STATE OF VERMONT

SUPERIOR COURT
Orange Unit

CIVIL DIVISION
Docket No. 160-7-10 Oecv

Joshua Bell and Ryan Bressette
Plaintiffs

v.

Ronald Gonyaw and Sarah Gonyaw
Defendants

Findings of Fact, Conclusions of Law, and Order

Plaintiffs Joshua Bell and Ryan Bressette started a sugarhouse on property belonging to defendant-landowners Ronald and Sarah Gonyaw, but the sugaring operation came a-cropper shortly after it began. Plaintiffs now seek unjust-enrichment damages from defendants for the value of the sugarhouse they built on the property. The following findings of fact and conclusions of law are based on the credible evidence presented at the merits hearing held August 1, 2011.

Findings of Fact

Mr. Bell was formerly in a romantic relationship with defendants' daughter, Ashley. He lived with the Gonyaws for approximately seven years and started a haying business with Mr. Gonyaw. Although Mr. Bell's romantic relationship with Ashley ended about five years ago, he continued to hay with Mr. Gonyaw.

In 2009, the Gonyaws bought farm property just up the road from where they lived. The farm consisted of more than 200 acres and contained a sugar bush with more than 1,200 maple trees. The Gonyaws had no interest in sugaring but were receptive to plaintiffs' inquiries about starting a sugaring operation on the property.

The parties verbally agreed that plaintiffs could build a sugarhouse on the property and use it for sugaring operations for so long as they wanted. At the conclusion of the sugaring operation, the sugarhouse was to become the property of the Gonyaws. There was no agreement as to the duration of the sugaring operation.

Plaintiffs began constructing the sugarhouse in August 2009. They cut and skidded timber off the farm, and then poured a concrete slab floor and built a sugarhouse with a wood frame and a metal roof. It was completed in December 2009. Plaintiffs introduced evidence about the number of hours they spent skidding lumber, the cost of milling the lumber, and the cost of the roofing materials.

Plaintiffs began sugaring in early 2010. Neither of them had much experience in sugaring.

At this point in time, Mr. Bell had a new girlfriend named Tiffany Mullin. Ms. Mullin's ex-husband is now the current boyfriend of Ashley Gonyaw. One day in March, Ms. Mullin came to the property to bring some food to Mr. Bell. Sarah Gonyaw saw this and a major altercation ensued between her and Mr. Bell in which she told him that Ms. Mullin was not welcome on the property. Mr. Bell lost his temper. Property was damaged. Mr. Bell left the premises.

Mr. Bell now claims that he was told not to return to the property. But the court finds more credible Ms. Gonyaw's testimony that Mr. Bell no longer wanted to be involved with the Gonyaws at all, and that he quit the sugaring operation because of the dispute involving Ms. Mullin. At the time, he was already in the process of winding down the haying operation with Mr. Gonyaw. It is not disputed that he claimed he would burn down the sugarhouse—an act inconsistent with a desire to continue sugaring.

Mr. Bressette attempted to finish the 2010 sugaring season without Mr. Bell. He was able to produce only about twenty gallons of maple syrup. Mr. Bressette now claims he was ordered off the property at the end of the 2010 season by the Gonyaws, apparently because of ruts in the hayfield caused by friends coming to the sugarhouse. It is clear that the Gonyaws were upset by the damage caused to the hayfield, but they deny that they ordered Mr. Bressette to cease sugaring operations. The court finds it more credible that both plaintiffs quit the sugaring operation because of their difficulties in dealing with the Gonyaws.

Mr. Bressette removed his sugaring equipment at the end of the 2010 season. Neither plaintiff has returned to the sugar bush since spring 2010.

Plaintiffs seek damages for unjust enrichment for the cost of constructing the sugarhouse on the Gonyaw farm. No evidence was presented as to the increased value, if any, to the Gonyaw farm by virtue of the sugarhouse construction. For their part, defendants showed that the grand list appraisal of the farm has gone down since the sugarhouse was constructed and the barn removed, but there is no evidence concerning whether the decrease in grand list value was caused by market conditions, the removal of the barn, the addition of the sugarhouse, other factors, or some combination of factors.

Plaintiffs claim the sugarhouse value is $20,000 based on its proximity to the sugar bush and the potential profitability of a sugaring business. Both plaintiffs also opine that the sugarhouse increased the overall value of the farm property but they do not know by how much. For their part, the Gonyaws deny that the sugar house has any value or is even something they want on their property, but that position is inconsistent with their agreement that they would get the sugarhouse when plaintiffs ended their sugaring operation.

Conclusions of Law

A claim for unjust enrichment requires proof that plaintiffs conferred a benefit on defendants, that defendants accepted the benefit, and that retention of the benefit under the circumstances would be inequitable. *Center v. Mad River Corp.*, 151 Vt. 408, 412 (1989). Application of the doctrine may be considered under circumstances where there is no enforceable agreement between the parties, and where the circumstances show that "it is against equity and good conscience to allow defendant to retain what is sought to be recovered." *DJ Painting, Inc. v. Baraw Enters., Inc.*, 172 Vt. 239, 243 (2001) (quotation omitted).

One of the important characteristics of unjust enrichment is its measure of recovery, which "focuses on the value of the benefit actually conferred upon the defendant" rather than on the reasonable value of plaintiff's services. *DJ Painting*, 172 Vt. at 242 n.2 (quotation omitted). In this case, therefore, plaintiffs' burden of proof required them to prove the value of the benefit conferred upon defendants.

Plaintiffs did not present any evidence to demonstrate the extent to which the sugarhouse increased the overall value of the farm property. Instead, they offered opinions as to property value that were uncertain and unsupported by appraisals or other expert testimony. Plaintiffs' opinions were moreover based on either the cost of completing the work (which does not necessarily reflect the value to the property of the completed building) or the anticipated profits from the sugaring business, which were wholly speculative. See *Berlin Dev. Corp. v. Vt. Structural Steel*, 127 Vt. 367, 372 (1968) (explaining that "recovery for lost profits is not generally allowed for injury to a new business with no history of profits"). For these reasons, the court is unable to find by a preponderance of the evidence the value of the benefit allegedly conferred by plaintiffs upon defendants.

Quantum meruit, for its part, is an equitable theory that permits plaintiffs to recover for the cost of services performed either at the defendant's request or which benefitted the defendant in some way, in cases where the parties did not formally agree on the measure of compensation to be given for the plaintiff's services. It is not awarded, however, in cases where the work was performed without an expectation of payment. Dobbs on Remedies 237 (1973). In this case, plaintiffs did not expect to be compensated by defendants for their work in constructing the sugarhouse. Instead, they expected to be able to use the sugarhouse for so long as they wanted to continue sugaring at the property. Because this expectation was fulfilled, the cost of plaintiffs' services in constructing the sugarhouse is not an appropriate measure of recovery.

A separate reason preventing equitable recovery is that the parties expressly contemplated that the sugarhouse would revert to defendants upon the termination of the sugaring operation. In other words, the parties agreed that the value of the sugarhouse would accrue to defendants at the end of the agreement, and so there was no inequity in the occurrence of that event. See *Ray Reilly's Tire Mart, Inc. v. F.P. Elnicki*, 149 Vt. 37, 40 (1987) (explaining that "[t]he most significant requirement for a recovery on quasi contract is that the enrichment to the defendant be unjust"). What plaintiffs really lost was not the value of the sugarhouse but rather the value of the lost sugaring opportunity—and as noted above, the value of that opportunity was too speculative to be recoverable in this action. Although the parties may have

had visions of long-term success, the reality was that plaintiffs were inexperienced and the sugarhouse was located on land that did not belong to them. No promises were made or broken here about the duration or profitability of the sugaring operation.

A final reason preventing equitable recovery is that the parties actually entered into an enforceable verbal agreement regarding the sugaring operation, and hence the proper cause of action is contractual rather than equitable or quasi-contractual. But even if the complaint were recast to state a contractual claim, the evidence did not show breach of the verbal agreement but rather mutual friction between the parties that resulted in plaintiffs choosing to discontinue the sugaring operation. The consequence of that choice was that plaintiffs ceded control of the sugarhouse to defendants. It was the outcome they had agreed upon, and no promises were broken in the way in which that end came to pass. As such, no relief is appropriate here.

ORDER

For the foregoing reasons, judgment is entered for defendants. A separate final judgment shall issue separately.

Dated at Chelsea, Vermont, this 9 day of August, 2011.

Harold E. Eaton, Jr.
Superior Court Judge

Joyce E. McKeeman
Assistant Judge

Victoria N. Weiss
Assistant Judge

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Final Judgment Order

This action came on for court trial before the court, Hon. Harold E. Eaton, Jr., presiding, on August 1, 2011. Based on the findings of fact and conclusions of law entered on even date, it is hereby ORDERED and ADJUDGED that plaintiffs shall take nothing, and that judgment is entered for defendants.

Dated at Chelsea, Vermont this 9 day of August, 2011.

Hon. Harold E. Eaton, Jr.
Superior Court Judge

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