

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1248

September Term, 2014

RAYMOND WALLACE

v.

CHRISTINE P. BRICE, et vir

Eyler, Deborah S.,
Woodward,
Berger,

JJ.

Opinion by Woodward, J.

Filed: October 21, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On April 7, 2014, appellant, Raymond Wallace, filed suit against appellees, Christine P. Brice (“Christine”) and R. David Brice, in the Circuit Court for Kent County, claiming entitlement to a life estate in property owned by appellees. Appellant’s amended complaint sought relief in three separate counts. Count One requested the imposition of a constructive trust on the property for the benefit of appellant. Count Two asked the court to establish an equitable lien on the property for appellant. Count Three sought restitution for unjust enrichment in the amount of \$150,000. Counts One and Two sought relief based on an alleged agreement between appellant and Christine for a life estate. Count Three was based on appellant’s building of a house on the property in reliance on that agreement. The court granted appellees’ motion to dismiss the amended complaint. In its order, the court concluded that all counts of the amended complaint were barred by the Statute of Frauds.

On appeal, appellant presents two questions for our review, which we have rephrased:¹

1. Did the trial court err by dismissing Counts One and Two of the amended complaint on the basis of the Statute of Frauds?

¹ Appellant’s questions, in the words of his brief, are:

1. Did the trial court properly apply the Statute of Frauds to the well-pleaded allegations of the Amended Complaint?
2. Did the trial court err by dismissing Count Three of the Amended Complaint which alleges that the Appellees had been unjustly enriched by the accepted acts of the Appellant and requests money damages?

2. Did the trial court err by dismissing Count Three of the amended complaint on the basis of the Statute of Frauds?

For the reasons stated herein, we shall affirm the circuit court’s dismissal of Counts One and Two, but will vacate the dismissal of Count Three.

BACKGROUND

On September 24, 1990, appellant and his wife, Delores Wallace, purchased a 2.001-acre parcel of land (“the Property”) located in Kent County, Maryland. Appellant constructed a house on the Property in which he and his wife resided. On August 20, 2004, Mrs. Wallace conveyed her entire interest in the Property to appellant. On October 18, 2007, appellant sold the Property to Christine for \$300,000. Christine is Mrs. Wallace’s daughter and appellant’s step-daughter. By the terms of the deed conveying the property, Christine was granted the Property “as sole owner, in fee simple.” No life estate was reserved to appellant in the deed. After the sale, appellant and his wife continued to reside on the Property, along with Christine and two of her children.

On January 13, 2009, Christine, with the assistance of appellant, purchased an acre of land adjoining the Property for the sum of \$1,000. The new land was administratively combined with the original 2.001-acre parcel. Appellant then spent \$123,000 building a house on the new land, in which he and his wife proceeded to live.

Mrs. Wallace died in November 2011. On February 22, 2013, Christine conveyed the now 3.001-acre Property to her husband, R. David Brice, and herself, as tenants by

the entirety. In March 2014, appellees informed appellant that they intended to sell the Property and that he would need to remove himself from the Property.

On April 7, 2014, appellant filed a Complaint for Establishment of Constructive Trust against appellees in the circuit court. In his complaint, appellant asserted his claim to a life estate in the Property and sought relief in the form of a constructive trust on the Property. On May 15, 2014, appellees filed a motion to dismiss the complaint, asserting that the Statute of Frauds was a complete bar to appellant's claim, and that appellant had failed to join a necessary party. On June 3, 2014, appellant filed a response to the motion to dismiss. On the same day, appellant also filed an Amended Complaint for Establishment of Constructive Trust and Related Relief. Appellant's amended complaint added CNB, a bank and Maryland corporation, as an additional defendant. Appellant's amended complaint sought relief in three counts: One, a constructive trust, Two, an equitable lien, and Three, unjust enrichment. Counts One and Two were based on the alleged agreement between appellant and Christine for a life estate in the Property. Count Three was based on appellant's building of the new residence on the Property. On June 18, 2014, appellees filed a motion to dismiss the amended complaint, again asserting the Statute of Frauds as a defense to all counts of the amended complaint.²

² The issue of merger was raised by appellees in their motion to dismiss before the trial court and at oral argument before this Court, but such issue was not mentioned in appellees' brief in the instant appeal. "[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal." *Klauenberg v. State*, 355 Md. 528, 552 (1999). Such issue is thus waived. *See* Md. Rule 8-504(a)(5).

On August 12, 2014, the circuit court held a hearing on appellees’ motion to dismiss the amended complaint. At the conclusion of the hearing, the court stated: “I think it’s that somewhat preordained result that causes the law to say that the statute of frauds says that there must be something, some memorandum, some writing. In short, the Court will grant the Motion to Dismiss and with regret, I might say, that I do so.” In an order issued that same day, the court dismissed the entire case with prejudice, finding that “this action is barred by the Statute of Frauds.” This timely appeal followed.

STANDARD OF REVIEW

The proper standard for reviewing the grant of a motion to dismiss is whether the trial court was legally correct. In reviewing the grant of a motion to dismiss, we must determine whether the complaint, on its face, discloses a legally sufficient cause of action. In reviewing the complaint, we must presume the truth of all well-pleaded facts in the complaint, along with any reasonable inferences derived therefrom. Dismissal is proper only if the facts and allegations, so viewed, would nevertheless fail to afford plaintiff relief if proven.

Higginbotham v. Pub. Serv. Comm’n of Md., 171 Md. App. 254, 264 (2006) (citations and internal quotation marks omitted).

DISCUSSION

I. Part Performance

The Statute of Frauds is codified in Section 5-104 of the Real Property Article:

No action may be brought on any contract for the sale or disposition of land or of any interest in or concerning land unless the contract on which the action is brought, or some memorandum or note of it, is in writing and signed by the party to be charged or some other person lawfully authorized by him.

Md. Code (1974, 2010 Repl. Vol.), § 5-104 of the Real Property Article (“RP”). For a contract to be enforceable under the Statute of Frauds, the required memorandum must be:

- (1) a writing (formal or informal);
- (2) signed by the party to be charged or by his agent;
- (3) naming each party to the contract with sufficient definiteness to identify him or his agent;
- (4) describing the land or other property to which the contract relates;
and
- (5) setting forth the terms and conditions of all the promises constituting the contract made between the parties.

Beall v. Beall, 291 Md. 224, 228-29 (1981).

Appellant does not claim that there is any writing to evidence the alleged agreement between appellant and Christine that grants him a life estate. Instead, appellant argues on appeal that the circuit court erred in dismissing Counts One and Two of his amended complaint, because his part performance of the agreement removes the bar of the Statute of Frauds. Appellant asserts that his sale of the Property to Christine on October 18, 2007, was made with the understanding that appellant and his wife had a right to live on the Property for the duration of their lives. Appellant claims that in furtherance of such understanding, he facilitated the purchase of the additional acre of land at a discounted price, spent \$123,000 constructing a residence on the new acre for himself and his wife, and continued to live on the Property from the sale to Christine

through the initiation of this case in April 2014. Appellant asserts that, but for the understanding that he had a life estate in the Property, he never would have conveyed the Property to Christine, helped expand the size of the Property, or spent money building a new home on the Property. Appellant contends that his actions following the October 2007 conveyance to Christine “make sense only in the context of the alleged oral agreement securing him and his now deceased wife a place to live during their respective lifetimes.” Appellant concludes that, if this Court assumes the truth of his well-pled allegations, they “show partial performance of an oral contract granting [a]ppellant a life estate in the property.”

Appellees counter that “the Statute of Frauds precludes any action based upon an unwritten contract to impose a life estate.” According to appellees, it is “undisputed that there is not, nor has there ever been, any writing of any kind to evidence an agreement among the parties that [appellant] ever had a life estate in the [P]roperty or that he would be compensated for improvements.” Appellees contend that “[p]art performance will not make an oral contract enforceable unless it is such as to be directly referable to that contract.” Appellees claim that the part performance “must furnish evidence of the identity of the contract” and “relate to and be unequivocal evidence of the *terms* of a particular agreement.” Appellees conclude that, because appellant’s “conduct is not specifically referable to any particular agreement,” it “does not amount to part performance and will not prevent imposition of the Statute of Frauds.”

“This Court has stated that part performance is adequate to remove the bar of the statute of frauds when there is ‘full and satisfactory evidence’ of the terms of the agreement and the acts constituting part performance.” *Beall*, 291 Md. at 230 (quoting *Hall v. Hall*, 1 Gill 383, 393 (1843)). “‘The act relied on as part performance must, in itself furnish evidence of the identity of the contract; and it is not enough that it is evidence of some agreement, but it *must relate to and be unequivocal evidence of the particular agreement charged in the bill.*’” *Campbell v. Welsh*, 54 Md. App. 614, 621 (quoting *Semmes v. Worthington*, 38 Md. 298, 326-27 (1873) (emphasis in original)), *cert. denied*, 297 Md. 108 (1983). “The proof must be clear and explicit, leaving no room for reasonable doubt.” *Semmes*, 38 Md. at 318. A party asserting part performance must prove that he “would not have performed the act *but for* the contract.” *Clark v. Strasburg*, 79 Md. App. 406, 415 (1989) (emphasis in original), *rev’d on other grounds*, 319 Md. 583 (1990).

In the instant case, the acts alleged by appellant are not sufficient to constitute part performance that would remove the bar of the Statute of Frauds. In his amended complaint, appellant alleges that, when he conveyed the Property to Christine on October 18, 2007, “the parties agreed that [appellant] and his wife . . . would hold a life estate in the Property.” Appellant’s amended complaint contains nothing further concerning the terms of that agreement. The amended complaint goes on to allege that Christine, appellant, and appellant’s wife “all agreed to add one (1) acre of land to the Property to allow [appellant] and [appellant’s wife] to construct a new residence in which

the latter would live for the balance of their lives.” Appellant alleges that “[t]he singular purpose for the expansion of the Property . . . was to allow for the construction of a new residence for [appellant] and his wife for use during their lifetimes.” Nowhere does appellant allege that such agreement to purchase additional property and build a new residence was part of the original agreement for a life estate. Moreover, appellant’s amended complaint does not allege any date on which such agreement was made. The allegations as set forth in the amended complaint thus provide no connection between the actions being relied upon to prove part performance and the original agreement for a life estate.

The allegations of the amended complaint also do not satisfy the “but for” test. *See Clark*, 79 Md. App. at 415. Appellant claims that, but for the life estate in the Property, he never would have conveyed the Property to Christine, helped acquire the additional acre for the Property, or spent money to build a new home on the Property. The amended complaint, however, does not relate those actions to the terms of the agreement to give appellant a life estate. In other words, the actions that constitute part performance must emanate from the obligations imposed by the contract at issue. *See Beall*, 291 Md. at 230; *Semmes*, 38 Md. at 326-27. Appellant’s actions do not relate to the agreement for the life estate, but to the life estate itself, which appellant believed that he had received as a result of the agreement.

This Court’s opinion in *Campbell* is instructive on the issue of part performance. In that case, Campbell claimed that he and his late mother had a verbal agreement

wherein she agreed to sell him part of her property in exchange for \$2,500 and some renovation work. 54 Md. App. at 615. Campbell paid the \$1,500 down payment and did the renovation work, but claimed that his mother later excused him from paying the \$1,000 balance. *Id.* at 615-16. The trial court granted summary judgment in favor of the mother's estate. *Id.* at 617. On appeal, Campbell argued that the Statute of Frauds did not bar his suit due to his part performance, and that he was entitled to a constructive trust. *Id.* at 618. In affirming the circuit court's grant of summary judgment, this Court held:

The acts offered up as part performance of this rather fluid agreement are hardly referable exclusively to it. [Campbell], who was in the construction business, took possession of a piece of land, built some improvements on it that he used in his business, and renovated an existing house for use as his home. He built a driveway from the house to the road, planted some trees, and maintained the yard. He lived and worked there for fifteen or sixteen years, paying nothing more than the \$1,500 he claims to have paid in 1965. If that were enough to avoid the Statute of Frauds, there would be no Statute of Frauds.

Id. at 623.

Applying *Campbell* to the instant case makes appellant's failure to satisfy the part performance doctrine even clearer. Campbell took possession of a piece of the land owned by his mother. 54 Md. App. at 616. Appellant took possession of the additional parcel purchased and owned by appellees. Campbell estimated his expenditures on the property to be \$56,700, plus utility payments. *Id.* at 617. Appellant claims to have spent \$123,000 building a new residence. Campbell moved his family onto the property with him. *Id.* at 618. Appellant moved into the newly built residence with his wife.

Campbell, however, actually performed actions that he claimed were required of him by the alleged agreement with his mother for the purchase of the property. *Id.* at 615-16. Here, the amended complaint does not allege that appellant was required to do anything in exchange for the life estate. As previously stated, appellant's actions were not the result of his obligations under the agreement for a life estate, but rather were in reliance on appellant's belief that he had a life estate. Because we concluded that the actions of Campbell were insufficient for part performance, we reach the same conclusion in the instant case. *See id.* at 623.

Appellant relies upon two cases for the proposition that his part performance was sufficient to take the instant case outside of the Statute of Frauds. Appellant's reliance on those cases is misplaced. In *Bauer v. Hamill*, 188 Md. 553, 566 (1947), the Court of Appeals found that “[t]he contract for the sale of this property . . . to the appellants was clear, unambiguous, and certain in all its parts, fair and mutual.” The appellants in *Bauer* took possession of the property and paid part of the purchase price. *Id.* Those actions were sufficient for the Court to hold that the contract had been partially performed, which took it out of the Statute of Frauds. *Id.* at 566-67. In *Serio v. Von Nordeck*, 189 Md. 388, 390 (1947), the plaintiff had been in possession of defendants' property with a month to month lease. The parties had a verbal agreement for the defendants to sell the property to the plaintiff for “\$20,500, ‘subject to a ground rent of \$90 per year, for 99 years, renewable forever.’” *Id.* The plaintiff gave the defendants \$5,000 and paid for various repairs and renovations on the property. *Id.* at 390-91. The Court held that the plaintiff's

actions were sufficient for part performance. *Id.* at 392. In contrast to the instant case, the terms of the agreements in *Bauer* and *Serio* were “clear, unambiguous, and certain,” and the acts constituting part performance clearly were related to those terms. Again, the amended complaint here set forth no terms of the agreement for the conveyance of a life estate to appellant.

Finally, the deed conveying the land to Christine was executed by appellant himself. The deed states that the Property was conveyed to Christine, “as sole owner, in fee simple,” in consideration of the sum of \$300,000. Nowhere in that deed is there any reference to a life estate in the Property reserved to appellant. In essence, appellant is claiming that he and Christine had a verbal agreement for a life estate, but then he proceeded to execute a deed that directly contradicted that agreement. Such action by appellant is clearly contrary to any part performance of the alleged agreement for a life estate.

In sum, the acts of facilitating the acquisition of additional property and building a new residence on the Property do not “furnish evidence of the identity” of the *original* contract for a life estate. *Campbell*, 54 Md. App. at 621 (citations and internal quotation marks omitted). Appellant’s actions may be considered evidence of an agreement, but they do not constitute “unequivocal evidence of the particular agreement” for a life estate alleged in the complaint. *Id.* (emphasis omitted) (citations and internal quotation marks omitted). The proof provided is not “clear and explicit” and certainly leaves “room for reasonable doubt” regarding the terms of the original agreement for a life estate.

Semmes, 38 Md. at 318. Thus the allegations set forth in appellant’s amended complaint are insufficient to constitute actions that rise to the level of part performance. Accordingly, the circuit court did not err in dismissing Counts One and Two of appellant’s amended complaint on the basis of the Statute of Frauds.

II. Unjust Enrichment

Appellant asserts that appellees were unjustly enriched “by virtue of their knowing acceptance of the benefits of the [a]ppellant and his wife’s material improvement of the property.” Appellant argues that his unjust enrichment claim sounds in law and not equity; therefore, even if his equitable claims are defeated by the Statute of Frauds, the statute does not act as a bar to his unjust enrichment claim for money damages.

In response, appellees argue that they have not been unjustly enriched, because “[a]lthough [a]ppellant has receipt[s] to show payment of some construction costs, [appellees] remain responsible for the debt.” Appellees assert that appellant “has received tremendous financial benefit, which disqualifies his claim for reimbursement on equitable principles alone.”³

³ Raised for the first time at oral argument before this Court, appellees contend that reasonable expectation of payment is an element of a claim for unjust enrichment. Moreover, appellees argue that an expectation of payment in this case could only be founded upon an oral agreement between the parties. Despite this assertion, the three elements of an unjust enrichment claim are well-settled in Maryland, and expectation of payment is not one of those elements. *See Dolan v. McQuaide*, 215 Md. App. 24, 35-36 (2013), *cert. denied*, 439 Md. 331 (2014); *Mass Transit Admin. v. Granite Constr. Co.*, 57 Md. App. 766, 774 (1984); *Everhart v. Miles*, 47 Md. App. 131, 136 (1980).

“The doctrine of unjust enrichment applies where ‘the defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity to refund the money.’” *Mass Transit Admin. v. Granite Constr. Co.*, 57 Md. App. 766, 773-74 (1984) (quoting Dan B. Dobbs, Handbook on the Law of Remedies § 4.2 (1973)). In *Dolan v. McQuaide*, this Court summarized a claim for unjust enrichment as follows:

In an action for unjust enrichment . . . there has been no agreement, the defendant has no prior expectations either as to value or as to risk, and so the law of restitution simply returns the defendant to the *status quo* by disgorging the value of the benefit actually received. In that way, the plaintiff shoulders all of the risk in the transaction, while the defendant takes on no risk and is left no better or worse off than they were, *ex ante* (save the costs of litigation).

215 Md. App. 24, 38-39 (2013) (footnotes omitted), *cert. denied*, 439 Md. 331 (2014).

The Statute of Frauds acts as a bar to contracts for the sale of land that are not supported by an adequate writing. RP § 5-104. A claim for unjust enrichment is a restitutionary remedy at law, “and the relief given is a simple money judgment.” *Mass Transit Admin.*, 57 Md. App. at 775. An unjust enrichment action is not premised on a contract and thus is not an attempt to enforce a contract. *See Dolan*, 215 Md. App at 38. Rather, it is a remedy “to provide relief for a plaintiff when an enforceable contract does not exist but fairness dictates that the plaintiff receive compensation for services provided.” *Cnty. Comm’rs of Caroline Cnty. v. J. Roland Dashiell & Sons, Inc.*, 358 Md. 83, 97 (2000). Therefore, an unjust enrichment claim cannot be dismissed on the basis of the Statute of Frauds.

At the motion to dismiss hearing, the circuit court dismissed the entire action, stating on the record: “And I think it’s that somewhat preordained result that causes the law to say that the statute of frauds says that there must be something, some memorandum, some writing. In short, the Court will grant the Motion to Dismiss and with regret, I might say, that I do so.” The court’s Order of Dismissal states that the court “finds that this action is barred by the Statute of Frauds, and the same is DISMISSED with prejudice.” For the reasons discussed above, the circuit court erred in dismissing appellant’s claim for unjust enrichment on the basis of the Statute of Frauds.

Before remanding this case on the claim for unjust enrichment, however, we must still determine whether appellant’s amended complaint states such a cause of action.

A claim for unjust enrichment must satisfy three elements:

1. A benefit conferred upon the defendant by the plaintiff;
2. An appreciation or knowledge by the defendant of the benefit; and
3. The acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without the payment of its value.

Dolan, 215 Md. App. at 36 (citation omitted).

As to the first element, appellant’s amended complaint alleges that he spent in excess of \$123,000 to construct a new residence on the Property. Appellant also alleges that appellees contributed nothing to the cost of constructing the new residence, and that his actions “have increased the value of the Property by at least \$150,000.00.” Appellees

argue that there has been no benefit conferred upon them, because the source of appellant's funds for constructing the house came from the purchase money mortgage to which appellees are indebted. That claim is irrelevant at this stage, because a motion to dismiss only takes into consideration the facts that are alleged in the complaint. *Higginbotham*, 171 Md. App. at 264. Taking appellant's well-pleaded facts as true, appellant did confer a benefit upon appellees by constructing, at appellant's expense, a second home on the Property owned by appellees. *See Dolan*, 215 Md. App. at 36.

The residence constructed by appellant was built on appellees' Property. Appellant alleges that appellees "were well aware of [appellant's] construction of the residence." Appellant built the residence in 2009 and lived there through the commencement of this action in 2014. Under the facts alleged, appellant's complaint satisfies the second element that appellees had knowledge of the benefit being conferred upon them. *See id.*

Finally, appellant has sufficiently alleged the third element of an action for unjust enrichment. Appellant claims that he was told of appellees' intention to sell the Property around March 1, 2014. During that conversation, appellant alleges that appellees informed him that he would need to remove himself and his personal property from the Property. Appellant also alleges that appellees' "acceptance and retention of the improvements made by [appellant] to the size of the Property and by constructing a new residence make it inequitable for [appellees] to retain those benefits without payment of their value to [appellant]."

Appellant's amended complaint satisfies all three elements required for a claim of unjust enrichment, and, in doing so, appellant has stated a claim upon which relief can be granted. Accordingly, we shall vacate the circuit court's dismissal as to Count Three, unjust enrichment.

**JUDGMENT OF THE CIRCUIT COURT
FOR KENT COUNTY AFFIRMED IN
PART AND VACATED IN PART; CASE
REMANDED TO THAT COURT FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION; COSTS TO BE
PAID 2/3 BY APPELLANT AND 1/3 BY
APPELLEES.**