THE SUPREME COURT OF NAURU

[CIVIL JURISDICTION] **Civil Suit No. 03 of 2018**

Between: Angelina Samson

PLAINTIFF

AND: Ding Ding Jodie Bam

DEFENDANT

Before: Judge Rapi Vaai

APPEARANCES:
Appearing for Plaintiff: V Clodumar
Appearing for the Respondent: S. Valenitabua

Date of Hearing: 4/12/2019
Date of Submissions: 5/12/2019
Date for Decision: 17/1/2020

Ruling

1. This ruling is concerned with the counterclaim by the defendant to recover costs of renovations totaling $6000 she spent on the house, ownership of which was determined by the Nauru Lands Committee in 2010 to vest in the plaintiff.

2. The determination by the Nauru Lands Committee was challenged by the defendant as ultra vires. It was raised as a defense to an action by the plaintiff to evict the defendant from the house.
This court by a written ruling dated 26th July 2019 struck out and dismissed the defendants' ultra vires challenge which in effect deprived her of any defense against the claim by the plaintiff for eviction. The court did not however issue an eviction order. It will do so in this ruling.

Claim for compensation

3. The defendant claim compensation for the costs of repair work she did when she moved into the house which she alleged was in the year 2010. Minor repairs were done in 2010, but it was in the year 2018 when she received her Ronwan payments that she undertook major repairs at a cost of $6000. She claimed the house was in a state of disrepair and in run down condition. She replaced all the doors, installed louvre windows, repaired the ceiling, and did some electrical work as well as painting.

4. One of her brothers who assisted in the purchase of materials as well as with the repair work confirmed the plaintiff's testimony as to the repair work and the fact that no receipts were issued by the Chinese shops and Capelle store from which the materials were purchased.

5. No documentation was produced to support the defendant's claim that $6000 was spent on materials and labour.

6. The plaintiff did not tender evidence. Without knowledge and authority of the plaintiff the defendant allegedly undertook the repairs.

The Law

7. Both parties accept that the doctrine of unjust enrichment is part of the law of the Republic. The doctrine was expressed by the Lord Wright in *Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbous Ltd*[1]:

[1] (1943) AC 32 at 61 -62

> *" It is clear that any civilized system of law is bound to provide remedies for case of what has been called unjust enrichment or unjust benefit, that is to prevent a man from retaining the money or some benefit derived from another which it is against conscience that he should keep. Such remedies in English law are generically different form remedies in contract or tort, and are now recognized to fall within a third category of the common law which has been called quasi contract or restitution"*

8. The essential requirement s for a successful claim were stated by the Supreme Court of Canada in *Pettkuns v. Becker*[2] to be an enrichment, a corresponding deprivation and absence of any juristic reason for the retention of the enrichment.

Submissions

9. Mr Clodumar for the defendant contended that as the plaintiff did not tender evidence to rebut the defendant's evidence, the counter claim for $6000 repairs should be granted.

10. Mr Valenitabua submitted that the defendant unlawfully occupied the house and if repairs were done it was without knowledge of the plaintiff. As there are no receipts for the material allegedly purchased nor proof of Ronwan payment, the claim should be rejected.

Discussion

11. There is no doubt that the equitable doctrine of unjust enrichment is part of the law of Nauru. What is in doubt is the basis upon which compensation for unjust enrichment should be assessed. Different terms have been used in judgments, throughout the commonlaw countries. In *Morris v. Morris*[3] McLelland J of the Equity Division of the Supreme Court of New South Wales applied the test which the Privy Council expressed in *Chalmers v. Pardoe*[4] which highlighted the need to assess "the sums expended" and the

[2] (1980) 2 SCR 834
[3] (1982) 1 NSWLR 61
[4] (1963) 1 WLR 677

amounts of money....expended." In *Peel v. Canada*[5] the Supreme Court of Canada made references "to benefit gained" and "corresponding detriment sustained"

12. There is not one simple method of assessment which can be applied to all cases. It is a question of the amount which in the circumstances of the particular case will satisfy the requirements of equity. In some cases the value of the benefit may be the appropriate guide while in other cases the cost incurred by the plaintiff may be better measure.

13. This doubt however does not arise here since the focus of the determination is whether $6000 was spent by the defendant on repairs. If she did, it is common ground that the plaintiff should compensate her.

14. The court has very serious doubt concerning the veracity of the defendant's testimony. She could have obtained receipts if demanded. But even if receipt were not available she could have produced a list of all the items purchased and repairs undertaken.
She could have had a builder examine the work that was done and submit a report. The burden of proof is on the defendant to prove her counterclaim. It is not sufficient for her, as Mr Cloduamr suggested in submissions, to make the oral allegation which should be believed and accepted in the absence of rebuttal by the other party. Onus of proof does not shift to the defendant.

15. The site visit by the Court and Counsels did not in any way support the defendant's counterclaim. The house is still in a state of disrepair. The counterclaim that all doors were replaced is false; a very significant part of the ceiling needs repairs; although a significant part of the house has louvre windows, there was nothing to indicate which louvres were replaced by the defendant. If any repairs were done, it was done for her convenience. There was simply no noticeable visual sign of any major improvement made during the last 12 months.

[5] (1992) 3 SCR 762

16. In 2018 when the defendant as she alleged commenced work with the repairs, these proceedings which sought her removal from the house have already commenced.
Indeed when she occupied the house in 2010 the plaintiff had already been determined by the Nauru Lands Committee to be owner of the house.

17. It is difficult to understand how improvements carried out to the building of another person can create an equity based on unjust enrichment when the owner has expressly forbidden the occupation of her house.

18. No doubt there can be circumstances where a claim to unjust enrichment might still succeed notwithstanding an expressed wish and demand by the owner to vacate the house and cease occupation. There could for example a genuine dispute as to ownership of the house. But there is nothing in the evidence that would entitle this defendant to succeed on a claim in equity based on costs of renovations when clearly title to the house was established since 2010, and after the court proceedings for her eviction was commenced.

19. It is not an essential requirement for a successful claim that the plaintiff knew the defendant was expending money on repairs. Cases show that the essential requirements are the deriving of a benefit by the plaintiff at the cost of the defendant in circumstances in which it would be unfair for that benefit to be retained by the plaintiff. If the plaintiff has known of the repair work and had either knowingly allowed the defendant to continue with it, that is clearly a relevant factor which may demonstrate the unfairness of allowing the plaintiff to retain the benefit.

20. Whatever repair work the defendant performed it could not be classified as a benefit to the plaintiff. Mr Clodumar conceded in response to question from the bench that the repair work was for the convenience of the defendant.

21. But even if there were repairs which can be treated as a benefit, the decided cases show that the ultimate test is the unfairness of allowing the benefit to be retained by the plaintiff. Contrary to the demands and wishes of the plaintiff the defendant continued to occupy the house for nine years. The nature of the repairs and the circumstances under which they were affected

leads to the obvious conclusion that it would not be unjust for the plaintiff to retain whatever benefit may have been occasioned.

Orders

1. The counter claim is dismissed.

2. The defendant, her family, relatives and agents are ordered to vacate the house by Thursday the 30th January 2020.

3. Costs of the plaintiff to be taxed by the Registrar if not agreed upon.

Dated this 17th day of January, 2020

Judge R. Vaai