

STATE OF MICHIGAN
COURT OF APPEALS

MO'EEN MOHAMAD AL KABRA,

Plaintiff-Appellant/Cross-Appellee,

v

AKRAM NAJI MAROUF, individually and d/b/a
EDITH'S MARKET,

Defendant-Appellee/Cross-Appellant.

UNPUBLISHED

March 27, 1998

No. 187073

Washtenaw Circuit

LC No. 92-042615-CH

Before: Markey, P.J., and Michael J. Kelly and Whitbeck, JJ.

PER CURIAM.

Plaintiff filed a two-count complaint against defendant, alleging first that he had been induced to invest in a party store because of defendant's fraudulent misrepresentation that plaintiff would have a fifty-percent interest in the profits of the store. In Count II, plaintiff alleged that he was the rightful owner of the real property on which the store is located and that the trial court should quiet title in him and grant him possession. After a six-day bench trial, the trial court issued an opinion and judgment in plaintiff's favor on Count I and in defendant's favor on Count II. Plaintiff appealed the decision to this Court and defendant cross-appealed. We affirm the trial court's judgment as to count II, but reverse the trial court's judgment as to Count I.

Plaintiff raises two issues for review, only one of which was raised before the trial court and therefore preserved for appeal. *Haworth v Wickes Mfg Co*, 210 Mich App 222, 229-230; 532 NW2d 903 (1995). Plaintiff argues that the evidence was insufficient to support the trial court's finding that defendant owned the real property on which the store is located. Actions to quiet title are equitable in nature, and a court acting in equity "looks at the whole situation and grants or withholds relief as good conscience dictates." *Michigan Nat'l Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992). We review this issue de novo, however, we accept the factual findings of the trial court unless they are clearly erroneous. *Id.*

We are not persuaded that the trial court clearly erred in finding that defendant was the true owner of the real property on which Edith's Market was located. Defendant testified that after

acquiring the property in 1982, he put the real property and gas license under his brother's name to avoid any potential conflict in holding both a gas license for the adjacent gas station and a liquor license for the party store, both being located on the real property. Similarly, defendant testified that after a subsequent conflict with his brother, he put the property and gas license in plaintiff's name. Moreover, defendant obtained a power of attorney from plaintiff to exercise control of the property. Defendant testified to several subsequent acts of ownership, including his application for a loan, remodeling the gas station building, shutting down the gas station, and moving the store into the gas station building. Both plaintiff and defendant testified that defendant did not pay plaintiff rent either to operate the store or occupy the apartment above the store, as defendant had to the previous owner of the real property. Both plaintiff and defendant also testified that defendant paid the property taxes and all other expenses of the property. In light of this evidence, the trial court committed no error in concluding that defendant was the owner of the real property on which the store was located.

Although plaintiff argues that his testimony on this issue was more persuasive than defendant's testimony, both parties supplied this Court with a list of the inconsistencies in the other's testimony. Thus, there is testimony that supports both versions of the business transactions in this case. Indeed, the trial court noted that the evidence presented by each of the parties was at times improbable and that both parties changed their testimony at various times during the trial and in depositions. The trial court was present throughout the six days of testimony and was in the best position to judge the witnesses' credibility. Simply put, the trial court believed defendant's side of the story; we defer to the trial court's credibility determination. MCR 2.613(C).

Plaintiff raises additional arguments regarding the applicability of the statute of frauds and the equitable "clean hands" doctrine. However, because these arguments were not raised in the trial court, we refuse to address them. See *Royce v Citizens Ins Co*, 219 Mich App 537, 545; 557 NW2d 144 (1996); see also *Stephenson v Golden (On Rehearing)*, 279 Mich 710, 732-733; 276 NW 849 (1937) ("Those who try equity cases must make the appropriate record to raise properly the questions sought to be determined judicially."). We also decline to review plaintiff's argument that defendant's use of plaintiff's power of attorney to deed the property to himself in 1991 exceeded the scope of the document. The trial court found that defendant had been the true owner of the property at issue since approximately 1982, notwithstanding the deed to plaintiff. Because defendant was the actual owner when he used plaintiff's power of attorney to transfer the property, whether his act exceeded the scope of the power of attorney is, as the trial court stated, irrelevant. Thus, we affirm the portion of the trial court's judgment determining that plaintiff is the owner of the real property at issue in this case.

Defendant argues in his cross-appeal that the trial court's factual finding that plaintiff is a one-half owner of the Edith's Market business was clearly erroneous. We agree. We review factual findings by the trial court for clear error. MCR 2.613(C), *Ghidotti v Barber (On Remand)*, 222 Mich App 373, 377; 564 NW2d 141 (1997). A finding is clearly erroneous if an appellate court is left with a firm and definite conviction that a mistake was made. *Id.*

Here, defendant denied that plaintiff provided any money to be invested in the business. In contrast, plaintiff testified that he provided defendant with about \$10,000 for the store's inventory and an additional \$35,000. A letter that plaintiff asserted was written to him by defendant referenced a

“\$35,000 debt” from defendant to plaintiff, while other letters also referenced plaintiff having provided money to defendant in connection with “the store.” However, defendant denied having written these letters. A handwriting expert, appointed by the trial court, testified that defendant was attempting to disguise his handwriting in samples that defendant provided to the expert. The trial court found that defendant had written the letters and, accordingly, implicitly found that plaintiff had provided defendant with money for the business. We consider these findings to be well supported by the evidence.

However, the trial court then concluded that the parties intended for plaintiff to have a one-half interest in the business with defendant to have the other one-half interest. Accordingly, the trial court awarded each party a one-half ownership interest in the business with each party to be entitled to one-half of the profits from the business and to be responsible for one-half of its losses.¹ There was testimony from plaintiff and defendant’s brother indicating that plaintiff was to receive one-half of the profits of the business. Plaintiff also testified at one point that the parties agreed that defendant would run the store and be entitled to one-half of the profits, while plaintiff would own the store and receive the other one-half of the profits. There was no testimony that plaintiff and defendant were each to be one-half owners of the business. Thus, we conclude that the trial court’s finding that the parties each had a one-half ownership interest in the business was clearly erroneous because we have a firm and definite conviction that this finding was mistaken. *Ghidotti, supra* at 377. Accordingly, we reverse the portion of the trial court’s judgment regarding the parties’ ownership interest in the business known as Edith’s Market.

As discussed above, we accept the trial court’s finding that plaintiff actually provided money for the business. However, a legally valid contract requires a meeting of the minds on the essential terms or all material facts of the agreement. *West Bloomfield Hospital v Certificate of Need Bd*, 223 Mich App 507, 519; 567 NW2d 1 (1997); *Kamalnath v Mercy Memorial Hospital Corp*, 194 Mich App 543, 548; 487 NW2d 499 (1992); *Stanton v Dachile*, 186 Mich App 247, 256; 463 NW2d 479 (1990). Further, whether there has been a meeting of the minds and the content of such is determined objectively by the acts and express words of the parties, not by their subjective intent. *Kamalnath, supra* at 548; *Stanton, supra* at 256.

From the record before us, we do not believe that the parties reached a specific enough agreement regarding the business to have established a legally enforceable contract. There simply was too much left open regarding the parties’ respective rights. From plaintiff’s version of the events, the parties essentially agreed that they would split the profits of the business, but they did not provide any limit on the length of time that this profit sharing would continue, any provision for allocating the burden of potential losses by the business or any delineation of the parties’ respective rights if the business were to close. If this “agreement” were to be applied without elaboration, defendant could close the business at any time and simply keep plaintiff’s investment. It would be objectively unreasonable to conclude that plaintiff agreed to this. Conversely, plaintiff based on his finite investment would apparently be entitled to profits from the business forever, without assuming the risk of losses or having any further obligation to the business. We consider it objectively unreasonable to conclude that defendant agreed to that possibility. Accordingly, we conclude that the parties failed to enter a legally enforceable contract regarding the Edith’s Market business.

Even though a contract may not exist between two interconnected parties, a person who has been unjustly enriched at the expense of another person is required to make restitution under the equitable doctrine of unjust enrichment. *Kammer Asphalt Paving Co, Inc v East China Twp Schools*, 443 Mich 176, 185; 504 NW2d 635 (1993). The elements of unjust enrichment are (1) receipt of a benefit by a defendant from a plaintiff and (2) resulting inequity to the plaintiff because of retention of the benefit by the defendant. *Barber v SMH(US), Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993). Here, defendant received money from plaintiff for investment in the Edith's Market business, and it would be inequitable for defendant to retain that money when the parties failed to reach an agreement about their respective rights in the business. The trial court has not determined the total amount of money that plaintiff provided to defendant in connection with Edith's Market. Accordingly, we remand with instructions that the trial court determine the amount of money that defendant received from plaintiff in connection with the business and enter an order requiring defendant to pay that amount, plus interest, if appropriate, to plaintiff under such terms as the court shall determine.

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

/s/ Jane Markey

/s/ Michael J. Kelly

/s/ William C. Whitbeck

¹ The trial court qualified this holding by providing that plaintiff would not be entitled to a share of profits earned prior to January 1, 1994 based on the doctrine of laches because plaintiff did not request an accounting for those profits at an earlier time. The trial court also provided that plaintiff would not be responsible for any losses incurred by the business in 1994 or earlier because plaintiff "had nothing to do with operating the store" at that time.