David J. Dougherty, Appellant V. Samantha R. Pohlman, Respondent

2021 | Cited 0 times | Court of Appeals of Washington | January 12, 2021

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

DAVID J. DOUGHERTY, an individual, No. 53746-0-II

Appellant,

v.

SAMANTHA R. POHLMAN, in her capacity as personal representative of the ESTATE OF RAVEN J. DOUGHERTY, UNPUBLISHED OPINION

Respondent.

GLASGOW, J. David J. and Raven J. Dougherty dissolved their marriage in 2005 but remained in a relationship until 2015. In the dissolution, Raven 1 was awarded as her separate property a piece of undeveloped land in Buckley, Washington. David, a general contractor, helped that was completed in 2008. Raven and David lived together in the completed home until they ended their relationship.

In 2015, David sent a demand letter to Raven, alleging that she had orally agreed to compensate him for working on the house but recently refused to do so. Raven denied an agreement existed, claimed David owed her money under the prior dissolution decree, and refused to compensate him. Raven died in 2018.

In 2018, David sued estate and the parties proceeded to trial on his unjust

enrichment and quantum meruit claims. At estate brought a CR

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January 12, 2021 41(b)(3) motion to dismiss, arguing that claims were untimely under the three-year statute

of limitations. The trial court granted the motion to dismiss, and we affirm.

FACTS

David marriage was dissolved in 2005 in Illinois. Raven owned undeveloped

property in Buckley, and the court awarded it to her as separate property. Despite ending their

marriage, David and Raven remained in a relationship and lived together until separating in 2015.

David was a general contractor who built houses and owned an overhead door installation

business. From 2005 to 2008, David and Raven spent summers in Illinois and winters in

Washington. While in Washington, they lived in a motor Buckley property while

building a house there. David designed the house with the assistance of an architect friend. David

constructed many portions of the house and supervised subcontractors who completed specialized

tasks.

Raven kept a handwritten journal during the construction process. The journal chronicled

the progress of the house and included photographs of David working on the house.

The house was completed in 2008. David and Raven then periodically lived in it together.

David continued to split his time between Washington and Illinois, and he lived in the completed

Buckley house for multiple months-long stretches until 2015.

Raven was diagnosed with terminal cancer in 2014. In 2015, David and Raven separated

and ended their relationship. In December 2015, David hired an attorney who sent a demand letter to Raven asserting that she had orally agreed to grant David a 50 percent ownership interest in the property in exchange for construction work David performed.

at 330. The letter indicated that Raven refused to do so for the first time in 2015. Raven responded, arguing that David had no right to an ownership interest in the

property or monetary payment. Instead, the letter asserted that David still owed Raven money under the dissolution decree.

In 2017, David and Raven filed cross motions for civil contempt in Illinois to enforce provisions of the 2005 dissolution decree. During the contempt hearing, David testified about his work on the Buckley house and argued that he and Raven had orally agreed that the value of the time and labor he put into the Buckley house offset most of the money he owed Raven under the dissolution decree. David did not file any express or implied contract claims in conjunction with his cross motion for contempt. The Illinois court denied both motions, finding that neither party established willful noncompliance.

In 2018, Raven died from cancer. Samantha R. marriage, was estate. David filed a creditor claim estate seeking $208,372.43, the amount he said Raven owed him for his work on

the house. The estate claim.

Later in 2018, David filed a complaint in the Pierce County Superior Court estate to enforce the alleged oral agreement to give him a 50 percent ownership interest in the

property, bringing multiple causes of action including unjust enrichment and quantum meruit. The enrichment and quantum meruit survived. The parties proceeded to trial on the unjust enrichment and quantum meruit claims only.

estate moved to dismiss under CR 41(b)(3), arguing in part

that barred by the three-year statute of limitations. The estate contended that David could have filed his unjust enrichment and quantum meruit claims as early as 2008, when

he finished constructing the house, meaning his claims accrued in 2008. Because David waited

until 2018 to file his claims, the estate argued that the statute of limitations had expired.

David responded that his implied contract claim did not begin accruing until 2015, when

he alleged Raven first unequivocally refused to convey to him a 50 percent ownership interest in

the property. David explained, Prior to [2015] . . . based on his belief that there had

been an oral agreement or an agreement with Raven, [David] believed there was an actual contract

at the time. It was [not] until that belief was rebutted that he was able to . . . pursue

enrichment and quantum meruit claims. Verbatim Report of Proceedings (VRP) (July 31, 2019) at

109.

The trial court granted the estate)(3)

claims based on the statute of limitations. The trial case in chief established that his claims accrued any later than 2008 when the construction was

complete.

David appeals the t is unjust enrichment and

quantum meruit claims based on the statute of limitations. 2

2 David also challenges several of evidentiary rulings . And the estate

raised several alternative arguments in support of affirming the trial court statute of limitations issue is dispositive and does not rely on the contents of the 2015 letters, we do not reach any of these arguments. ANALYSIS

David contends that the trial court erred by dismissing his claims as untimely under the

three-year statute of limitations because he claims that the statute of limitations did not begin running until 2015 when, he says, Raven first told him she would not give him an interest in the real property. David argues that an unjust enrichment claim cannot accrue until the unjust retention of a benefit is until 2015. Br. of Appellant at 16-19.

The estate responds that a cause of action accrues when a party has the right to bring a claim for relief in court. The estate argues that David worked on the house from 2005 to 2008, and he could have brought an unjust enrichment or quantum meruit claim well before he did so in 2018, a decade after he completed the work in question.

To grant a motion to dismiss as a matter of law the evidence in the light most favorable to the plaintiff and rule as a matter of law that the plaintiff

, 2 Wn. App.

2d 343, 352, 409 P.3d 1162 (2018). We Rufin v. City of Seattle, 199 Wn. App. 348, 357, 398 P.3d 1237 (2017). The application of a statute of limitations is also a question of law that we review de novo. In re Miller Testamentary Credit Shelter Tr., 13 Wn. App. 2d 99, 104, 462 P.3d 878 (2020).

A. -Year Statute of Limitations

To prove unjust enrichment, the plaintiff must establish three elements:

receive[d] make it unjust for the defendant to retain the benefit without Young v. Young, 164 Wn.2d 477, 484- the benefit retained absent any contractual relationship because notions of fairness and justice

Id. at 484. To prove quantum meruit, the plaintiff must establish the existence of a contract implied in fact and must prove that (1) the defendant requested work, (2) the plaintiff expected payment for the work, and (3) the defendant knew or should have known the plaintiff

expected payment for the work. Id. at 484-85.

Under an action upon a contract or liability, express or implied, which

is not in writing, and does not aris [T]he statute of limitations applicable to a common law cause of action

for unjust enrichment . . . is equivalent to a cause of action for . . . implied in law [contract and] .

. . is three years Davenport v. Wash. Educ. Ass n, 147 Wn. App. 704, 737, 197 P.3d 686 (2008).

Here, both parties agree that the applicable statute of limitations period for both claims is

three years, but they dispute when the three-year period accrued. The parties do not dispute that

David last performed work on in 2008, and Raven did not pay him

money or deed him an interest in the property at or after that time.

B. Unjust Enrichment

In Eckert v. Skagit Corp., the plaintiff was a machinist who had developed a device on his

own time that the defendant, Skagit Corporation, had been using for about 18 years before Eckert

filed his complaint for unjust enrichment. 20 Wn. App. 849, 850, 583 P.2d 1239 (1978). Eckert

claimed use of the device had resulted in significant cost savings to the corporation and the

corporation had been unjustly enriched. Id. The Eckert court explained, Generally, a cause of action accrues and the statute of

limitations begins to run when a party has the Id. at 851. The

court agreed that the promise to pa broken. Id. While the record did not reflect a precise time when the claim for unjust enrichment

accrued, it was clear that the fact that Eckert had not been compensated was susceptible of proof

during the first [three] years of s invention. The cause of action

fully matured at that time. Id. The applicable statute of limitations was three years, and more than three years passed between accrual and commencement of the lawsuit. Id.

As in Eckert when he completed his work on the

home because it was susceptible of proof then. Because Raven had neither transferred a property interest to David nor paid him for his work on the property, David could have argued in 2008 when he completed work on the house that (1) he had conferred a benefit on Raven, (2) he did so at his expense, and (3) it was unjust for Raven to retain that benefit without compensating him.

David argues that under Dragt v. Dragt/DeTray, LLC, 139 Wn. App. 560, 576, 161 P.3d

473 (2007), an unjust enrichment claim requires the unjust retention of a benefit, and Raven did not unjustly retain the benefit of his work until she expressly refused to pay him in 2015. But the Eckert court did not require that the time of accrual be precisely defined where it was clear that more than three years had passed between the time when the claim was susceptible to proof and the complaint. In this case, David went uncompensated for several years after he became entitled to compensation because he had completed his work on the property in 2008.

We also reject unjust retention and repudiation must be unequivocal

and that this did not happen until Raven responded to cites Alaska Pacific Trading Co. v. Eagon Forest Products, Inc., 85 Wn. App. 354, 365, 933 P.2d 417

(1997), for this proposition, but this case is not applicable because it addresses contractual repudiation, not unjust enrichment. Alaska Pacific thus does not support a requirement that the unjust retention of a benefit be unequivocal on Wallace Real Estate

Investment, Inc. v. Groves, 124 Wn.2d 881, 898, 881 P.2d 1010 (1994), is misplaced because

Wallace deals with anticipatory breaches, not unjust enrichment.

accrued more than three years before David brought his

unjust enrichment claim.

C. Quantum Meruit

Like his unjust enrichment claim, quantum meruit claim was susceptible to proof

and also accrued no later than 2008. David could have argued in 2008 that (1) Raven solicited

construction of the house, (2) David expected to be compensated for it, and (3) Raven

knew David expected to be compensated.

David argues that he was incapable of pursuing any quantum meruit claim until 2015, when

Raven allegedly first refused to convey to him a 50 percent ownership interest in the property

under the alleged oral agreement. David argued at trial that rior to [2015] . . . based on his

belief that there had been an oral agreement or an agreement with Raven, [David] believed there

was an actual contract at the time. It was [not] until that belief was rebutted that he was able to

then pur . VRP (July 31, 2019) at 109.

We reject this argument because an implied contract claim begins to accrue when the

evidence of the claim is sufficiently matured to establish the elements in court, not the date when

the plaintiff realizes they could bring a claim. See ship v. Vertecs Corp., 158 Wn.2d 566, 575-76, 590, 146 P.3d 423 (2006). Contract claims like the one here

when the plaintiff learns that [they have] a legal cause of action; rather, the action accrues when

the plaintiff discovers the salient facts underlying the elements of the cause of action Id. at 576

(emphasis added). Even if David believed Raven would compensate him at some point with a 50

percent ownership interest in the property, the salient facts underlying his implied contract claim rested on knowledge David already had in 2008 that he had constructed a house for Raven believing he would be compensated, yet he did not receive compensation.

In sum, we because he did not bring

them within the three-year statute of limitations. argument that the statute of limitations should have been tolled because he believed until 2015 that Raven would compensate him for his work on the property, is incorrect under the proper analysis of accrual for unjust enrichment and quantum meruit claims.

Because we hold that the three- by the time he filed his lawsuit, admissibility of the contents of the letters exchanged in 2015, as well as their arguments regarding the admissibility of other evidence, are irrelevant. We therefore do not address any of the remaining arguments.

CONCLUSION

We affirm CR 41(b)(3) s claims because the statute of

limitations had run before David filed his complaint and they were untimely. A majority of the panel having determined that this opinion will not be printed in the

Washington Appellate Reports, but will be filed for public record in accordance with RCW

2.06.040, it is so ordered.

Glasgow, J. We concur:

Sutton, A.C.J.

Cruser, J.