

2014 IL App (1st) 133367-U

No. 1-13-3367

December 23, 2014

SECOND DIVISION

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

| | | |
|--------------------------|---|-------------------------------|
| LOUIS FIDELI, |) | Appeal from the Circuit Court |
| |) | of Cook County. |
| Plaintiff-Appellant, |) | |
| |) | |
| v. |) | No. 06 CH 11851 |
| |) | |
| NINA WILLOUGHBY and JOHN |) | |
| HEFFERON, |) | The Honorable |
| |) | Patrick J. Sherlock, |
| Defendants-Appellees. |) | Judge presiding. |
| |) | |

JUSTICE NEVILLE delivered the judgment of the court.
Justices Pierce and Liu concurred in the judgment.

ORDER

¶ 1 *Held:* To recover on a theory of unjust enrichment, either the plaintiff must show that the defendant committed improper conduct, such as fraud, duress or undue influence, or the plaintiff must show that the court should imply a contract because the defendant's retention of a benefit would violate principles of justice, equity and good conscience.

¶ 2 Two years after Louis Fideli deeded property to Nina Willoughby, he sued her claiming that she promised to give him a 50% interest in the property after rescuing it from foreclosure. The case went to trial on a theory of unjust enrichment. The trial court found that Fideli failed to prove his claim. In this appeal, we find that the trial court applied the correct legal standards, and the evidence sufficiently supports the trial court's findings. Therefore, we affirm.

¶ 3 **BACKGROUND**

¶ 4 Willoughby ran a small retail clothing business in a store she rented on Halsted Street in Chicago. In 1986, she and Fideli obtained a loan of \$315,000, and Fideli used the money to purchase the property that included Willoughb
¶ 5 y's store. Fideli kept the property solely in his name. He put up no money for the purchase apart from the bank loan. Willoughby used the proceeds from her business to pay the mortgage and taxes.

¶ 6 Willoughby missed some mortgage payments in 2003. In April 2004, the bank sued and foreclosed on the mortgage. In March 2004, Fideli executed a warranty deed that made Willoughby co-owner of the property. Fideli executed a second warranty deed in June 2004 that made Willoughby sole owner of the property. Willoughby then applied for a loan to refinance the mortgage. On the loan application, she estimated the property's value as \$1,200,000. The bank loaned her \$577,000 in December 2004, because she gave the bank a mortgage on the property and because her fiancé, John Hefferon, who had excellent credit, guaranteed the loan. Willoughby used the loan to repay the debt left outstanding in April

2004, and avoided foreclosure. Willoughby and Hefferon continued paying the expenses for the property.

¶ 7 In June 2006, Fideli sued Willoughby and Hefferon claiming that Willoughby had promised to return to Fideli a 50% interest in the property once she avoided foreclosure by obtaining a new loan. The case came to trial on a single count for unjust enrichment.

¶ 8 At the trial, Willoughby admitted that she did not pay Fideli for transferring the property to her, and that Fideli did not intend to give her the property as a gift. Willoughby testified that a man had offered to pay more than \$700,000 for the property. She preferred not to sell, even though the offered price would have exceeded the total debt for the property. She said that she never agreed to give Fideli any interest in the property. Fideli gave her the property in exchange for relief from debt when his credit history did not permit him to obtain a loan to pay off the mortgage.

¶ 9 Fideli testified that Willoughby promised that after she obtained refinancing for the property, she would return to him his 50% interest in the property. Fideli admitted that Willoughby never signed any contract for the return of the property. He also acknowledged that when he learned of the foreclosure lawsuit, he did not hire an attorney or take any other steps to protect his interest in the property.

¶ 10 The trial court said:

"[T]he crux of the case boils down to do I believe that the Defendant, Nina Willoughby, agreed to transfer back to Plaintiff, Louis Fideli, a 50 percent interest in the property; or do I not believe that.

And I say that this is the crux of the issue because in a claim for unjust enrichment, the Court must find a couple of things:

One, that the Defendant[] unjustly retained a benefit to the Plaintiff's detriment and also, that the Defendants' retention of the benefit violates fundamentals of justice, equity and good consci[ence].

In this case, the Defendant clearly was the benefactor of the transaction, and the Plaintiff clearly suffered as a result of the transaction.

The issue, however, is was the retained benefit unjust.

The Court finds that Willoughby's retention of the entire interest in the property is not unjust for the following reasons:

Plaintiff was a mature[] businessman at the time he agreed to the transfer.

The property was in foreclosure at the time of the transfer[.]

Neither Fideli nor Willoughby had sufficient credit to refinance the building to avoid the foreclosure.

* * *

Fideli's testimony also was that Willoughby agreed to transfer back his interest in the property after she arranged to refinance the mortgage.

I find this testimony to be not credible.

According to Fideli, the property was worth \$1.2 million and had a mortgage balance of less than \$600,000. Thus, he claims he had \$300,000 in equity in the property ***.

Fideli never retained counsel to defend himself in the foreclosure case in order to save his equity. He never executed a listing agreement with a broker in order to maximize the recapture of his equity in the building.

He admits that he took no steps to memorialize in writing this purported agreement with Ms. Willoughby.

He also admits that *** he knew Ms. Willoughby was going to be bringing a third party to finance the transaction.

Yet, he admits he never spoke with this third party or even attempted to speak with the third party, who turns out to be *** Dr. Hefferon.

Fideli could not explain why he believed that Willoughby would bring in an investor who would help Fideli save his equity.

There was a personal relationship between Fideli and Willoughby that had been dissolved for at least five years prior to this transaction, and one would expect, in this type of sub rosa agreement, that there would be some type of writing to memorialize it.

Fideli did little, if anything, to protect himself, even after the refinance.

There's not a single writing between the parties that even alludes to this so-called agreement, either before or after the fact.

Further, the [benefit] is not unjust because Willoughby personally obtained a benefactor to refinance this property. This is something that Fideli could have done but was either unwilling or unable to do.

Moreover, at the time of the transfer, the building did not have a paying tenant other than Willoughby, who had been paying rent, which was essentially the mortgage payment[,] for many years.

It is unclear why she would continue to make payment towards the mortgage in the form of rent simply for the benefit of Fideli.

Fideli [did] not prove that he transferred the property under duress.

Fideli did not prove that Willoughby exerted undue influence over him.

Fideli did not prove that he was defrauded.

Indeed, the proofs are that a request was made of Fideli, and he acceded to that request.

* * *

In sum, the Court finds the Plaintiff failed to carry his burden of proof."

The court entered judgment in favor of Willoughby and Hefferon. Fideli now appeals.

¶ 11

ANALYSIS

¶ 12

In this appeal, Fideli argues that the evidence requires a judgment in his favor, and the trial court applied the wrong standards when it held that Fideli had not met his burden of proof. We review a trial court's factual findings to determine whether they are against the

manifest weight of the evidence, but we review legal questions *de novo*. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 154 (2005).

¶ 13 Our supreme court held that to recover for unjust enrichment, a plaintiff must show that the defendant "has unjustly retained a benefit to the plaintiff's detriment, and that defendant's retention of the benefit violates the fundamental principles of justice, equity, and good conscience." *HPI Health Care Services, Inc. v. Mt. Vernon Hospital*, 131 Ill. 2d 145, 160 (1989). The doctrine of unjust enrichment provides a remedy for "unlawful or improper conduct as defined by law, such as fraud, duress, or undue influence" (*Alliance Acceptance Co. v. Yale Insurance Agency, Inc.* 271 Ill. App. 3d 483, 492 (1995)); alternatively, a plaintiff may recover for unjust enrichment based on a contract implied in law. *Chicago Title Insurance Co. v. Teachers' Retirement System*, 2014 IL App (1st) 131452, ¶ 17. To recover for an implied contract, "plaintiffs must show that defendant[s] voluntarily accepted a benefit which would be inequitable for [them] to retain without payment." *People ex rel. Hartigan v. E & E Hauling, Inc.*, 153 Ill. 2d 473, 497 (1992).

¶ 14 The trial court here expressly considered and rejected all possible bases for recovery on a theory of unjust enrichment, and the court clarified that it applied as its primary guide the language from *HPI*. Fideli notes that he did not need to prove fraud or duress to recover on a theory of implied contract. The trial court considered the possible theories of improper conduct, and separately considered and rejected the theory that Willoughby gained a benefit when it "would be inequitable for [her] to retain [the benefit] without payment." See *E & E Hauling, Inc.*, 153 Ill. 2d at 497. The trial court expressly held that "the [benefit] is not unjust because Willoughby personally obtained a benefactor to refinance this property. This

is something that Fideli could have done but was either unwilling or unable to do." We find that the trial court applied the correct legal standards to determine whether Fideli met his burden of proof.

¶ 15 We apply the manifest weight of the evidence standard to our review of the trial court's findings of fact. *Corral*, 217 Ill. 2d at 154. The court held that Willoughby promised Fideli that, with the help of a third party, she would unburden Fideli of his debt related to the property, at a time when the bank had sued to foreclose the mortgage, and when Fideli lacked the wherewithal to obtain refinancing on his own. Fideli did not explain why he expected the third party to protect Fideli's equity in the property when Fideli took no steps to protect that equity. The parties' testimony indicated that Fideli invested no money when he obtained title to the property, and Willoughby always paid the mortgage and the taxes for the property. Like the trial court, we see no injustice in Willoughby's retention of the benefit of the deed to the property after Fideli transferred the deed to her. We cannot say that the trial court's findings are against the manifest weight of the evidence. Accordingly, we affirm the trial court's judgment.

¶ 16 CONCLUSION

¶ 17 The trial court followed applicable precedent when deciding whether Fideli proved his claim for unjust enrichment. The evidence sufficiently supports the trial court's finding that Willoughby did not promise to give Fideli a 50% interest in the property after she obtained refinancing to save the property from foreclosure. Therefore, we affirm the decision of the trial court.

¶ 18 Affirmed.