IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1092

Filed: 5 June 2018

Forsyth County, No. 15 CVS 6738

PREFERRED CONCRETE POLISHING, INC., Plaintiff,

v.

ANTHONY PIKE and JENNIFER PIKE, Defendants.

Appeal by plaintiff from order entered 28 July 2017 by Judge Anderson D. Cromer in Forsyth County Superior Court. Heard in the Court of Appeals 4 April 2018.

Smith Law Group, PLLC, by Matthew L. Spencer and Steven D. Smith, for plaintiff-appellant.

Wake Forest University School of Law Appellate Advocacy Clinic, by John J. Korzen, and L.G. Gordon, Jr. for defendants-appellees.

DIETZ, Judge.

Plaintiff Preferred Concrete Polishing, Inc. brought a *quantum meruit* action against Defendants Anthony and Jennifer Pike, seeking to recover the value of concrete floor polishing and finishing services performed at the Pikes' residence. As explained below, the trial court properly dismissed this claim because the complaint

alleges an express contract governing the same services for which Preferred Concrete seeks to recover in *quantum meruit*. The court also acted within its sound discretion in denying Preferred Concrete's oral motion to amend at the hearing on the motion to dismiss. We therefore affirm the trial court's order.

Facts and Procedural History

Plaintiff Preferred Concrete Polishing, Inc. polishes and finishes concrete floors for commercial and residential use. Defendants Anthony and Jennifer Pike approached Preferred Concrete for a price estimate for work on the Pikes' home.

Then, according to the complaint, Justin Sheets, a Preferred Concrete employee, "approached Defendant Anthony Pike to arrange an 'under-the-counter' deal wherein [Sheets] and other employees of Plaintiff would perform concrete floor polishing and finishing services at the Defendants' Real Property at a cost lower than Plaintiff could offer." The Pikes agreed and Sheets performed the work, allegedly using Preferred Concrete's "equipment, materials, supplies, and employees."

Preferred Concrete later sent an invoice to the Pikes for $14,877.50 for the value of the work performed. The Pikes refused to pay the invoice and Preferred Concrete sued. The complaint asserts a single claim for recovery in *quantum meruit*, alleging the company "is entitled to recover from Defendants in *quantum meruit* the reasonable value of the services Plaintiff provided for Defendants' benefit."

The Pikes answered the complaint and moved to dismiss for failure to state a claim under Rule 12(b)(6). At the hearing on the motion to dismiss, Preferred Concrete orally moved to amend the complaint to add a claim for conversion. The trial court granted the motion to dismiss and denied the motion to amend. Preferred Concrete timely appealed.

Analysis

I. Rule 12(b)(6) Motion to Dismiss

We begin by addressing the trial court's dismissal under Rule 12(b)(6) for failure to state a claim on which relief can be granted. "This Court reviews the grant of a Rule 12(b)(6) motion to dismiss *de novo*." *Jackson/Hill Aviation, Inc. v. Town of Ocean Isle Beach*, __ N.C. App. __, __, 796 S.E.2d 120, 123 (2017). "We examine whether the allegations of the complaint, if treated as true, are sufficient to state a claim upon which relief can be granted under some legal theory." *Id.* "Dismissal is only appropriate if it appears beyond a doubt that the plaintiff could not prove any set of facts to support his claim." *Id.*

"*Quantum meruit* operates as an equitable remedy based upon a quasi contract or a contract implied in law which provides a measure of recovery for the reasonable value of services rendered in order to prevent unjust enrichment." *Ron Medlin Constr. v. Harris*, 364 N.C. 577, 580, 704 S.E.2d 486, 489 (2010). Importantly, a litigant cannot recover in *quantum meruit* for services performed under a contract because

"an express contract precludes an implied contract with reference to the same matter." *Vetco Concrete Co. v. Troy Lumber Co.*, 256 N.C. 709, 713, 124 S.E.2d 905, 908 (1962). "Furthermore, the mere fact that one party was enriched, even at the expense of the other, does not bring the doctrine of unjust enrichment into play. There must be some added ingredients to invoke the unjust enrichment doctrine." *Watson Elec. Constr. Co. v. Summit Cos., LLC*, 160 N.C. App. 647, 652, 587 S.E.2d 87, 92 (2003).

That "added ingredient" is some measure of unfairness—that is, some allegation that the recipient of the services *unfairly* gained a benefit. *Id.* For example, in *Watson Electrical*, an electrical subcontractor performed work at the defendants' business but never got paid by the general contractor, with whom defendants had contracted. *Id.* This Court rejected the subcontractor's *quantum meruit* claim because, "[e]ven though [the defendants] were 'enriched' by the work performed by [the subcontractor]," the enrichment was not unjust because the defendants had contracted for those services and paid for them through the general contractor. *Id.* at 652–53, 587 S.E.2d at 92; *see also Peace River Elec. Co-op., Inc. v. Ward Transformer Co.*, 116 N.C. App. 493, 509, 449 S.E.2d 202, 213–14 (1994).

Here, the complaint alleges that a Preferred Concrete employee, Justin Sheets, arranged an "under-the-counter deal" with the Pikes to perform concrete flooring work at the Pikes' home. Thus, the complaint expressly alleges the existence of a

contract to perform the concrete flooring work—a contract between Sheets and the Pikes. Moreover, although the complaint alleges that the Pikes knew the work was completed using Preferred Concrete's property and employees, the complaint does not allege that Sheets was not *authorized* to perform the work using Preferred Concrete's property, nor does it allege that the Pikes *knew* Sheets was using Preferred Concrete's equipment and labor without permission.

In other words, the complaint alleges that the Pikes contracted with Sheets to perform work at their home, and Sheets performed that work using equipment and labor from someone else. That is an altogether common occurrence in home construction and improvements. Without some allegation that the Pikes knew Sheets improperly used Preferred Concrete's equipment and labor, the allegations in the complaint do not allege the sort of unfairness necessary to state a claim for *quantum meruit*. Accordingly, the trial court properly dismissed the claim under Rule 12(b)(6).[1]

II. Motion to Amend Complaint

Preferred Concrete next contends that the trial court erred in denying its motion to amend the complaint under Rule 15. The company orally moved to amend at the July 2017 hearing on the motion to dismiss. A transcript of that proceeding is not in the record on appeal, but Preferred Concrete asserts that it sought to add a claim for conversion.

[1] Because we affirm the trial court's dismissal under Rule 12(b)(6), we need not address the court's alternative dismissal under Rule 12(b)(7).

We review a trial court's denial of a motion to amend for abuse of discretion. *Pruett v. Bingham*, 238 N.C. App. 78, 86, 767 S.E.2d 357, 363 (2014), *aff'd*, 368 N.C. 709, 782 S.E.2d 510 (2016). This Court may reverse a discretionary decision of the trial court only if we conclude that the court's ruling was "so arbitrary that it could not have been the result of a reasoned decision." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

When the trial court does not specify a reason for denying a motion to amend, as here, this Court reviews any "apparent reasons" for the ruling. *United Leasing Corp. v. Miller,* 60 N.C. App. 40, 42–43, 298 S.E.2d 409, 411 (1982). Grounds for denying a motion to amend include "undue delay," "bad faith," "undue prejudice," "futility of amendment," or "repeated failure to cure defects by previous amendments." *Id.* at 43, 298 S.E.2d at 411–12.

Applying this standard, we find no abuse of discretion in the trial court's ruling. Preferred Concrete moved to amend its complaint at the hearing on the Pikes' motion to dismiss the complaint, which occurred nearly eighteen months after the Pikes first moved to dismiss. The trial court was well within its sound discretion to deny the motion to amend based on the length of this delay. *See Wilkerson v. Duke Univ.*, 229 N.C. App. 670, 679, 748 S.E.2d 154, 161 (2013). Accordingly, we affirm the trial court's denial of the motion to amend.

Conclusion

For the reasons explained above, we affirm the trial court's order.

AFFIRMED.

Judges DILLON and ARROWOOD concur.

Report per Rule 30(e).