

IN THE COURT OF APPEALS OF IOWA

No. 9-179 / 98-728
Filed August 27, 1999

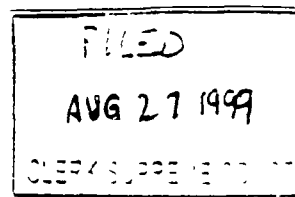
KEN STONEWALL and MICKI STONEWALL,

Petitioner-Appellees,

vs.

MAURINE STONEWALL,

Defendant-Appellant.



Appeal from the Iowa District Court for Marshall County, Carl D. Baker,
Judge.

Defendant appeals from a district court judgment entered in favor of plaintiffs
on their claim that defendant breached an oral contract to sell them real property

AFFIRMED AS MODIFIED.

Timothy A. Lynch of Van Orsdel, Lynch & Rouse, L.C., Des Moines, for
appellant.

Barry S. Kaplan of Fairall, Fairall, Kaplan, Hoglan & Condon, Marshalltown,
for appellees.

Considered by Sackett, C.J., and Vogel, and Zimmer, JJ.

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ZIMMER, J.

Defendant Maurine Stonewall appeals from a district court judgment entered in favor of plaintiffs on their claims of breach of contract and unjust enrichment. We affirm as modified.

I. Background Facts and Proceedings. Maurine Stonewall owns an acreage and farm house in Marshall County. Ken and Micki Stonewall began renting the property in August 1992. The parties agree Ken and Micki did so under an oral lease agreement with Maurine.

The current dispute arose in June 1996 when the parties encountered disagreement over two provisions allegedly included in the lease agreement. (1) an oral agreement regarding any improvements made to the rental property and (2) an oral agreement regarding sale of the leased premises to Ken and Micki. As a result of this dispute, Ken and Micki moved off of the land in March 1997 and filed the present action.

At a bench trial at law, Ken and Micki argued the oral lease agreement included an understanding that if Ken and Micki made any improvements to the property, they would be responsible for paying all labor costs while Maurine would pay for all materials expenditures. Maurine argued in her answer to the parties' petition that any improvements were made voluntarily. At trial, however, she testified that as part of the rental agreement the parties had agreed that if improvements were made, Maurine would pay for materials and Ken and Micki would supply labor.

Maurine did argue, however, the scope of the improvements actually made exceeded her expectations.

Ken and Micki also alleged Maurine orally agreed to sell them the leased premises. They contended Maurine was to offer them the property in June 1996 for \$22,000. They claimed that in addition to the \$22,000, they agreed to reimburse Maurine for her investment in any improvements to the property. They also claimed that under the terms of the agreement, if they were unable to purchase the property, Maurine was to reimburse them their labor costs and any remaining materials costs for which they had not yet been reimbursed. They claimed she breached the agreement when she refused to sell the property and failed to reimburse them for labor and remaining materials costs. They requested damages in the amount \$12,443 for third-party labor and unreimbursed materials made upon the alleged oral promise to sell the land.

Maurine responded the parties had discussed a sale, but had never agreed to include the proposed option clause in the rental agreement. She argued any proof of such an alleged oral agreement was incompetent under the statute of frauds. See Iowa Code § 622.32(3) (1997).

Ken and Micki finally argued Maurine would be unjustly enriched if she was allowed to recover possession of the property without reimbursing them for third-party labor and their unreimbursed materials expenditures. They requested \$12,443.¹

¹ A party may not recover on both express and implied contracts covering the same subject matter. See *Frontier Properties Corp. v. Swanberg*, 488 N.W.2d 146, 149 (Iowa 1992); *Maasdam v. Maasdam's Estate*, 237 Iowa 877, 884, 24 N.W.2d 316, 320 (1946)

The district court found Ken and Micki had proven the existence of an oral contract under which they were entitled to rent the property. It found the parties' rental agreement provided that if improvements were made, Maurine would pay for materials so long as Ken and Micki provided labor. It concluded that even if Maurine had not agreed to all of the improvements, her acquiescence was sufficiently demonstrated in that (1) she had seen the extensive improvements being made and did not object and (2) she paid for over \$19,000 in materials for the improvements without protest.²

The court also concluded the parties' oral contract provided Ken and Micki with an option to buy Maurine's property in June 1996 for \$22,000. In addition to the sale price, the court found Ken and Micki were to reimburse Maurine for her investment in the improvement projects.

The court further concluded Maurine would be unjustly enriched if she did not pay Ken and Micki for their remaining unreimbursed materials expenditures as well as for their third-party labor costs. It awarded them \$12,439.29.

Maurine appeals. She contends the district court improperly admitted oral proof of the parties' alleged oral option contract for the sale of the property in violation of the statute of frauds. She also argues even if the evidence was not

"One may, of course, plead these causes of action in separate counts." *Maasdam v. Maasdam's Estate*, 237 Iowa at 885, 24 N W 2d at 320.

² This was well over half of the materials costs accrued as of the date this action commenced.

improperly admitted, it is insufficient to prove the parties had entered into an oral agreement. She argues for these reasons, the damages judgment against her should be reversed.

II. Scope of Review. We review a case according to the way it was tried in the district court. *Neuzil v. City of Iowa City*, 451 N.W 2d 159, 163 (Iowa 1990) This case was filed and tried at law. Our review is therefore for errors at law. See Iowa R. App. P. 4; *Pierce v. Farm Bureau Mut. Ins. Co.*, 548 N.W 2d 551, 553 (Iowa 1996); *Neuzil v. City of Iowa City*, 451 N.W 2d at 163. Because our review is for errors at law, the trial court's findings of fact have the effect of a special verdict and are binding on us if supported by substantial evidence. See Iowa R. App. P. 4, 14(f)(1); *Neuzil v. City of Iowa City*, 451 N.W.2d at 163. Evidence is substantial if a reasonable mind could find it adequate to reach the same findings. See *Pierce v. Farm Bureau Mut. Ins. Co.*, 548 N.W 2d at 553.

III. Merits. The statute of frauds provides oral evidence of a promise to create or convey an interest in land is incompetent proof of such promise. See Iowa Code § 622.32(3) (1997); *Sun Valley Iowa Lake Ass'n v. Anderson*, 551 N.W.2d 621, 630 (Iowa 1996). Proof of such a contract must be in writing and signed by the party to be charged with the alleged contract. See Iowa Code § 622.32 (1997); *Davis v. Roberts*, 563 N.W.2d 16, 20 (Iowa App. 1997). The promise must be proven by a preponderance of clear, satisfactory, and convincing evidence. See *Sun Valley Iowa Lake Ass'n v. Anderson*, 551 N.W.2d at 630.

The statute of frauds is not a substantive rule of law forbidding, invalidating, or barring enforcement of oral contracts for the creation or transfer of an interest in land. See *In re Erickman's Estate*, 291 N.W.2d 308, 313, (Iowa 1980); *In re Lindsey's Estate*, 254 Iowa 699, 710, 118 N.W.2d 598, 605 (1962). Rather, it is a statutory rule of evidence which limits the manner in which such a contract may be proven. See *Johnson v. Ward*, 265 N.W.2d 746, 747-48 (Iowa 1978); *In re Lindsey's Estate*, 254 Iowa at 711, 118 N.W.2d at 605. Its purpose is to defeat objectives of fraud and perjury and protect innocent parties from the consequences thereof. See *Fairall v. Arnold*, 226 Iowa 977, 988, 285 N.W. 664, 670 (1939); *Leytham v. McHenry*, 209 Iowa 692, 695, 228 N.W. 639, 640 (1930).

There are several exceptions, however, which will eliminate the evidentiary bar imposed by the statute of frauds. First, where a party has rendered part performance, the evidentiary requirements of the statute of frauds do not apply. See *Pollman v. Belle Plain Livestock Auction, Inc.*, 567 N.W.2d 405, 407 (Iowa 1997). This includes receipt by the vendor of some or all of the purchase money. See Iowa Code § 622.33 (1997); *Davis v. Roberts*, 563 N.W.2d 16, 20 (Iowa App. 1997). It also includes situations where the plaintiff has taken possession of the land. See Iowa Code § 622.33; *Peddicord v. Peddicord*, 242 Iowa 555, 559, 47 N.W.2d 264, 267 (1951).

Second, proof of the elements of promissory estoppel will also remove an oral contract involving an interest in real estate from the statute of frauds. See *Pollman v. Belle Plain Livestock Auction, Inc.*, 567 N.W.2d at 407; *Gallagher, Langlas &*

Gallagher, 587 N.W.2d 615, 619 & n.3 (Iowa App. 1998). Third, parol evidence may be introduced to establish an oral agreement for the creation or transfer of an interest in real estate if the agreement is first admitted by oral evidence of the adverse party. See *Gardner v. Gardner*, 454 N.W.2d 361, 363 (Iowa 1990); *Davis v. Roberts*, 563 N.W.2d 16, 20 (Iowa App. 1997).

Maurine argues none of these exceptions apply. We agree there has been not been partial performance. No purchase money was received by Maurine. Ken and Micki paid her money pursuant to the rental agreement, not the alleged purchase agreement. This does not satisfy the exception. See *Pollman v. Belle Plain Livestock Auction, Inc.*, 567 N.W.2d at 409 (part-performance satisfied “only when the acts constituting partial performance are referable exclusively and unequivocally to the contract [I]f the acts claimed as part performance can be explained without reference to the alleged oral contract, they do not take the contract out of the statute of frauds.”). Nor did plaintiffs take or hold possession of the premises under and by virtue of the alleged oral option sale agreement. Rather, they were in possession as tenants under their lease and left when they terminated their lease. This does not satisfy the exception. See *id.*; *Brandt v. Schucha*, 250 Iowa 679, 692, 96 N.W.2d 179, 186 (1959) (to satisfy the exception, possession must be exclusively referable to the claimed sale contract). We also agree the elements of promissory estoppel have not been satisfied.

In admitting evidence of the parties’ alleged contract, the district court relied upon the adverse party admission exception. Maurine argues she did not admit the

contract at trial, and therefore parol evidence of the alleged contract was admitted in violation of the statute of frauds. Ken and Micki contend Maurine admitted the oral contract, and for that reason, it may be established by parol evidence notwithstanding the limitation that land contracts may only be proven by writings signed by the adverse party.

To satisfy the adverse admission exception, it is not necessary the adverse party explicitly admit the parties entered into a contract. *See McCutchan v Iowa State Bank of Fort Madison*, 232 Iowa 550, 556–57, 5 N.W.2d 813, 816 (1942), *Packwood Elevator Co. v. Heisdorffer*, 260 N.W.2d 543, 546 (Iowa 1977), *Davis v Roberts*, 563 N.W.2d 16, 20–21 (Iowa App. 1997). The exception will be sufficiently satisfied so long as the adverse party testifies to facts from which an admission can be clearly inferred by substantial evidence. *Id.*

The district court found an admission could be inferred from Maurine's testimony. In so doing the court supplemented her testimony with testimony from Ken and Micki regarding the alleged sale price of the land, the closing date of the sale, and arrangements to reimburse Maurine for her investment in the improvement projects. The court also noted Maurine's payment of over \$19,000 in materials for the improvements supported the conclusion the parties had entered into the alleged oral option contract.

The Iowa Supreme Court has previously held that

if the plaintiff relies upon the testimony of the defendant to establish the alleged oral contract, he must prove the same thereby, and cannot contradict or supplement the same by the testimony of other witnesses.

In such case the testimony of the adverse party must be sufficient in itself.

See McCutchan State Bank of Fort Madison, 232 Iowa at 554–55, 5 N W 2d at 815–16 (emphasis added). Relying upon *McCutchan*, we conclude the district court should not have relied on Ken and Micki’s testimony or Maurine’s payments for materials in determining whether the adverse party admission exception had been satisfied. While this evidence might have been helpful to the plaintiffs in proving the contract by clear, satisfactory and convincing evidence once the adverse party admission exception had been met, it was not competent to satisfy the admission exception itself.

We have carefully reviewed Maurine’s trial testimony. We find she never explicitly admitted an oral contract for the sale of land. Nor do we believe such an admission can be clearly inferred from her testimony by substantial evidence. In this regard, we note that as a matter of law it cannot be said Maurine indirectly admitted the contract because her testimony denying it was less credible than the plaintiffs’ testimony affirming it. That is, simply because the district court may have not believed her testimony that there was not a contract is not sufficient to satisfy the adverse party admission exception. *See McCutchan State Bank of Fort Madison*, 232 Iowa at 554–55, 5 N.W.2d at 816–17 (“The testimony of the defendant . . . upon the question of the oral contract, [is] conclusive, and the court cannot say that he is not telling the truth about the matter. . . . [T]he testimony of the defendant must be taken as true.”). We determine the district court erred in admitting parol evidence of the

parties' alleged oral contract on the basis of the adverse party admission exception. The parties alleged oral option contract has not been proven. However, the remaining elements of the parties' rental agreement have been sufficiently proven and are binding.

We conclude the judgment for damages entered against Maurine is not sustainable on the basis she breached an oral contract for the sale of real estate. Given the facts as found by the trial court, we further conclude the judgment against Maurine cannot be entirely sustained by the court's alternate damages recovery theory of unjust enrichment, i.e. quasi-contract or implied contract in law.

"A quasi contract or contract implied in law rests upon the equitable principle that one shall not be permitted to unjustly enrich himself at the expense of another or to receive property or benefits without making compensation therefor." *Guldborg v. Greenfield*, 259 Iowa 873, 878, 146 N.W.2d 298, 301 (1966). "Unjust enrichment" is the modern designation for the doctrine of quasi contracts or contracts implied in law. See *Robert's River Rides, Inc. v. Steamboat Dev. Corp.*, 520 N.W.2d 294, 302 (Iowa 1994).

Express and implied contracts cannot, however, coexist on the same subject matter, and where an express contract and implied contract purport to cover the same subject matter, the former must supersede the latter. See *Chariton Feed & Grain, Inc. v. Harder*, 369 N.W.2d 777, 791 (Iowa 1985). "Generally the existence of a contract precludes the application of the doctrine of unjust enrichment." See *Johnson v. Dogden*, 451 N.W.2d 168, 175 (Iowa 1990).

Here, the trial court awarded damages for labor and materials costs incurred for improvements made during the plaintiffs' rental period on the basis of unjust enrichment. However, the trial court found and the parties agree their rental agreement specifically covered this subject matter: Maurine was to pay for improvements and Ken and Micki were to provide labor. Because of the existence of this express agreement, the trial court erred in awarding Ken and Micki damages for their expenditures on the basis of the equitable theory of implied contract. The trial court erred in failing to limit their recovery to the terms of their express agreement.

Nevertheless, we cannot ignore our obligation to "affirm an appeal where any proper basis appears in the record for a trial court's judgment, even though it is not one upon which the court based its holding" or it is not a basis upon which the appellee seeks to uphold the judgment. *See Grefe & Sidney v. Watters*, 525 N.W.2d 821, 826 (Iowa 1994); *Newmire v. Maxwell*, 161 N.W.2d 74, 80 (Iowa 1968). Under the terms of their rental agreement, Ken and Micki are entitled to judgment in the amount of \$5,968.39 for their outstanding materials expenditures. However, pursuant to the terms of their agreement, they are not entitled to recover for labor. Their only possible recovery for labor was under the terms of the alleged option agreement, which we have already determined was not properly established under the statute of frauds.

For the foregoing reasons, we determine the trial court erred in admitting parol evidence of the parties' alleged oral option sale agreement in violation of the statute

of frauds. The parties' alleged oral option has not been proven. We further conclude recovery may not be had on the basis of unjust enrichment because the claimed damages arise from subject matter covered by an express contract. Pursuant to that express contract, plaintiffs are only entitled to recover \$5,968.39 for their unreimbursed materials expenditures. They are not entitled to receive damages for their labor expenditures. The ruling of the district court is modified accordingly.

AFFIRMED AS MODIFIED.