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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

No. 2-094 / 91-1108

JERALD E. JORGENSEN,

Appellee,

vs.

SCOTT'S ROLLING HILLS FEEDLOT, INC.,

Appellant.

Appeal from the Iowa District Court for Winneshiek County, James C. Bauch, Judge.

Defendant appeals a judgment by the district court for plaintiff on his petition for rent of a feeding facility. **AFFIRMED.**

Richard D. Zahasky, Decorah, for appellant.

Thomas P. Jorgensen of Duncan, Jones, Riley & Finley, P.C., Des Moines, for appellee.

Considered by Schlegel, P.J., and Hayden and Sackett, JJ.

HAYDEN, J.

Plaintiff Jerald Jorgensen was the sole officer of Rolling Hills Feedlot, Inc. Rolling Hills was in the business of custom feeding beef cattle and swine. The feedlot facility consisted of 200 acres of land, an adjacent building site, the main feedlot facility, some machinery, and livestock. On July 23, 1990, Jorgensen sold Rolling Hills to Victor and Randy Scott for $625,000. Scotts proceeded to operate the business under the name of Scott's Rolling Hills Feedlot, Inc. (Scott's), the defendant herein.

The sales contract provided, "A separate agreement will be made regarding leased real property and crop in field currently held by J.E. Jorgensen." This provision referred to 760 acres of land adjacent to the Rolling Hills property. This land was owned by Aetna Life Insurance and leased to Jorgensen personally. The Aetna property contained crop land, grazing land, and a feeding facility.

After the sale Jorgensen began working for Scott's. He was permitted to live in a house on the Rolling Hills property without paying rent. The parties negotiated an agreement for rent of the Aetna pasture land and payment for the crop in field. Scott's did not pay rent for the feeding facility on the Aetna property.

On November 29, 1990, Scott's notified Jorgensen his employment was terminated. The parties have agreed Jorgensen's last day of work was December 1, 1990. Jorgensen was also required to vacate his living quarters.

On December 10, 1990, Jorgensen notified Scott's he was demanding rent of $125 per day, beginning on December 1, 1990, for the feeding facility on the Aetna property. He thereafter sent Scott's notice of termination and demand for possession. When Scott's refused to pay the rent, Jorgensen filed a petition for forcible entry and a claim for rent.

Jorgensen claimed the parties entered into an oral agreement for his employment for two years. He stated one of the terms of the contract was Scott's would not have to pay rent for use of the feeding facility on the Aetna property. Jorgensen believed Scott's breached the contract when it terminated his employment. He then sought rent for the use of the feeding facility.

In its decision of March 7, 1991, the district court concluded the forcible entry action was moot because Jorgensen's lease with Aetna expired on March 1, 1991. The court dismissed Jorgensen's claim for rent on the ground such an action could not be joined with a forcible entry action.

Jorgensen filed a motion pursuant to Iowa Rule of Civil Procedure 179(b). On May 7, 1991, the court reconsidered and concluded Scott's had waived the defense of misjoinder. The court found Jorgensen was entitled to rent of $125 per day for the feeding facility on the Aetna property. The court stated it did not specifically find there was an agreement between the parties for a specific

sum, but rather there was a basis in the record for paying the sum of $125 per day. Judgment of $11,250, plus interest, was entered against Scott's.

On May 16, 1991, Scott's filed a motion for a new trial. Marlene Scott, the wife of Randy Scott and Scott's bookkeeper, signed an affidavit stating she had found records in the Rolling Hills computer which appeared to show Hilltop Feeders of Iowa had been paying the rental payments for the Aetna property. Scott's believed this evidence showed Jorgensen had assigned his interest in the Aetna lease to Hilltop Feeders.

The district court denied the motion for a new trial. The court concluded the claimed newly-discovered evidence did not warrant the grant of a new trial. Scott's now appeals.

I. We must first determine our proper scope of review. Under Iowa Code section 648.5, a forcible entry action is in equity. However, an action for a money judgment is ordinarily at law. See Mosebach v. Blythe, 282 N.W.2d 755, 758 (Iowa App. 1979). We note the present action was filed in equity, and we determine it was heard in equity. Therefore our review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. Scott's contends there was no evidence of an oral agreement between the parties and thus the court should not have entered a judgment against it for rent on the Aetna property. Scott's states there was clearly no "meeting of the minds" about any terms for a rental agreement for the feeding facility because the parties had agreed Scott's would not have to pay rent for that property. It also claims the feeding facility was an essential part of Rolling Hills and thus was included in the purchase price under the sales contract of July 23, 1990.

We first note the sales contract specifically excluded the Aetna property. We conclude the parties intended to separately negotiate for Scott's use of that property. We reject Scott's claim the use of the feeding facility was included in purchase price under the sales contract.

We also note the district court stated it specifically was not finding there was a rental agreement between the parties for a specific sum. The district court's decision is therefore apparently based on unjust enrichment or a quasi-contract.

When the parties manifest their agreement by words the contract is said to be express. Duhme v. Duhme, 260 N.W.2d 415, 419 (Iowa 1977). An implied in fact contract arises from the conduct of the parties, not merely from their relationship, and requires an expression of assent. Irons v. Community State Bank, 461 N.W.2d 849, 855 (Iowa App. 1990). An implied at law or quasi-contract is no contract

at all, but a form of the remedy of restitution. Id. Quasi-contracts are imposed by law to prevent unjust enrichment. Id.

The fact that a contract is invalid because the minds of the parties did not meet as to some of the essential terms does not require that a party who furnishes something to the other party, relying upon the terms as he understood them, be without a remedy. Heninger & Heninger, P.C. v. Davenport Bank & Trust Co., 341 N.W.2d 43, 47 (Iowa 1983). In such cases the law implies a promise to pay the reasonable value of the services. Id. at 48.

We hold Scott's would be unjustly enriched if it were not required to pay rent for the Aetna feeding facility. Scott's has pointed to no benefit received by Jorgensen in exchange for the use of the feeding facility after his employment was terminated and he was required to leave his rent-free residence. We affirm the judgment against Scott's imposed by the district court.

III. Scott's also contends the district court should have granted its motion for a new trial based on newly-discovered evidence.

In ruling on a motion for a new trial, the trial court has broad discretion to determine whether the verdict effectuates substantial justice between the parties. Iowa R. App. P. 14(f)(3). We are slower to interfere with the grant of a new trial than with its denial. Iowa R. App. P. 14(f)(4). Generally, a trial court has broad discretion

in passing on motions for new trials, and only when there is a clear abuse of discretion will we interfere with a ruling upon the motion. Houvenagle v. Wright, 340 N.W.2d 783, 785 (Iowa App. 1983).

There are four requirements which a movant must satisfy in order to obtain a new trial on the basis of newly-discovered evidence: (1) the evidence was discovered following the trial; (2) the evidence was such that it could not have been discovered before conclusion of the trial in the exercise of diligence; (3) the evidence must be material and not merely cumulative or impeaching; and (4) such evidence would probably change the result if a new trial were granted. Miller v. AMF Harley-Davidson Motor Co., Inc., 328 N.W.2d 348, 353 (Iowa App. 1982).

We determine Scott's has not adequately shown the computer record in question could not have been discovered before conclusion of the trial in the exercise of diligence. The Rolling Hills computer records were in the control of Scott's continuously after the date of sale on July 23, 1990. Furthermore, we question whether the evidence would probably change the result if a new trial were granted. The computer record, which was generated by an employee of Scott's, showed at most Jorgensen had received certain payments from Hilltop Feeders. Scott's presented no other evidence to support its allegation Jorgensen had assigned his interest under the lease to Hilltop Feeders.

We hold the district court did not abuse its discretion in denying Scott's motion for a new trial. We affirm the district court on all issues.

AFFIRMED.