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NO. COA08-709

NORTH CAROLINA COURT OF APPEALS

Filed: 3 March 2009

OUTER BANKS WATER & SEWER,
L.L.C. f/k/a FIRST COAST GENERAL
CONTRACTORS, INC.,
Plaintiff,

v.

Currituck County
No. 06 CVS 198

R.P.C. CONSTRUCTION, INC., CLANCY
& THENS CONSTRUCTION CO.,
CROSLAND, INC., CROSLAND
CURRITUCK, LLC, and THE ST. PAUL
TRAVELERS COMPANIES, INC. a/k/a
TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA,
Defendants.

Court of Appeals

Slip Opinion

Appeal by defendants from judgment entered 30 January 2008 by
Judge Clifton W. Everett, Jr. in Superior Court, Currituck County.
Heard in the Court of Appeals 1 December 2008.

*Safran Law Offices, by Kenneth A. Sack and M. Riana Smith, for
plaintiff-appellee.*

*Lewis & Roberts, P.L.L.C., by James A. Roberts, III and
Matthew C. Bouchard, for defendant-appellants.*

WYNN, Judge.

Quantum meruit is an equitable remedy that allows a party to
recover damages for the "reasonable value of material and services
rendered" in order to prevent unjust enrichment.¹ In this case,

¹ *Potter v. Homestead Preservation Assn*, 330 N.C. 569, 578,
412 S.E.2d 1, 7 (1992).

Defendants R.P.C. Contracting, Inc., et al., ("R.P.C. Contracting") argue that the trial court erred by awarding Plaintiff Outer Banks Water & Sewer, L.L.C., recovery under *quantum meruit*. Because competent evidence supports the trial court's findings, which in turn, support the conclusion that Outer Banks Water & Sewer should recover the reasonable value of its material and services rendered to R.P.C. Contracting to prevent a manifest injustice, we affirm the trial court's judgment.

First Coast General Contractors, Inc. ("First Coast Contractors") was incorporated in December 1997 and purchased by Terry Lamb in 2004, who thereafter served as President and sole shareholder of the company. Toward the end of 2004, Mr. Lamb also served as project manager for Outer Banks Water & Sewer, which had been incorporated in November 2004. Mr. Lamb's wife, Patricia Lamb, served as Outer Banks Water & Sewer's initial registered agent, and later as its "managing member."

On 13 December 2004, the N.C. Department of the Secretary of State issued First Coast Contractors a Notification of Revenue Suspension "for its failure to comply with the requirements of the Department of Revenue pursuant to N.C.G.S. § 105-230(a)." Nonetheless, on 19 January and 4 February 2005, R.P.C. Contracting entered into two purchase order agreements with First Coast Contractors, referred to as "Tulls Creek" and "Industrial Park." Mr. Lamb accepted the orders, which provided that First Coast Contractors would supply the material, equipment, and labor to R.P.C. Contracting.

Neither party contests that First Coast Contractors was revenue suspended at the time the purchase orders were made, and thus prohibited from performing the work under the express contracts with R.P.C. Contracting. However, the parties agree that the work contemplated by the agreements was actually performed by Outer Banks Water & Sewer. Indeed, Mr. Lamb testified that around this same time, Outer Banks Water & Sewer took over First Coast Contractors, assuming all of its assets, debts, and outstanding jobs. Further, Outer Banks Water & Sewer submitted progress updates, change orders, and pay applications to R.P.C. Contracting on Outer Banks Water & Sewer's letterhead for the Tulls Creek and Industrial Park projects.

Beginning 22 February 2005, R.P.C. Contracting issued multiple checks payable to "Outer Banks Water & Sewer" in partial remuneration for project labor and materials. However, when R.P.C. Contracting failed to pay the balance, Outer Banks Water & Sewer filed a civil action on 12 June 2006, seeking to recover on the original contract with First Coast Contractors or, in the alternative, to recover in *quantum meruit*.

Following a bench trial, the trial court made findings of fact and conclusions of law, holding that "[i]t would be manifestly unjust for R.P.C. [Contracting] to retain the benefits of [Outer Banks Water & Sewer]'s work to the detriment of [Outer Banks Water & Sewer]." Accordingly, the trial court awarded Outer Banks Water & Sewer recovery in the amount of \$68,536.24 plus interest. R.P.C. Contracting appeals.

The standard of review on appeal from a judgment entered after a non-jury trial is whether there is competent evidence to support the trial court's findings of fact and whether the findings support the conclusions of law and ensuing judgment. *Cartin v. Harrison*, 151 N.C. App. 697, 699, 567 S.E.2d 174, 176, *disc. review denied*, 356 N.C. 434, 572 S.E.2d 428 (2002).

In this case, while the trial court found the existence of contracts between First Coast Contractors and R.P.C. Contracting, the trial court made no findings of fact or conclusions of law indicating the existence of express contracts between Outer Banks Water & Sewer and R.P.C. Contracting. To the contrary, the trial court based its award on the ground that "[i]t would be manifestly unjust for R.P.C. [Contracting] to retain the benefits of [Outer Banks Water & Sewer]'s work." Accordingly, the issue on appeal is whether the trial court properly made findings of fact and conclusions of law to support its ensuing judgment and award of recovery in *quantum meruit* to Outer Banks Water & Sewer.

To establish a claim for recovery in *quantum meruit*, a "plaintiff must show: (1) services were rendered to defendants; (2) the services were knowingly and voluntarily accepted; and (3) the services were not given gratuitously." *Environmental Landscape Design v. Shields*, 75 N.C. App. 304, 306, 330 S.E.2d 627, 628 (1985) (citation omitted).

Here, the trial court made the following relevant findings: Outer Banks Water & Sewer performed work for R.P.C. Contracting on the Tulls Creek and Industrial Park projects; R.P.C. Contracting

made partial payments to Outer Banks Water & Sewer for services rendered; and Outer Banks Water & Sewer demanded payment from R.P.C. Contracting. Each of these findings is supported by competent evidence in the record including: bills for materials and pay applications submitted to R.P.C. Contracting on Outer Banks Water & Sewer letterhead; purchase orders and subject change orders submitted from R.P.C. Contracting to Outer Banks Water & Sewer; copies of checks drawn on R.P.C. Contracting's account payable to Outer Banks Water & Sewer; and written communications between Outer Banks Water & Sewer and R.P.C. Contracting discussing the nature and extent of the work performed by Outer Banks Water & Sewer as well as the payments made by R.P.C. Contracting. Taken together, this evidence is sufficient to establish the trial court's findings of fact as conclusive on appeal. Those findings, in turn, support the trial court's conclusion that Outer Banks Water & Sewer should recover in *quantum meruit*.

Nonetheless, R.P.C. Contracting argues that Outer Banks Water & Sewer is prohibited from recovering in *quantum meruit* because Outer Banks Water & Sewer is "merely the continuation of 'First Coast [Contractors]' with a new moniker, 'Outer Banks [Water & Sewer]'" and thus, equally barred from recovery. However, pursuant to Rule 10(b) of the North Carolina Rules of Appellate Procedure, this argument is not properly before us.

"In order to preserve a question for appellate review, a party must have presented to the trial court a timely request, objection or motion, stating the specific grounds for the ruling the party

desired the court to make if the specific grounds were not apparent from the context." N.C. R. App. P. 10(b)(1) (2007). Here, R.P.C. Contracting failed to argue in its pleadings or at trial that Outer Banks Water & Sewer was a mere continuation of First Coast Contractors or in any way impacted by First Coast Contractors' revenue suspension. To the contrary, R.P.C. Contracting stated in its answer that "[t]here is no indication that First Coast General Contractors, Inc. ever merged into or otherwise became Outer Banks Water & Sewer, LLC." Our Supreme Court "has long held that where a theory argued on appeal was not raised before the trial court, 'the law does not permit parties to swap horses between courts in order to get a better mount'" *State v. Sharpe*, 344 N.C. 190, 194, 473 S.E.2d 3, 5 (1996) (quoting *Weil v. Herring*, 207 N.C. 6, 10, 175 S.E. 836, 838 (1934)) (citations omitted). Accordingly, we dismiss this argument.

Affirmed.

Chief Judge MARTIN and Judge STEPHENS concur.

Reported per Rule 30(e).