

[Cite as *Just Like Us Family Enrichment Ctr. v. Easter*, 2010-Ohio-4893.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94180

JUST LIKE US FAMILY ENRICHMENT CENTER

PLAINTIFF-APPELLEE

vs.

GERALD T. EASTER, SR.

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-663201

BEFORE: Dyke, J., Rocco, P.J., and McMonagle, J.

RELEASED AND JOURNALIZED: October 7, 2010

ATTORNEY FOR APPELLANT

Carl G. McMahon, Esq.
410 Leader Building
526 Superior Avenue
Cleveland, Ohio 44114-1979

ATTORNEYS FOR APPELLEE

Matthew J. Kucharson, Esq.
Mark I. Wallach, Esq.
Calfee, Halter & Griswold
1400 Keybank Center
800 Superior Avenue
Cleveland, Ohio 44114

ANN DYKE, J.:

{¶ 1} Defendant-appellant, Gerald T. Easter, Sr. (“Easter”), appeals the trial court’s award of damages in the amount of \$27,216 to plaintiff-appellee, Just Like Us Family Enrichment Center (“Just Like Us”), and denying Easter’s counterclaim and third party claim against defendants-appellees, Marc and Jana Crosby (“the Crosbys”). For the reasons that follow, we affirm.

{¶ 2} The Crosbys are the founders and executive directors of Just Like Us. Just Like Us is a nonprofit organization that provides support to ex-offenders and their families in the community. The organization also offers administrative and educational assistance for daycare services.

{¶ 3} In the summer of 2007, the Crosbys, on behalf of Just Like Us, met with Easter, who owned a building located at 17603 Harvard Avenue in

Cleveland, Ohio (“the Building”). At first, the parties agreed that Easter would finance the cost of the renovations needed to make the Building habitable, and in turn, Just Like Us would provide monthly lease payments. Easter, however, was unable to obtain financing for the renovations and the parties canceled that agreement and entered into another one.

{¶ 4} In late August of 2007, the parties entered into their second agreement in which Just Like Us would finance the cost of renovating the Building up to \$45,000, and in exchange, Easter would abate the rent of Just Like Us for 30 months. Both parties agreed that Just Like Us would pay all invoices that were first submitted by Easter. Neither party is able to present a copy of the written contract, and as the trial court noted, the parties disagree on nearly every other term of the agreement other than those provided forthwith.

{¶ 5} For the next couple months, Just Like Us paid Easter for the contractor invoices for an undisputed amount of \$25,675. Additionally, Just Like Us paid \$1,541 for an insurance policy for the improvements.

{¶ 6} Then, on January 16, 2008, unbeknownst to Just Like Us, Easter transferred ownership of the Building to his daughter, Laura A. Easter, for no consideration. After this date, Easter stopped submitting official vendor invoices to Just Like Us for payment despite its repeated requests for the invoices. As a result, Just Like Us ceased making payments for the renovations. On April 30, 2008, Just Like Us’s scheduled move-in date, Easter had failed to complete the renovations necessary and Just Like Us did not take occupancy.

{¶ 7} Subsequently, on June 25, 2008, Just Like Us instituted the instant action against Easter alleging breach of contract, negligent misrepresentation, unjust enrichment, and promissory estoppel. On September 26, 2008, defendant timely answered the complaint and filed a counterclaim alleging breach of contract, negligent misrepresentation, promissory estoppel, and fraud and mis-representation. Additionally, he filed a third party complaint against the Crosbys.

{¶ 8} Nearly one year later, Easter filed two motions to dismiss Just Like Us's complaint, motions to strike the contract attached to the complaint, and motions for definitive statement. Additionally, Easter filed a motion to take judicial notice of Marc Crosby's criminal record. The trial court denied these motions on August 25 and 26, 2008.

{¶ 9} After mediation proved unsuccessful, the bench trial of this matter commenced on August 28, 2009 and lasted two days. The court heard all relevant evidence and on October 2, 2009, issued its opinion and judgment entry in which it denied recovery on Just Like Us's claims for breach of contract, negligent misrepresentation, and promissory estoppel but awarded Just Like Us \$27,216, plus interest, on its claim for unjust enrichment. The trial court also denied all of Easter's counterclaims and his third party claim.

{¶ 10} Easter now appeals and presents three assignments of error for our review. His first provides:

{¶ 11} “The Trial Court Erred in Granting Judgment in Favor of the Plaintiff/Appellee Based Upon the Quasi-Contract Equitable Cause of Action Known as Unjust Enrichment.”

{¶ 12} Within this assignment of error, Easter posits four arguments in support of his position that the trial court erred in granting judgment in favor of Just Like Us on their unjust enrichment claim. First, Easter maintains that Just Like Us failed to establish that Easter retained any benefit as a result of the renovations. Next, Easter complains that there lacked competent, credible evidence to support the trial court’s finding that Just Like Us had “clean hands.” Third, Easter contends that Just Like Us was required, but failed, to proffer expert testimony establishing its damages. Finally, Easter argues that Just Like Us should have filed suit against the current owner of the building, his daughter. We find each of Easter’s arguments unpersuasive.

Elements of Unjust Enrichment

{¶ 13} First, we find that Easter did receive a benefit from the renovations. In order to succeed on a claim for unjust enrichment, Just Like Us was required to demonstrate the following: “(1) a benefit conferred by a plaintiff upon a defendant; (2) knowledge by the defendant of the benefit; and (3) retention of the benefit by the defendant under circumstances where it would be unjust to do so without payment (‘unjust enrichment’).” *Hambleton v. R.G. Barry Corp.* (1984), 12 Ohio St.3d 179, 183, 465 N.E.2d 1298, quoting *Hummel v. Hummel* (1938), 133 Ohio St. 520, 525, 14 N.E.2d 923.

{¶ 14} With regard to challenges to the sufficiency of the evidence supporting a judgment, we note that where any essential element of a claim for relief is not proven, any judgment rendered notwithstanding that failure should be reversed. See *Farley v. Farley* (1994), 97 Ohio App.3d 351, 355, 646 N.E.2d 875.

{¶ 15} With regard to challenges to the manifest weight of the evidence, we must be mindful that in a bench trial, trial judges are presumed to rely only upon relevant, material, and competent evidence in arriving at their judgments. *State v. Richey* (1992), 64 Ohio St.3d 353, 362, 595 N.E.2d 915; *State v. Post* (1987), 32 Ohio St.3d 380, 384, 513 N.E.2d 754. An appellate court will not reverse a judgment as being against the manifest weight of the evidence where some competent, credible evidence exists to support the judgment. *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80, 461 N.E.2d 1273. The court explained:

{¶ 16} “The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.”

{¶ 17} Easter complains that Just Like Us did not establish that he received a benefit. The evidence, however, indicates the contrary. There is no dispute that the Building was vacant prior to Just Like Us contacting Easter. Additionally, as the Crosbys testified, the Building was not suitable for rent before construction.

There were no floors and walls and broken windows. Also, as Easter pointed out, no heating and cooling system. Easter's own witness and friend, William Bias, testified that prior to construction, the Building needed "substantial renovations" to even be suitable to rent. As admitted by Easter, however, he was unable to obtain financing to complete any renovations on the Building. Thus, by securing Just Like Us and its finances in the amount of \$25,675 in order to pay for the renovations to the building, and the insurance policy needed to conduct the renovations, Just Like Us conferred a benefit upon Easter. We also note, despite Easter's assertions to the contrary, that the benefit was conferred upon him, and not his daughter, because the \$25,675 paid by Just Like Us for the renovations and the \$1,541 for the insurance contract was paid prior to January 16, 2008, when his daughter obtained possession of the Building.

{¶ 18} Finally, the evidence in the record clearly establishes that Easter knew of the benefit, as he was the general contractor of the project, and that circumstances render it inequitable to permit Easter to retain the benefit without compensating Just Like Us, which was never afforded one day of the 30 month lease agreement. Accordingly, we find competent and credible evidence going to each element of unjust enrichment.

Unclean Hands

{¶ 19} Next, we find that the trial court properly rejected Easter's defense of unclean hands. This court has previously held that a party asserting an unjust enrichment claim must come to court with clean hands. *Directory Servs. Group*

v. Staff Builders Internatl. (July 12, 2001), Cuyahoga App. No. 78611. Equity mandates the theory that he who seeks equity must do equity. *Id.* As stated in *Trott v. Trott* (Mar. 14, 2002), Franklin App. No. 01AP-852:

{¶ 20} “The clean hands doctrine of equity requires that whenever a party takes the initiative to set in motion the judicial machinery to obtain some remedy but has violated good faith by his or her prior-related conduct, the court will deny the remedy. *Marinero v. Major Indoor Soccer League* (1991), 81 Ohio App.3d 42, 45, 610 N.E.2d 450. Thus, in order for the doctrine to bar a party’s claims, the party must be found to be at fault in relation to the other party and in relation to the transaction upon which the claims are based.”

{¶ 21} Furthermore, “the maxim, ‘He who seeks equity must come with clean hands,’ requires only that the party must not be guilty of reprehensible conduct with respect to the subject matter of his suit.” *Basil v. Vincello* (1990), 50 Ohio St.3d 185, 190, 553 N.E.2d 602.

{¶ 22} Easter argues that Just Like Us had unclean hands because the Building renovation work halted solely due to Just Like Us’s failure to pay for any of the renovations and materials after January 16, 2008. This argument lacks merit because Just Like Us’s obligation to pay for the renovation work had ceased when Easter transferred ownership of the Building to his daughter. After transferring possession, Easter was unable to perform his part under the agreement because, by not owning the Building any longer, he could not assure rent abate for the next 30 months. Thus, in actuality, Easter wore the unclean

hands. Accordingly, because Easter was unable to perform, Just Like Us was no longer required to perform its obligations under the agreement.

{¶ 23} Next, Easter maintains that Just Like Us had unclean hands because it failed to pay a number of vendor invoices that amounted to over \$48,000. A review of these invoices, however, indicates that many are not invoices but rather are quotes or proposals for work never performed or materials never received. Of these documents, only two are legitimate invoices both of which, however, the Crosbys denied ever seeing prior to the trial. Since there is some competent, credible evidence to support the decision of the trial court, we find Easter's defense of unclean hands without merit.

Expert Testimony

{¶ 24} We also reject Easter's claim that Just Like Us was required to present expert testimony establishing its damages to recover on its unjust enrichment claim. In *Kalasunas v. Brydle* (June 18, 1987), Cuyahoga App. No. 52149, this court reviewed a similar situation as the one presented here in which the claimants had made improvements to the property and were awarded restitution damages for unjust enrichment. *Kalasunas* stated that "the fact that the amount of out-of-pocket expenses incurred * * * does not represent a proportionate increase in market value of the premises * * * does not matter." Thus, we ordered the appellants in that case to repay the monies expended by the appellees in repairing the property. See, also, *Rice v. Wheeling Dollar Sav. & Trust Co.* (1951), 155 Ohio St. 391, 398, 99 N.E.2d 301.

{¶ 25} In this case, Just Like Us presented evidence in the form of testimony, financial statements, and email correspondence demonstrating that it paid \$25,675 for every legitimate contractor invoice while Easter still owned the Building and that Easter retained the benefit of these renovations until he transferred interest in the building. Just Like Us also presented evidence that it paid \$1,541 for the insurance policy for the renovations. Thus, Just Like Us presented competent, credible evidence demonstrating the amount of damages incurred as a result of Easter's unjust enrichment. Accordingly, this argument is without merit.

Wrong Defendant

{¶ 26} Finally, we find unpersuasive Easter's argument that Just Like Us should have filed the lawsuit against the current owner of the building, Easter's daughter. First, the lease and renovation agreement was between Just Like Us and Easter, not Easter's daughter. Second, the evidence clearly demonstrated that at the time Just Like Us paid the \$25,675 for the renovations, Easter's daughter did not own the building. Easter's argument in this regard is without merit and overruled.

{¶ 27} Easter's second assignment of error provides:

{¶ 28} "The Trial Court Erred in Denying Appellant's Counter Claims and Third Party Claims."

{¶ 29} Here, Easter maintains that the trial court erred in denying him compensation for serving as the general contractor of the renovation work and

reimbursement for funds he allegedly advanced after January 16, 2008 to continue the renovations to the Building. We find competent, credible evidence supporting the trial court's denial of both claims.

{¶ 30} There is no dispute that the parties agreed that Just Like Us would pay Easter \$800 a week to serve as a general contractor to oversee the renovations of the building. However, the evidence also demonstrated that Easter was required, but failed, to present invoices documenting his labor. Both Jana and Marc Crosby testified that the parties agreed that in order for Easter to receive money to pay for the renovation work, he needed to submit an invoice or other form of documentation adequately establishing the work performed and the cost of said performance. Additionally, Easter's own witness and friend, Wayne Whitmore, testified that in order to get paid, Easter was required to submit contractor invoices as work progressed. Accordingly, it is undisputed that in order to be paid, Easter needed, but failed, to present an invoice documenting his work. By failing to do so, he, not Just Like Us, breached the agreement.

{¶ 31} Furthermore, the evidence proved that Easter did not diligently perform his duties as general contractor. First, and most obvious, the renovations were not completed by April 30, 2008 as promised by Easter. Second, during the entire month of December of 2007, Easter did not perform any work. Additionally, from March 30, 2008 until April 5, 2008, Easter was in Florida and he was "very sick" during the week of February 6, 2008.

{¶ 32} Finally, as the trial court correctly determined, after Easter transferred ownership of the Building to his daughter on January 16, 2008, Just Like Us no longer had an agreement with Easter and owed nothing to him.

{¶ 33} Additionally, the trial court properly denied Easter's claim for personal funds expended to pay for the renovations after January 16, 2008. As previously stated, on this date, Easter transferred ownership of the Building to his daughter without any consideration and unbeknownst to Just Like Us and the Crosbys. The trial court correctly determined that after such transfer, Just Like Us owed no duty to Easter because he no longer had any interest in the Building and he materially breached any agreement possibly entered into between the parties. Therefore, Easter's argument in this regard is without merit.

{¶ 34} Easter's second assignment of error is without merit.

{¶ 35} His third assignment of error states:

{¶ 36} "The Trial Court Erred in Denying Appellant's Motion for Judicial Notice of Third Party Defendant/Appellee Marc Crosby's Cuyahoga County Common Pleas Court Drug Trafficking Criminal Record."

{¶ 37} We disagree with Easter and find that the trial court did not err in refusing to take judicial notice of Marc Crosby's criminal record in state court. A trial court is afforded discretion in making evidentiary rulings and a reviewing court will not reverse a trial court's decision unless the record demonstrates that the trial court abused its discretion. *State v. Sage* (1987), 31 Ohio St.3d 173, 180,

510 N.E.2d 343; see, also, *In re Rine*, Licking App. No. 2007 CA 00026, 2008-Ohio-170.

{¶ 38} Evid.R. 609 governs the admission of prior convictions to impeach the accused and provides that if the prior conviction is considered relevant under Evid.R. 403(B), it is generally admissible to impeach the accused “if the crime was punishable by death or imprisonment in excess of one year * * * and if the court determines that the probative value of the evidence outweighs the danger of unfair prejudice, of confusion of the issues, or of misleading the jury.” Evid.R. 609(A)(2). Further, Evid.R. 611(B) provides that the scope of *cross-examination* extends to “all relevant matters and [to] matters affecting credibility.” (Emphasis added.)

{¶ 39} First, during the cross-examination of Marc, Easter’s counsel was free to impeach his credibility regarding his prior criminal history with the state pursuant to Evid.R. 609(A)(2) and 611(B). Counsel, however, failed to do so even though he had questioned Marc about his criminal history in federal court. Moreover, we are concerned that the danger of unfair prejudice from the convictions clearly outweighed any probative value of their admittance. Lastly, we note that the documents provided to the court indicating Marc’s criminal record with the state were merely printouts from the online docket and not official court documents. Accordingly, we reject Easter’s argument that the trial court erred in failing to take judicial notice of Marc’s criminal record in state court.

{¶ 40} We also find that the trial court's taking judicial notice of the date of transfer of the Building from Easter to his daughter is not prejudicial to Easter. Easter admitted to the transfer and the date. Additionally, "[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Evid.R. 201(B). Hence, we overrule Easter's final assignment of error.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANN DYKE, JUDGE

**KENNETH A. ROCCO, P.J., and
CHRISTINE T. MCMONAGLE, J., CONCUR**