

*Note: In the case title, an asterisk (\*) indicates an appellant and a double asterisk (\*\*) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2019-198

MARCH TERM, 2020

Gyan Baird* v. Alexander Leveille**	}	APPEALED FROM:
	}	
	}	Superior Court, Chittenden Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 590-7-16 Cncv
		Trial Judge: Helen M. Toor

In the above-entitled cause, the Clerk will enter:

Plaintiff appeals the court's order granting defendant, her former boyfriend, judgment as a matter of law on her claim for promissory estoppel following a jury verdict in her favor on this count. Plaintiff argues that defendant waived the argument by not raising it in his motion for judgment as a matter of law at trial. Defendant cross appeals, arguing that he was entitled to judgment as a matter of law on plaintiff's unjust-enrichment claim. We reverse the court's order granting judgment as a matter of law to defendant on plaintiff's claim for promissory estoppel, and remand for reinstatement of the jury verdict on this count. In all other respects, the judgment is affirmed.

The record reveals the following facts. The parties are former romantic partners and cohabitants. In 2010, they resumed a prior relationship and eventually became engaged to be married. They also established a business partnership. Plaintiff's principal employment was with the couple's business. Defendant maintained a full-time job. The couple agreed to invest their time and money into restoring defendant's home in Morrisville. The work was done by defendant and some hired contractors. Plaintiff supported the restoration project with administrative work and by providing childcare for defendant's son. While the restoration was underway, the couple resided at plaintiff's rental house. In July 2011, the couple moved into defendant's home. Plaintiff paid rent to defendant of \$600 per month, except for \$400 in the summer. Plaintiff also gave defendant \$30,000 in cash to use towards improvements on the house. In return for her investment of time and her money, plaintiff claimed that defendant promised plaintiff that he would convey a one-half interest in the property to her.

By June 2014, the parties' relationship had deteriorated. Defendant requested that plaintiff move out, but plaintiff refused to leave unless defendant returned some of her rental payments and reimbursed her for money she invested in the property. Plaintiff also alleged that defendant physically and sexually assaulted her. Both parties obtained temporary abuse-prevention orders, but the court declined to grant a final order to either party for insufficient evidence of potential future abuse. See Leveille v. Baird, No. 2015-024, 2015 WL 5793229, at \*3 (Vt. Sept. 30, 2015) (unpub. mem.), <https://www.vermontjudiciary.org/sites/default/files/documents/eo15-024.pdf> [<https://perma.cc/ERW4-K7DH>]. In July 2016, plaintiff filed this action. She alleged breach of

contract based on the parties' agreement regarding defendant's house. She also sought damages for other counts, including assault and battery, breach of the warranty of habitability, illegal eviction, and consumer fraud. Prior to trial, defendant moved for summary judgment on eight claims, and the court granted partial summary judgment, dismissing plaintiff's claim related to the parties' business and her consumer-fraud claim.

There was a contested jury trial. At the close of plaintiff's evidence, defendant moved for a directed verdict. The court granted the motion as to plaintiff's breach-of-contract claim, concluding that plaintiff's claim depended on demonstrating the value of defendant's house and plaintiff had failed to introduce any evidence on the value of the house.<sup>1</sup> At the close of defendant's case, defendant renewed his earlier motions for judgment as a matter of law. The remaining claims went forward, and the jury found in plaintiff's favor on four claims: promissory estoppel, unjust enrichment, assault, and conversion, and awarded her \$60,000 in damages.

Defendant filed a post-judgment motion, again seeking judgment as a matter of law on the promissory-estoppel and unjust-enrichment claims. The court rejected defendant's argument that the promissory-estoppel and unjust-enrichment claims should have been decided by a judge and not a jury on the ground that defendant waived the argument by not raising it at trial. As to the promissory-estoppel claim, the court found that the only promise the jury could have found was a promise by defendant to give plaintiff half the value of the real estate. The court reasoned that the value of the equity in the real estate was a necessary element of proof and no such evidence was presented.<sup>2</sup> In contrast, the court concluded that the unjust-enrichment claim was not tied directly to the value of the real estate. The court explained there was sufficient evidence to support a verdict for damages on the unjust-enrichment claim because plaintiff testified about the value of the services she provided to defendant and the value of the work she gave up to complete these tasks for defendant. Therefore, the court granted defendant's motion in part and vacated the verdict on promissory estoppel. Plaintiff appeals and defendant cross-appeals.

Plaintiff argues that the court erred in granting defendant's post-trial motion for judgment as a matter of law because defendant did not move for a directed verdict on the grounds raised in the post-trial motion. We agree.

A motion for judgment as a matter of law under Vermont Rule of Civil Procedure 50 "may be made at any time before submission of the case to the jury [and must] specify the judgment sought and the law and the facts on which the moving party is entitled to judgment." V.R.C.P. 50(a)(2). The purpose of a Rule 50 motion is "to give the nonmoving party an opportunity to cure the defects in proof that might otherwise preclude the case from going to the jury." Cooper v. Cooper, 173 Vt. 1, 11 (2001). If the motion is not granted, it must be renewed after the verdict to preserve it for appeal. V.R.C.P. 50(b). The Reporter's Notes to the rule explain that "[b]ecause the post-judgment motion is merely a renewal of the pre-verdict motion, it can be granted only on grounds advanced in the prior motion." Reporter's Notes—2009 Amendment, V.R.C.P. 50; see

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<sup>1</sup> The court also dismissed the claims for breach of the warranty of habitability and retaliatory conduct. These claims are not at issue in this appeal.

<sup>2</sup> The court rejected defendant's assertion that he was entitled to judgment as a matter of law because plaintiff had not separately pled promissory estoppel or unjust enrichment in her complaint, concluding that these claims were tried by implied consent. Defendant does not challenge that ruling on appeal.

Stacy v. Merchants Bank, 144 Vt. 515, 519 (1984) (“When a motion for directed verdict is first made, the moving party must affirmatively state his grounds in support of the motion.”).

On appeal, this Court reviews a motion for judgment as a matter of law “under the same standard as the trial court: the evidence is viewed in the light most favorable to the nonmoving party, and we exclude the effects of any modifying evidence.” Gero v. J.W.J. Realty, 171 Vt. 57, 59 (2000); see V.R.C.P. 50(a) (judgment as matter of law appropriate when “there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue”).

Here, defendant’s post-judgment motion raised an issue not presented in his prior motion and therefore was waived. Plaintiff sought damages for promissory estoppel on the grounds that defendant had made a promise to her, that she reasonably relied on his promise, and that she was financially harmed as a result. At the close of plaintiff’s case, defendant moved for judgment as a matter of law on the promissory-estoppel claim on the basis that there was no evidence of a defined promise. Defendant did not contend that he was entitled to judgment as a matter of law on that claim because plaintiff had failed to provide any evidence regarding damages. To the extent that defendant raised the lack of evidence regarding the value of the house, this was in relation to defendant’s request to dismiss plaintiff’s breach-of-contract claim. Plaintiff conceded that at the close of her case, there was no evidence of the house’s value and, accordingly, the court dismissed her claim for breach of contract.<sup>3</sup>

Because defendant’s motion for judgment as a matter of law at trial did not allege that there was no evidence of damages to support plaintiff’s claim for promissory estoppel, he could not seek judgment on this ground in his post-trial motion. The requirement to specify the grounds for judgment as a matter of law at trial is important because “[i]f the rule were otherwise, judgment as a matter of law might be entered under Rule 50(b) on a renewed motion made after the close of the trial on a ground that could have been met with proof if it had been suggested in the motion.” 9B C. Wright & A. Miller, *Federal Practice and Procedure* § 2533 (3d ed. 2019). Having failed to raise the issue at trial, defendant could not rely on this ground in his post-judgment motion. Therefore, we reverse the court’s order granting defendant judgment on the promissory-estoppel claim.<sup>4</sup>

Defendant cross-appeals, arguing that the court erred in failing to vacate the jury’s verdict on plaintiff’s unjust-enrichment claim because he contends that the only measure of damages for this claim was the value of the house for which there was a lack of proof. As for the promissory-estoppel claim, defendant was not entitled to judgment as a matter of law on the unjust-enrichment claim on the ground that plaintiff presented insufficient proof of the value of the house because defendant did not raise this argument in his motion at trial.

When defendant moved for judgment as a matter of law at the close of plaintiff’s case, he did so on the basis that there was no evidence that defendant was unjustly enriched. Defendant did not argue that evidence on the value of the house was essential to proving damages for this

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<sup>3</sup> In fact, the court was clear that even if the breach-of-contract claim was dismissed, it would not result in dismissal of the claims for promissory estoppel and unjust enrichment.

<sup>4</sup> Because we reverse on this basis, we do not reach plaintiff’s alternative arguments that dismissal was improper because the measure of damages for promissory estoppel did not depend on the value of the real property and because she presented sufficient evidence on the value of the real property.

count. In response to the argument defendant raised at trial, plaintiff asserted that she had presented evidence that defendant's financial position was enhanced through her work to assist in improving his house. The court concluded that this was enough to get the claim to the jury. Consistent with this ruling, the court, without objection from defendant, instructed the jury that to prove unjust enrichment, plaintiff had to show that defendant obtained a benefit at her expense and that it would be unfair to allow him to keep that benefit without compensating plaintiff.

In defendant's post-trial motion for judgment as a matter of law, defendant argued for the first time that evidence about the value of his property was essential for plaintiff to prove damages on this claim. The court denied that motion on the grounds that there was sufficient evidence from which the jury could award damages for unjust enrichment, including plaintiff's testimony regarding the value of the child care and other services, and work she gave up, to further improvement of the home. We affirm the court's denial on the ground that defendant waived the argument in his post-judgment motion by failing to raise it in the motion presented at trial.

The post-judgment order granting defendant judgment as a matter of law on plaintiff's claim of promissory estoppel is reversed and the matter is remanded for the court to reinstate the jury verdict on this count. In all other respects, the judgment is affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Harold E. Eaton, Jr., Associate Justice

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William D. Cohen, Associate Justice