Circuit Court for Queen Anne's County
Case No.: C-17-CV-17-000187

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2249

September Term, 2017

TIMOTHY E. HORAN, ET UX.,

v.

JESSICA L. MARKS

Fader, C.J.,
Reed,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: April 1, 2019

The Circuit Court for Queen Anne's County granted summary judgment to Jessica Marks, the appellee, on an unjust enrichment claim by her parents, appellants Timothy and Valerie Horan, relating to maintenance and improvement costs for real property titled in Ms. Marks's name. The Horans contend that the circuit court erred in granting summary judgment in favor of Ms. Marks. Because we conclude that the Horans' claim is barred by res judicata, we affirm the judgment of the circuit court.

BACKGROUND

Mrs. Horan is Ms. Marks's mother.[1] Geraldine Mink, the mother of Mrs. Horan and grandmother of Ms. Marks, was the sole owner of property located at 501 Prospect Bay Drive East, Grasonville, Maryland (the "Property"). On April 23, 2013, Ms. Mink executed a deed transferring ownership of the Property to herself and Ms. Marks, "as joint tenants with full rights of survivorship." On April 29, 2013, the deed was recorded in the Land Records for Queen Anne's County. Ms. Mink died on July 12, 2013, vesting full title to the Property in Ms. Marks.

Following Ms. Mink's death, the Horans cleaned the Property, made necessary repairs, and made the Property "livable." Ms. Marks claimed that she then allowed the Horans to either live in the Property rent-free or rent the Property and retain the rent, so long as they "maintained the Property and paid its expenses."[2] According to the Horans,

[1] Ms. Marks states in her brief that she has no blood relation to Mr. Horan.

[2] The Horans contend that Ms. Marks misrepresented that they had lived in the Property for a period of time and that the circuit court erred in adopting that erroneous allegation as a finding of fact. We take no position on that issue as it is not relevant to our disposition of this appeal.

they never agreed to the arrangement described by Ms. Marks. To the contrary, they believed that they had "an agreement of trust for [Ms. Marks] to transfer title to the Property to [the Horans] at [their] request."

In 2015 and 2016, the Horans rented the Property to tenants and placed the rental proceeds in a joint bank account in the names of Mrs. Horan and Ms. Marks. However, due to a dispute between the parties regarding payment of the property taxes—Ms. Marks contends that the Horans failed to pay a property tax bill and she had to step in to pay it—Ms. Marks assumed sole control of the Property, including renting the Property, collecting rent, and paying expenses.

The dispute between the Horans and Ms. Marks over ownership and use of the Property gave rise to two different lawsuits, which we will discuss in turn.

The 2016 Case

On October 3, 2016, the Horans filed a complaint against Ms. Marks seeking the imposition of a constructive trust over the Property (the "2016 Case").[3] The Horans alleged that it was Ms. Mink's intent that, upon her death, the Property be transferred to Mrs. Horan. However, despite numerous requests from the Horans, Ms. Marks refused to transfer the Property to them. The Horans alleged that Ms. Marks's refusal to transfer the Property had "financially devastated" them. The Horans also claimed that between 2013 and 2016, they had provided "drastically needed repairs" to the Property and that Ms.

[3] *See Timothy E. Horan, et ux. v. Jessica Marks*, Queen Anne's County Circuit Court, No. C-17-CV-16-000080.

Marks had been "unjustly enriched by retaining title to the property." Specifically, the Horans set forth the following itemization of repairs they claimed to have made at the Property:

a. Replaced entire roof shingles and several pieces of rotten plywood underlayment.
b. Removed and replaced entire 1st floor carpeting and padding.
c. Cleaned, treated, deodorized and painted subflooring damaged by years of pet urine and feces.
d. Repaired and replaced several damaged bi-fold closet doors and shelving.
e. Replaced water damaged ceiling drywall and stucco.
f. Painted entire 1st floor interior walls, door and trim.
g. Replaced non-working stove/oven.
h. Replaced two leaking kitchen faucets.
i. Installed new water conditioner and loaded with salt.
j. Repaired doorbell, summer kitchen countertop.
k. Replaced all heat supply vents due to rust.
l. Replaced broken pasture fence boards.
m. Cleaned entire house, for rental, including floors and windows.
n. Repaired sump pump.

They also claimed to have paid the following expenses for the Property:

a. Paid 2013, 2014 taxes and were prepared to pay 2015 taxes.
b. Paid 2014, 2015, and 2016 community assessment.
c. Paid 2014, 2015 property insurance
d. Utility bills from July 2013 thru January 2015[]
e. 2016 Replaced interior heating unit fan motor and exterior unit condens[e]r

The Horans further claimed that for the preceding eight years, they had cared for Ms. Mink and her ailing husband with no assistance from Ms. Marks. Based on these allegations, the Horans requested that the circuit court place the Property in a constructive trust for their benefit, order Ms. Marks to convey the Property to them, secure all past and future rental income paid by the current renters, and grant their costs and other further relief.

On March 1, 2017, the circuit court issued a memorandum opinion granting summary judgment in favor of Ms. Marks. The court found that the Horans had failed to state a claim for a constructive trust and that their claim of an express trust agreement was barred by the Statute of Frauds because the alleged agreement was not in writing.

This Court affirmed in an unreported opinion. *Horan v. Marks*, No. 143, Sept. Term 2017, 2018 WL 6131928 (Nov. 21, 2018).[4] We determined that the Horans' claim of an oral express trust in land was barred by the Statute of Frauds and that, as a matter of law, the facts alleged could not give rise to a constructive trust. *Id.* at *8. We observed that the purpose of a constructive trust "is to prevent the unjust enrichment of the holder of the property." *Id.* at *5 (quoting *Wimmer v. Wimmer*, 287 Md. 663, 668 (1980)). To sustain their claim for a constructive trust, the burden lay "with the Horans to adduce clear and convincing evidence that Marks engaged in wrongdoing relative to the 2013 Deed and/or that it would be inequitable for her to retain title." *Horan*, 2018 WL 6131928, at *7.

We found that "[t]here was no evidence that Marks engaged in any fraud or wrongdoing of any kind" to obtain the property and that "[t]he evidence, viewed in a light most favorable to the Horans, also does not support the imposition of a constructive trust on the ground of unjust enrichment." *Id.* That is because the Horans had presented no evidence that they contributed to the purchase price or paid the mortgage or other expenses

[4] On February 7, 2019, the Horans filed a "Motion to Extend Time to File Appeal Petition" in the Court of Appeals, which the Court treated as a late-filed petition for writ of certiorari (No. 510, Sept. Term, 2018). On March 11, 2019, the Horans filed a supplement to their petition and an addendum to their supplement. As of the date of this opinion, the Court of Appeals has not yet ruled on the petition.

prior to the deed conveying the Property to Ms. Marks, and the evidence that they had spent money on repairs of the Property and real estate taxes after Ms. Mink's death, while being permitted to retain rent proceeds, "does not amount to the type of inequity that would support a finding, by clear and convincing evidence, that Marks would be unjustly enriched if she were permitted to retain title." *Id.* We observed in a footnote that the Horans had claimed in their reply brief to have "spent $93,000 to repair and renovate the Property," but that the record did not contain support for that contention. *Id.* *7 n.9.

Based on our conclusion that the Horans had failed to identify a genuine dispute of material fact to preclude the entry of summary judgment, we affirmed the decision of the circuit court.

The 2017 Case

While the Horans' appeal of the circuit court's judgment in the 2016 Case was pending before this Court, the Horans filed this action seeking to recover the value of improvements they made to the Property (the "2017 Case"). The Horans claimed that Ms. Marks was unjustly enriched by their payment and rendering of services worth $93,398.56, which they itemized in a "Billing Statement" they attached to their complaint.[5] According to the Horans, the billing statement was prepared in response to a request from Ms. Marks's counsel, made at the summary judgment hearing *in the 2016 Case*, for an accounting of the monies spent on the Property.

[5] The Horans acknowledged that this expenditure had to be partially offset by $30,000 in rent they collected from the Property.

Ms. Marks moved to dismiss or, in the alternative, for summary judgment, arguing that the Horans had failed to set forth a valid claim for unjust enrichment or any other legal basis that would entitle them to the recovery of their claimed expenses.

After a hearing, the circuit court issued a memorandum opinion in which it found that the Horans' unjust enrichment claim against Ms. Marks was "not viable" and granted summary judgment in Ms. Marks's favor. The court found that "[t]here was never any contractual relationship" between the Horans and Ms. Marks, "whether oral or written," nor was there any document executed by Ms. Marks evidencing "that the Horans would make [the] repairs they did on the property and be reimbursed." The Horans noted this appeal.

DISCUSSION

The Horans argue that the circuit court erred in granting summary judgment in Ms. Marks's favor because, they contend, there were disputed material facts supporting their unjust enrichment claim. Specifically, the Horans argue that they made improvements to the Property which conferred a benefit on Ms. Marks and that it would be inequitable for Ms. Marks to retain the benefit of those improvements without fairly compensating them.

In this action, as in the previous litigation, the Horans seek to recover under a theory of unjust enrichment. In the 2016 Case, the Horans sought to impose a constructive trust, which "is an equitable remedy, not a cause of action in itself." *Chassels v. Krepps*, 235 Md. App. 1, 15 (2017), *cert. denied*, 457 Md. 677 (2018). "The constructive trust, like its counterpart remedies 'at law,' is a remedy for unjust enrichment." *Wash. Suburban Sanitary Comm'n v. Utilities, Inc. of Md.*, 365 Md. 1, 39 (2001) (citing 1 Dobbs, *Law of*

Remedies § 4.3(2), at 597 (1993) (footnote omitted)).[6] A constructive trust may be an appropriate remedy "where property was acquired through an improper method or a breach of a confidential relationship, or where there is a 'higher equitable call' on that property by the complaining party." *Chassels*, 235 Md. App. at 15-16 (quoting *Starleper v. Hamilton*, 106 Md. App. 632, 640 (1995)) (internal citation omitted). In this case, the Horans also seek to recover for unjust enrichment based on the same set of facts.

We affirmed the circuit court's entry of summary judgment on the Horans' claim for unjust enrichment in the 2016 Case. *Horan*, 2018 WL 6131928, at *6-8. In the course of considering that claim, we reviewed their claim that Ms. Marks had been unjustly enriched. Although the remedy sought in that case—a constructive trust—is different from the remedy sought in the 2017 Case—a monetary judgment—both lawsuits allege that Ms. Marks had been unjustly enriched by, among other things, amounts paid by the Horans and services the Horans had provided with respect to the Property. Indeed, the factual basis for the Horans' claim of unjust enrichment did not change between the filing of the two lawsuits. The Horans contend that the "Billing Statement" they attached to their complaint in the 2017 Case, and which forms the basis for their $93,398.56 damages claim in that case, was produced in response to a request made for the basis of their claim in the 2016

[6] The remedy of constructive trust was developed by the equity courts, before law and equity were consolidated, to "parallel" the quasi-contract theory used in law courts to remedy unjust enrichment. *Robinette v. Hunsecker*, 439 Md. 243, 255 n.12 (2014). "The distinction between the two remedies is 'procedural rather than substantive.'" *Id*. (quoting 5 Scott on Trusts (1989) § 461).

Case. Notably, every single line item on that billing statement was incurred before they filed the 2016 Case.[7]

Although Ms. Marks has not raised res judicata as a defense, this Court may consider res judicata on its own initiative. *See Holloway v. State*, 232 Md. App. 272, 282-83 (2017) (noting that cases may be decided on res judicata grounds even though the parties did not raise res judicata) (citing *Anne Arundel County Bd. of Educ. v. Norville*, 390 Md. 93, 105 (2005)). "Res judicata is an affirmative defense that precludes the same parties from relitigating any suit based upon the same cause of action because" the judgment already rendered "'is conclusive, not only as to all matters that have been decided in the original suit, but as to all matters which with propriety could have been litigated in the first suit.'" *Powell v. Breslin*, 430 Md. 52, 63 (2013) (quoting *Alvey v. Alvey*, 225 Md. 386, 390 (1961)). The doctrine "restrains a party from litigating the same claim repeatedly and ensures that courts do not waste time adjudicating matters which have been decided or *could have been* decided fully and fairly." *Norville*, 390 Md. at 107. The doctrine precludes relitigation "if (1) the parties in the present litigation are the same or in privity with the parties to the earlier action; (2) the claim in the current action is identical to the one determined in the prior adjudication; and (3) there was a final judgment on the merits in the previous action." *Powell*, 430 Md. at 63-64.

[7] The last date stated on the Billing Statement is May 27, 2016, when the Horans claim to have paid $126.75 for an "HVAC Service Call – Family Heating." The 2016 Case was filed in October 2016.

The first element of res judicata is satisfied here because the parties are identical. The second element is also satisfied because the claims are the same as both lawsuits are premised on unjust enrichment. Even if that were not the case, res judicata bars not only claims that were previously decided but also claims that "*could have been* decided fully and fairly" in the earlier final judgment. *Norville*, 390 Md. at 107. Maryland courts have adopted the transactional approach to determining whether a subsequent claim could have been decided with an earlier claim for res judicata purposes. *Id.* at 108-10. Under that approach, the critical question is whether "the two claims or theories are based upon the same set of facts and one would expect them to be tried together ordinarily." *Id.* at 109. If so, "res judicata generally prevents the application of a different legal theory to that same set of facts, assuming that 'the second theory of liability existed when the first action was litigated.'" *Id.* at 111 (quoting *Gertz v. Anne Arundel County*, 339 Md. 261, 270 (1995)). Here, even if the claims were different, they are unquestionably premised on the same set of facts.

The third element of res judicata is also satisfied as the circuit court entered summary judgment against the Horans on the merits in the 2016 Case. Accordingly, the Horans' claims in this action are barred by res judicata. We therefore affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.