STATE OF MICHIGAN

COURT OF APPEALS

LAWRENCE NICHOLS, d/b/a NICHOLS CONTRACT SERVICES, Plaintiff-Appellee,	UNPUBLISHED May17, 2007
v ROGER D. COX and CHRISSY COX, Defendants-Appellants.	No. 265603 Newaygo Circuit Court LC No. 04-018747-CH

Before: Hoekstra, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

Defendants Roger and Chrissy Cox appeal as of right from a final order awarding plaintiff Lawrence Nichols $28,388 in relief in quantum meruit, plus interest, costs, and sanctions. We affirm.

Defendants sustained significant damage to their White Cloud, Michigan, home in a fire. After receiving $211,000 in insurance proceeds, defendants decided to replace their destroyed home with a prefabricated house. They hired plaintiff, a contractor, to demolish the burned house and prepare the site for their prefabricated home. The parties signed an agreement on July 9, 2003, which indicated that anticipated costs of the renovations and preparation of the property for the prefabricated home would be $44,528.[1] Plaintiff stated at trial that defendants wanted him to prepare the foundation and install the basement and stairs for the house, build decks and repair the garage, prepare the plumbing, a well, and a septic system, and remove a tree. Although the agreement did not describe what defendants wanted plaintiff to do on the property, it listed estimated itemized costs, apparently for various repairs and renovations that defendants wanted.[2]

[1] The document indicates that the $44,528 figure, included in typeface in the agreement, was crossed out and replaced with a handwritten figure of $49,528. Apparently, this adjustment was made to reflect the parties' subsequent agreement that plaintiff would repair defendants' garage and that this renovation was estimated to cost $5,000.

[2] The agreement included the following itemized costs: (1) Basement: $17,078, (2) Well
(continued…)

Plaintiff subsequently began renovating defendants' property. He demolished the fire-damaged structure, dug the basement, and poured the basement walls. He hired subcontractors to perform electrical work, plumbing, excavation, and carpentry.[3] Apparently after work began on the building site, the parties discussed building another garage on the property. The parties presented contradictory accounts of the discussion. Plaintiff claimed that he and defendants agreed that plaintiff would build another garage on the property, apparently for an additional fee. Defendants claimed that they never entered into a written contract with plaintiff to build the garage. Instead, Chrissy Cox claimed that she came home from work one day to find that plaintiff had started building a new garage. She claimed that plaintiff had told her that, because he had completed other repairs and renovations for less than their estimated costs, he could build the garage and still remain within the original estimated price for renovations to the property. Regardless, defendants did not instruct plaintiff to stop building the garage.

Defendants claimed that plaintiff either did not finish, or completed unsatisfactorily, a number of projects.[4] Defendants hired another contractor to complete and repair these alleged deficiencies. Defendants claimed that they paid plaintiff $32,000 for the work that he had done to the property, although plaintiff claimed that he only received payments totaling $25,564 from defendants.[5]

Plaintiff claimed that he gave defendants three Sworn Statements,[6] dated July 16, 2003, August 25, 2003, and September 20, 2003, respectively. Although the July 16 statement listed a

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Allowance: $5,000, (3) Septic Allowance; $5,000, (4) Excavation: $2,500, (5) Staircase; $1,500, (6) Home Demolition: $4,000, (7) Electric; $3,800, (8) Plumbing: $4,000, (9) Porches/Decks: $900, (10) Permits: $1,200. A cost of $5,000 to "repair garage" was also written on the agreement in handwriting and initialed by plaintiff. Plaintiff claimed that when he met with defendants, they discussed how much it would cost to repair their garage. Plaintiff claimed that they "just added" the cost of repairing the garage to the agreement and he wrote the estimated cost of the repairing the garage and the revised total on the agreement to reflect this modification. However, he also claimed that defendants later decided to repair the garage themselves, so he never worked on the garage and does not claim that defendants owe him money in relation to this estimated cost.

[3] This carpentry work included building the deck, garage, and front porch of the house.

[4] These allegedly inadequate projects included incomplete demolition and removal of the old garage, incomplete drywall, an unsatisfactory septic system, uneven stair risers and an improperly placed stair platform, no deck railing and an otherwise unfinished deck, improper and incomplete installation of siding, an unfinished concrete walkway, incomplete electrical installation, an unsatisfactory overhead garage door, a lack of "step flashing" that would prevent future leaking, an improperly installed methane gas pipe in the basement, and a failure to properly grade and backfill the property.

[5] Defendants also made some payments directly to certain subcontractors. However, the parties present conflicting evidence regarding whether these payments were for work that the subcontractors performed on behalf of plaintiff or for work performed pursuant to separate agreements that defendants made with these subcontractors for additional renovations.

[6] The statements were each entitled "Sworn Statement," but were, in fact, unsworn, as they were neither signed by plaintiff nor notarized.

total estimated cost of $49,913, the August 25 and September 20 statements included costs for tree removal, construction of another garage, and construction of a deck and estimated a total cost of $72,663. Plaintiff noted that he used the Sworn Statements "like a billing statement," submitting a statement to defendants in order to receive a periodic payment. Chrissy Cox claimed that she never received the August 25 and September 20 statements and was unaware that plaintiff estimated that defendants would pay an additional $12,250 for the new garage and an additional $10,500 for a deck. Plaintiff claimed that he ceased working on defendants' property in October 2003, after defendants told him that they were having financial difficulties and could not pay him.

Plaintiff subsequently brought a cause of action against defendants, claiming that they breached their contract with plaintiff when they refused to pay him. He maintained that they owed him $39,950 for work on their property. However, the trial court ruled that "no meeting of minds" occurred sufficient to form a contract, stating as follows:

> I'm going to decide this case on the basis of quantum meruit. It's quite obvious, and from listening to both of the parties, that neither one of them got a clue as to what was encompassed by the contract or the details of the contract. So I've gone out and looked at the place, I've heard the testimony, you know, of the parties as to what the expectation is and what the contractor thought he was doing, and essentially just looking at what was there and what was done and going to decide it on that basis.

The trial court entered judgment against defendants in the amount of $28,388, plus case evaluation sanctions, costs, and interest.

Defendants argue that the trial court erred when it permitted plaintiff to recover under the theory of quantum meruit for his work on their home. Defendants claim that they entered into a written contract with plaintiff regarding repairs to their home and that the trial court's decision to award relief to plaintiff under the theory of quantum meruit was erroneous. We disagree. The existence of a contract is a question of law that we review de novo. *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 452; __ NW2d __ (2006). "Before a contract can be completed, there must be an offer and acceptance. Unless an acceptance is unambiguous and in strict conformance with the offer, no contract is formed." *Pakideh v Franklin Commercial Mortgage Group, Inc*, 213 Mich App 636, 640; 540 NW2d 777 (1995). Further, a contract is only formed if the parties exhibit "mutual assent or a meeting of the minds on all essential terms . . . ." *Burkhardt v Bailey*, 260 Mich App 636, 655; 680 NW2d 453 (2004).

The trial court held that the parties did not enter into an enforceable contract, concluding, "It's quite obvious, and from listening to both of the parties, that neither one of them got a clue as to what was encompassed by the contract or the details of the contract." Although defendants claimed that an enforceable contract existed, they provide no argument supporting their assertion

that that the trial court's conclusion to the contrary was incorrect.[7] Accordingly, we accede to the trial court's finding that no contract existed in this case.

Instead, defendants argue that the trial court erred when it applied the doctrine of quantum meruit to permit plaintiff to recover for work he had performed on defendants' property. Defendants argue that quantum meruit was inappropriate in this case because plaintiff, a professional contractor, prepared and submitted the original written agreement in this case. Apparently defendants argue that because plaintiff had more experience entering into construction contracts and authored the terms of the agreement, he was responsible for the sloppy, unenforceable document and should not be "rewarded" for his lack of diligence by being allowed to recover in quantum meruit.

"The theory underlying quantum meruit recovery is that the law will imply a contract in order to prevent unjust enrichment when one party inequitably receives and retains a benefit from another." *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 194; 729 NW2d 898 (2006). The *Biagini* Court noted that a party may not recover against another under a theory of quantum meruit if it entered into an express contract with that party, even if the parties disagreed regarding the terms of the contract. *Biagini v Mocnik*, 369 Mich 657, 659; 120 NW2d 827 (1963). The *Biagini* Court then addressed the question whether a party may recover in quantum meruit after a trial court has found that no express contract existed between the parties because the minds of the parties did not meet.[8] *Id.* at 658-659. It noted,

> The application of this rule presupposes the existence of a valid, enforceable contract. In the instant case the trial judge found as a matter of fact, due to the absence of a meeting of minds, that no express contract ever existed. In such a situation, recovery can be had in *quantum meruit*. [*Id.* at 659.]

Accordingly, if a contract is void or unenforceable, the prohibition against recovery in quantum meruit does not apply.

"[A] claim of quantum meruit is equitable in nature." *Morris Pumps*, *supra* at 199. We review de novo a trial court's dispositional ruling on an equitable matter. *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005). "The trial court's findings of fact in an equity action can be set aside only if they are clearly erroneous."[9] *Attorney Gen v Lake States*

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[7] Defendants briefly argued that oral modifications made to the contract were unenforceable because the contract terms required that all modifications be made in writing and signed by the parties. However, this argument is irrelevant to the question whether a meeting of the minds occurred when the parties signed the original document.

[8] The *Biagini* Court presented the issue on appeal as follows: "Where parties differ as to the terms of an express oral contract, and the court finds no express contract because the minds of the parties did not meet, may there be recovery in quantum meruit?" *Biagini*, *supra* at 658-659.

[9] "A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with the definite and firm conviction that a mistake has been made." *McNamara v Horner*, 249 Mich App 177, 182-183; 642 NW2d 385 (2002).

Wood Preserving, Inc, 199 Mich App 149, 155; 501 NW2d 213 (1993). Recovery on a claim of quantum meruit is appropriate (1) if the evidence establishes that the defendants received a benefit from the plaintiff and (2) an inequity resulted to the plaintiff "because of the retention of the benefit by the defendant[s]." See *Morris Pumps*, *supra* at 195.

Defendants argue that plaintiff should not be entitled to relief in quantum meruit because he came to the court with unclean hands. The clean hands maxim "'is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant.'" *Stachnik v Winkel*, 394 Mich 375, 382; 230 NW2d 529 (1975), quoting *Precision Instrument Mfg Co v Automotive Maintenance Machinery Co*, 324 US 806, 814; 65 S Ct 993; 89 L Ed 1381 (1945). Because the clean hands maxim "is designed to preserve the integrity of the judiciary, courts may apply it on their own motion even though it has not been raised by the parties or the courts below." *Stachnik*, *supra* at 382.

Admittedly, plaintiff was the licensed professional involved in this arrangement, whereas defendants apparently had never before contracted for home improvement services. Further, plaintiff did not sign or have notarized the statements that he submitted to defendants, and defendants denied receiving the August and September statements. However, defendants do not identify any evidence indicating that plaintiff's failure to sign and have the statements notarized was done in bad faith. Instead, plaintiff testified that he used the statements as billing invoices to receive periodic payments for his services. He testified that the payments he requested in the statements reflected the uncompensated costs and labor for renovations to defendants' property that he incurred by the billing date.[10] Although plaintiff did not properly complete, sign, and have the statements notarized, defendants fail to establish that plaintiff did so in bad faith. Further, they fail to establish that plaintiff attempted in bad faith to recover more than the reasonable value of the services he provided when he submitted the statements to defendants as a means of obtaining payment. The "clean hands" doctrine does not prohibit recovery under quantum meruit on this ground.

Next, defendants argue that plaintiff acted in bad faith when he "presented evidence of alleged oral modification of the written contractual agreement," although the agreement prohibited oral modification. Again, defendants fail to present evidence that plaintiff attempted to implement these alleged oral modifications to the contract in bad faith. Plaintiff testified that he modified the agreement after defendants agreed to undertake additional renovations to the property that were not included in the original estimate. He also claimed that he increased

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[10] The trial court used the itemized costs in the September 20 statement as an aid in determining the value of the services that defendants received from plaintiff. In so doing, the trial court determined that the plaintiff's valuation of the work he performed for defendants that was listed in this statement was credible. We give considerable weight to this determination by the trial judge "because he 'is in a better position to test the credibility of the witnesses by observing them in court and hearing them testify than is an appellate court which has no such opportunity.'" *Stachnik*, *supra* at 383-384, quoting *Christine Bldg Co v City of Troy*, 367 Mich 508, 518; 116 NW2d 816 (1962).

defendants' total bill to reflect the costs and labor associated with these additional renovations. Further, the trial court noted that defendants knew that plaintiff was undertaking certain renovations (in particular, building another garage), yet did not tell him to stop.[11] Again, plaintiff's attempts to recover the reasonable value of the services that he provided to defendants do not constitute acting in bad faith.

Finally, defendants argue that plaintiff should not recover under quantum meruit because he failed to complete the renovations. However, plaintiff claimed that he ceased working on defendants' property in October because defendants had failed to pay him and admitted their concern to him that they would be unable to pay him for additional work. Defendants admitted that they last paid plaintiff in August 2003. Further, plaintiff did not request that the trial court permit him to recover for work that he did not perform for defendants. Plaintiff's decision to stop working for defendants because he was not getting paid does not constitute bad faith preventing plaintiff from recovering in quantum meruit. Defendants fail to establish a scenario under which plaintiff is precluded by the "clean hands" doctrine from recovering in quantum meruit.

Accordingly, the trial court did not clearly err when it granted plaintiff relief in quantum meruit. Although plaintiff did not complete renovations to defendants' home before ceasing work in October 2003, the parties do not dispute that plaintiff performed and oversaw a significant portion of the renovation to the property. Plaintiff oversaw demolition of defendants' fire-damaged home, dug the basement, poured the basement walls, and paid subcontractors to install plumbing and electricity and to build a deck, a porch, stairs, and a garage. Further, plaintiff testified that defendants did not compensate him for all the costs and labor he incurred on renovations to their home. Accordingly, the evidence presented to the trial court established that defendants received a benefit from plaintiff (namely, renovations to their property), yet plaintiff was harmed financially because defendants did not repay plaintiff for the costs and labor he incurred in the renovation process. Under these circumstances, the trial court's decision to grant plaintiff relief under quantum meruit was appropriate.

Next, defendants argue that the trial court erred when it denied their motion for a directed verdict. Initially, we note that nothing in the trial court record indicates that the trial court ruled on defendants' motion for a directed verdict. When defendants raised this motion at the close of plaintiff's proofs, the trial court merely took defendants' argument under advisement. Nothing in the trial court record indicates that the trial court addressed this motion at any subsequent point in the trial or posttrial proceedings.

Regardless, the trial court's failure to directly rule on defendants' motion is immaterial because the trial court's finding that the parties did not have a contract obviated defendants' argument that the statements did not comply with the provisions of the Construction Lien Act,

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[11] The trial court again used the itemized costs in the September 20 statement to determine the value of certain services that plaintiff performed that were not included in the original agreement. Again, in so doing, the trial court made the implicit determination that this valuation of plaintiff's work was credible.

MCL 570.1101 *et seq*. Under the Construction Lien Act, a contractor shall provide a sworn statement to a property owner "[w]hen payment is due to the contractor from the owner or lessee or when the contractor requests payment from the owner or lessee," MCL 570.1110(1)(a), or "[w]hen a demand for the sworn statement has been made by or on behalf of the owner or lessee," MCL 570.1110(1)(b). Although a contractor's failure to provide a sworn statement to a property owner before recording a claim of lien does not invalidate that contractor's construction lien on the property, "the contractor shall not be entitled to any payment, and a complaint, cross-claim, or counterclaim may not be filed to enforce the construction lien until the sworn statement has been provided." MCL 570.1110(8).

However, the provisions of MCL 570.1110 only apply to a "contractor." In the Construction Lien Act, a "contractor" is "a person who, pursuant to a contract with the owner or lessee of real property, provides an improvement to real property." MCL 570.1103(5). A "contract" is "a contract, of whatever nature, for the providing of improvements to real property, including any and all additions to, deletions from, and amendments to the contract." MCL 570.1103(4). However, as discussed earlier, the trial court did not abuse its discretion when it concluded that the parties had not entered into a contract to provide improvements to defendants' property because no "meeting of the minds" occurred between plaintiff and defendants. Because the parties did not enter into a contract, plaintiff did not provide improvements to defendants' property "pursuant to a contract" with defendants and, therefore, he is not a contractor pursuant to the Construction Lien Act. See MCL 570.1103(5). The provisions of MCL 570.1110 only apply to contractors; because plaintiff is not a contractor, the question whether the statements complied with the provisions of MCL 570.1110 is moot. Because defendants' remaining issues on appeal concern the misapplication of the provisions of MCL 570.1110, and MCL 570.1110 is inapplicable because the parties did not enter into a contract, we need not consider these issues further.

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens