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2014 IL App (5th) 130357-U

NO. 5-13-0357

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

ORAL BROWNING and DEBORAH)	Appeal from the
BROWNING,)	Circuit Court of
)	Williamson County.
Plaintiffs and Counterdefendants-)	
Appellees)	
)	
v.)	No. 12-LM-231
)	
MISTY BROWNING,)	
)	Honorable
Defendant and Counterplaintiff-)	Carolyn B. Smoot,
Appellant.)	Judge, Presiding.

JUSTICE STEWART delivered the judgment of the court.
Justices Goldenhersh and Spomer concurred in the judgment.

ORDER

¶ 1 *Held:* Under the facts and circumstances of the present case, the circuit court's equitable powers to prevent unjust enrichment included discretion to order the removal of a manufactured home that is permanently affixed to real estate.

¶ 2 The plaintiffs/counterdefendants, Oral and Deborah Browning, filed a complaint for forcible entry and detainer against the defendant/counterplaintiff, Misty Browning. The complaint alleged that Misty owned and occupied a manufactured home that she erected on their property and that they requested her to remove the manufactured home,

but she has refused to do so. Misty filed a counterclaim against Oral and Deborah alleging that she erected the home on their property in reliance on the promise that the real estate would be transferred to her. She alleged that the home was permanently affixed to the property and that Oral and Deborah were unjustly enriched as a result of the permanent fixture. She requested an equitable lien against the property and "any other such further relief as [the] Court deem[ed] just." After a bench trial, the circuit court entered a judgment granting Oral and Deborah possession of the property and ordering Misty to move the manufactured home to a new location. The court further ordered Oral and Deborah to pay half of the cost of relocating the manufactured home, up to \$8,000. Misty now appeals the circuit court's judgment and argues that the manufactured home is a permanent fixture to the real estate and, therefore, she established a claim for an equitable lien. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 At the time Oral and Deborah filed their lawsuit, Misty was married to their only son, Butch Browning, and Misty and Butch had one son together. However, Misty and Butch had separated and were going through a divorce. Prior to their separation, Misty and Butch moved the double-wide manufactured home onto Oral and Deborah's property which is the subject matter of the present case. Misty paid for the manufactured home with money she received from her parents as an advance on her inheritance. The parties agree that Misty purchased the home with her nonmarital funds.

¶ 5 After Misty and Butch separated, Oral and Deborah sent Misty a demand that she remove her manufactured home from their property and restore the property to its original condition to the extent that was possible. On July 31, 2012, they filed their complaint against Misty, alleging that she refused to vacate and remove the manufactured home, did not have permission to continue to occupy the manufactured home on their property, and had not paid any rent since her separation from their son. Oral and Deborah requested the court to enter an order granting them possession of their property occupied by Misty and allowing Misty a minimal amount of time to remove her manufactured home from the premises. Oral and Deborah also requested an award of the fair rental value of the premises and an order requiring Misty to restore the premises to its original condition or an award of damages in an amount that would restore the premises to its original condition.

¶ 6 Misty filed a two-count countercomplaint against Oral and Deborah. Misty alleged that she purchased the manufactured home for \$80,000 and placed it on Oral and Deborah's property in reliance on a promise by them that they would transfer the real estate to her for use by her and Butch. She alleged that the home was permanently affixed to a concrete block foundation and that this permanent improvement increased the value of Oral and Deborah's property by over \$100,000, for which Misty had not been reimbursed or compensated. In count I of her counterclaim, Misty requested the court to impose an equitable lien on the property for the amount that the property value had increased as a result of the permanent improvement or, alternatively, a judgment in the

amount of the "reasonable costs and value of the services" that she incurred for the improvements she made to the property. In count II of the counterclaim, Misty alleged a cause of action based on a theory of unjust enrichment and requested the same relief as she requested in count I. In each count of the counterclaim, Misty also requested "any other such further relief as this Court deems just."

¶ 7 At the time of the trial, Misty had moved out of the manufactured home. She testified that she purchased the home in April 2011 for \$80,308. When she purchased the home, the seller gave her a title to the home and delivered the home to Oral and Deborah's property in two sections. The seller brought the home to the property on wheels that the seller removed and kept. Misty's purchase contract provided that the under-tires and axles used for the transportation of the home remained the property of the seller. The seller left behind two tongues that had been used to transport each half of the house but were no longer attached to any part of the house.

¶ 8 The home was set onto a foundation that is made from concrete blocks and mortar. The seams where the two parts of the house came together were sealed and are not visible from either the inside or outside of the house. Temporary stairs lead to the front entrance of the house and are not fixed in place. Butch and Misty never built stairs leading out from the back door to the ground.

¶ 9 Misty testified that at the time she had the house erected on Oral and Deborah's property, she had other property where she could have placed the house. The property already had utilities in place for a home. She testified that she wanted to place the home

on her property, but Butch and Deborah urged her to place the house on Oral and Deborah's property because Oral and Deborah wanted to be closer to their only son and grandson. During his testimony, Oral agreed that he was thrilled that Misty and Butch would have a home on the property.

¶ 10 Oral and Deborah took out a loan on the property in order to help pay for the costs of setting up the utilities for Misty's manufactured home. Misty testified that without help from Oral and Deborah, she and Butch would not have been able to afford the set-up costs for the house. In addition, Misty's father also paid \$2,000 to have the land cleared for the home.

¶ 11 Misty testified that Deborah told her that she and Oral wanted to help her and Butch and that the property was the only thing they had to give them. According to Misty, they talked about sectioning off the land, but did not discuss the specific amount of acreage that would be transferred to her and Butch. Misty said that she had several conversations about the land with Deborah over the course of six months while they shopped for homes.

¶ 12 A real estate broker, Fortune Brayfield, testified on behalf of Misty. She testified that the home was a brand new manufactured home on a permanent foundation. It was the type of home that she would sell as real estate. Brayfield conducted a comparative market analysis to determine the value of the property. She estimated that the value of the home and a two-acre parcel was worth approximately \$90,000.

¶ 13 Butch testified on behalf of his parents. According to Butch, he talked with Misty about different options with respect to purchasing or building a home, and Misty ultimately decided that she wanted to purchase a double-wide manufactured home. They discussed different options for the placement of the home. According to Butch, Oral and Deborah agreed to the placement of a home on their property, but they expressly stated that they were not going to transfer any land as part of the agreement. Butch also testified that the home was located in the middle of 40 contiguous acres owned by his parents. The acreage is primarily wooded land with no other home sites. During the marriage, he and Misty had planned on building a deck and a front porch onto the home and building a garage, but they never started those projects.

¶ 14 Butch stated that the loan for the utilities hookup was signed by himself and his father. According to Butch, Misty did not want to put the home on her own property because her mother lived next door and she often had disagreements with her mother. In addition, they both wanted their son to go to the school district where Oral and Deborah's property was located.

¶ 15 Deborah testified that she did not approach Misty about constructing a home on their property, and she denied ever telling Misty that she and Oral would transfer ownership of any property. She agreed, however, that she was thrilled that her only son and only grandson would be living down the road from her on their property. She denied ever telling Butch and Misty that they would inherit their land someday. According to

Deborah, Misty actually purchased the manufactured home before she had a place to put it, and the home sat on the seller's lot after the purchase for a period of time.

¶ 16 On cross-examination, Deborah agreed that the manufactured home was placed on the property with the understanding that Butch and Misty were going to live on the property forever. She testified that there were no discussions about moving the home at a later time. She testified that the fact that the house was movable was an important consideration, but that the intent was for the home to stay there.

¶ 17 Oral testified that his concern when Misty wanted to place the home on their property was that the land would not be taken away from him. He testified that when he agreed to allow the home to be put on the property, he expressly stated, "The land will not change hands." He also stated that Misty did not want to put the home on her own property because it was next to her mother's property. He agreed to cosign a loan for hooking up the utilities, and the property was used as collateral for the loan.

¶ 18 He testified that, at one point he asked Misty to help pay the real estate taxes on the property, but that he continued to pay real estate taxes. He knew that Butch and Misty had planned on building a garage, and he never told them that they could not build permanent improvements on the property. He testified that they were allowed to do whatever they wanted to do with the property while they were married. He agreed that when the home was placed on the property, it was done with the intent that it remain there forever and that there were no discussions about its being moved in the future.

¶ 19 A friend of Oral and Deborah, Peggy Stanley, testified that she was a legal secretary and that she had a conversation with Deborah concerning the placement of Misty's home on the property. She advised Deborah not to transfer the property because something could happen in the future.

¶ 20 A dealer in manufactured homes, Mike Brooks, testified on behalf of Oral and Deborah. Brooks explained the difference between a manufactured home and a modular home. A manufactured home is built "under the HUD code" which is a federal code. A modular home, however, is normally called a State Code Modular and is built under a state code which, in general, was "synonymous with the International Residential Code."

¶ 21 A manufactured home, like Misty's home, is similar to a trailer in that they are both constructed with I-beams underneath which add strength to the home. They are built in a factory in one, two, or sometimes three sections. They are finished in the factory, wrapped, and delivered to the site where they are put on some type of concrete footing. In contrast, Brooks explained, a modular home "does not have the I-beams but is secured to a seal plate on a permanent foundation like a site built." Brooks believed that if each type of home is built to "the most stringent code or stringent specs for each one, *** they are going to be the same in terms of strength, durability, longevity." Both types of homes are made in a factory and delivered to the site. A manufactured home has a title, while a modular home has a certificate of origin. On cross-examination, he described the homes as being "very, very similar." He did not believe that there was any more or less permanency difference between a manufactured home and a modular home.

¶ 22 Brooks testified that people often trade in manufactured homes. If there is a trade-in with a manufactured home, he goes to the site and inspects the home and appraises the value based on his experience with the market, the age of the home, and using a reference NADA book on manufactured homes. To his knowledge, there is not a similar NADA book for modular homes.

¶ 23 According to Brooks, when a customer has a manufactured home in place and wants to buy a brand new manufactured home to put on the site where the old home sits, he will generally go to the site and pick up the old home as a trade-in for the new home, and he will then resell the old home. He testified that to transport the home to his resale lot, he places wheels under the home's I-beam and reattaches a tongue to each section of the home. If the home is a double-wide, he separates the seam down the middle to separate the sections for transporting.

¶ 24 According to Brooks, a double-wide trailer is anchored to the ground by attaching the I-beam to footings. He testified that the anchoring is accomplished with "traditional straps" or "by some of the new technology that we use which is an actual steel arm that attaches from the concrete footing to the I-beam or I-beams." The concrete footings are holes dug into the ground and filled with concrete. The straps run the length of the trailer and are fastened to the concrete footings to prevent the structure from blowing away. He testified that he uses "a more elaborate system that is very similar to the site built systems in terms of foundation."

¶ 25 Brooks testified that skirting is placed around the outside of trailers to aid with insulation and to keep pipes from freezing. The skirting can be vinyl or a concrete perimeter foundation. Generally speaking, the home is not attached to the perimeter block foundation. He explained that the cement blocks around Misty's home sit on an eight-inch-deep poured concrete footing. He testified that manufactured homes are taxed as real estate in Illinois once they are placed on permanent foundations.

¶ 26 Brooks described Misty's home as a "top-of-the-line manufactured home." He explained that when a home such as Misty's is delivered to a site, the tongues and wheels are removed. The seams joining the two sections together are visible on the outside until siding is placed on the outside of the home. The siding is designed to be permanent. In the interior, the drywalls and carpets are seamed together, and the seams are intended to be permanent. On cross-examination, he agreed that although the home can be moved, most people do not place this type of home on a lot with the intention of moving it around and trading it in. He also agreed that a regular house could be moved as well. He estimated the cost of moving a manufactured home to be approximately \$20,000.

¶ 27 In order to move the home, he would reverse the process of its installation. He would remove the siding on the ends of the home, remove the ridge cap, remove the perimeter block foundation, jack the home up, and separate the two halves. He would wrap each section and reinstall tires and a tongue for each section. He testified that it was not an easy process and would result in the concrete skirting being demolished. The

footings could stay in the ground depending on the wishes of the landowner. At the new site, he would have to rebuild a new foundation structure.

¶ 28 According to Brooks, the company that manufactures the homes gives the owners warranties, and moving the structures violates the manufacturer's warranties. Moving the homes creates a risk of damage to the home.

¶ 29 John Harvel, a certified residential appraiser, testified on behalf of Oral and Deborah. In describing the difference between a manufactured and modular home, he testified that a manufactured home is brought to the home site on wheels, while a modular home is brought to the home site on the back of a flatbed truck and erected with a crane. A manufactured home has a serial number and a title, while a modular home has neither. For financing purposes, a modular home is treated as the equivalent of a stick-built home, while a manufactured home is not. The concrete block foundation around a manufactured home offers no support and is only for insulation purposes. The manufactured home sits on "concrete piers with blocks."

¶ 30 Harvel testified that he prepared an appraisal report for the parcel of real estate where the manufactured home sits. He testified that the manufactured home sat on two acres of land owned by the plaintiffs. He appraised the value of home on the two acres as \$64,000. He valued the two acres of land alone as worth approximately \$12,000. Therefore, he valued the home improvement at \$52,000.

¶ 31 Harvel opined that if the 2 acres sat in the middle of 20 acres, the land value of the remaining 18 acres would be less than what the acreage would be worth if the 2 acres

were vacant or if the 2 acres had a stick-built home on it. He testified that the value of the price of land is lower per acre when it is sold in a 20-acre tract versus a 2-acre tract. On average, 20 acre tracts in Williamson County sold for approximately \$1,800 to \$2,500 per acre.

¶ 32 Mary Ann Davis testified that she was a part owner of a business that transports and sets up single- and double-wide homes for dealers and private individuals. She estimated that it would cost \$5,500 to move a double-wide home approximately 25 miles. Her estimate was not specific to Misty's home but was her business's standard price. Her estimate did not include concrete or utility work that would have to be provided by the customer. The customer would also be responsible for removing and reinstalling the underpinning anchors and concrete block foundation as well as putting the siding back on and resealing the drywall and the trim wood on the inside where the house was split. She estimated that the concrete work would cost around \$4,500, and the block work would be in addition to that.

¶ 33 At the conclusion of the bench trial, the circuit court took the matter under advisement and subsequently entered a judgment granting immediate possession of the real estate to Oral and Deborah as they requested in their complaint for forcible entry and detainer. This is the only relief that the court granted with respect to Oral and Deborah's complaint.

¶ 34 With respect to count I of Misty's counterclaim, the court denied her request for an equitable lien, finding that she failed to prove that she was entitled to an equitable lien.

The court, however, granted Misty relief with respect to count II of her counterclaim which alleged a theory of unjust enrichment, although the court did not grant Misty the specific relief that she requested. Instead, the court found that Misty's manufactured home was not a permanent structure, but was capable of being removed from Oral and Deborah's real estate and that a reasonable estimate of the costs for removing and reinstalling the mobile home was \$16,000. The court, therefore, ordered Misty to remove the mobile home within 45 days of the date of the judgment and ordered Oral and Deborah to reimburse Misty for one-half of the costs associated with the removal and reinstallation of the home, up to \$8,000. Misty now appeals the circuit court's judgment.

¶ 35

DISCUSSION

¶ 36 Misty raises several issues with respect to the circuit court's judgment. She challenges the circuit court's finding that her manufactured home was not a permanent structure and argues that the trial court incorrectly found that she was not entitled to an equitable lien. Misty argues that, because the home is a permanent structure on Oral and Deborah's property, she established a claim for unjust enrichment for the amount she spent in purchasing the home or, alternatively, for the value that Oral and Deborah's property increased as a result of the placement of her home on their property. She argues that because the manufactured home became a fixture upon the real estate, the circuit court should have granted her an equitable lien and should not have ordered her to remove the home. In support of this argument, Misty also asserts that the circuit court erred in ordering her to remove the home from Oral and Deborah's property as additional

relief in Oral and Deborah's forcible entry and detainer action. She argues that this relief is not proper in a forcible entry and detainer proceeding.

¶ 37

I.

¶ 38

Relief Granted in the Forcible Entry and Detainer Action

¶ 39 First, with regard to Misty's last contention, we note that the circuit court did not order her to remove the home as part of Oral and Deborah's forcible entry and detainer claim. Instead, the judgment of the circuit court states as follows: "As to Plaintiff/Counter-Defendant's complaint, the Parties agree Plaintiff/Counter-Defendant is *only entitled to possession under their forcible entry and detainer action.*" (Emphasis added.) Accordingly, possession of the real estate was the only relief that the court granted with respect to Oral and Deborah's complaint.

¶ 40 With respect to that portion of the circuit court's judgment that ordered Misty to remove the home, the circuit court made findings concerning the removability of the home and the costs associated with moving the home in the context of count II of Misty's counterclaim that alleged unjust enrichment. The court granted Misty one-half of the cost of moving her home as part of its judgment with respect to count II of her counterclaim, not in the context of the forcible entry and detainer allegation. Accordingly, the merits of the circuit court's judgment with respect to the removal of the home must be evaluated in light of Misty's allegation of unjust enrichment, not under the law pertaining to the forcible entry and detainer claim.

¶ 41

II.

¶ 42

Unjust Enrichment

¶ 43 A claim of unjust enrichment invokes the equitable powers of the circuit court. *Guinn v. Hoskins Chevrolet*, 361 Ill. App. 3d 575, 604, 836 N.E.2d 681, 704 (2005) (unjust enrichment is an equitable remedy that is only available when there is no adequate remedy at law). A circuit court's equitable powers are broad, and it exercises its equitable powers based on a consideration of all the facts and circumstances of a particular case. *Lewsader v. Wal-Mart Stores, Inc.*, 296 Ill. App. 3d 169, 175, 694 N.E.2d 191, 195 (1998). It is the "very nature of an equitable remedy to be flexible and to rely upon the discretion of the trial court." *Id.* at 182, 694 N.E.2d at 199.

¶ 44 Therefore, in reviewing the circuit court's judgment in the present case, we must analyze whether the court abused its discretion in its determination of the proper equitable remedy in light of all the facts and circumstances of this particular case. "A trial court abuses its discretion only when its ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would adopt the court's view." *People ex rel. Madigan v. Petco Petroleum Corp.*, 363 Ill. App. 3d 613, 634, 841 N.E.2d 1065, 1082 (2006). The circuit court in the present case did not abuse its discretion in fashioning its remedy for resolving Misty's claim of unjust enrichment.

¶ 45 To state a claim for unjust enrichment, "a plaintiff must allege 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, Inc., 131 Ill. 2d 145, 160, 545 N.E.2d 672, 679 (1989). It is applied in situations where there is no express contract between the parties. *Gagnon v. Schickel*, 2012 IL App (1st) 120645, ¶ 25, 983 N.E.2d 1044.

¶ 46 In the present case, the parties agree that Misty had permission to place her manufactured home on Oral and Deborah's property and that there was no written contract between them concerning the placement or removal of the home. The parties further agree that the manufactured home has some value, although they disagree on the amount of its value, and they agree that the home was purchased with Misty's nonmarital funds. Oral and Deborah do not dispute Misty's ownership of the manufactured home and do not claim ownership of the home as a fixture to their land.

¶ 47 The facts and circumstances of this case presented the circuit court with a dispute between the parties that centered on what relief should be granted to resolve Misty's claim of unjust enrichment. Although both parties presented evidence that the home has some value independent of the real estate on which it sits and that it can be moved to other locations, none of the parties want possession of the home. As a result, in resolving the parties' dispute, the circuit court, by necessity, had to determine who would have possession and ownership of the home.

¶ 48 The question we must address on appeal is whether the circuit court's equitable powers included the power to remedy the unjust enrichment by awarding Misty possession of the manufactured home and ordering her to remove it. We believe that the

circuit court's judgment granting Misty the manufactured home to remedy the unjust enrichment was a permissible equitable remedy that is supported by the facts and circumstances of the case and is within the court's discretion.

¶ 49 As noted above, to state a cause of action based on a theory of unjust enrichment, "a plaintiff must allege that the defendant has unjustly retained a benefit to the plaintiff's detriment." *HPI Health Care Services, Inc. v. Mt. Vernon Hospital, Inc.*, 131 Ill. 2d 145, 160, 545 N.E.2d 672, 679 (1989). Misty alleged unjust enrichment in count II of her counterclaim, but the evidence established that Oral and Deborah do not want to unjustly retain the home or the value of the home to Misty's detriment. Instead, they want her to take the home and requested her to do so. In essence, it is Misty's refusal to take the home that created Oral and Deborah's alleged "enrichment." The court's order effectively remedied the enrichment by disgorging Oral and Deborah of the "benefit" by ordering Misty to take possession of her home. Under the facts of this case, Misty has not established that the circuit court abused its discretion in fashioning this equitable relief. See *Westcon/Dillingham Microtunneling v. Walsh Construction Co. of Illinois*, 319 Ill. App. 3d 870, 878, 747 N.E.2d 410, 417 (2001) ("In fashioning a remedy, courts have broad discretion to grant the relief that equity requires.").

¶ 50 Misty argues that the circuit court improperly ordered her to remove the manufactured home from Oral and Deborah's property because the manufactured home was permanently affixed to the property and, therefore, became a fixture. A "fixture" is personal property that is incorporated into or attached to real estate. *Nokomis Quarry Co.*

v. Dietsl, 333 Ill. App. 3d 480, 484, 775 N.E.2d 669, 673 (2002). Misty argues that, because the parties intended for the home to be permanent, it should be treated as part of Oral and Deborah's real estate and that the court should have granted her an equitable lien. We disagree with Misty's reasoning.

¶ 51 In reviewing the merits of the circuit court's judgment, under the facts and circumstances of the present case, we do not need to decide whether Misty's manufactured home is a permanent fixture to Oral and Deborah's real estate. This is so because, even if we agree with Misty that the evidence established that the home is a fixture, a circuit court, nonetheless, has equitable power to order the removal of a fixture from real estate when the facts and circumstances of the case establish that removal of the fixture is reasonable and will prevent unjust enrichment.

¶ 52 Although no Illinois case has directly addressed the issue of a circuit court's power to order the removal of a fixture from realty to prevent unjust enrichment, other jurisdictions that have considered this issue have affirmed a circuit court's equitable power to do so. For example, in *Peck v. M.C. Developers, Inc.*, 618 A.2d 940 (N.J. Super. Ct. Ch. Div. 1992), a developer mistakenly erected a home on the wrong parcel of real estate. The property owner did not know that the developer erroneously erected the home on its property until it received a tax bill reflecting both the land and the improvement. The developer sought an order from the court to allow it to remove the home in order to reinstall it on a different lot. *Id.* at 941-42. The landowner objected to the removal of the home, arguing that there was "no judicial precedent in New Jersey

specifically addressing the issue of judicially ordered removal of improvements from real estate owned by an innocent land owner." *Id.* at 942.

¶ 53 The *Peck* court analyzed cases from other jurisdictions and concluded that "it has the authority to fashion an equitable remedy to prevent the unjust enrichment of [the landowner] and to assist [the developer], even though arguably a negligent party, to reduce the financial loss resulting from its negligent conduct." *Id.* at 943. The court concluded that the developer should not be penalized "where an equitable remedy" can eliminate "the unjust enrichment." *Id.* at 943. The court, therefore, ordered the landowner to allow the developer to remove the home and ordered the developer to restore the land to its unimproved condition. *Id.*

¶ 54 In reaching this conclusion, the *Peck* court considered *Citizens & Southern National Bank v. Modern Homes Construction Co.*, 149 S.E.2d 326 (S.C. 1966), where a bank brought an action in equity seeking to remove a house that was mistakenly constructed on the wrong parcel of property. The South Carolina Supreme Court held that a court's broad equity powers included the power to allow the bank to move the house. The court noted that the remedy would prevent the property owner from becoming unjustly enriched and would make both parties whole. *Id.* at 328.

¶ 55 The *Peck* court also cited *Governale v. City of Owosso*, 229 N.W.2d 918 (Mich. Ct. App. 1975), which involved a case where a city improperly laid water pipes on the plaintiffs' land. The plaintiffs contended on appeal that the trial court improperly allowed the city to reenter their land and remove the pipes. *Id.* at 921. The plaintiffs asserted the

principle that the improvements became part of their realty, but the court noted that "[s]uch a principle, if carried to its logical extreme, could lead to patently inequitable ends and conflict with the doctrine of *unjust enrichment*." (Emphasis added.) *Id.* at 921. In affirming the trial court's order allowing the city to remove the pipe, the *Governale* court noted that a court exercising its equitable power "must be accorded considerable latitude in fashioning remedies commensurate with the equities of the case." *Id.*

¶ 56 Finally, the *Peck* court cited *McCreary v. Lake Boulevard Sponge Exchange Co.*, 183 So. 7 (Fla. 1938), where property owners were mistaken about a boundary line which resulted in one property owner constructing a building on the other's lot. The Florida Supreme Court noted "that while it is true that buildings erected on real estate become a part of the realty, it does not follow that under certain circumstances and conditions they may not be removed." *Id.* at 8. The *McCreary* court held that "if by mistake one erects his building on the land of the other, the land-owner on his part may by mandatory injunction compel the removal of the building, and, on the other hand, he who has by mistake erected the building may by proceedings have leave to remove the same on payment of any damage accruing to the free-hold by reason of his mistaken action." *Id.* at 8-9.

¶ 57 The present case is different from the above-cited cases in that Misty's manufactured home was not mistakenly erected on Oral and Deborah's real estate. Misty placed it there with their consent. Nonetheless, the present case is similar to the above-cited cases in that the circuit court was presented with a situation in which one party

claimed unjust enrichment as a result of an improvement that she made to realty owned by the opposing parties. We find the above cases from other jurisdictions to be persuasive because they establish that a trial court's broad equitable powers in such situations include the power to order the removal of the home or structure from real estate in order to prevent unjust enrichment and to make both parties whole. The circuit court in the present case, therefore, properly exercised this power under the facts and circumstances of this case and did not abuse its discretion in fashioning its remedy.

¶ 58 The evidence established that moving Misty's home to a new location is a reasonable remedy. Brooks testified that manufactured homes are routinely moved as various customers trade in old manufactured homes for new ones. He testified that in order to move a manufactured home, he reverses the installation process. He removes the siding on the ends of the home, removes the ridge cap, removes the perimeter block foundation, jacks the home up, and separates the two halves. He wraps each section and reinstalls the tires and a tongue for each section. He can then move each section of the home to a new location to reinstall the home on a new lot. This type of moving procedure is not uncommon in the manufactured home industry.

¶ 59 Under these facts, the circuit court did not abuse its discretion in ordering Misty to remove the home as the remedy to her claim of unjust enrichment regardless of whether the home was permanently affixed to the real estate. Removal of the home under the facts of this case is a reasonable remedy that makes the parties whole and prevents the unjust enrichment. Accordingly, we affirm the circuit court's judgment.

¶ 60

CONCLUSION

¶ 61 For the foregoing reasons, the judgment of the circuit court of Williamson County is hereby affirmed.

¶ 62 Affirmed.