Circuit Court for Baltimore City
Case No. 24-C-19-000296

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1947

September Term, 2019

RENALD CARLTON OWENS

v.

CARL W. SHEFFEL, SR.

Arthur,
Leahy,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: January 22, 2021

The instant appeal arises from a judgment entered by the Circuit Court for Baltimore City after a bench trial in favor of Carl W. Sheffel, Sr., appellee, on a claim by Renald Carlton Owens, appellant, for unjust enrichment. The dispute between the parties involved the expenditure of money by appellant for the renovation of commercial real estate owned by appellee and located at 606 and 608 West Lexington Street in Baltimore City ("606/608 West Lexington").

On appeal, appellant presents one issue for our review: "Whether the circuit court commit[ted] reversible error by rendering a judgment in favor of appellee on appellant's claim for unjust enrichment[.]" We shall affirm.

I. BACKGROUND

In 1989, appellee owned 608 West Lexington Street in Baltimore, where he operated a bar. Appellant worked for a restaurant next door at 610 West Lexington Street and became acquainted with appellee. When appellee's business began to slow down due to the loss of an adjacent parking lot, the parties decided that appellant and another individual, Wayne Jeffries, would "take over and run" appellee's bar. From that point on, appellant and Jeffries "ran the entire business."

In 1990, a condemned building next door to appellee's bar, 606 West Lexington Street, became available at auction. The parties disagree about what happened next. According to appellant, he "personally contacted" appellee to see if they "could acquire" 606 West Lexington Street. Appellant stated that he successfully "bid[]" on the property, but because appellant's criminal background precluded placement of the liquor license in

his name, the parties agreed that appellee and appellee's wife would be the record title owners of 606 West Lexington Street. After winning the bid, appellant stated that he "shook hands" with appellee and they agreed that they owned the building jointly. Appellee, on the other hand, testified that he bought 606 West Lexington Street at auction and could not remember having any discussion with appellant about the property.

After the purchase of 606 West Lexington Street, the parties began to renovate 606/608 West Lexington to "consolidate[]" them and into one building and thereby create "more room." Appellee did not recall when exactly those renovations took place but believed that he had paid for the work. Appellee testified further that, as an engineer, he "over[saw]" the modification. According to appellant, however, the money for the repairs came from both appellant and appellee.

On February 1, 1997, the parties entered into a written lease agreement wherein appellant agreed to rent "the entire building known as 606 W[est] Lexington Street and the first, second and third floor of the property known as 608 W[est] Lexington Street . . . ."[1] The lease was for five years with an option to renew for an additional five years at an initial rent of $1,250 per month. Appellant, as the tenant, was required, among other things, to pay the rent, utility costs, water and sewer charges, real estate taxes, and "casualty insurance." In addition, appellant was obligated to keep the premises at 606/608 West

[1] Appellant's brother, Donald Owens, and Mombee TLC, Inc. ("Mombee"), a corporation apparently formed by appellant, were also listed as tenants in the lease. Donald Owens did not join appellant as a plaintiff in this case. Although listed as a plaintiff, Mombee never asserted any claim on its own behalf at trial.

Lexington in good order and condition and to make all necessary repairs at his expense. If appellant made any "alterations" to the premises, the lease required appellant to do so at his expense, and such alterations would immediately become the property of appellee, as landlord.

Appellee testified that he "kept a record" of what appellant paid him over the years, but the payment amounts varied. According to appellee, appellant would sometimes give him a single check for $12,000 for the year, as opposed to monthly checks of $1,250 for the rent, and appellee would put that money toward "anything [he] had to pay, which could be taxes, a water bill occasionally," and the remaining amount would be "profit." Appellant, on the other hand, testified that the lease agreement was "manufactured" to assist in transferring the liquor license. Appellant did acknowledge that he made payments to appellee of $1,250, and appellee would "put it in the bank" and use it "for whatever [he] had to pay."

In 2001, during the initial term of the lease, appellant testified that he borrowed "[$]150,000, [$]200,000[,] in that range" from an individual named Lloyd Wynn to renovate the premises. Appellant said that the purpose of the renovations was to "combine the first floor[] and open up the second floor," build a bar, and repair some structural damage. Wynn testified that he loaned appellant approximately $150,000 in 2001.

606/608 West Lexington went through another substantial renovation in 2010-2011 to repair the roof and some other damage. During that renovation, appellee gave money to appellant "so he could give it to other people that were doing the repair work and

renovation." Appellee documented his payments to appellant in a ledger and in invoices that appellant signed, with the final invoice indicating that appellee had paid $211,350 "toward roof repair" as of April 15, 2011. Appellee did not believe appellant financially contributed to the 2010-2011 renovation, stating that appellant "didn't have any money." Appellant, on the other hand, testified that during that renovation, he had contributed to the "$600,000 renovation," and had put "every dime" he made during that time "into the project." Appellant stated that he and appellee would "both get[] back [their] monies at the end of [] the tunnel." Appellant explained that he expected to receive the money that he put into the 2010-2011 repairs from appellee when the building was sold.

In 2019, the University of Maryland contacted appellee to express its interest in buying 606/608 West Lexington for $500,000. Appellee testified that he attempted to attend a meeting with the University with appellant, but upon seeing appellant, the University cancelled. Appellee stated that he was still working to finalize the deal with the University.

In 2019, appellee filed a complaint in district court to evict appellant for failing to obtain insurance, pay taxes, and pay around $9,000 in back rent. Appellee testified that he never promised appellant that appellant would receive any of the sale proceeds. The record is unclear as to whether appellant was ever evicted from the premises.[2]

At the conclusion of the trial, the trial court took the matter under advisement. About a week later, the court articulated its findings in a "Memorandum and Order" dated

[2] Appellant testified that he still operates the business out of 606/608 West Lexington.

October 29, 2019. The Memorandum reads in relevant part:

> [T]he Plaintiff's case is problematic. **First of all,** assuming *arguendo* that there was an agreement/partnership forged between the parties, such that a benefit was conferred upon [appellee] by [appellant], **what is the value of that benefit? [Appellant] offered oral testimony that out of his own pocket he spent hundreds of thousands of dollars improving the properties. However, there was no testimony/evidence as to what if any value these improvements have had on the fair market value of the properties. In an unjust enrichment claim, the measure of the recovery is the gain to the defendant, not the loss by the plaintiff.** *Alternatives Unlimited, Inc. v. New Balt. City Bd. of School Comm'rs*, 155 Md. App. 415, 455 (2004). There was not adduced any qualified appraiser's estimate of the value of the improvements paid for by [appellant] as they relate to the overall fair market value of the properties. In fact, there was no testimony in any form in that regard. Any valuation[] I would be asked to make would have been entirely speculative. Therefore, I cannot find for [appellant] on that basis alone.
>
> **Further, for [appellant] to succeed at all, I would have to find** that there was some informal agreement between the parties that they were partners in some venture; i.e., **that there was something more between them tha[n] a landlord/tenant relationship. However, [appellant's] proof in that regard is sadly lacking. There was not one piece of corroborative documentation offered by [appellant] to support his position.** No texts, no emails, no correspondence, no checks, no receipts, no contracts, no income tax statements, no partnership profit/loss statements.
>
> **In contrast, [appellee] was able to offer as evidence a copy of a lease between the parties, check[] registers, and financial records corroborative of his version of events**, i.e., that their relationship was nothing more than that of a landlord [appellee] and tenant [appellant].
>
> **On that basis, I cannot find that [appellant] has met his burden of proof in this matter, and consequently, I find for [appellee].**

(emphasis added).

Appellant timely filed this appeal. We shall supply additional facts as necessary.

II. DISCUSSION

On appeal from a bench trial, "the appellate court will review the case on both the law and the evidence." Md. Rule 8-131(c). 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.* When we review for clear error, "'we must consider the evidence in the light most favorable to the prevailing party and decide not whether the trial judge's conclusions of fact were correct, but only whether they were supported by a preponderance of the evidence.'" *Royal Investment Grp., LLC v. Wang*, 183 Md. App. 406, 430 (2008) (quoting *Bowie v. Mie Properties, Inc.*, 398 Md. 657, 676–77 (2007)). We review the court's conclusions of law for legal correctness. *Id.*

Unjust enrichment is "'the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience.'" *Richard F. Kline, Inc. v. Signet Bank*, 102 Md. App. 727, 731 (1995) (quoting *Everhart v. Miles*, 47 Md. App. 131, 136 (1980)). Unjust enrichment is a quasi-contract claim, a "'[l]egal fiction invented by common law courts to permit recovery by contractual remedy in cases where, in fact, there is no contract, but where circumstances are such that justice warrants a recovery as though there had been a promise.'" *AAC HP Realty, LLC v. Bubba Gump Shrimp*, 243 Md. App. 62, 70 (2019) (quoting *Cnty. Comm'rs of Caroline Cnty. v. J. Roland Dashiell & Sons*, 358 Md. 83, 94 (2000)). The claim of unjust enrichment has three elements:

> (1) the plaintiff confers a benefit upon the defendant; (2) the defendant knows or appreciates the benefit; and (3) the defendant's acceptance or retention of the benefit "under such circumstances as to make it inequitable for the defendant to retain the benefit without the payment of its value."

Wang, 183 Md. App. at 439 (quoting *Hill v. Cross Country Settlements, LLC*, 402 Md. 281, 295 (2007)). An individual who has been unjustly enriched at the detriment of another person must make restitution to the other person. *Wang*, 183 Md. App. at 439.

"'[T]he classic measurement of unjust enrichment damages is the gain to the defendant, not the loss by the plaintiff.'" *Chassels v. Krepps*, 235 Md. App. 1, 18 (2017) (quoting *Mogavero v. Silverstein*, 142 Md. App. 259, 276 (2002)). Said another way, "[t]he measure of damages in an unjust enrichment claim is the *value* of goods or services rendered by the plaintiff in the hands of the defendant." *Md. Cas. Co. v. Blackstone Int'l, Ltd.*, 442 Md. 685, 709 (2015) (emphasis added).

Appellant argues that the circuit court "abused its discretion and committed an error of law in entering judgment for the [a]ppellee." Regarding the first element, the benefit conferred, appellant argues that he invested a "rather large sum of money, $150,000, to help with improvements of [the] business." He claims that as the owner of the 606/608 West Lexington, appellee gained the benefit of appellant's investment in the improvements. Appellant argues *next* that the second element is met because appellee "knew his business was declining and the work in which the [appellant] was doing, providing monetary funds for renovations, would only help the [appellee] in the grand

scheme of his business."[3] *Finally*, appellant contends that the third element of unjust enrichment, the balance of the equities, tips in his favor. He explains that the parties had a partnership "to help one another out," "mak[e] a profit," and complete renovations. According to appellant, he always "acted in good faith" in his business venture with appellee, and based on this long-standing relationship, it would be unjust to allow appellee to retain the benefit of appellant's work on the buildings. In sum, appellant claims that he "met his burden of proof in providing the court with enough evidence to satisfy a claim for unjust enrichment and that the trial court abused [its] discretion with [its] findings."

Appellee responds that appellant "failed to meet the required burden of proof for a claim of unjust enrichment." Appellee points to the trial court's findings that "there was not one piece of corroborative documentation" offered by appellant and that appellee, on the other hand, had presented documentation "corroborative of his version of events." Appellee argues that the court correctly cited to each element of a claim of unjust enrichment, analyzed those elements, and found two specific deficiencies in appellant's case. According to appellee, the court made factual determinations that (1) appellant did not establish a value for the benefit conferred, and (2) the relationship between appellant and appellee was nothing more than a landlord/tenant relationship. Appellant concludes that, because there was ample evidence supporting the court's findings, those findings were not clearly erroneous.

[3] Appellant inadvertently inverts the terms "appellant" and "appellee" in this section of his brief.

Here, the trial court focused its opinion on the first element of unjust enrichment—whether appellant conferred a benefit on appellee. The court first looked at the evidence supporting the value of the benefit conferred, assuming such benefit had been conferred. The court explained that appellant's case was "problematic":

> [A]ssuming *arguendo* that there was an agreement/partnership forged between the parties, such that a benefit was conferred upon [appellee] by [appellant], **what is the value of that benefit?** [Appellant] offered oral testimony that out of his own pocket he spent hundreds of thousands of dollars improving the properties. However, **there was no testimony/evidence as to what if any value these improvements have had on the fair market value of the properties.**

(emphasis added). The court examined the evidence in light of the law that the measure of damages "is the gain to the defendant, not the loss by the plaintiff." The court was not persuaded that appellant's oral testimony of his expenditure of "hundreds of thousands of dollars improving the properties" established the "gain" to appellee, *i.e.*, the impact of such improvements on the fair market value of the properties. The court pointed to a lack of expert testimony regarding "the value of the improvements paid for by [appellant] as they relate to the overall fair market value of the properties."

Still, appellant insists that he *did* supply evidence of the value of the improvements in the hands of appellee. Appellant points to evidence of the purchase offer of $500,000, his investment of $150,000 for the 2001 renovation, and the $500,000 cost for the 2010-2011 renovation. Appellant concludes: "If the court finds that a fair estimated fair market value of the house was approximately $500,000[,] the measure of damages should at least be proportional to 'the value of the goods or services rendered by the plaintiff in the hands

of the defendant.'" Appellant is mistaken.

Appellant appears to confuse two concepts that are well-defined in Maryland jurisprudence—the burden of production and the burden of persuasion. *See Starke v. Starke*, 134 Md. App. 663, 676 (2000). "'In Maryland, as in the majority of states, it is the rule . . . that the burden of proof is on the plaintiff . . . and that burden never shifts.'" *Bd. of Trustees, CCBC v. Patient First*, 444 Md. 452, 469 (2015) (quoting *Kruvant v. Dickerman*, 18 Md. App. 1, 3 (1973)). The burden of proof includes "two distinct burdens: the burden of production and the burden of persuasion." *Id.* The plaintiff's burden of production means that the plaintiff "must produce sufficient evidence on an issue to present a triable issue of fact and avoid a directed verdict." *Id.* The burden of persuasion, on the other hand, describes the "level of certitude" a fact finder should feel before reaching a decision on an issue. *Starke*, 134 Md. App. at 676.

Judge Charles Moylan, Jr., has written for this Court about the burden of persuasion in the context of appellate review of a trial court's decision that it was *not* persuaded. In *Starke v. Starke*, the appellant sued her son for fraud regarding their property. 134 Md. App. at 667–68. After the trial court found in favor of her son, appellant appealed to this Court and argued that the trial court erred in "failing to order a constructive trust" or "failing to find constructive fraud." *Id.* at 667. Judge Moylan wrote:

> **[I]t is far easier to sustain as not clearly erroneous the decisional phenomenon of not being persuaded than it is to sustain the very different decisional phenomenon of being persuaded.** Actually to be persuaded of something requires a requisite degree of certainty on the part of the fact finder (the use of a particular burden of persuasion) based on legally

> adequate evidentiary support (the satisfaction of a particular burden of production by the proponent). There are with reasonable frequency reversible errors in those regards. **Mere non-persuasion, on the other hand, requires nothing but a state of honest doubt. It is virtually, albeit perhaps not totally, impossible to find reversible error in that regard.**

Id. at 680–81 (emphasis added). Judge Moylan emphasized that "[h]ow a fact finder, properly instructed, [] assesses credibility and how much weight a fact finder gives to evidence [] are matters within the exclusive control of the fact finder." *Id.* at 676. Thus, an appellate court rarely, if ever, can find that a trial court was clearly erroneous in not being persuaded. *See id.* at 680.

With these tenets in mind, we see no clear error in the trial court's failure to find in appellant's favor on his claim of unjust enrichment. The court properly pointed out that appellant had to prove the value of the benefit conferred by showing the gain to appellee, not the loss by appellant. *See Chassels*, 235 Md. App. at 18. The court observed that the testimony about appellant's expenditure of "hundreds of thousands of dollars" did not show what, if any, increase in the value of appellee's properties was caused by such expenditure. As a result, the court viewed any increase in the value of appellee's properties to be "entirely speculative." Stated otherwise, the court simply was not persuaded that appellant had proven the value of the benefit conferred. Moreover, contrary to appellant's argument, the fact that the court did not look to other evidence in the record and find a "value" for the benefit conferred from that evidence does not render the court's finding erroneous. Again, the court was not persuaded. Because the assessment of credibility and the weight of the evidence are placed within the exclusive province of the fact finder, we conclude that the

trial court did not err in finding that appellant had not proven the value of the benefit conferred by appellant on appellee. *See Starke*, 134 Md. App. at 676; *see also Yonga v. State*, 221 Md. App. 45 (2015).

The trial court also found, in effect, that appellant had conferred no benefit on appellee. At trial, appellant adduced testimony that he and appellee had entered into some form of business venture regarding 606/608 West Lexington, and thus appellant's expenditure of "hundreds of thousands of dollars" in making improvements to those properties conferred a benefit on appellee, as the record title owner. The court, however, found that appellant's evidence was "sadly lacking," because (1) "[t]here was not one piece of corroborative documentation offered by [appellant] to support his position," and (2) "[appellee] was able to offer as evidence a copy of the lease between the parties, check[] registers, and financial records corroborative of his version of events." Consequently, the court found that appellant had failed to prove that the relationship between the parties "was something more . . . tha[n] a landlord/tenant relationship."

Although not articulated in its Memorandum, the trial court's factual conclusion that only a landlord/tenant relationship existed between appellant and appellee legally precluded the conferring of a benefit by appellant on appellee. Despite appellant's claim in his testimony that he spent hundreds of thousands of dollars over the years for renovations to 606/608 West Lexington, the only specific amount to which he testified was

the $150,000 that he spent in 2001.[4] That amount was corroborated by Wynn, who testified that he loaned appellant $150,000 in 2001 for such renovations. The year 2001 was during the initial term of the lease between the parties. Paragraph 8 of the lease provides, in relevant part, that, if appellant desires to make any alterations to the buildings, such alterations must have the approval of appellee and "shall be done by [appellant] at [his] own expense." Paragraph 9 then states that "[a]ny such alterations shall become the property of [appellee] as soon as they are affixed to the premises and all right, title, and interest therein of [appellant] shall immediately cease, unless otherwise agreed to in writing." Therefore, under the lease, appellant's renovations to the buildings in 2001, at a cost to him of $150,000, were at his expense and immediately became the property of appellee. Accordingly, no benefit was conferred, nor could have been conferred, by appellant on appellee.

In sum, the trial court was simply not persuaded that the relationship between appellant and appellee was anything more than a landlord/tenant relationship. Because there was more than sufficient evidence of a landlord/tenant relationship between the parties, the trial court committed no error in so finding. *See Starke*, 134 Md. App. at 676, 680. Finally, under the terms of the lease, appellant's renovations to 606/608 West Lexington in 2001, at a cost to him of $150,000, immediately became the property of appellee, and thus no benefit was conferred.

[4] Consistent with the record, the only specific amount claimed by appellant in his brief to this Court that he invested in improvements to 606/608 West Lexington is $150,000 in 2001.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. APPELLANT TO PAY COSTS.