

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ALBERT LEE WILLIAMS,

Plaintiff/Appellee/Cross-Appellant,

v

ELSIE MAE LOUISE MATHER,

Defendant/Appellant/Cross-  
Appellee.

UNPUBLISHED

February 16, 2001

No. 214397

Cass Circuit Court

LC No. 95-000103-DO

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Before: Saad, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right and plaintiff cross-appeals as of right from the trial court's judgment, following a bench trial, that found in favor of plaintiff regarding his claims of rescission, fraud, and unjust enrichment, but found in favor of defendant regarding the remaining claims of partnership, express and implied contracts, and equitable trust. We affirm the trial court's judgment in all respects.

**I. FACTS AND PROCEEDINGS**

This case arises out of a dispute mainly involving real properties between these two parties who, while involved in a relationship for nine years (from the fall of 1985 until December 1994), were never married to each other.<sup>1</sup> The parties met in 1985 and became romantically involved in the fall of 1985. They were both married at the time, although separated from their respective spouses. Plaintiff was divorced from his wife, Jane Anne Williams, in July 1986, while defendant was divorced from her husband, Dick Mather, in July 1987. Plaintiff is a general laborer who works on rehabilitating and constructing houses. Plaintiff initially met defendant when he heard that she owned several rental properties and inquired whether she needed any repair work done to them. According to plaintiff, the parties began living together at a house located on Prairie Ronde in Dowagiac in the fall of 1985, and then moved into a house together located at 2775 US 12 East in Niles in July 1986.

<sup>1</sup> We note that plaintiff did include a count for determination of common law marriage and divorce in his complaint. That count, however, was dismissed before trial on a motion for summary disposition and the parties raise no issues concerning this claim.

Plaintiff had been living in his marital home located at 25431 Gage Street in Dowagiac with his wife. Jane Williams continued to reside in the house until February 1986. Although there was much disputed testimony concerning the Gage Street property, plaintiff and his wife signed a quitclaim deed, dated February 24, 1986, conveying the property to Sunshine Investments, Inc., a corporation incorporated by defendant in December 1985. Defendant held the quitclaim deed for nine years before she recorded it in January 1995, claiming that she had not recorded the deed because there were liens on the property and plaintiff had previously been in bankruptcy. The Gage Street property contained a two-story main house, a small house, a barn, and a warehouse. These structures were rented during the time that plaintiff and defendant lived together and the rental incomes paid for the mortgage payments. Further, defendant admitted at trial that plaintiff maintained the structures on the Gage Street Property during the nine years that they lived together.

As mentioned, the parties lived together at property located on US 12 in Niles. This property was purchased by plaintiff, defendant, and Sunshine Investments through a land contract, dated July 31, 1986. The purchase agreement was dated July 16, 1986. As with the Gage Street property, there was a great deal of conflicting testimony concerning the US 12 property. The property was purchased for \$73,000, with a down payment of \$10,000. Defendant claimed that plaintiff invested no money in this property and that she paid both the down payment and all the monthly payments. Plaintiff contended that he paid most of the down payment. Defendant ultimately attempted to obtain sole title to the US 12 property and refinance it in her own name; however, it was shown at trial that defendant forged the quitclaim deed purporting to convey plaintiff's interest in the property to her, that she forged an affidavit for the refinancing, and that the quitclaim deed was never recorded.

Aside from the ownership rights to the Gage Street and US 12 properties, the other main issue at trial was whether plaintiff and defendant were business partners such that plaintiff would be entitled to a percentage of the rental properties that the parties purchased and rehabilitated during their nine-year relationship. It was undisputed at trial that plaintiff worked on rehabilitating many of the rental properties. The rental properties, however, were exclusively in defendant's name. By the time of trial, defendant owned thirty rental properties and claimed net assets of more than \$2.8 million. At trial, plaintiff asked for an award of several of the properties, whose value was nearly \$1.4 million.

The parties separated in December 1994, when plaintiff moved out of the US 12 property. He moved into an apartment in a building owned by defendant, but never paid any rent, so defendant had plaintiff evicted in July 1985. Plaintiff then went to live at the Gage Street property, where he was residing at the time of trial. Plaintiff filed this action in February 1995. The trial in this case began in April 1996 and continued to February 1998. The trial court filed its written opinion on July 1, 1998, and found that (1) plaintiff failed to prove the existence of a partnership, (2) plaintiff failed to prove an express or implied contract, (3) the quitclaim deed to the Gage Street property was void on the basis of fraud and this property was awarded to plaintiff on the basis of rescission, (4) plaintiff proved his claim of unjust enrichment with regard to the US 12 property and was awarded a monetary judgment of \$65,000.

## II. DEFENDANT'S APPEAL

### A.

Defendant's first issue is that the trial court erred in failing to make findings of fact or conclusions of law despite defendant's submission of detailed proposed findings. The trial court issued a nineteen-page written opinion following trial, detailing its findings of fact and conclusions of law. It specifically noted that such is required by MCR 2.517(A). Further, when we initially reviewed the trial court's opinion, we agreed that additional findings were necessary for appellate review. This matter was remanded to the trial court with specific instructions to supplement its findings and conclusion with respect to the basis of its valuation and distribution of the real property located on US 12. The trial court filed its supplemental findings with this Court in May 2000.

Consequently, the trial court's factual findings and conclusions of law are in accordance with MCR 2.517(A) and we find no further error with regard to defendant's contention in this regard. We note that there was a great deal of conflicting evidence at trial and it was for the trial court, as the fact finder, to resolve these factual discrepancies because "regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C).

### B.

Defendant next argues that the trial court erred in voiding her title to the Gage Street property on equitable grounds and revesting all title to plaintiff. At the outset, we note that the trial court's factual findings are reviewed for clear error, while its conclusions of law are reviewed de novo. *Omnicom of Michigan v Giannetti Investment Co*, 221 Mich App 341, 348; 561 NW2d 138 (1997).

The evidence surrounding this property was clearly disputed at trial. Plaintiff and his wife purchased the Gage Street property and Jane Williams continued to reside there until February 1986. In January 1986, plaintiff had received a delinquency notice from his mortgage company indicating that he was two months behind on the mortgage payments. Defendant testified that plaintiff asked her to "take over" this property because he was about to lose it, and she agreed to take the property and make the mortgage payments on it. Plaintiff, on the other hand, testified that defendant suggested that he obtain a quitclaim deed from his wife and give her \$15,000 as a settlement for the quitclaim deed.<sup>2</sup> Although plaintiff admitted that he never gave his former wife any money in consideration of the quitclaim deed, she and plaintiff signed a quitclaim deed, dated February 24, 1986, conveying the property to Sunshine Investments (defendant's corporation).

The trial court's ruling that the quitclaim deed is void is amply supported by the record. The quitclaim deed was apparently delivered unwitnessed to defendant in February 1986. In fact,

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<sup>2</sup> We note that defendant became a real estate agent in the early 1980s and that she also has a real estate broker's license.

it is undisputed that the quitclaim deed was not recorded until January 1995. It was established at trial that defendant forged the signature of Gary Weaver, whose name appears on the quitclaim deed as a witness and notary public. Weaver, who knew defendant by previously working with her at a real estate office and had known her for about twenty years, testified at trial that he neither signed nor notarized the quitclaim deed. He further testified that the signature was not his because he has created an artistically designed signature. Moreover, defendant's daughter, Pamela Dee Richardson, purports to witness the deed; however, it was established at trial by Richardson's own testimony that she was living in Atlanta, Georgia at the time the deed was signed. Additionally, the trial court completely discounted Richardson's testimony, finding her to be an incredible witness, as is within the province of the trial court to so conclude sitting as the fact finder. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 171; 530 NW2d 772 (1995).

Plaintiff and his wife continued to be on the mortgage and defendant never assumed the mortgage. Although there was evidence that defendant made the monthly mortgage payments on the Gage Street property until plaintiff returned to live there in 1995, during the time that the parties lived together, the structures on the property were rented and the rental incomes paid for the monthly mortgage payments. Further, it was undisputed that plaintiff maintained the structures on the Gage Street property during the time that the parties lived together.

The trial court declared the quitclaim deed to be void and revested all title to plaintiff. The trial court relied on a line of cases holding that gifts made in contemplation of marriage to be conditional and that if the marriage does not occur, the gift must be returned. See *In re Lowe Estate*, 146 Mich App 325; 379 NW2d 485 (1985); *Richmond v Nye*, 126 Mich 602; 85 NW 1120 (1901). The trial court further noted that the legal theories for recovery are numerous and include fraud, promissory estoppel, contract, and unjust enrichment. We affirm the trial court, but for somewhat different reasoning. Plaintiff's theory in this regard was based on fraud and he requested rescission of the quitclaim deed. It is well settled that a conveyance may be set aside due to fraud or misrepresentation. *Bornegesser v Winfree*, 329 Mich 528; 46 NW2d 366 (1951); *Berthuine v Scewczyk*, 317 Mich 275; 26 NW2d 770 (1947); *Richardson v Ball*, 300 Mich 424; NW2d (1942); *Thomas v Ledger*, 274 Mich 16; 263 NW 783 (1936). Further, procuring a grantor's signature by fraudulent manipulation of papers constitutes forgery and precludes acquisition of interests under the forged instrument. *Horvath v Nat'l Mortgage Co*, 238 Mich 354; 213 NW2d 202 (1927); *Horton v Verhelle*, 231 Mich App 667, 677; 588 NW2d 144 (1998).

Here, there was ample evidence that defendant forged the quitclaim deed in an attempt to obtain sole title to the Gage Street property, and the trial court so found. Consequently, it was within the trial court's authority to declare the quitclaim deed to be void on the basis of fraud and revest title to plaintiff and his former wife, Jane Williams. Accordingly, we affirm the trial court's ruling with respect to the Gage Street property.

### C.

Defendant next argues that the trial court erred in awarding plaintiff \$65,000 on the ground of unjust enrichment as compensation for his interest in the US 12 property.

The purchase agreement for this property was signed on July 16, 1986, by the parties as “Albert Williams and Elsie Mather Williams, husband and wife, of 608 E. Prairie Ronde, Dowagiac” even though the parties were never married. The property was purchased under a land contract by plaintiff, defendant, and Sunshine Investments dated July 31, 1986. The land contract also listed the buyers as “Albert Williams and Elsie Mather Williams, husband and wife, and Sunshine Investments, Inc., a Michigan Corporation, 608 E. Prairie Ronde.” The property was purchased for \$73,000 with a down payment of \$10,000. Defendant claimed that she paid the down payment and monthly payments and that plaintiff’s name was put on the documents because of their personal relationship and possible plans for marriage. Plaintiff, on the other hand, testified that he paid over \$6,300 of the down payment.

On October 11, 1986, a quitclaim deed was executed purporting to transfer plaintiff’s interest to defendant and Sunshine Investments. The quitclaim deed lists plaintiff as a single man transferring his interest to defendant, a single woman, for consideration of less than \$100. There was, however, evidence of additional forgeries by defendant with respect to this quitclaim deed. This quitclaim deed was drafted by defendant and she admitted at trial that she signed her daughter’s (Pamela Richardson) name to the deed as a witness. Gary Weaver again denied witnessing or notarizing this quitclaim deed. Plaintiff testified that he did not knowingly sign this quitclaim deed. Also, the quitclaim deed was never recorded.

Defendant also admitted at trial to attempting to refinance the US 12 property in her own name and attempted to do this by drafting the quitclaim deed, by obtaining a title commitment that set out what she was required to do to refinance, and by preparing an affidavit allegedly signed by plaintiff stating that he did not contribute to any of the down payment or the monthly payments on the land contract. The affidavit, dated October 31, 1987, is again forged because defendant signed her daughter’s name as a witness and notary public. Further, Kathy Tucker, plaintiff’s daughter, purports to be a witness on the affidavit, but the name is improperly signed as “Cathy Tucker” and Tucker denied the signature was hers. Plaintiff also could not recall signing the affidavit and further denied that it was a true statement. On November 11, 1987, defendant executed a quitclaim deed transferring the US 12 property from Sunshine Investments to herself in consideration of one dollar. The promissory note, dated October 5, 1987, but not recorded until November 13, 1987, lists only Elsie M. Mather, formerly known as Elsie Mather Williams.

The trial court found, as was amply supported by record evidence, that defendant acquired sole title to the property by fraud since she forged many of the documents. The trial court exercised its equitable powers and awarded plaintiff a money judgment of \$65,000 regarding the US 12 property. The trial court noted that the mortgage debt as of October 31, 1994, was \$92,620. As noted in its supplemental findings, the parties stipulated that the value of the property was \$190,000. This left an equity value of just under \$100,000. The trial court acknowledged that it awarded plaintiff more than half of the equity value, and did so because of defendant’s conduct, the length of time that plaintiff lived in the house, the money that plaintiff contributed to its acquisition (obviously accepting plaintiff’s testimony that he contributed about \$6,300 to the down payment), plaintiff’s contributions to the property’s maintenance, and plaintiff’s share of the appreciation in its value. The trial court also noted that the parties both held legal title to the property, as initially listed on the purchase agreement and the land contract,

and that partition pursuant to MCL 600.3336; MSA 27A.3336 was the most appropriate remedy under the circumstances.

There is no error with regard to the trial court's ruling. First, the trial court's factual findings are not clearly erroneous because they are supported by the evidence at trial and it was for the trial court to resolve the factual conflicts. Further, application of the doctrine of unjust enrichment was proper. Unjust enrichment may be applied where the defendant receives a benefit from the plaintiff and it would be inequitable to allow the defendant to retain the benefit. *In re McCallum Estate*, 153 Mich App 328, 335; 395 NW2d 258 (1986). Here, there was evidence, accepted by the trial court, that plaintiff invested his money into the property and worked at making improvements to the property. Further, plaintiff resided at the property with defendant for over eight years. Where the parties had been co-owners of the property, although not actually as husband and wife, the court could order partition and it need not be equal when it appears to the court that an equal partition would prejudice the rights and interests of a party and the court may partition according to the equities of the case. MCL 600.3336(1); MSA 27A.3336(1).

Accordingly, we find no error with regard to the trial court's decision to award plaintiff a money judgment of \$65,000 with respect to the US 12 property on the basis of fraud and unjust enrichment.

D.

Defendant lastly argues that the trial court erred in failing to rule on or apply the wrongful conduct doctrine to bar plaintiff's claims when this issue was raised in defendant's motion for summary disposition, and taken under advisement, and raised again in defendant's posttrial brief. Defendant contends that plaintiff's wrongful conduct was that he failed to file income tax returns for certain years, that he failed to disclose certain assets when he filed for bankruptcy in 1983, and that he failed to disclose his status as defendant's business partner, thereby defrauding taxing authorities, financial institutions, merchants, and others.

The wrongful-conduct rule provides that courts should not lend their aid to plaintiffs who base their causes of action on personal illegal conduct. *Orzel v Scott Drug Co*, 449 Mich 550; 537 NW2d 208 (1995). Defendant's claim in this regard is completely meritless. First, as acknowledged by defendant, this defense essentially applies to plaintiff's partnership claim, a claim that was rejected by the trial court on another ground. Moreover, considering defendant's own conduct of forging legal documents in an effort to obtain sole title to the Gage Street and US 12 properties, she should be hard pressed to accuse another of wrongful conduct.

The trial court did not err in declining to apply the wrongful-conduct doctrine to bar any of plaintiff's claims.

### III. PLAINTIFF'S APPEAL

#### A.

Plaintiff first argues that the trial court erred in finding that no partnership existed between him and defendant such that he was entitled to a dissolution and accounting.

At trial, plaintiff maintained that they had a silent partnership and that defendant wished to keep the partnership silent. He conceded that there was no written partnership agreement, and that it was their agreement to keep the partnership silent. With regard to compensation, plaintiff testified that they agreed that because he was a business partner he would not be paid a salary. However, he conceded that he never claimed any partnership income on his income taxes from 1986 to 1997. Plaintiff, however, did admit to receiving some money for working on the Hillcrest Apartment project and that defendant generally provided him with “spending money.”

Plaintiff testified that he believed that he was a fifty percent owner of the business partnership (Sunshine Investments). However, this partnership was incorporated by defendant only in 1985 and plaintiff's name did not appear on any of the corporate papers. Plaintiff further admitted that he was never an officer or shareholder of the corporation and that defendant was the sole shareholder and officer.

Plaintiff did present the testimony of William Rucker, a roofing contractor, Dennis Garwood, a heating and air conditioning contractor, and Jeff Fester, a building contractor, all of whom had done some construction work on the rental properties. Their testimony was that they believed or understood that plaintiff and defendant were business partners essentially because they worked together rehabilitating the rental properties.

Defendant, on the other hand, adamantly denied the existence of any business partnership. Defendant testified that she paid plaintiff in cash for the work he performed on the rental properties, although there was no documentation to confirm this because defendant admitted to not reporting plaintiff's wages on any type of tax form. Defendant testified that plaintiff wanted to be paid in cash and it was her contention that plaintiff did not want the wages to be reported for tax purposes. Defendant insisted at trial that she paid plaintiff for the work he performed on the rental properties, but that it was always in cash. She also testified that she had an agreement with plaintiff that he would work for her in exchange for a place to live, a vehicle to drive, and tools.

The trial court found that plaintiff had failed to show the existence of a partnership, noting that no formal partnership agreement was ever prepared or executed, mutuality was lacking, no stock was ever transferred to plaintiff, all monies were paid to defendant, joint liability was lacking, all assets were titled in defendant's name, defendant made all the management decisions, and defendant procured all the loans in her own name.

The determination whether a partnership exists is a question of fact and the burden of proof to show a partnership is on the party alleging a partnership. *Miller v City Bank & Trust Co*, 82 Mich App 120, 123; 266 NW2d 687 (1978). Section 6 of the Uniform Partnership Act, MCL 449.6; MSA 20.6, provides that a “partnership is an association of 2 or more persons . . . to carry

on as co-owners a business for profit.” Further, MCL 449.7; MSA 20.7 provides that “[t]he receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner of the business.” In *Miller, supra*, p 124, this Court stated, “Co-ownership of the business requires more than merely joint ownership of the property and is usually evidenced by joint control and the sharing of profits and losses.” Thus, profit sharing and mutual agency and control are two important indicia of a partnership. *Id.*, p 125.

Considering the conflicting testimony at trial regarding any alleged partnership, the trial court’s factual findings are not clearly erroneous. Because the determination of a partnership is a question of fact, we cannot say that the trial court’s conclusion that no partnership was proven is in error. As noted by the trial court, there was no evidence that plaintiff actually shared in the profits or losses, and there was really no evidence of mutual agency or control. We will not invade the factual determination by the trial court that no partnership existed, especially where the trial court’s factual findings are supported by its view of the evidence.

Accordingly, the trial court did not err in finding that plaintiff failed to prove the existence of a partnership between him and defendant.

#### B.

Plaintiff next argues that the trial court erred in not finding that an implied contract existed between him and defendant to compensate him for his work in rehabilitating the rental properties.

The trial court found that no express contract existed between the parties, and plaintiff does not contest this finding. The trial court further found that the evidence failed to show the existence of a contract implied in fact and that there was no evidence to support the finding of a contract implied in law with regard to plaintiff’s claim that he should be compensated for rehabilitating the rental properties. This Court in *In re McKim Estate*, 238 Mich App, 453, 458; 606 NW2d 30 (1999), quoting *In re Lewis Estate*, 168 Mich App 70, 75; 423 NW2d 600 (1988), set forth when a contract implied in fact arises:

“when services are performed by one who at the time expects compensation from another who expects at the time to pay therefore.” The issue is a question of fact to be resolved through the consideration of all the circumstances, including the type of services rendered, the duration of the services, the closeness of the relationship of the parties, and the express expectations of the parties. However, “when one renders personal services to another merely upon the expectation of a legacy promised without a contract obligation, the promisee takes his chances on recovering the legacy, and, if his expectations are disappointed, he can recover nothing.”

Again quoting *In re Lewis Estate, supra*, pp 74, 75, this Court in *In re McKim Estate, supra*, pp 457-458, set forth when a contract implied in law arises:

A contract implied in law is not a contract at all but an obligation imposed by law to do justice even though it is clear that no promise was ever made or



intended. A contract may be implied in law where there is a receipt of a benefit by a defendant from a plaintiff and retention of the benefit is inequitable, absent reasonable compensation. However, this fiction is not applicable where there exists a relationship between the parties that gives rise to the presumption that services were rendered gratuitously. A presumption of gratuity arises where the plaintiff is related by blood or marriage to the decedent, and where the parties lived together as husband and wife although never married. Where a presumption of gratuity arises, the plaintiff may still recover for services rendered under the theory of contract implied in fact.

As this Court has stated, the issue of a contract implied in fact is a question of fact to be resolved through the consideration of all the circumstances. *In re Lewis Estate, supra*, p 75. Considering the disputed evidence at trial, we cannot conclude that the trial court's view of the evidence and its ultimate factual findings are clearly erroneous. As the trial court further noted, plaintiff admitted at trial that he was compensated for some of the services rendered either in cash payments or other forms of compensation. Consequently, the trial court's factual finding, based on its view of the evidence, that there was no showing of a contract implied in fact is not erroneous.

The trial court's further decision to not impose a contract implied in law with regard to plaintiff's claim for compensation for his work on the rental properties is likewise not error. Although not entirely clear, it appears that the trial court declined to find a contract implied in law because it would not be inequitable for defendant to retain the benefit from plaintiff, namely, his work done to the rental properties. Considering that plaintiff admitted at trial that he was compensated at least in part for some of his work, the trial court's refusal to find a contract implied in law is not error.

Accordingly, we find that the trial court's finding that plaintiff failed to establish a contract implied in fact or law with regard to his work done on the rental properties is proper.

### C.

Next, plaintiff argues that the trial court erred in not determining that defendant engaged in fraud against him during their nine-year relationship. Although plaintiff's claim in this regard is somewhat vague, it appears that he is again essentially attacking the finding that no partnership existed so that he was not entitled to further compensation for working on the rental properties.

First, it should be reiterated that the trial court did find in plaintiff's favor with respect to the claim of fraud concerning the Gage Street property and concerning the US 12 property. Further, the trial court noted that plaintiff admitted at trial to being compensated for at least some of the work he performed on the rental properties. The trial court ultimately rejected plaintiff's legal theories concerning the existence of a partnership, a contract implied in fact, and a contract implied in law to be further compensated for his work on the rental properties. A claim of fraud in this regard, like plaintiff's other legal theories, were questions of fact for the trial court to resolve based on the evidence and the credibility of the witnesses. The trial court's decision to find that plaintiff had not sustained a claim of fraud with respect to being compensated for his

work on the rental properties was not clearly erroneous considering the conflicting testimony at trial.

Accordingly, we reject plaintiff's assertion that the trial court should have found the existence of fraud for the entire nine-year relationship because the trial court's factual findings and legal conclusions based on those factual findings are entirely supported by the evidence.

D.

The last issue raised by plaintiff is that the trial court erred in failing to award the "full amount of damages" that plaintiff was entitled to receive on the unjust enrichment claim.

The unjust enrichment claim related to the US 12 property and the trial court awarded plaintiff \$65,000 in monetary damages for this property for the reasons set forth in part II, C of this opinion. We have already determined that the trial court's award in this respect was proper, and we find no reason to reverse the award of monetary damages in the amount that it did.

Accordingly, the trial court's judgment is affirmed in all respects.

Affirmed.

/s/ Henry William Saad

/s/ Kathleen Jansen

/s/ Michael J. Talbot