[Cite as *Bowers Constr. Co., Inc. v. Chuparkoff*, 2010-Ohio-419.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

BOWERS CONSTRUCTION CO., INC.	C.A. No. 24775
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
TED & MARGARET CHUPARKOFF	AKRON MUNICIPAL COURT COUNTY OF SUMMIT, OHIO
Appellants	CASE No. 08CV12792

DECISION AND JOURNAL ENTRY

Dated: February 10, 2010

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} There was a fire at a building owned by Ted and Mary Chuparkoff. After extinguishing the fire, the Akron Fire Department asked Bowers Construction Company to board up the building. Two of Bowers' employees spent four hours boarding up several windows and a hole in the roof. While they were working, the Chuparkoffs arrived and had a conversation with them. A few weeks later, Bowers sent the Chuparkoffs a bill for $988. When the Chuparkoffs refused to pay it, Bowers sued them. The municipal court determined that the Chuparkoffs were liable under the doctrines of quasi-contract and quantum meruit and found that $774 was the reasonable value of the work. The Chuparkoffs have appealed, arguing that the municipal court incorrectly denied their motion for a directed verdict, incorrectly let Bowers amend its complaint at trial, incorrectly granted Bowers a judgment based on quantum meruit, and incorrectly determined that the fire department had the authority to direct Bowers to board

up the building. This Court affirms because the municipal court correctly denied the Chuparkoffs' motion for a directed verdict, it correctly concluded that the fire department had authority to secure the building, and there was sufficient evidence to support Bowers' recovery for quantum meruit.

DIRECTED VERDICT

{¶2} The Chuparkoffs' first assignment of error is that the municipal court incorrectly denied their motion for a directed verdict. Their second assignment of error is that the court incorrectly granted Bowers a judgment on the basis of quantum meruit because it did not plead that claim in its complaint, amend its complaint prior to trial, or modify its complaint at trial with their agreement. Because these assignments of error raise related issues, this Court will address them together.

{¶3} The caption on Bowers' complaint was "Complaint on Account, Breach of Contract." The Chuparkoffs have argued that, since Bowers did not prove that it had an account with them and admitted that there was no contract, the municipal court should have granted their motion for a directed verdict. They have also argued that, to the extent the court let Bowers amend its complaint at trial, it violated Rule 15 of the Ohio Rules of Civil Procedure and unduly prejudiced their defense.

{¶4} Under Civil Rule 50(A)(4), a trial court should grant a motion for a directed verdict if, after construing the evidence most strongly in favor of the non-moving party, it concludes "that upon any determinative issue reasonable minds could come to but one conclusion . . . and that conclusion is adverse to [the non-moving] party." The Chuparkoffs did not move for a judgment in their favor until the close of all the evidence. Bowers has not disputed that the evidence did not support its attempt to recover for breach of contract or on an

account. Instead, it has argued that its complaint and the evidence at trial supported a claim of quantum meruit.

{¶5} Civil Rule 8(A) "requires that a complaint state a cause of action through 'a short and plain statement of the claim showing that the [party] is entitled to relief . . . .'" *Truax v. Arora*, 9th Dist. No. 2758, 1993 WL 99893 at *2 (Apr. 7, 1993) (quoting Civ. R. 8(A)). "[Rule] 8(F) further provides [that] '[a]11 pleadings shall be so construed as to do substantial justice.'" *Id*. (quoting Civ. R. 8(F)). "This liberal pleading rule merely requires sufficient operative facts which give fair notice of the nature of the action, and permits as many claims for relief to which a party may be entitled under the operative facts." *Id*. "Any legal theory applicable to the stated facts will support a recovery." *Id*.

{¶6} A successful claim of quantum meruit requires proof that: "(1) a benefit has been conferred by a plaintiff upon a defendant; (2) the defendant had knowledge of the benefit; and (3) the defendant retained the benefit under circumstances where it would be unjust to do so without payment." *Bldg. Indus. Consultants Inc. v. 3M Parkway Inc.*, 182 Ohio App. 3d 39, 2009-Ohio-1910, at ¶16 (quoting *Chef Italiano v. Crucible Dev. Corp.*, 9th Dist. No. 22415, 2005-Ohio-4254, at ¶26). The plaintiff must also "prove the reasonable value of the services rendered." *Stoebermann v. Beacon Journal Publ'g Co.*, 177 Ohio App. 3d 360, 2008-Ohio-3769, at ¶29 (quoting *Watterson v. King*, 166 Ohio App. 3d 704, 2006-Ohio-2305, at ¶16).

{¶7} Bowers alleged enough facts in its complaint to support a claim for quantum meruit. It alleged that the Akron police department called it out to the Chuparkoffs' building and told it that the building needed to be boarded up. It also alleged that Bowers did the work, that it "was emergency work that needed to [be] done," and that the "work was done pursuant to the law." It further alleged that the Chuparkoffs "are liable for payment for [the work,]" but had not

paid. Accordingly, in alleging that it conferred a benefit on the Chuparkoffs by doing work for them that was required by the city and alleging that it was not reimbursed for that work, Bowers set forth a claim for quantum meruit in its complaint.

{¶8} Because the complaint supported a claim of quantum meruit from the start, Bowers did not have to amend it to add such a claim. The municipal court, therefore, correctly concluded that the Chuparkoffs were not entitled to a directed verdict just because there was no evidence of a contract or an account. The Chuparkoffs' first and second assignments of error are overruled.

QUANTUM MERUIT

{¶9} The Chuparkoffs' third assignment of error is that the municipal court incorrectly awarded Bowers a judgment on the basis of quantum meruit. It has argued that Bowers did not present any evidence to support such a claim. "When applying a sufficiency-of-the-evidence standard, a court of appeals should affirm a trial court [if] 'the evidence is legally sufficient to support the [judgment] as a matter of law.'" *Bryan-Wollman v. Domonko*, 115 Ohio St. 3d 291, 2007-Ohio-4918, at ¶3 (quoting *State v. Thompkins*, 78 Ohio St. 3d 380, 386 (1997)).

{¶10} As this Court previously noted, to prove its claim, Bowers had to show that it conferred a benefit on the Chuparkoffs, that they had knowledge of the benefit, and that they retained the benefit under circumstances in which it would be unjust for them to do so without payment. *Bldg. Indus. Consultants Inc. v. 3M Parkway Inc.*, 182 Ohio App. 3d 39, 2009-Ohio-1910, at ¶16. It also had to prove the reasonable value of its services. *Stoebermann v. Beacon Journal Publ'g Co.*, 177 Ohio App. 3d 360, 2008-Ohio-3769, at ¶29.

{¶11} Bowers' estimator testified that he received a call from the Akron police or fire department asking him to come out to the Chuparkoffs' building. He said that, when he arrived,

he saw the fire department putting out a fire and that most of the windows and doors of the building were broken or open. He said that the fire department wanted him to board up the windows to prevent kids from entering the building. He also said that the fire department was not allowed to leave until the building was secure. He, therefore, had a work crew come out to board up the building. He further said that the amount Bowers billed the Chuparkoffs was reasonable based on the cost of materials and the time needed to perform the job.

{¶12} Mr. Chuparkoff testified that, as soon as he and his wife learned from the police that there had been a fire at their building, they drove to it. He said that, by the time they arrived, it was dark, but there were two men outside working on the building. He introduced himself and had a brief conversation with them. He said that, after about five minutes, he and his wife left. He conceded that the building needed to be boarded up, but said that, if he had learned about the fire earlier in the day, he could have had a maintenance worker or his sons do it instead.

{¶13} Construing the evidence in a light most favorable to Bowers, it was sufficient to support a claim for quantum meruit. There was evidence that Bowers boarded up the Chuparkoffs' building, which the fire department required to be done immediately to prevent children from entering the premises. There was evidence that the Chuparkoffs knew Bowers was performing the work and did not try to stop them or tell them that they would do the work themselves. There was also evidence that Bowers incurred expenses for labor and materials in doing the work for the Chuparkoffs. The evidence, therefore, supported a finding that it would be unjust to let the Chuparkoffs keep the benefit of Bowers' work without compensating it. Bowers also presented evidence about the reasonable value of its work. Accordingly, the municipal court's conclusion that Bowers could recover for quantum meruit is supported by sufficient evidence. The Chuparkoffs' third assignment of error is overruled.

FIRE DEPARTMENT'S AUTHORITY

{¶14} The Chuparkoffs' fourth assignment of error is that the municipal court incorrectly relied on Section 93.14 of the Akron Codified Ordinances to support its determination that the fire department had authority to direct Bowers to board up their building. They have argued that Section 93.14 does not give the fire department carte blanche authority to board up every building that has been damaged by fire. They have also argued that the court incorrectly took judicial notice of the ordinance.

{¶15} Under Section 93.14, "[t]he Fire Official shall investigate . . . every fire . . . occurring within the [city] that is of a suspicious nature or which involves the loss of life or serious injury or causes destruction or damage to property. Such investigation shall be initiated immediately on the occurrence of such fire . . . and if it appears that such an occurrence is of a suspicious nature, the Fire Official shall take charge immediately of the physical evidence, and in order to preserve any physical evidence relating to the cause or origin of such fire . . . take means to prevent access by any person or persons to such building . . . until such evidence has been properly processed." The municipal court concluded that Section 93.14 gave "the fire department . . . the legal authority to order the boarding up of [the Chuparkoffs'] property."

{¶16} The Chuparkoffs submitted a newspaper article about the fire reporting that there was evidence of forced entry at the building and that the fire appeared to be intentionally set. The municipal court, therefore, correctly concluded that the fire department could have determined that the fire was "of a suspicious nature," requiring it to "take means" to secure the building such as directing Bowers to board it up.

{¶17} Regarding whether the municipal court could take judicial notice of Section 93.14, Rule 44.1(A)(2) of the Ohio Rules of Civil Procedure allows a court to "take judicial

notice . . . of a municipal ordinance within the territorial jurisdiction of the court without advance notice in the pleading of a party or other written notice." The Chuparkoffs' fourth assignment of error is overruled.

CONCLUSION

{¶18} The municipal court correctly granted Bowers Construction Company a judgment on the basis of quantum meruit. The judgment of the Akron Municipal Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Akron Municipal Court, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellants.

CLAIR E. DICKINSON
FOR THE COURT

CARR, J.
MOORE, J.
CONCUR

APPEARANCES:

TED CHUPARKOFF, attorney at law, for appellants.

THOMAS C. LOEPP, attorney at law, for appellee.