[Cite as *Catlett v. Cent. Allied Ents., Inc.*, 2009-Ohio-4641.]

STATE OF OHIO, COLUMBIANA COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

WILLIAM CATLETT PLAINTIFF-APPELLANT CROSS-APPELLEE VS. CENTRAL ALLIED ENTERPRISES, INC. DEFENDANT-APPELLEE CROSS-APPELLANT	))))))))))	CASE NO. 08 CO 5 OPINION

CHARACTER OF PROCEEDINGS: Civil Appeal from the Court of Common Pleas of Columbiana County, Ohio Case No. 2006-CV-667

JUDGMENT: Affirmed.

APPEARANCES:

For Plaintiff-Appellant/Cross-Appellee:

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JUDGES:

Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Mary DeGenaro
Dated: August 31, 2009WAITE, J.

{¶1} Appellant/Cross-Appellee, William Catlett appeals the judgment of the Columbiana County Court of Common Pleas entered in favor of Appellee/Cross-Appellant Central Allied Enterprises, Inc. on his unjust enrichment claim following a bench trial. Central Allied appeals the judgment of the trial court entered in favor of Catlett on its counterclaim for unjust enrichment.

{¶2} During the summer of 2005, Catlett authorized Central Allied to store equipment on his property during Central Allied's installation of a water line for the county along State Route 45 in Elkrun Township, Ohio. Catlett contends that when he agreed to let Central Allied use his property, he made it clear that he expected remuneration in the form of money or services for the use of his land.

{¶3} Representatives from Central Allied testified that Catlett authorized the company to store equipment on his land free of charge, and he only approached Central Allied representatives for compensation after the project was under way. The company contends that Catlett did not confer a benefit on Central Allied because the company could have found another location to store their equipment at no cost. Also, throughout the project Central Allied delivered fill dirt to Catlett's property free of charge.

{¶4} On August 9, 2006, Catlett filed a complaint asserting claims for breach of contract and unjust enrichment based upon Central Allied's use of his land. Central Allied filed a counterclaim asserting unjust enrichment based upon the fill that the company delivered to Catlett's property. Following a bench trial conducted on November 15, 2007, the trial court concluded that there was no contract and no basis

for an award on principles of quasi-contract or quantum meruit, and entered judgment in favor of Central Allied on both counts of the complaint. (1/7/08 J.E., pp. 4-5.) The trial court further concluded that Central Allied had failed to present any evidence regarding the amount of the fill provided to Catlett or its value, and entered judgment in favor of Catlett on the counterclaim. (1/7/08 J.E., p. 5.)

{¶5} The determination of whether Appellant has established an unjust enrichment claim turns completely on whether the trial court credited the testimony of Appellant stating, that he made it clear he expected remuneration when he was first approached by Central Allied representatives, or the representatives of Central Allied asserting that Catlett agreed to let the company store the equipment gratis at their first meeting. Because there is competent, credible evidence to support the trial court's factual determinations, Appellant's sole assignment of error is overruled.

{¶6} Furthermore, there was conflicting testimony provided by Central Allied representatives regarding the amount of fill delivered to Catlett, and, as a consequence, Central Allied's cross-assignment of error is overruled and the judgment of the trial court is affirmed in full.

ASSIGNMENT OF ERROR

{¶7} "THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED AS A MATTER OF LAW IN FAILING TO FIND LIABILITY ON THE PART OF DEFENDANT UNDER A THEORY OF QUASI-CONTRACT."

{¶8} Unjust enrichment occurs when a person, "has and retains money or benefits which in justice and equity belong to another." *Johnson v. Microsoft Corp*.,

106 Ohio St.3d 278, 2005-Ohio-4985, ¶20, 834 N.E.2d 791. In order to recover under a theory of unjust enrichment, the following elements must be proved: (1) the plaintiff conferred a benefit upon the defendant, (2) the defendant had knowledge of the benefit, and (3) circumstances render it unjust or inequitable to permit the defendant to retain the benefit without compensating the plaintiff. *Hambleton v. R.G. Barry Corp.* (1984), 12 Ohio St.3d 179, 183, 465 N.E.2d 1298.

{¶9} "The benefit conferred by the plaintiff must be in response to a fraud, misrepresentation, or bad faith on behalf of the defendant." *McCamon-Hunt Ins. Agency, Inc. v. Medical Mut. Of Ohio*, 7th Dist. No. 07MA94, 2008-Ohio-5142, ¶27. This requirement ensures a causal link between the plaintiff's loss and the defendant's benefit. Id. citing *HLC Trucking v. Harris*, 7th Dist. No. 01 BA 37, 2003-Ohio-0694, at ¶26. The purpose of the doctrine is not to compensate the plaintiff for any loss or damages but to compensate him for the benefit he has conferred on the defendant. *Johnson*, ¶21.

{¶10} One of the main features of quasi-contract is that it does not entail a meeting of the minds as does an express or an implied in fact contract. *Legros v. Tarr* (1989), 44 Ohio St.3d 1, 7. Equity, not intent, governs the application of the legal fiction. *Paugh & Farmer, Inc. v. Menorah Home for Jewish Aged* (1984), 15 Ohio St.3d 44, 46.

{¶11} The entire point of the doctrine is to turn a moral obligation into a legal obligation where a known benefit is conferred upon a party and where the retention of that benefit without compensation to the party who benefits would be unjust. See

Hummel v. Hummel (1938), 133 Ohio St. 520, 526. However, "enrichment is not considered to be unjust if a party volunteered his or her services and did not expect payment." *Pawlus v. Bartrug* (1996), 109 Ohio App.3d 796, 800, 673 N.E.2d 188, citing *Paugh & Farmer Inc.* at 46, 472 N.E.2d 704.

{¶12} The factfinder must consider the facts in each case to determine the existence of the elements, i.e., whether a known benefit was conferred by the plaintiff upon the defendant whose retention of the benefit would be inequitable. As always, the appellate court defers to the trial court's factual determinations, including the determinations when weighing the evidence. *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 79-80. Where a decision is supported by some competent, credible evidence on each of the elements, it is not against the manifest weight of the evidence. *C.E. Morris Co. v. Foley* (1978), 54 Ohio St.2d 279, 280.

{¶13} In July, 2005, John McCollough and Tony Randall approached Catlett in order to request permission to store pipe and equipment on his property during Central Allied's upcoming installation project on Route 45. McCollough was an equipment operator at Central Allied and Randall was a foreman for the company. McCollough and Randall both testified that Catlett authorized Central Allied to use his property, and that he did not at any point in this conversation request remuneration. Both men testified that Catlett's only condition was that the equipment did not block his driveway. (Tr., pp. 211, 229.)

{¶14} Catlett testified that he authorized the use of his land, but that he told the men, "[w]e'll work something out." (Tr., p. 75.) According to Catlett, he did not

think that the discussion with McCollough and Randall was a formal discussion of terms, because they had seen him working on his property that day and stopped to speak with him. (Tr., p. 76.) In fact, Catlett testified that he did not think McCollough and Randall had the authority to negotiate a deal. He said he was surprised when Central Allied's equipment appeared on his property approximately three days later, as he had assumed that the company would have negotiated a deal to store its equipment well in advance of the actual project. (Tr., p. 78.)

{¶15} Catlett further testified that he had expected to be approached by someone of higher rank at Central Allied about storing equipment on his property, and that, in the back of his mind, he considered asking for a commercial tap into the water line. He conceded that he did not mention the tap to McCollough or Randall. (Tr., p. 77.) Catlett explained that he has entered into both written and oral agreements for the use of his land in the past, and that he had received $750 and $1,000 per month from other companies for approximately half of the land used by Central Allied. (Tr., pp. 86, 90.)

{¶16} Approximately three months into the project, Catlett contacted Dan Parcher, Central Allied's project manager, because he had never talked to anyone from the office about working out an agreement for the use of the land. (Tr., p. 80.) He testified that he told Parcher that he had already discussed a commercial tap with Buckeye Water District and the county. (Tr., p. 80.) According to Catlett, Parcher said he would contact Buckeye Water District and get back to him.

{¶17} Parcher's testimony is somewhat different than Catlett's. Parcher testified that Catlett told him that he had already negotiated the tap with Randall. (Tr., p. 182.) Parcher was surprised that Randall would negotiate such an agreement, because he had no authority to do so. (Tr., p. 183.) However, Parcher told Catlett that he would honor any agreement that Catlett had reached with Randall. (Tr., p. 182.) When Parcher investigated Catlett's claims, Randall told Parcher that he had not entered into any such agreement with Catlett. (Tr., p. 183.)

{¶18} Catlett then contacted Robert Woodhall, Central Allied's Vice President of Construction Operations. (Tr., p. 154.) Catlett testified that Woodhall told him not to worry and that the company would do the right thing. (Tr., p. 83.) However, Woodhall testified that Catlett led him to believe that he had already negotiated a deal with a representative of Central Allied for the tap. (Tr., p. 155.)

{¶19} At some point toward the end of the project, Catlett had lunch with "Bert," who informed him in error that a water tap could cost between $30,000 and $40,000. (Tr., p. 89.) Catlett called Parcher and told him that he was not aware that the proposed tap was so costly, and suggested instead that Central Allied compensate him monetarily for the use of his land. (Tr., pp. 89-90.) Parcher told Catlett that the company had given him fill and, "[t]hat's it." (Tr., p. 90.)

{¶20} Woodhall, Parcher, and Randall testified that the company virtually never compensates landowners for equipment storage. (Tr., pp. 169, 197, 212.) Randall testified that the company only compensates landowners in congested areas, like a downtown location. (Tr., p. 220.) Woodhall testified that landowners are

typically compensated when a construction trailer with utilities are required. (Tr., pp. 161-163.)

{¶21} Parcher testified that the company could have used property belonging to A&L Salvage free of charge. (Tr., p. 193.) Both Parcher and Woodhall testified that Central Allied does not include any costs relating to equipment storage in its construction bids. (Tr. pp. 179, 197.) It is an uncontested fact that Catlett never demanded or sought the removal of Central Allied's equipment from his property.

{¶22} Evidently, the trial court credited the testimony of McCollough and Randall that Catlett did not reveal that he expected compensation for the use of his property when he agreed to permit Central Allied to store its equipment on his property. There was credible evidence to support the conclusion that Central Allied had no intention of compensating a landowner for the use of his or her property, as that cost was not included in the construction bid. Likewise, there was credible evidence to support the conclusion that Central Allied would have stored its equipment elsewhere if Catlett had made it clear that he expected remuneration for the use of his property.

{¶23} When asked whether he understood that McCollough and Randall had not offered any compensation for the use of his property, Catlett responded, "I didn't think they had any authority to offer me anything and I wasn't dealing with them about that." (Tr., p. 113.) When asked whether he believed that McCollough and Randall implied that he would be paid, he responded, "I didn't believe they implied anything. They just had asked me a question and I answered them." He conceded

that he "took it for granted" that there would be some compensation. (Tr., pp. 113-114.)

{¶24} The trial court must have also credited the testimony of Woodhall and Parcher that Catlett characterized the tap as a negotiated deal when he spoke with them. Accepting their testimony as true, the factfinder could logically conclude that Catlett regretted his initial decision to volunteer the use of his property, and then attempted to manipulate the company into compensating him for the use of his land.

{¶25} Because there is credible evidence to support the conclusion that Catlett initially volunteered the use of his property, and then may have attempted to get Central Allied to provide the tap or compensate him in some way by means of subterfuge, Appellant's sole assignment of error is overruled and the judgment of the trial court is affirmed on Appellant's unjust enrichment claim.

CROSS-ASSIGNMENT OF ERROR

{¶26} "The Trial Court erred by dismissing Appellee's counterclaim and finding that Appellant is not liable for the reasonable value of fill and labor services provided to Appellant."

{¶27} All of the testimony at trial established that Central Allied provided fill dirt to Catlett free of charge, and there was no testimony to suggest that Catlett received the fill as a result of fraud, misrepresentation, or bad faith on behalf of his part. Catlett testified that representatives from Central Allied asked if he wanted fill, and that he requested as much as possible. (Tr., pp. 86, 128.) The various representatives of Central Allied testified that fill was provided to Catlett and to his

neighbors without cost at their request. Woodhall conceded that the company includes the cost of hauling away fill in their construction bids. (Tr., p. 175.) As a consequence, the overwhelming weight of the evidence supports the conclusion that Central Allied acted as a volunteer with respect to the fill.

{¶28} Of equal import, Central Allied representatives provided conflicting testimony regarding the amount of the fill given to Catlett and its value. Parcher testified that the company removed 13 tons of fill to install the water line, and that Catlett received all of it. (Tr., p. 188.) He estimated the value of the fill and the labor involved in delivering it to be, "over fifty some thousand dollars." (Tr., p. 190.) McCollough testified that fill was also given to several of Catlett's neighbors at their request. (Tr., p. 230.) But Randall said Catlett received all of the fill with the exception of ten or fifteen loads. (Tr., p. 213.) Consequently, Central Allied employees could not agree to the amount of fill given to Catlett.

{¶29} Finally, Central Allied, faced with the testimony that Catlett moved fill to and from his respective properties with some regularity, adduced testimony that, at the very least, the company saved Catlett the fuel costs associated with moving the fill. (Tr., p. 131.) However, there was no evidence of the value of the fuel cost savings.

{¶30} The uncontested testimony at trial established that Central Allied offered fill dirt to Catlett at no cost, Catlett did not defraud or trick Central Allied into giving him the fill. Because of this and because the amount of the fill was not

established, Central Allied's cross-assignment of error is overruled, and the judgment of the trial court is affirmed in full.

Donofrio, J., concurs.

DeGenaro, J., concurs.