Circuit Court for Kent County
Case No. C-14-CV-18-000115

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 759

September Term, 2020

JASON CONNER

v.

ALBERT PARSONS

Nazarian,
Ripken,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Harrell, J.

Filed: July 9, 2021

This appeal arises out of a "train wreck" sort of real estate transaction involving essentially Jason Conner, appellant, and Albert Parsons, appellee. On 6 December 2018, Parsons filed in the Circuit Court for Kent County a complaint against Conner and Conner's father, Barry Conner.[1] The complaint included claims for breach of contract and unjust enrichment, and sought a constructive trust. Both Conners filed a motion to dismiss or, in the alternative, for summary judgment. After a hearing, the court dismissed all counts against Barry Conner. As to Jason Conner, the court dismissed the claim for breach of contract, but denied the motion to dismiss as to the claims for unjust enrichment and the request to impose a constructive trust. After a bench trial on 31 August 2020, the circuit court found, among other things, that Jason Conner had been enriched unjustly and entered judgment in favor of Parsons in the amount of $9,333.24. The court denied Parsons's request for the establishment of a constructive trust. Both parties filed motions to alter or amend the judgment, which the court denied. Conner timely filed timely a notice of appeal. Parsons filed timely a cross-appeal.

QUESTIONS PRESENTED

Conner presents the following questions for our consideration:

> I. Did the circuit court err as a matter of law in finding that Conner had been unjustly enriched following the conveyance of real property, without consideration, by the appellee in April 2010?
>
> II. Did the circuit court err as a matter of law in applying contract-based damage calculations to an unjust enrichment restitutionary award?

[1] We shall refer in this opinion to Jason Conner as "Conner" and to Barry Conner by his full name.

III. Did the circuit court err as a matter of law in suggesting, in footnote 10, that the appellant may be obligated to the appellee for future contract-based payments under an agreement that merged with the gift deed executed by the appellee on 13 April 2010?

On cross-appeal, Parsons asks us to consider the following questions:

IV. Did the circuit court err in the application of the merger doctrine in the instant case?

V. Did the circuit court err when it found that the parties' agreement, as it relates to Barry Conner, Sr. is (also) subject to the merger doctrine when Barry Conner, Sr. is not a party to the deed?

VI. Did the circuit court err when it found that the defendant, Barry Conner, Sr., was not unjustly enriched because he was not a party to the deed?

For the reasons set forth below, we shall reverse the finding of unjust enrichment and the entry of judgment in the amount of $9,333.24 against Conner and affirm the circuit court's dismissal of all claims against Barry Conner.

FACTUAL AND PROCEDURAL BACKGROUND

The parties in the instant case have a familial relationship, in that Parsons is married to Conner's great aunt.[2] In 2010, Parsons owned property across the street from Barry Conner. In January 2010, Barry Conner asked Parsons if he would consider selling a parcel of land to Conner, who was in need of a place to live when he and his family returned from an extended stay in Brazil. Parsons replked, "[n]o, it's not for sale. I don't want to sell it.

[2] Parsons testified that his wife was Jason Conner's aunt, but when asked if he was Jason Conner's great uncle, Parsons stated, "[t]hey say so, but I'm not legally . . . they say I'm a relative, but I've never been as far as I'm concerned." We take note of the trial judge's determination that it "did not find the testimony of either party to be particularly credible. As to [Conner], that is partly due to his non-involvement in the actual agreement. As to [Parsons], he was only going to assert what was in his self-interest."

I don't need the money." Notwithstanding his initial refusal to sell, on 23 February 2010, Parsons, Barry Conner, and Conner executed a written "Memorandum of Agreement" that provided, in pertinent part:

> On this twenty-second of February, Year 2010, the following persons: Albert F. Parsons, Jason Q. Conner, and Barry H. Conner, hereby agree to the following:
>
> (1) Jason Q. Conner or Barry H. Conner will pay to Albert F. Parsons the amount of $333.33 each month. This payment will be made each month for ten calendar years beginning with the month of April 2010.
>
> (2) At the end of this period, the payment will be re-negotiated between Messrs. Conner and Mr. Parsons (or Mr. Parsons estate) with any upward increase limited to no more than one percent above the prevailing prime rate at that time.
>
> (3) These payments are for a lot of land owned by Albert F. Parsons measuring 80.05 feet by 201.67 feet, and contiguous to his place of residence at 21028 Chester Avenue, Rock Hall, Maryland 21661. The lot address is 21013 Rock Hall Avenue, Rock Hall, Maryland 21661.
>
> (4) The above-described payments are considered "interest-only" for said lot, on a principal amount of $100,000.
>
> (5) Any additional payments which may be made at the end of any calendar year will be considered payment on the principal, and as such will be deducted from the principal in their entirety.
>
> (6) Upon receipt of such payments on the principal, the interest payments will be adjusted downward accordingly, calculated at four percent per year on the remaining principal. If the interest rate has been re-negotiated, the payments will be calculated based on the interest rate then in effect.

Conner intended to build a home on the lot, but, after entering the Memorandum of Agreement, he learned that the dimensions of the lot did not allow him to orient the house as he wished. Parsons and his wife agreed to convey to Conner an additional 2,108 square

feet of land from an adjacent parcel of land they owned. On 14 April 2010, a "Gift Deed" was filed in the Circuit Court for Kent County, pursuant to which, for "consideration of the sum of NO DOLLARS[,]" Parsons conveyed to Conner, in fee simple, 12,685 square feet of property. We shall refer to the property conveyed as "the subject property."[3] Conner used the subject property to obtain a mortgage loan in the amount of $147,500, and thereafter had a house built on it. There was no evidence presented below as to the value of the unimproved land conveyed to Conner in 2010.

Following the recordation of the "Gift Deed," Conner made monthly payments to Parsons until June 2016 when he experienced financial difficulties. The parties stipulated that from 2010 through June 2016, Conner had paid Parsons a total of $25,080. At trial, Conner and his former wife testified that Parsons agreed that Conner could cease making the monthly payments. Parsons denied ever meeting with Conner and testified that he never agreed Conner could stop making payments.

At trial, the only claims before the court were Parsons's claim against Conner for unjust enrichment and his request for imposition of a constructive trust. Conner argued, among other things, that the transfer of the property to him and the forgiveness of the loan in 2016 were gifts, and that he did nothing fraudulent or wrongful so as to justify either a finding that he was enriched unjustly or the imposition of a constructive trust.

[3] The ownership history of the subject property is complicated and some of it is not included here because it is not pertinent to our resolution of the questions presented. We note the discrepancy between the Memorandum of Agreement, which described the property as consisting of 16,143.68 square feet, and the 12,675 square feet of property that was ultimately transferred to Conner.

The court found that "[r]egardless of the merging of the memorandum into the deed, the parties operated under the belief or implication that the debt set out in the memorandum was to be paid on the terms indicated." The court determined that the payments made by Conner to Parsons were neither voluntary nor gifts. Further, although the parties met in 2016, the court could not "conclude that the loan was forgiven." The court found that Conner was enriched unjustly because he had "received the benefit of the agreement between the parties under circumstances that make it inequitable for him to do so without payment of the accumulated monthly payments." The court also found that Parsons was not entitled to the imposition of a constructive trust.

With regard to damages, the court stated:

> Now, the question is the amount of the judgment that should be entered. [Parsons's] claim is for damages related to unjust enrichment from 2016 to the date of filing of the complaint, i.e. December 6, 2018. His complaint was not amended. Consequently, the Court concludes that the damages [Parsons] is entitled to on the complaint are the accumulated monthly interest only loan payments from 2016 until December 2018. There is no particular due date each month. While the receipts on Pl. Ex. 3 are not complete, the parties agree payments were made through July 2016. [Conner] is obligated for 5 months in 2016, 12 months in 2017 and 11 months in 2018, a total of 28 months x $333.33, i.e. $9,333.24. The Court will enter judgment in that amount.

In a footnote, the court wrote, "[o]bviously, since [Conner] has not made the payments from December 2018 until now, he would likely be obligated for those amounts as well." As to the claim for unjust enrichment, judgment was entered in favor of Parsons in the amount of $9,333.24.

STANDARD OF REVIEW

This case was tried without a jury. Accordingly, we look to Maryland Rule 8-131(c), which provides that "[w]hen an action has been tried without a jury, the appellate court will review the case on both the law and the evidence." We "will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." *Id.* We "'consider the evidence produced at the trial in a light most favorable to the prevailing party[.]'" *General Motors Corp. v. Schmitz*, 362 Md. 229, 234 (2001)(quoting *Ryan v. Thurston*, 276 Md. 390, 392 (1975)). "If there is any competent and material evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous." *Anderson v. Great Bay Solar I, LLC*, 243 Md. App. 557, 606 (2019), *cert. denied sub nom*, *Bd. of Comm'rs of Somerset Cnty v. Anderson*, 468 Md. 224 (2020)(citations omitted). When the trial court's decision involves an interpretation and application of Maryland statutory or case law, we must determine whether the trial court's conclusions are legally correct under a non-deferential standard of review. *Credible Behavioral Health, Inc. v. Johnson*, 466 Md. 380, 388 (2019)(citations omitted).

DISCUSSION

I & IV

We begin by addressing the first and fourth questions presented, both of which relate to the court's ruling on the issue of merger. Conner contends that the circuit court erred in finding that he was enriched unjustly because the Memorandum of Agreement merged into the Gift Deed and, therefore, the court could not rely on unenforceable contractual obligations to support a finding that he had been enriched unjustly. In his cross-appeal,

Parsons maintains that the consideration to be paid constituted a collateral issue and, therefore, the doctrine of merger did not apply. For the reasons discussed below, Parsons's claims are barred by the doctrine of judicial estoppel.

A. Judicial Estoppel

Judicial estoppel is a principle "that precludes a party from taking a position in a subsequent action that is inconsistent with a position taken by him or her in a previous action." *Bank of New York Mellon v. Georg*, 456 Md. 616, 624-25 (2017); *see also Dashiell v. Meeks*, 396 Md. 149, 170 (2006). It is derived from the doctrine of estoppel by admission in English jurisprudence. In *Eagan v. Calhoun*, 347 Md. 72 (1997), the Court of Appeals noted that, "Maryland has long recognized the doctrine of estoppel by admission, derived from the rule laid down by the English Court of Exchequer . . . that '[a] man shall not be allowed to blow hot and cold, to claim at one time and deny at another.'" *Id.* at 87-88 (citations omitted); *see also Standard Fire Ins. Co. v. Berrett*, 395 Md. 439, 462 (2006)(and cases cited therein)("Generally speaking, a party will not be permitted to maintain inconsistent positions or to take a position in regard to a matter which is directly contrary to, or inconsistent with, one previously assumed by him, at least where he had, or was chargeable with, full knowledge of the facts, and another will be prejudiced by his action"). Likewise, we have noted that judicial estoppel, also known as the doctrine against inconsistent positions, and estoppel by admission, prevents "a party who successfully pursued a position in a prior legal proceeding from asserting a contrary position in a later proceeding." *Roane v. Washington County Hosp.*, 137 Md. App. 582, 592, *cert. denied*,

364 Md. 463 (2001). *See also Mathews v. Underwood-Gary*, 133 Md. App. 570, 579 (2000), *aff'd on other grounds*, 366 Md. 660 (2001).

The purpose of judicial estoppel is "to protect the integrity of the judicial system from one party who is attempting to gain an unfair advantage over another party by manipulating the court system." *Bank of New York Mellon*, 456 Md. at 625. *See also Dashiell*, 396 Md. at 170 ("'one who, without mistake induced by the opposite party, has taken a particular position deliberately in the course of litigation, must act consistently with it; one cannot play fast and loose.'")(quoting *Kramer v. Globe Brewing Co.*, 175 Md. 461, 469 (1938)). Judicial estoppel performs two important functions. First, it "rests upon the principle that a litigant should not be permitted to lead a court to find a fact one way and then contend in another judicial proceeding that the same fact should be found otherwise." *Gordon v. Posner*, 142 Md. App. 399, 425 (2002)(internal quotations and citations omitted). Judicial estoppel ensures the integrity of the judicial process by "prohibiting parties from deliberately changing positions according to the exigencies of the moment[.]" *New Hampshire v. Maine*, 532 U.S. 742 (2001)(citation omitted); *see also Dashiell*, 396 Md. at 171. Three circumstances must exist before judicial estoppel will be deployed to foreclose a party's claim:

> (1) one of the parties takes a [ ] position that is inconsistent with a position it took in previous litigation, (2) the previous inconsistent position was accepted by a court, and (3) the party who is maintaining the inconsistent positions must have intentionally misled the court in order to gain an unfair advantage.

Bank of New York Mellon, 456 Md. at 625 (quoting *Dashiell*, 396 Md. at 171).

In *New Hampshire v. Maine*, the Supreme Court recognized that because judicial estoppel "is intended to prevent improper use of judicial machinery," it "is an equitable doctrine invoked by a court at its discretion[.]" *New Hampshire*, 532 U.S. at 750 (internal quotations and citations omitted). The Court wrote:

> Courts have observed that "[t]he circumstances under which judicial estoppel may appropriately be invoked are probably not reducible to any general formulation of principle[.]" Nevertheless, several factors typically inform the decision whether to apply the doctrine in a particular case: First, a party's later position must be "clearly inconsistent" with its earlier position. Second, courts regularly inquire whether the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create "the perception that either the first or the second court was misled[.]" Absent success in a prior proceeding, a party's later inconsistent position introduces no "risk of inconsistent court determinations," . . . and thus poses little threat to judicial integrity. A third consideration is whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. In enumerating these factors, we do not establish inflexible prerequisites or an exhaustive formula for determining the applicability of judicial estoppel. Additional considerations may inform the doctrine's application in specific factual contexts.

Id. at 750-51(citations omitted).

In the present case, it is undisputed that Parsons executed the deed that was filed in the Circuit Court for Kent County. In that deed, Parsons affirmed that the subject property was to be conveyed for "consideration of the sum of NO DOLLARS[.]" Before the circuit court in this litigation, Parsons took the exact opposite position, arguing that, in fact, there had been an agreement to convey the subject property for some consideration that was more than "NO DOLLARS[.]" Parsons argued that it would be "inequitable" for Conner "to retain the benefit of the property conferred" without requiring "payment of its value,

that Conner "acquired title to the property through improper means by promising to pay [Parsons] and then failing to do so[,]"and that it would be inequitable for Conner to retain legal title to the property. Clearly, Parsons was blowing hot and cold, changing his positions according to the exigencies of the moment. To insure the integrity of the judicial process, we hold that Parsons's claims against Conner in the instant case are barred by the doctrine of judicial estoppel.[4]

Even if Parsons's claims against Conner were not barred by judicial estoppel, he would fare no better because the circuit court determined properly that the Memorandum of Agreement merged into the Gift Deed. Generally, a "contract for the sale of land becomes null and void when a deed conveying the property to the purchaser is executed and accepted." *Rosenthal v. Heft*, 155 Md. 410, 142 A. 598, 602 (1928). *See also Dorsey v. Beads*, 288 Md. 161 (1980)(a deed made in full execution of a contract for the sale of land merges the provisions of the contract therein, including all prior negotiations and

[4] In light of our holding, we need not determine whether Parsons's claims against Conner are also barred by the doctrine of estoppel by deed. Estoppel by deed was explained by the Court of Appeals as follows:

> Generally, estoppel by deed is based upon equitable considerations. In other words, it rests upon the inequity of allowing the party estopped from asserting a contrary position. The principal is that when a man has entered into a solemn engagement by deed, he shall not be permitted to deny any matter which he has asserted therein, for a deed is a solemn act to any part of which the law gives effect as the deliberate admission of the maker; to him it stands for truth, and in every situation in which he may be placed with respect to it, it is true as to him.

Thompson v. Gue, 256 Md. 32, 37 (1969)(quoting 28 Am.Jur.2d, II. Estoppel by Deed or Bond, § 4, p. 603).

agreements leading up to the execution of the deed); *Mullins v. Ray*, 232 Md. 596, 598-99 (1963)(discussing merger). In Maryland, a "prima facie presumption arises from the acceptance of a deed that it is an execution of the entire agreement for the sale of the realty, and the rights of the parties in relation to the agreement are to be determined by the deed." *Prime Venturers v. One West Bank Group, LLC*, 213 Md. App. 122, 136-37 (2013)(quoting *Dorsey*, 288 Md. at 170 (quoting *Barrie v. Abate*, 209 Md. 578, 582-83 (1956))). This prima facie presumption is referred to as the merger doctrine. "The purpose of the merger doctrine is to protect both the integrity of the deed and the integrity of the contracting process." *Id.* (citing *In re: Tribby*, 241 B.R. 380, 386-87 (E.D.Va. 1999)).

Although the general rule is that a "'contract for the sale of land becomes null and void when a deed conveying the property to the purchaser is executed and accepted,'" there are exceptions. *Id.* (quoting *Rosenthal*, 155 Md. at 418). Merger does not occur when the agreement contains collateral covenants not inconsistent with the deed or where it appears that the execution of the deed is only a partial execution of the agreement. *Id.* at 137. *See also, Dorsey*, 288 Md. at 170-71 (the merger "rule does not apply to real estate contract provisions or other matters not performed or consummated by delivery and acceptance of the deed. . . ., collateral agreements or conditions not incorporated in the deed or inconsistent therewith[.]").

In Maryland, the Court of Appeals has held that the consideration payable, in this case the purchase price, is collateral to, and does not merge with, a deed. [5] *Dorsey*, 288 Md. at 171; *Rosenthal*, 155 Md. 410, 142 A. 598, 601-02 (1928). That general rule, however, does not resolve the issue at hand because the terms of the Memorandum of Agreement were inconsistent with, and directly contradicted, the deed. In *West Boundary Real-Estate Co. of Baltimore City v. Bayless*, 80 Md. 495 (1895), the parties entered an agreement for the sale of a particular lot. *Bayless*, 80 Md. at 443. The agreement proposed by the seller included specific provisions with regard to "the opening of a street and the putting of improvements nearer than 30 feet from the westernmost or rear boundary of the lot[.]" *Id.* It set the purchase price at $1,200 in cash and 80 shares of capital stock and required the purchaser to erect a dwelling on the lot "costing not less than $5,000[.]" *Id.*

[5] The cases cited pre-date the enactment of § 12-104 of the Tax Property article of the Maryland Code, which became effective on 1 February 1986. Section 12-104 requires, among other things, that the consideration payable must be set forth in the recorded instrument as follows:

> a) Except as provided in subsection (b) of this section, the consideration payable, including the amount of any mortgage or deed of trust assumed by the grantee, or the principal amount of the secured debt incurred, shall be described in:
> (1) the recitals or the acknowledgment of the instrument of writing; or
> (2) an affidavit under oath that accompanies the instrument of writing and that is signed by a party to the instrument of writing or by an agent of a party.

We note that the Court of Appeals has held that an attorney may be found to have failed willfully to pay recordation tax on a real estate deed when he or she prepares a deed showing no consideration was paid in an attempt to record the instrument without paying the required recordation tax. *See Attorney Grievance Comm'n v. Boyd*, 333 Md. 298 (1994).

The purchaser accepted the proposed conditions "except that the dwelling is to cost not less than $4,000, instead of $5,000." *Id.* Shortly after that agreement was made, a deed was executed. *Id.* According to the deed, the amount of consideration was $5,200. *Id.* The deed provided also that the purchaser "should not within 10 years from the date of said deed erect on said lot any dwelling house costing less than $3,000, and within the same time he should not build any improvements nearer than 30 feet to the front building line." *Id.* The parties' agreement was clearly "inconsistent with the deed in several important particulars." *Id.* at 444. The Court of Appeals noted that it was impossible "looking at these two instruments, to suppose they were intended to stand together." *Id.* The Court held:

> We find nothing which clearly shows that the deed was only a part execution of the contract, but, on the contrary, it appears very clear that it was the intention of the parties, so far as we can ascertain that intention from the alleged contract and the deed, that the latter was to take the place of all antecedent negotiations, and it follows that, even if a valid contract had been made, it became, after the execution of the deed, void and of no further effect. As was said by the late Judge Miller in delivering the opinion of this court in *Bladen v. Wells*, *supra*: "If a party, after conveying by deed, . . . can set up an antecedent or accompanying parol contract contradicting the deed, . . . there would be very little room for the operation of the rule, and very little security or safety in such instruments or in titles held under them.

Id.

The reasoning employed in *Bayless* informs our decision in the case at hand. The lot of land described in the Memorandum of Agreement was described as being owned by Parsons and "measuring 80.05 feet by 201.67 feet, and contiguous to [Parsons's] place of residence at 21028 Chester Avenue, Rock Hall, Maryland 21661. The lot address is 21013 Rock Hall Avenue, Rock Hall, Maryland 21661." The Gift Deed described the property

as, among other things, "containing 12,685 square feet of land[.]" Notwithstanding the different descriptions of the land to be conveyed, the parties did not dispute that Parsons conveyed to Conner the property that formed the basis of their agreement. Notwithstanding the agreement that Conner and his father would make monthly interest payments on a principal amount of $100,000, Parsons conveyed the property to Conner as a gift. There is no evidence in the record to show that the conveyance of the property as a gift was only a part execution of the Memorandum of Agreement. The parties' agreement was clearly inconsistent with the deed in several respects and it is impossible to conclude that they were intended to stand together. Thus, the agreement between Conner and Parsons merged into the deed.

Recently, in *Clark Office Building, LLC v. MCM Capital Partners, LLLP, et al.*, 249 Md. App. 307 (2021), we discussed the required elements for a claim of unjust enrichment, stating:

> In *Hill v. Cross Country Settlements, LLC*, 402 Md. 281, 936 A.2d 343 (2007), the Court of Appeals enumerated the elements of a claim for unjust enrichment/restitution as follows:
>
> > 1) A benefit conferred upon the defendant by the plaintiff; 2) An appreciation or knowledge by the defendant of the benefit; and 3) The acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without the payment of its value.
>
> *Id.* at 295, 936 A.2d 343 (citations omitted). These elements were derived from *Williston on Contracts*, § 1479 (3rd ed. 1970). *See Everhart v. Miles*, 47 Md. App. 131, 136, 422 A.2d 28 (1980).

Clark Office Building, LLC, 249 Md. App. at 315.

There was no evidence presented at trial to show that Conner accepted the gift deed conveying the subject property to him in fee simple under circumstances making it inequitable for him to retain the property without payment of its value. For these reasons, even if Parsons's claims were not barred by the doctrine of judicial estoppel, we would conclude that the circuit court erred in finding that Conner was enriched unjustly.

II. & III.

In light of our holding, we need not reach the question of whether the circuit court erred in its calculation of damages or its off-hand suggestion in footnote 10 of its Memorandum Opinion And Judgment that Conner may be obligated to Parsons for future contract-based payments.

V. & VI.

In his cross-appeal, Parsons raises two related arguments: (1) that the circuit court erred in finding that, as to Barry Conner, the Memorandum of Agreement merged into the deed, and (2) the circuit court erred in finding that Barry Conner was not enriched unjustly because he was not a party to the deed. Parsons argues that because the Gift Deed was silent as to Barry Conner, neither the deed nor the merger doctrine can be used to defeat Barry Conner's obligations under the Memorandum of Agreement. Parsons also maintains that Barry Conner "elected to have the property actually transferred solely to his son" and that that conveyance constituted a benefit not only to Conner, but to Barry Conner. We reject Parsons's arguments.

In the deed, which was executed by Parsons and filed in the Circuit Court for Kent County, Parsons affirmed that the subject property was to be conveyed for "consideration

of the sum of NO DOLLARS[.]" In this case, Parsons takes the exact opposite position, arguing that, pursuant to the Memorandum of Agreement, there was an agreement to convey the property for some consideration more than zero dollars, that Barry Conner elected to have the property transferred solely to his son, and that a benefit was, thereby, conferred on Barry Conner. For the same reasons discussed above, we hold that Parsons's claims against Barry Conner are barred by the doctrine of judicial estoppel.

Even if Parsons's claims were not barred, we would affirm the circuit court's decision to dismiss all claims against Barry Conner. As we have already stated, under the facts of this particular case, the Memorandum of Agreement was not a collateral agreement that avoided application of the merger doctrine and thereby permitted the admission of parol evidence. Further, the record makes clear that Barry Conner did not take possession of the subject property and Parsons conferred no benefit on him. Even if the merger doctrine did not apply, any promise by Barry Conner to make payments to Parsons under the Memorandum of Agreement lacked consideration. In short, there was no enforceable agreement between Barry Conner and Parsons.

JUDGMENT OF THE CIRCUIT COURT FOR KENT COUNTY FINDING UNJUST ENRICHMENT AND ENTERING JUDGMENT IN THE AMOUNT OF $9,333.24 AGAINST APPELLANT, JASON CONNER, REVERSED; JUDGMENT DISMISSING ALL CLAIMS AGAINST BARRY CONNER AFFIRMED; COSTS TO BE PAID BY APPELLEE/CROSS-APPELLANT.