

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 15, 2008

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2007AP264

Cir. Ct. No. 2006CV20

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

DALE A. SARNSTROM,

PLAINTIFF-RESPONDENT,

V.

JEFFREY D. SARNSTROM AND DARLA J. SARNSTROM,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Pierce County:
ROBERT W. WING, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Jeffrey and Darla Sarnstrom appeal a judgment awarding Dale Sarnstrom over \$60,000 for breach of contract. The Sarnstroms argue that the trial court's decision is not supported by the evidence and is otherwise barred by both the statute of frauds and the parol evidence rule. The

Sarnstroms additionally challenge the equitable remedy fashioned by the trial court. We reject the Sarnstroms' arguments and affirm the judgment.

BACKGROUND

¶2 In 1993, the Sarnstroms bought eighty acres of land from Jeffrey's father, Dale, under a land contract. Payments were made at or about the time they were due pursuant to an amortization schedule. At trial, Dale testified that in the fall of 2002, Jeffrey asked him to "[sign] the land over" so that the Sarnstroms could use the property as collateral to obtain loan financing. Dale testified, however, that Jeffrey assured him he would still receive payments as arranged under the land contract's amortization schedule. In September 2002, when the Sarnstroms' payments were current, but with an approximate balance of \$50,000, Dale executed a deed "in fulfillment" of the land contract. A copy of the deed was faxed to the lender financing the Sarnstroms' loan.

¶3 After execution of the deed, the Sarnstroms made two more payments under the amortization schedule—one in October 2002 and the last payment in April 2003. When the Sarnstroms failed to make any further payments, despite requests to do so, Dale filed suit alleging breach of contract and unjust enrichment. After a trial to the court, judgment was entered in Dale's favor and this appeal follows.

DISCUSSION

¶4 The Sarnstroms argue that the trial court's judgment is not supported by the evidence. We are not persuaded. We uphold a trial court's findings of fact unless they are clearly erroneous. *Global Steel Prods. Corp. v. Ecklund Carriers, Inc.*, 2002 WI App 91, ¶10, 253 Wis. 2d 588, 644 N.W.2d 269. We do not

reweigh the evidence or reassess the witnesses' credibility, but will search the record for evidence that supports findings the trial court made, not for findings it could have made but did not. *See Noble v. Noble*, 2005 WI App 227, ¶¶15-16, 287 Wis. 2d 699, 706 N.W.2d 166. Because it is for the trial court to resolve conflicts in the testimony, we will uphold its assessments as to witness credibility unless inherently or patently incredible, and we will not second-guess the trial court's reasonable factual inferences. *See Global Steel Prods. Corp.*, 253 Wis. 2d 588, ¶10.

¶5 Here, Dale testified that he executed the deed in order to help the Sarnstroms obtain financing, but with the understanding that payments would continue as arranged pursuant to the land contract. Robert Loberg, the attorney who prepared the warranty deed and termination document, testified that at the Sarnstroms' request he faxed copies of these documents to the Sarnstroms' lender the day after Dale signed them. Jodi Fedie, the lender's representative, testified that prior to September 2002, the Sarnstroms had obtained some financing in which Dale had to sign the loan documents. When the Sarnstroms sought refinancing in September 2002, Fedie informed them they had the option of either having Dale sign the loan documents, as before, or having Dale set up record title in the Sarnstroms so that Dale would not have to join in the refinance obligations.

¶6 Jeffrey testified that he never asked his father to sign the deed for purposes of refinancing and was, in fact, unaware that the deed had been signed until April 2003, when the Sarnstroms sought to again refinance by consolidation. Jeffrey testified that when he learned the deed had been executed, he assumed it was intended as a gift that extinguished the balance due under the land contract. The court found that Dale had not executed the deed with the intent to extinguish his right to receive payments under the contract. Rather, the court found Dale

executed the deed solely with the intent to allow the Sarnstroms to obtain financing.

¶7 The trial court is the ultimate arbiter of the credibility of the witnesses and the weight to be given each witness's testimony. *See Noll v. Dimiceli's, Inc.*, 115 Wis. 2d 641, 644, 340 N.W.2d 575 (Ct. App. 1983). Ultimately, the trial court found that: (1) the Sarnstroms had breached the terms of the contract; (2) Dale's execution and delivery of the deed was made in reasonable reliance upon Jeffrey's representation and promise that the contract payments would be made; (3) the Sarnstroms would be unjustly enriched if not required to make the contract payments; and (4) the damages alleged in the complaint were proven at trial. We conclude that the evidence supports the trial court's findings and conclusions.

¶8 In their brief, the Sarnstroms make reference to the statute of frauds and the parol evidence rule; however, their arguments are not developed in a manner readily susceptible to appellate review. In any event, with respect to the statute of frauds, the Sarnstroms intimate that there is no written document memorializing the oral agreement to continue payments on the loan. The statute of frauds, as codified by WIS. STAT. § 706.02(1), states that a transaction creating an interest in land "shall not be valid unless evidenced by a conveyance." In turn, a conveyance is defined as a written instrument satisfying the requirements of § 706.02. In the absence of a written instrument, however, an agreement conveying an interest in land may be enforceable in whole or in part if the provisions of WIS. STAT. § 706.04 are met. *See Nelson v. Albrechtson*, 93 Wis. 2d 552, 556, 287 N.W.2d 811 (1980).

¶9 An enforceable agreement under WIS. STAT. § 706.04 will be found only when “all of the elements of the transaction are clearly and satisfactorily proved.” Additionally, one of the following circumstances must apply: “(1) [t]he deficiency of the conveyance may be supplied by reformation in equity; or (2) [t]he party against whom enforcement is sought would be unjustly enriched if enforcement of the transaction were denied; or (3) [t]he party against whom enforcement is sought is equitably estopped from asserting the deficiency.” WIS. STAT. § 706.04. The elements of an unjust enrichment claim are (1) a benefit conferred; (2) knowledge or appreciation by the receiving party of the benefit; and (3) acceptance or retention by the receiving party of the benefit under circumstances making it inequitable to retain the benefit without payment of its value. *Puttkammer v. Minth*, 83 Wis. 2d 686, 688-89, 266 N.W.2d 361 (1978). Based on the evidence, the statute of frauds would not bar the equitable relief granted to prevent an unjust enrichment. With regard to the Sarnstroms’ reference to the parol evidence rule, parol evidence may not be used to contradict the express language of a *written* contract. See *Caulfield v. Caulfield*, 183 Wis. 2d 83, 92, 515 N.W.2d 278 (Ct. App. 1994). Here, we are reviewing an oral agreement to clear title in exchange for continued payments on an existing debt. Therefore, the parol evidence rule is not implicated.

¶10 Finally, the Sarnstroms challenge the equitable remedy fashioned by the trial court. Specifically, they contend the trial court erred by “calling the whole loan due and payable as a matter of equity because Jeffrey Sarnstrom was going to sell the property.” Because of intervening interests, including mortgages and the sale of three parcels from the subject property, the court could not have easily returned the land to Dale. The court opted, in the alternative, to impose a

judgment lien in order to protect Dale's right to receive payment on the debt. We discern no error.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

