

Circuit Court for Baltimore City
Case No.: 24C15004592

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0928

September Term, 2020

DOMINIC A. CELANO, *et al.*

v.

ANTHONY J. LONGO, JR.

Kehoe,
Gould,
Zic,

JJ.

Opinion by Gould, J.

Filed: July 12, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This case involves a partnership to acquire, rent, renovate, and/or sell properties in the Baltimore area. The eight-count complaint filed in this action related to several of those properties and included claims for an accounting, fraud, unjust enrichment, and declaratory judgment, among others. This appeal concerns the trial court’s rulings as to only two of the counts, both related to one property located at 127 South Robinson Street in Baltimore, Maryland (the “Robinson property”), and mainly concerns two parties: appellant Dominic Celano and appellee Anthony Longo. We will therefore confine our discussion of the facts to those that pertain to the Robinson property and the two counts pertaining to same.

BACKGROUND

Appellant Dominic Celano and appellee Anthony Longo purchased the Robinson property as joint tenants in January 2004. Mr. Longo claims he spent roughly \$137,000 on renovations and improvements to the property. Mr. Longo also lived in the Robinson property for approximately three years, during which time he paid no rent, although he did contribute \$300 per month towards the interest on the line of credit. Eventually, the relationship soured, and Mr. Longo filed an eight-count complaint in the Circuit Court for Baltimore City, as noted above.¹

In count two of his amended complaint, Mr. Longo requested the court to order a sale of the Robinson property in lieu of partition² and “enter an order directing the

¹ The original complaint was filed in September 2015, and later amended in May 2016.

² A sale of real property in lieu of partition is governed by section 14-107 of the Real Property Article of the Maryland Annotated Code (1974, 2015 Repl. Vol.).

distribution of the proceeds of said sale[.]” For his part, Mr. Celano agreed that the property should be sold.

In count eight, Mr. Longo requested a declaratory judgment that, under the theory of *quantum meruit*, he is entitled to reimbursement for the funds he spent on the renovations for the Robinson property out of the proceeds from the sale of the Robinson property. Mr. Longo did not specifically ask the court to determine the amount of the reimbursement.

A bench trial was held on November 28, 2016. In his opening statement, Mr. Longo’s counsel clarified what was and what was not at issue in the proceedings. He repeatedly said that damages were not at issue:

First of all, let me tell you what this case is not about. This is not a collection case for unpaid renovation costs. It is a request for an accounting[.]

* * *

And so when we get into the custodian of records, I’m not trying to prove damages, so to speak, I’m just trying to prove that work has been done.

* * *

Count VII and Count VIII are declaratory judgments on quantum meruit. They only come into play if I lose on all the other counts. Because we’re not after being paid for our -- the work that we did on these properties, we’re asking to be -- to have the B&C Rentals LLC be made whole and the Robinson Street partnership made whole as a result of the accounting.

During Mr. Longo’s direct examination, his counsel sought to introduce a three-page spreadsheet itemizing work done to the Robinson property. Mr. Longo testified that the document contained a breakdown of renovations that he made to the Robinson property and that he had discussed the document with Mr. Celano. Notably, Mr. Longo did not testify about the contents of the spreadsheet, the reasonableness of the renovations, the

accuracy of the costs, or the change in value of the property that resulted from the improvements. When Mr. Longo’s counsel moved to admit the document into evidence, Mr. Celano’s counsel objected, arguing that the list was more akin to “a summary of testimony” than an estimate, and did not include dates, receipts, or pertinent information. The circuit court then asked Mr. Longo’s counsel to explain the “providence” of the document, and this exchange took place:

[MR. LONGO’S COUNSEL]: The way this all works is[,] once again[,] I’m not using it to prove damages[,] . . . But this is being offered in contradiction to what Mr. Celano testified and is in support of the testimony of this witness now, that this estimate was shown to Mr. Celano and they discussed the range of expenses for this rehab.

THE COURT: So your suggestion or at least your proffer of evidence is that that particular exhibit, [the list of charges for the renovation] was created and shown to Mr. Celano.

[MR. LONGO’S COUNSEL]: That’s what the witness just testified to.

[MR. LONGO]: Correct.

THE COURT: Well, I just wanted to be clear on that. So this was a document -- your proffer is that it was a document created by this witness at a time pertinent to the discussions about how --what we’re going to do -- not what I’m going to do, but what they’re going to do in regards to the improvements on -- at this particular location?

[MR. LONGO’S COUNSEL]: That’s correct, Your Honor.

The court overruled Mr. Celano’s objection and the document was admitted into evidence. During his closing argument, Mr. Longo’s counsel again described his request for declaratory judgment and his “best-case scenario,” as follows:

[MR. LONGO’S COUNSEL]: Counts VII and VIII are these declaratory judgment counts on quantum meruit. And the reason that cause

of action for breach of contract is not available is it's not ripe yet. But there's facts from which the Court could enter a declaratory judgment that the Plaintiffs are entitled to quantum meruit for the work that they've performed on --Mr. Longo on Robinson Street . . .

* * *

Mr. Longo has not been -- has not been compensated for the work he did on Robinson Street.

* * *

So it's my position that my clients are entitled to a declaratory judgment of this Court that if and when the properties are sold, they're entitled to their -- to establish their quantum meruit, which is a proceeding for a later time if the parties can't agree on because it's -- the sale of the properties has not yet happened.

THE COURT: So just so I'm -- what specifically in your best-case scenario, would you have me do in that regard, in regard to those two counts?

[MR. LONGO'S COUNSEL]: Dividing up the net proceeds of the sale.

* * *

THE COURT: --are you asking the Court to ascertain what an equitable distribution would be, or are you asking that I just -- I find that there is an interest?

[MR. LONGO'S COUNSEL]: They are entitled to quantum meruit. That would be it.

THE COURT: Without a specific finding as to --

[MR. LONGO'S COUNSEL]: The amount.

* * *

[MR. LONGO'S COUNSEL]: That's for a later time.

THE COURT: Agreed.

In response, Mr. Celano’s counsel argued:

Count II, the sale of Robinson -- oh, no, obviously, we don't contest that. Can't partition the property. Sale is appropriate. We do believe, however, that the proceeds from the sale of Robinson should be divided equally between the two parties.

Other than insurmountable statute of limitations problems and the general inability to prove what happened, you know, ten years ago, Plaintiff asks this Court for, like, some relief. A declaratory judgment that we’re owed money but not how much we’re owed.

* * *

So[,] he comes into court and says, well, let’s sell it, but I’m not going to prove now what I’m entitled to. It doesn’t work that way. That’s a separate independent cause of action. You come into court, you say, I want the property sold. We can’t divide it. Sell it, and I paid the mortgage payments for the last eight years, and this is how much it was, and this person paid the taxes, and that’s how much that was. So I should get the mortgage payments off the top. He should get the taxes off the top. And then we divide the rest. That’s the way it’s done.

The trial ended on December 21, 2016, and the court said that a ruling would be forthcoming. In August 2017, nine months after the trial but prior to the court’s ruling, the parties sold the Robinson property. The net proceeds from the sale were \$100,555.74 and have since been held in escrow by agreement of the parties.

On March 14, 2019, the court issued its decision in the form of a document entitled Memorandum, Findings & Order. As to count two, the circuit court found as follows:

The real estate located at 127 [S.] Robinson Street in Baltimore, Maryland, is co-owned by Longo and Celano. By this Count, Longo seeks the sale of that property pursuant to Section 14-107 of Maryland’s Real Property Code. On that Count at least, the parties are in accord as Celano concedes that the property should be so disposed.

The only issue remaining is how and in what amount the proceeds of any sale of that property should be distributed. There is credible evidence that Longo

has invested roughly \$137,000.00 into that property for renovations/improvements. Whether those improvements/renovations were extravagant or otherwise of higher quality than what would be necessary to make the property marketable is of no moment. Those improvements/renovations will contribute to the fair market value of the house on its sale.

Therefore, a) this Court finds in favor of the Plaintiff Longo on this Count, and b) further finds that net proceeds from any sale of this property be distributed among the pertinent parties as follows: it is hereby ordered that out of the net proceeds of the sale of 127 S. Robinson Street, \$137,000.00 should be distributed to Longo, and that if there are net proceeds above and beyond that amount, fifty percent (50%) shall be distributed to Celano, and fifty percent (50%) shall be distributed to Longo.

As to count eight, the circuit court found that its ruling as to count two rendered Mr.

Longo's request for declaratory judgment moot, stating:

The property located at 127 S. Robinson Street is jointly owned by Longo and Celano. By this Count, Longo seeks under a theory of implied-in-fact contract and quantum meruit to have this Court enter a decree via a declaratory judgment declaring that Longo is entitled to be re-imbursed for his efforts in improving/rehabilitating that residence from proceeds that would stem from the sale of 127 S. Robinson Street.

However, this Court's disposition of Count II renders this Count moot.

Mr. Celano filed a motion to amend the judgment on March 25, 2019, requesting the court to amend its order to omit any reference to the distribution of proceeds from the sale of the Robinson property. This motion was denied on September 17, 2020.

This timely appeal followed, and Mr. Celano presents us with the following questions:

1. Whether the court erred in awarding [Mr.] Longo the first \$137,000 in proceeds from the sale of Robinson Street.
2. Whether the evidence that was introduced pertaining to [Mr.] Longo's alleged improvements to Robinson Street was sufficient to support the trial court's award.

We hold that the circuit court erred in awarding Mr. Longo the proceeds from the sale. We therefore reverse the court’s ruling on count two, vacate the court’s ruling on count eight, and remand for further proceedings as set forth in this opinion.

DISCUSSION

When reviewing a case tried without a jury, this Court must “review the case on both the law and the evidence.” Md. Rule 8-131(c). On review:

[W]e give deference to the factual findings of the trial judge and will reverse only for clear factual error. A factual finding is clearly erroneous if there is no competent and material evidence in the record to support it. The legal conclusions reached by the circuit court are not accorded deference on appeal, however, and instead are reviewed *de novo*.

Hoang v. Hewitt Ave. Assoc., LLC, 177 Md. App. 562, 576 (2007) (internal citations omitted).

Mr. Celano argues on appeal that the court erred in awarding Mr. Longo the first \$137,000 of net proceeds from the sale of the Robinson property. He contends that Mr. Longo did not put reimbursement damages at issue in his pleadings. Mr. Celano also argues that Mr. Longo’s counsel expressly told the court that Mr. Longo was not seeking a monetary award, that he was only asking the court to determine that he was entitled to *some* reimbursement, and that the amount of the reimbursement should be determined at a later time after the property was sold. In addition, Mr. Celano contends that the document containing the purported list of \$137,000 in renovation expenses was insufficient to establish Mr. Longo’s entitlement to damages in that amount. Mr. Longo counters that his complaint included a claim for damages from the renovations, and that the court’s finding that he was owed \$137,000 was supported by the evidence adduced at trial.

In our view, the question of whether the amended complaint specifically requested that the court determine the amount of the reimbursement to which Mr. Longo was entitled became academic when, during the trial, Mr. Longo’s counsel unambiguously told the court that Mr. Longo was only seeking to establish his entitlement to reimbursement and that the amount would be determined in a later proceeding after the property was sold. It was on that basis that the spreadsheet of alleged expenses was admitted into evidence, and thus, it is not surprising that Mr. Longo did not address nor did Mr. Celano contest the nature, extent, reasonableness, and necessity of the list of purported repairs.

This dispute implicates Maryland Rule 5-105, which states:

When evidence is admitted that is admissible as to one party or for one purpose but not admissible as to another party or for another purpose, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

As set forth above, the dialogue between Mr. Longo’s counsel and the court shows that the limited purpose for which the list of expenses was offered by Mr. Longo and admitted by the court was to not to prove damages, but to prove that the estimate “was shown to Mr. Celano and [that] they [had] discussed the range of expenses” for the rehabilitation to the Robinson property. After admitting the list of expenses for such a limited purpose, and after Mr. Longo’s counsel expressly stated that Mr. Longo was not at that time seeking to determine the amount of a reimbursement, it was an abuse of discretion for the trial court to both determine the amount of the reimbursement due to Mr. Longo and to rely on that document in doing so. A remand for further proceedings is, therefore, required.

The nature and scope of the proceedings on remand is another question that, pursuant to Maryland Rule 8-604(d)(1),³ we now address. As noted above, while the case was being held *sub curia*, the Robinson property was sold, and the net proceeds were placed in escrow. Thus, count two of the amended complaint—which requested a sale in lieu of partition—was rendered moot well before the court issued its decision. As a result, when the court issued its decision, count two was moot and therefore was no longer a viable basis on which the court could grant relief. The judgment on count two in Mr. Longo’s favor, therefore, shall be reversed.⁴

³ Maryland Rule 8-604(d)(1) states in full:

If the Court concludes that the substantial merits of a case will not be determined by affirming, reversing or modifying the judgment, or that justice will be served by permitting further proceedings, the Court may remand the case to a lower court. In the order remanding a case, the appellate court shall state the purpose for the remand. The order of remand and the opinion upon which the order is based are conclusive as to the points decided. Upon remand, the lower court shall conduct any further proceedings necessary to determine the action in accordance with the opinion and order of the appellate court.

⁴ As to the second question presented by Mr. Longo, even if count two had not been rendered moot, we would reverse the trial court’s judgment on that count because the court’s conclusion that Mr. Longo was entitled to reimbursement of \$137,000 was not predicated on sufficient factual findings or conclusions of law. The court, without any explanation, opined that “[w]hether those improvements/renovations were extravagant or otherwise of higher quality than what would be necessary to make the property marketable is of no moment. Those improvements/renovations will contribute to the fair market value of the house on its sale.”

The court didn’t identify a legal theory under which the nature and quality of the improvements would be irrelevant to Mr. Longo’s right of recovery. Nor did the court have a factual basis to find that the improvements would contribute to the fair market value of the property. It’s not always the case that an improvement or renovation will enhance

(continued)

Due to its ruling on count two, the trial court then dismissed as moot count eight, which requested a declaratory judgment regarding Mr. Longo’s entitlement to reimbursement. Because we are now reversing the trial court’s ruling as to count two, count eight is no longer moot. Thus, the judgment as to count eight shall be vacated and on remand, the court shall conduct further proceedings as it deems appropriate to fully adjudicate count eight, including the amount, if any, of reimbursement due to Mr. Longo for his renovations to the Robinson property.⁵

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AS TO COUNT TWO OF THE AMENDED COMPLAINT IS REVERSED; JUDGMENT AS TO COUNT EIGHT IS VACATED AND THE CASE IS REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION AS TO COUNT EIGHT ONLY; JUDGMENT OF THE CIRCUIT COURT IS AFFIRMED IN ALL OTHER RESPECTS. COSTS TO BE PAID BY APPELLEE.

the market value of a property. On remand, the court’s determination of Mr. Longo’s entitlement to a reimbursement—including, if applicable, the amount—must be predicated on a viable legal theory and evidence to support each element of such theory.

⁵ We considered Mr. Celano’s contention that the judgments should be reversed *in toto*, and that Mr. Longo should not be given another bite at the apple through a remand. However, count eight was never adjudicated on the merits because the trial court deemed it moot based on its ruling as to count two. Thus, we believe that a remand is the more appropriate course of action under the circumstances.