Kulke v. B&K Builders

762 N.W.2d 863 (2008) | Cited 0 times | Court of Appeals of Wisconsin | November 13, 2008

Before Higginbotham, P.J., Lundsten and Bridge, JJ.

¶1 B&K Builders appeals from a money judgment in favor of Duane Kulke. We affirm.

¶2 Kulke, doing business as Great Outdoors Landscaping, sued B&K on theories of breach of contract and quantum meruit. The complaint alleged that Kulke was a subcontractor for B&K on a specific project, that Kulke performed under the contract, but B&K did not pay the full amount due. In the alternative, Kulke alleged that he was entitled to payment under the implied contract theory of quantum meruit. After a trial, the court found that no express contract existed, but there was an implied contract. The court then applied the elements of unjust enrichment and awarded Kulke a monetary sum.

¶3 On appeal, B&K first argues that the circuit court erred by finding that no express contract existed. However, B&K does not explain how, if we agree with it on this issue, this would change the outcome. B&K's unarticulated theory appears to be that, if a contract existed, Kulke is limited to being paid the contract amount, even if he performed work beyond what was called for by the contract. B&K provides no legal argument in support of that proposition, and it is not immediately obvious to us why Kulke could not maintain a claim of unjust enrichment to seek compensation for services beyond the work covered by the contract.

¶4 Turning to the monetary award for unjust enrichment, B&K argues that the circuit court erred in its application of unjust enrichment. The elements of a claim of unjust enrichment are: (1) a benefit conferred upon the defendant by the plaintiff; (2) an appreciation or knowledge by the defendant of the benefit; and (3) acceptance or retention by the defendant of the benefit under circumstances making it inequitable for the defendant to retain the benefit without payment of its value. Ludyjan v. Continental Cas. Co., 2008 WI App 41, ¶7, 308 Wis. 2d 398, 747 N.W.2d 745.

¶5 B&K argues that the circuit court erred because it did not explain how B&K benefitted from extra work done by Kulke. We disagree with that reading of the decision. The court stated that this work "obviously would have had to have been done by someone else" if Kulke had not done it, and that "as a result of that [B&K] did not have to hire someone else to do that work."

¶6 B&K further argues that it did not benefit from extra work Kulke performed because B&K was not paid any extra for that work, since that work exceeded what was required by B&K's own contract for the project. B&K argues that the benefit of that work, rather than accruing to B&K, went to the entity

that hired B&K for the project, or to some other contractor who was responsible for that work, and was paid for it, even though it was instead done by Kulke. For this argument to be convincing, B&K would have to lead us through the evidence showing that Kulke's extra work was not included in B&K's contract. B&K's argument does not do this in any clear way, and therefore we conclude that B&K has not shown that the court erred in concluding that B&K benefitted from Kulke's work.

¶7 Finally, B&K's brief includes an argument that a money judgment in Kulke's favor was "improper" because of various flaws in Kulke's performance of the work. The argument is phrased in terms of Kulke's conduct being "improper or inappropriate," but we have not been able to discern a coherent legal theory in this argument. Accordingly, we reject it as inadequately briefed. See State v. Pettit, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992).

By the Court.--Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE809.23(1)(b)5. (2005-06).