[Cite as *Sammartino v. Eiselstein*, 2009-Ohio-2641.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

DAVID J. SAMMARTINO	)	CASE NO. 08 MA 211
	)	
PLAINTIFF-APPELLEE	)	
	)	
VS.	)	OPINION
	)	
RONALD EISELSTEIN, et al.	)	
	)	
DEFENDANTS-APPELLANTS	)	

CHARACTER OF PROCEEDINGS: Civil Appeal from the Youngstown Municipal Court of Mahoning County, Ohio
Case No. 08 CVI03261Y

JUDGMENT: Affirmed.

APPEARANCES:

For Plaintiff-Appellee: David Sammartino, Pro se
139 N. Roanoke Avenue
Youngstown, Ohio 44515

For Defendants-Appellants: Atty. Alden B. Chevlen
5202 Nashua Drive
Youngstown, Ohio 44515

JUDGES:

Hon. Cheryl L. Waite
Hon. Joseph J. Vukovich
Hon. Mary DeGenaro

Dated: June 3, 2009.

WAITE, J.

{¶1} Appellant Ronald Eiselstein (dba Fire Pearl Group) appeals a ruling of the Youngstown Municipal Court, Small Claims Division in a dispute over the return of a down payment for the purchase of real property. Appellee David J. Sammartino filed the small claims action to recover $2,000 he paid as a deposit to purchase property in Austintown from Appellant. Appellee later changed his mind about purchasing the property and sought the return of his deposit. The trial court held a magistrate's hearing on the matter. Appellant did not produce any signed contract regarding the sale of the property, and the testimony of the parties did not reveal any agreement regarding the disposition of the deposit if the purchase did not go forward. The magistrate ruled that there was no meeting of the minds of the parties, and awarded judgment to Appellee on the theory of quasi-contract and unjust enrichment. On September 16, 2008, the magistrate awarded Appellee $2,000 plus court costs. The court adopted the magistrate's decision on October 6, 2008. This appeal was filed on October 24, 2008.

{¶2} Appellant argues that the trial court incorrectly found that there was no contract, and that the court incorrectly applied the principles of quasi-contract and unjust enrichment to justify returning Appellee's down payment. Appellant's arguments are not persuasive. Appellant produced no signed contract at trial. Appellant did not establish any agreement or even any discussion among the parties as to the disposition of the deposit if the property transfer failed to go forward. The record is not even clear that Appellant owned the property in question. The judgment of the trial court is supported by the record and is hereby affirmed.

{¶3} We filed an entry on November 25, 2008, stating that the trial court's mere adoption of the magistrate's decision was not a final appealable order. The parties were granted 30 days to obtain a final appealable order. The trial court filed an amended entry on December 1, 2008. We accepted the amended entry as a final appealable order on December 11, 2008.

{¶4} Appellee filed a purported brief on November 24, 2008. We rejected the brief on December 11, 2008, because it did not conform to App.R. 16, primarily because it was not signed by Appellee and because there was no certification that a copy was sent to Appellant. We gave Appellee 30 days to file an appropriate brief. Appellee filed his revised brief on December 19, 2008.

{¶5} Appellant presents two related assignments of error:

{¶6} "The trial court erred in adopting the decision of the Magistrate that all consideration paid by Plaintiff/Appellee to Defendant/Appellant be awarded to Plaintiff on the theory that Defendant was unjustly enriched by its receipt and retention of the consideration."

{¶7} "The trial court erred in adopting the decision of the Magistrate that the Contract, which was the subject matter of the case, was a 'quasi-contract' voidable by either party due to a 'lack of a meeting of the minds.' "

{¶8} The standard of review for small claims court proceedings is abuse of discretion. *Dinucci v. Lis*, 8th Dist. No. 86223, 2005-Ohio-6730. The term "abuse of discretion" connotes more than an error of law or judgment; it implies that the court's

attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

{¶9} Judgments supported by some competent and credible evidence going to all of the elements of the claim will not be reversed as against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 280, 376 N.E.2d 578. This includes judgments rendered in small claims court. *Stull v. Budget Interior*, 7th Dist. No. 02 BA 17, 2002-Ohio-5230, ¶18. The trial judge in a bench trial can choose which reasonable interpretation of the evidence is more credible. *Myers v. Garson* (1993), 66 Ohio St.3d 610, 614, 614 N.E.2d 742. The trial court in a bench trial is in the best position to weigh the evidence and judge the credibility of witnesses. *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 79-80, 461 N.E.2d 1273.

{¶10} Small claims court is designed to resolve disputes expeditiously and with minimal costs to the parties. Except as otherwise provided by statute or court rule, the proceedings in the small claims division of a municipal court are subject to the Ohio Rules of Civil Procedure. R.C. 1925.16. On the other hand, we have held that the rules of procedure are relaxed in small claims court. *Stull*, supra. The Rules of Evidence do not apply to small claims cases, except the rules governing privilege. Evid.R. 101(C)(8).

{¶11} Appellant contends that there was a valid contract for the sale of real estate, that Appellee paid a deposit and then breached the contract by refusing to follow through with the sale, and that he should have been awarded damages

because Appellee breached the contract. Appellant argues that he had substantial damages because the sale price that Appellee was going to pay was more than the eventual sale price.

{¶12} The record does not support Appellant's argument. The record indicates that both Appellee David J. Sammartino and Appellant Ronald Eiselstein testified at the magistrate's hearing. Appellee denied that there was any signed written contract between the parties. Appellant could not produce any contract, testifying, "I believe there exists one. I have not found it but I haven't looked." (Tr., p. 6.) At most, the evidence shows that the parties attempted to enter into an oral contract for the purchase of real estate. The trial court attempted to determine the terms of that oral contract. It appears that the parties, on a handshake, agreed on or about July 15, 2002, that Appellee would purchase property on Norquest Boulevard in Austintown. There was an expectation that there would be a closing on the property within 30 days. The closing did not occur. Appellee then informed Appellant that he was in the middle of a divorce and could no longer afford to buy the property. He asked for his down payment to be returned.

{¶13} Appellant has attached exhibits to his brief on appeal, including a purportedly signed purchase agreement. This evidence does not appear elsewhere in the record and was not presented to the trial court. Therefore, it is not part of the record on appeal and we cannot consider this so-called evidence. According to the trial court testimony, there was no signed purchase agreement or any other type of signed contract between the parties.

{¶14} In Ohio, unjust enrichment is a claim under quasi-contract law that arises out of the obligation arising by law as to a person in receipt of benefits that he is not justly and equitably entitled to retain. *Hummel v. Hummel* (1938), 133 Ohio St. 520, 527, 14 N.E.2d 923. A claim for unjust enrichment arises not from a true contract, but from a contract implied in law, e.g., a quasi-contract. The equitable theory of unjust enrichment is not available where the relationship of the parties is governed by an express contract. *Weiper v. W.A. Hill & Assoc.* (1995), 104 Ohio App.3d 250, 262, 661 N.E.2d 796. Unjust enrichment entitles a party only to restitution of the reasonable value of the benefit conferred. *St. Vincent Med. Ctr. v. Sader* (1995), 100 Ohio App.3d 379, 384, 654 N.E.2d 144. The elements of a quasi-contract case are as follows: (1) a benefit conferred by a plaintiff upon a defendant; (2) knowledge by the defendant of the benefit; and (3) retention of the benefit by the defendant under circumstances where it would be unjust to do so without payment (i.e., the "unjust enrichment" element). *L & H Leasing Co. v. Dutton* (1992), 82 Ohio App.3d 528, 534, 612 N.E.2d 787; see also *Hambleton v. R.G. Barry Corp.* (1984), 12 Ohio St.3d 179, 183, 12 OBR 246, 465 N.E.2d 1298.

{¶15} In this case, there is no express contract in the record. Appellant was very vague at trial as to the supposed sale price of the property. The record is equally unclear as to how much the property eventually sold for after Appellee no longer wanted the property, what happened to the down payment, or what damages Appellant might have suffered. The record indicates that the property was actually held by a bankruptcy trustee when the parties initially discussed the sale. Appellant

could not give a definite answer regarding whether the property was still held by the bankruptcy trustee at the time of the proposed closing of the sale. Furthermore, Appellee testified that he and Appellant had entered into a subsequent agreement that Appellant would return $1,500 of the down payment and that Appellee would drop any legal claims to the remaining part of the down payment. What was clear from the testimony of both parties is that Appellee gave Appellant two payments totaling $2,000 toward the purchase of property, and that the transfer never took place. Given these facts, it is very difficult to see how the trial court abused its discretion in requiring Appellant to return the $2,000 down payment to Appellee. Appellant's assignments of error are overruled and judgment of the trial court affirmed.

Vukovich, P.J., concurs.

DeGenaro, J., concurs.