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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

WILLIAM FORTIN,	)	
Plaintiff/Cross-Appellant,	)	Filed September 25, 1986 24
vs.	)	
DANVILLE STATE SAVINGS BANK and HELEN WILLIAMS, Trustees of Trust A and Trust B Under the Last Will and Testament of Clair A. Williams, Deceased,	)	6-71 85-615
Defendants/Appellants.	)	

Appeal from the Iowa District Court for Des Moines County (No. CE 575-0381) - Harlan W. Bainter, Judge.

Defendants appeal and plaintiff cross-appeals the judgment in an action seeking reimbursement for capital contributions made during the life of a joint venture. **AFFIRMED.**

Bruce J. Schulte of Dailey, Ruther, Bauer, Schulte & Hahn, Burlington, for defendants-appellants.

D. Raymond Walton of Aspelmeier, Fisch, Power, Warner & Engberg, Mediapolis, for plaintiff/cross-appellant.

Heard by Snell, P.J., and Hayden and Sackett, JJ.

PER CURIAM 25

In 1965, plaintiff William Fortin began full-time salaried employment as a farmhand for his great-uncle, Clair Williams. Williams owned five separate farm tracts consisting of five hundred acres in Henry and Des Moines Counties. Williams was seventy-six years old and was no longer able to farm himself. He still raised hogs, however, and over the next few years taught Fortin much about farm management. In 1967, Fortin married and was allowed to occupy rent-free a house on one of Williams' farms. It had not been occupied for ten years, and Fortin and his wife performed extensive renovation. In 1969, Fortin began discussing with Williams how he might begin a farming career. Williams advised Fortin that none of his farms could be sold because following Williams' death they would be held in trust for the benefit of his wife and children. Ultimately, Williams hoped that his grandchildren, Russ and Rock Reed, would operate the farms. However, Williams was interested in establishing a business relationship with Fortin, and in 1970, they expanded the livestock operation. A hog confinement building was constructed, and Fortin assumed greater day-to-day management responsibility. Eventually, Fortin and Williams entered into a formal joint venture farming agreement on February 9, 1973. The agreement stated Williams would provide the land and Fortin the day-to-day management for the venture. Fortin would purchase certain farm machinery owned by Williams, and he also would purchase a one-half interest in the livestock and crops on Williams' farms. Fortin was to supply all of the equipment and machinery necessary for the livestock and farming operations and was to pay the entire cost of keeping the equipment and machinery running. The parties were to share the purchase price of livestock and feed and all items necessary to put the crop in the ground and raise livestock, such as fertilizer, chemicals, feed, veterinary bills, and medical supplies. The agreement further required Fortin

to repair and maintain all buildings and fences on Williams' farms with Williams assuming the cost of all materials necessary to repair and maintain the buildings and fences. The agreement made no provision for capital improvements. The joint venture could be terminated at the option of either party provided the other party was notified of such intention in writing.

On February 6, 1974, Clair Williams died. According to his will, the farms were transferred into two trusts. Williams' widow, Helen, and the Danville State Savings Bank were named trustees. Fortin continued to operate the Williams farms, making monthly reports to the bank's president, Dan Kelly. At the end of each fiscal year, the trusts and Fortin would settle on the basis of the monthly accountings.

From the date of Williams' death until the termination of Fortin's management in 1980, a number of projects were undertaken to improve the farm operation. A farrowing house, pig nursery, sow lean-to, and bulk feed bins were constructed. New water lines, field tile lines, fences, and a feed grinder were also installed. In each instance, Fortin discussed the need for the improvement with Kelly, and the trust agreed to provide the cost of materials while Fortin furnished the necessary labor and equipment. At no time did Fortin make any claim against Williams' estate for capital contributions, nor did he mention any desire for reimbursement to the trustees.

During the summers of 1973 to 1980, Williams' grandsons worked on the farms with Fortin. In the summer of 1980, a dispute arose between Fortin and Russ Reed, and the trusts issued to Fortin a notice of termination of the joint venture, effective October 1, 1980.

A series of meetings between the trustees, Fortin, and Williams' heirs occurred in an attempt to make a final settlement of accounts. No agreement

could be reached. Fortin claimed he should be reimbursed for the labor he contributed to capital improvements while he operated the farms.

In March of 1981, Fortin filed a petition in equity against the bank and Helen Williams seeking to recover $60,000 for his contributions to capital improvements on the Williams' farms under either an implied contract or unjust enrichment theory. He also alleged the trusts wrongfully retained items of farm equipment and prayed for some $10,000 in damages.

Following trial the court awarded damages of $26,645.99 based on Fortin's actual costs rather than reasonable or replacement value of the capital improvements. Certain specific undertakings were found to be repair and maintenance rather than capital improvements. Claims arising prior to the date of second publication of notice to creditors following Williams' death were found to be barred by the probate statute of limitations. A claim relating to field tile lines was disallowed on the ground that Fortin had failed to establish his actual cost. A claim for improvements to the home occupied by Fortin during the life of the joint venture was disallowed on the ground that the improvements were undertaken by Fortin on his own with his own funds without consultation with the trusts as joint venturers. The trial court further found the evidence insufficient to support Fortin's claim of ownership of certain specific items of equipment.

On appeal, the trustees assert that: (1) the evidence established that the capital improvements were the subject of separate and express contracts barring Fortin's claim and that some of the claims are barred by the statute of limitations governing contract actions; (2) Fortin's claim for reimbursement is barred by the principle of an account stated due to annual accountings where Fortin failed to request the reimbursement presently sought; (3) the trial court employed a measure of damages that was inappropriate under the unjust enrich-

ment theory upon which damages were awarded; and (4) any damage award should have been assessed against the joint venture rather than the individual joint venturers.

Fortin cross-appeals, claiming that (1) the trial court erred in determining that the probate statute of limitations barred certain claims which were not made against the estate of the decedent; (2) the trial court's award of damages should have been based on reasonable value of the capital improvements rather than actual cost to Fortin; (3) the evidence was sufficient to establish that certain undertakings constituted capital improvements rather than repair and maintenance for which no recovery could be allowed; (4) the evidence was not insufficient to establish labor costs relating to a repair and replacement of tile lines; (5) the evidence was sufficient to establish entitlement to reimbursement for improvements to a home occupied by Fortin during the life of the joint venture; and (6) the evidence was sufficient to establish Fortin's ownership of certain items of equipment alleged to have been converted.

Because this case sounded in equity, our review is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of fact, especially in matters involving credibility, but we are not bound by them. Iowa R. App. P. 14(f)(7).

> A joint adventure is defined as an association of two or more persons to carry out a single business enterprise for profit; also as a common undertaking in which two or more combine their property, money, efforts, skill or knowledge. The outstanding difference between a joint adventure and a partnership is that the former usually relates to a single transaction while the latter usually relates to a continuing business. (citations omitted)
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> As a rule, a joint adventure is characterized by a joint proprietary interest in the subject matter, a mutual right to control, a right to share in the profits and a duty to share the losses. (citations omitted)

Brewer v. Central Constr. Co., 241 Iowa 799, 806, 43 N.W.2d 131, 136 (1950); Johanik v. Des Moines Drug Co., 235 Iowa 679, 685, 17 N.W.2d 385, 389 (1945).

A joint venture must originate by either express or implied contract and so can exist only by voluntary agreement of the parties. Farm Bureau Service Co. of Hardin County v. Bavender, 217 N.W.2d 560, 563 (Iowa 1974); 48A C.J.S. Joint Ventures § 14 at 419-20 (1981). Ordinarily, the joint venture agreement controls as to the parties' liability to make contributions of capital to the common enterprise, as well as to their rights arising from such contributions. C.J.S. Joint Ventures § 29 at 452. Where the parties' agreement is not complete, resort must be made to other law to determine their rights and liabilities. J. Crane & A. Bromberg, Law of Partnership § 65 at 365 (1968). This principle is applicable in the present case as it is undisputed that the parties did not include a provision in the joint venture agreement concerning contributions to capital improvements.

The law governing operations of and accountings in joint ventures is that generally applicable to partnerships. Jensen v. Schreck, 275 N.W.2d 374, 378 (Iowa 1979). It is almost universally held that a law action is not maintainable between parties with respect to partnership transactions unless there has been an accounting or settlement of the partnership affairs. Hanson v. Lassek, 261 Iowa 707, 711-12, 154 N.W.2d 871, 874 (1967). "Accordingly, one partner cannot sue another at law to recover contributions to the partnership capital, a share of the profits or the proceeds of the sale of partnership property, until there has been an accounting of partnership affairs. Equity has exclusive jurisdiction of unsettled matters between partners. And this is true even though there has been a termination or dissolution of the partnership." Id. at 712, 154 N.W.2d at 874.

Iowa Code section 544.18 (1985) provides in pertinent part:

> The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

1. Each partner shall be repaid the partner's contributions, whether by way of capital or advances to the partnership property . . . .

* * *

2. The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by the partner in the ordinary and proper conduct of its business, or for the preservation of its business or property.

The equilibrating mechanism, by which one partner recovers from the partnership or his copartners any amounts he has paid in excess of his share, is variously called indemnification, contribution, or reimbursement. Crane § 65(b) at 371.

Generally, a joint venturer is entitled to reimbursement for all expenditures made in the ordinary course of affairs of the enterprise. C.J.S. Joint Ventures § 36 at 461. Thus, a joint venturer is entitled to be reimbursed by the venture for the value of labor and for hired labor if such labor is an expense of the venture rather than part of the venturer's contractual duty to furnish labor. Id. at 461-62. There is no question in this case that the payments made by Fortin were within the scope of the joint venture's business. Fortin was under no obligation to perform or pay for services not required by the joint venture agreement. Specifically, Fortin was under no contractual obligation to furnish labor for capital improvements.

Defendants contend that Fortin is precluded from claiming reimbursement for certain items because such contributions were completed prior to five years from the date Fortin filed this petition. Defendants rely on the five-year statute of limitations found in Iowa Code section 614.1(4) (1985). They argue that because each capital improvement was undertaken pursuant to a separate express agree-

ment, the statute of limitations began to run on each of these separate contracts from the date the improvement was completed.

Defendants' argument ignores the fact that all of the capital improvements occurred within the context of the joint venture. Therefore, Fortin properly brought this action for reimbursement after the joint venture terminated effective October 1, 1980.

Defendants also contend that Fortin is barred by Iowa Code section 633.410 (1985) from claiming reimbursement for contributions to the joint venture made prior to the death of Clair Williams.

The written joint venture agreement did not provide for continuation of the joint venture after the death of one of the co-venturers. Therefore, pursuant to Iowa Code section 544.31 (1985), the joint venture between Fortin and Clair Williams was dissolved by operation of law by the death of Williams. A new joint venture arose between Fortin and defendants after Williams' death when the venture continued in operation. We find, then, that Fortin's claims which arose prior to Williams' death are barred by Iowa Code section 633.410 because they were not asserted against Williams' estate. See 2 Barrett & Seago, Partners and Partnerships Law and Taxation C.8 § 3.1 at 20-21 (1956) (It is well settled that the death of a partner dissolves a partnership by operation of law. If the partnership is continued following the death of a partner, it would be a new partnership.).

Neither does defendants' theory of "account stated" bar Fortin's claim for reimbursement. In In re Koch's Estate, 256 Iowa 396, 400, 127 N.W.2d 571, 574 (1964), the Iowa Supreme Court defined an account stated as:

> "[A]n agreement, between parties who have had previous transactions of a monetary character, that all the items of the accounts representing such transactions are true, and that the balance struck is correct, together with a promise, express or implied, for the payment of such

> balance." It may be that an account stated need not include an agreement that all the items representing the transactions between the parties to it are true, but it includes an agreement which fixes the amount due by reason of such transactions. It virtually determines what items are correct, and the balance due.

The court further explained that an account stated extends only to those transactions contemplated by the parties. "The primary question in an action on an account stated is whether both parties intended the transaction to become a full and final settlement of the entire indebtedness represented thereby, and this question is determined from all the circumstances of the case." Id. at 575.

In the present case, it is apparent that both parties intended the annual accountings to cover the joint venture's day-to-day operations. These accountings did not contemplate a full and final settlement of the co-venturers' contributions to the capital improvements constructed within the year. The amounts included in the annual accountings which related to the construction of improvements were for materials which the trust had agreed to pay for and Fortin had advanced funds for during the year.

The trial court posited its decision on the principle of unjust enrichment. This concept of restitution has been accepted in several Iowa cases. In Gand v. Razanskas, 248 Iowa 1333, 1336, 85 N.W.2d 612, 614 (1957), the doctrine was applied as follows:

> A person who has been unjustly enriched at the expense of another is required to make restitution to the other.
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> A person is unjustly enriched if the retention of the benefit would be unjust. A person obtains restitution when he is restored to the position he formerly occupied either by the return of something which he formerly had or by the receipt of its equivalent in money.

Restatement of Restitution § 1 and comment a (1937); see also Shadle v. Borrusch, 255 Iowa 1122, 1126-27, 125 N.W.2d 507, 510 (1963); Schildberg Rock

Products Company v. Brooks, 258 Iowa 759, 770, 140 N.W.2d 132, 138 (1966). In applying the doctrine, the court in Key Pontiac Inc. v. Blue Grass Savings Bank, 265 N.W.2d 906, 908 (Iowa 1978), said: "Although what constitutes 'unjust enrichment' will vary from case to case, we are guided in our analysis by several well-settled principles. . . ." The court went on to quote again from the Restatement.

The court in judging the amount of unjust enrichment used figures supplied by plaintiff on the cost of labor and services rendered. Where deemed to be unsupported by the evidence the court reduced the amount, sometimes by half. Implicit therein is the trial court's determination that at least that much value and benefit is realized by defendants. We hold the correct measure of damages has been applied. In examining the items subjected to appeal by defendants and cross-appeal by plaintiff, we find sufficient evidentiary support for the trial court's findings and affirm the awards.

Defendants complain that the damage award should have been assessed against the joint venture rather than against defendants. This is a ploy designed to cut defendants' liability in half by having plaintiff assume half of the liability (to himself) as a party to the joint venture. We reject this totally meritless argument.

Costs are assessed to defendants-appellants.

AFFIRMED.