STATE OF MICHIGAN

COURT OF APPEALS

ELLEN BYRNE,

Plaintiff-Appellant,

v

EDWARD COLONE,

Defendant-Appellee.

UNPUBLISHED
November 6, 2007

No. 273741
Wayne Circuit Court
LC No. 05-528034-CK

Before: Bandstra, P.J., and Talbot and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from a circuit court order granting defendant partial summary disposition of plaintiff's claims. We affirm in part, reverse in part, and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and defendant had a personal relationship from approximately 1992 to February 2003, and have two children. Defendant once purchased an engagement ring for plaintiff, but they never married. Defendant owned and operated Colone Masonry. Plaintiff alleged that she and defendant developed and worked on two properties together, one on Five Points in Detroit and the other on Gaylord in Redford. Plaintiff alleges that she advanced substantial amounts of money to defendant for the completion of improvements to the properties and spent a substantial amount of time working for defendant and his company during the parties' relationship. She alleges that she financially supported defendant by paying the expenses of the homes in which they resided. Defendant allegedly asked plaintiff to marry him in May 1996, which plaintiff alleges was "calculated to induce Plaintiff to provide her financial backing and assistance with the building/improvements of these properties." Plaintiff alleges that in reliance on defendant's intent to marry her, she supported him, advanced him money, and worked for him and his company.

Plaintiff's complaint includes eight counts, namely, breach of contract, promissory estoppel, "joint venture," "resulting trust," "constructive trust," "unjust enrichment," "estoppel by deed," and "quantum meruit."

Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), (8) and (10), arguing that counts I through VII were barred by the statute of frauds, MCL 566.106, because plaintiff was claiming that she is "entitled to claim a share of Defendant's real property," but did not allege or produce any writing to support the grant of an interest in property. He further

argued that Count VII for quantum meruit failed to state a claim on which relief could be granted because services rendered during a special relationship are presumed to be gratuitous and plaintiff failed to overcome the presumption.

The trial court rejected defendant's statute of frauds argument, but concluded that plaintiff's action in quantum meruit and her other equitable claims were not actionable in the context of "co-habitant relationships." The court further reasoned that the express and implied-in-fact contract claims were actionable, but only to the extent that plaintiff was able to overcome the presumption that the services rendered were gratuitous by showing that she expected compensation when the services were rendered and defendant intended to pay for them. The court examined several purported agreements on which plaintiff relied and concluded that the only one that met the criteria was defendant's alleged promise to pay plaintiff $500 a week for her work.

On appeal, plaintiff argues that the court erred in dismissing count I, breach of contract, because it is not an "equitable claim" subject to the limitations in *Featherston v Steinhoff,* 226 Mich App 584; 575 NW2d 6 (1997).

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood,* 461 Mich 109, 118; 597 NW2d 817 (1999).

Services rendered during a meretricious relationship are presumably gratuitous. *Featherston, supra,* p 589. Although contracts made in consideration of meretricious relationships are not enforceable, the existence of a meretricious relationship does not render all agreements between the parties to be illegal. *Carnes v Sheldon,* 109 Mich App 204, 211; 311 NW2d 747 (1981). "[A]greements between parties to such a relationship with respect to money or property will be enforced if the agreement is independent of the illicit relationship." *Tyranski v Piggins,* 44 Mich App 570, 573; 205 NW2d 595 (1973). "[W]here there is an express agreement to accumulate or transfer property following a relationship of some permanence and an additional consideration in the form of either money or services, the courts tend to find an independent consideration." *Id.,* pp 573-574. However, recovery may not be founded on a contract implied in law or quantum meruit "because to do so would essentially resurrect common-law marriages." *Featherston, supra,* p 588. "The agreement must be express or implied in fact." *Id.* A contract implied in fact concerns a situation "[w]here the parties do not explicitly manifest their intent to contract by words, [but] their intent may be gathered by implication from their conduct, language, and other circumstances attending the transaction." *Id.,* p 589. Because services rendered during a meretricious relationship are presumably gratuitous, a plaintiff seeking recovery on the theory of a contract implied in fact must overcome the presumption by showing that at the time the services were rendered, the plaintiff expected to receive and the defendant expected to pay compensation for the services. *Id.*

The trial court erred in dismissing the breach of contract claim. After rejecting the statute of frauds argument that was the only basis advanced by defendant for dismissal of the claim, the court identified several purported agreements mentioned in plaintiff's responsive brief and evaluated whether each involved an expectation of receipt and payment of compensation for the contribution of services. That showing is necessary to overcome the presumption of gratuitous rendering of services where the plaintiff is relying on a contract implied in fact. *Featherston, supra,* p 589. However, an express contract between parties involved in a meretricious

relationship is enforceable upon proof of independent consideration. *Id.*, p 588. Contrary to the trial court's ruling, an action founded on an express contract does not require the specific showing of an expectation of receipt and payment of compensation for services. See, e.g., *Tyranski, supra*.

Plaintiff also challenges the trial court's dismissal of the "joint venture" count on the basis that it was subsumed by the express contract claim.

"Joint venture" is not a cause of action; it is an association between two or more persons to carry out a single business enterprise for profit. *Goodwin v S A Healy Co*, 383 Mich 300, 308; 174 NW2d 755 (1970). The relationship arises only when the individuals intend to associate themselves as such. *Id*., p 309. The elements for establishing a joint venture are set forth in *Kay Investment Co, LLC v Brody Realty No 1, LLC*, 273 Mich App 432, 437; 731 NW2d 777 (2006). One involved in a joint venture may bring an action for an accounting. See, e.g., *Bodman v Harding*, 295 Mich 196; 294 NW 151 (1940); *Bednarsh v Winshall*, 2 Mich App 355; 139 NW2d 889 (1966). The entitlement to an accounting is not limited to situations involving alleged wrongdoing or breach of the agreement. If the agreement does not stipulate the length of its existence, any party may dissolve the joint venture at any time. *Posner v Miller*, 356 Mich 6, 9; 96 NW2d 110 (1959). An action for an accounting may be used to have the affairs of the joint venture wound up. See, e.g., *Bodman, supra.*

The trial court erred in dismissing plaintiff's action styled as "Joint Venture," and requesting an accounting. Contrary to the trial court's reasoning, the action is not "subsumed under Plaintiff's express-contract claim" such that it need not be separately considered.

Plaintiff does not adequately address whether dismissal of the remaining counts was in error. She argues that the trial court's extrapolation and extension of *Featherston, supra*, beyond its holding concerning a quantum meruit claim is contrary to Michigan law in that no other reported decision has similarly extended it, and other decisions involving similar facts have allowed recovery. Although she seeks relief with respect to all counts dismissed by the court, she does not specifically address the dismissal of the counts for promissory estoppel (count II), "resulting trust" (count IV), "constructive trust" (count V), "unjust enrichment" (count VI), and estoppel by deed (count VII). Plaintiff's mere assertion that the trial court erred in extrapolating *Featherston* does not adequately address whether the dismissal of the remaining counts was erroneous.

> It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow. [*Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).]

In sum, we reverse the trial court's dismissal of plaintiff's claims for breach of contract and joint venture. The dismissal of the claims for promissory estoppel, "resulting trust," "constructive trust," "unjust enrichment," and estoppel by deed are affirmed.

Affirmed in part, reversed in part, and remanded for further proceedings. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Michael J. Talbot
/s/ Karen M. Fort Hood