

STATE OF MICHIGAN  
COURT OF APPEALS

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KITCHEN DOCTOR, INC.,

Plaintiff-Appellee,

v

AUTHENTIC PROPERTIES, LLC.,

Defendant-Appellant,

and

RANDALL HODDER,

Defendant.

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UNPUBLISHED

July 13, 2010

No. 290930

Ingham Circuit Court

LC No. 07-001840-CK

Before: TALBOT, P.J., and FITZGERALD and DAVIS, JJ.

PER CURIAM.

Defendant Authentic Properties<sup>1</sup> appeals as of right from the judgment for the plaintiff following a bench trial. Finding no error requiring reversal, we affirm.

I: Factual Background

In February 2007, defendant was preparing to open a restaurant named Dublin Square in East Lansing. Among the companies hired to help complete construction of the restaurant was plaintiff, who was hired to install stainless steel panels in the kitchen. Plaintiff's president, Ron Farrugia, dealt directly with a man named Randall Hodder. Hodder executed a contract with Farrugia to complete the kitchen for \$12,770. Plaintiff purchased the necessary materials and began work on the kitchen, and Hodder paid plaintiff \$3,000 in cash. Plaintiff then finished the work, and submitted its bill to defendant for the balance of the contract price. When Farrugia did not receive payment, he went to the Dublin Square site. Farrugia claimed that he was told to speak with Paul Vlahakis, a member of defendant, about getting paid. Vlahakis was not in, so

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<sup>1</sup> Because Authentic Properties is the only defendant with an interest in this appeal, for the purposes of this opinion the singular "defendant" will refer to it exclusively.

Farrugia approached Mark Fineout, who was apparently the general contractor for the Dublin Square project. According to Farrugia, Fineout said that Hodder had run “off with the money,” and that they could not pay Farrugia at the moment, but that they would eventually. Defendant never paid plaintiff.

Plaintiff filed this action in district court, alleging breach of contract. Defendant answered, denying that plaintiff and defendant ever entered into a contract. Defendant claimed that plaintiff’s contract was with Hodder only, that defendant had already paid Hodder, and that plaintiff needed to pursue Hodder for payment. Plaintiff filed an amended complaint, adding Hodder as a defendant<sup>2</sup> and adding claims for unjust enrichment, quantum meruit, and foreclosure of construction lien. With the addition of the equitable claims, the case was removed to circuit court on plaintiff’s motion.

Before trial, defendant moved for the dismissal of the foreclosure of construction lien claim, alleging that the lien itself was not valid, not having been filed within 90 days of the last work performed, as required by statute. At trial, plaintiff was willing to stipulate to the dismissal of the count, but defendant would not, because it wished to seek attorney fees for having to defend a vexatious count. The court found the lien invalid and dismissed the count after the close of plaintiff’s case-in-chief. In subsequent proceedings, defendant was awarded \$25,417.13 in attorney fees for defending the lien count.<sup>3</sup>

The main factual issue at trial was whether Hodder was an agent of defendant with the ability to bind defendant to a contract with plaintiff. The trial court found that Hodder was defendant’s apparent agent, and that plaintiff was entitled to recover under either a breach of contract, unjust enrichment, or quantum meruit theory. Defendant brings this appeal.

## II: Jurisdictional challenge

Defendant argues that the circuit court did not have jurisdiction over the action. We review de novo the legal question of whether the trial court had subject-matter jurisdiction. *Iron Mountain Info Mgt, Inc v State Tax Comm*, 286 Mich App 616, 619; 780 NW2d 923 (2009).

Michigan circuit courts are courts of general jurisdiction. MCL 600.601. They have “original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given . . . to some other court.” MCL 600.605. Michigan district courts are given exclusive jurisdiction over civil matters where the amount in controversy is less than \$25,000, MCL 600.8301, but do not have jurisdiction over equitable actions, MCL 600.8315. Subject-matter jurisdiction is the court’s right to “exercise judicial power over a class of cases, not the

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<sup>2</sup> It appears Hodder was never found and served, and was dismissed from the action.

<sup>3</sup> It appeared plaintiff intentionally misstated the last date of work performed as June 18, 2007, in order to make the claim of lien appear to have been filed within 90 days of that date. That date was not within 90 days of the filing date, so plaintiff attempted to file a “corrected” claim of lien by crossing out “June” and writing in “July.” By all evidence, the last date plaintiff performed work at Dublin Square was in February 2007.

particular case before it.” *Altman v Nelson*, 197 Mich App 467, 472; 495 NW2d 826 (1992). Subject-matter jurisdiction “does not depend on the truth or falsity of the charge, but upon its nature”; it “always depends on the allegations and never upon the facts.” *Id.*

Although defendant argues there was no basis for any equitable claims, these arguments are based on the facts, not the allegations. For example, defendant alleges that plaintiff’s unclean hands would have barred any equitable recovery. Assuming without deciding that plaintiff had unclean hands, this would not deprive the circuit court of jurisdiction over the matter. The circuit court may determine whether unclean hands bars recovery, not jurisdiction. Because the complaint contained two colorable claims that were equitable in nature (whether or not they were ultimately supported by the facts), we hold the trial court properly exercised jurisdiction.

Defendant also seeks fees and costs for defending the action in the wrong court. Because we hold jurisdiction was proper, we need not address defendant’s request.

### III: Breach of contract claim

Defendant next argues that the trial court erred in relying on answers to interrogatories in finding Hodder was an agent of defendant. We agree, but find the error was harmless. We review the trial court’s findings of fact for clear error and its conclusions of law de novo. *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003). We find a factual finding clearly erroneous when, after a review of the entire record, we are “left with a definite and firm conviction that a mistake has been made.” *Id.*

Here, the trial court erred in examining answers to interrogatories that had not been admitted into evidence. Discovery material does not become part of the evidentiary record unless it is admitted into evidence, and it is error for the court to consider answers to interrogatories that have not been admitted into evidence. *Hydr-O-Matic Pump Div, Weil-McLain Co, Inc v G&M Underground Contracting Co, Inc*, 101 Mich App 376, 390; 301 NW2d 26 (1980). During plaintiff’s case in chief, the trial court looked to these answers specifically to determine the roles of Vlahakis and Hodder in relationship to each other and to plaintiff.

After the close of proofs, however, the court summed up the evidence and made its findings, including the following:

But at the time of the event, at the time that [plaintiff] entered into some agreement with him, he was an apparent agent of the Defendants. Why was he not? He wasn’t working for anybody else. He wasn’t working for himself. He was attempting to obtain work men to perform services on behalf of what was filled out by way of a building permit of Vlahakis [sic] Family Limited Partnership, on behalf of them to build this Dublin Square. So he’s an apparent agent of the Defendants.

All the facts with which the trial court supported its finding that Hodder was an apparent agent of defendant were supported by trial testimony, not by discovery material. Because the trial court made clear that it would have found Hodder to be an agent of defendant even without consulting the discovery material, we hold that the error was harmless. Further, because the trial

court's findings were supported by evidence and not clearly erroneous, we affirm its judgment for plaintiff on the breach of contract claim.

#### IV: Remaining arguments

Defendant argues that plaintiff's equitable claims were barred by unclean hands, and by the existence of a remedy under the Construction Lien Act, MCL 570.1101 *et seq.* It also claims the trial court erred in finding defendant had unclean hands because it allegedly paid Hodder in cash. Even if we were to agree with defendant on these issues, we would still affirm the judgment on the breach of contract claim. We note that the doctrine of clean hands only applies to equitable claims, not legal ones, *Rose v Nat'l Auction Group, Inc.*, 466 Mich 453, 467-468; 646 NW2d 455 (2002), so that doctrine—and defendant's arguments based thereon—can have no effect on our holding with respect to the breach of contract claim.

Unjust enrichment and quantum meruit are equitable remedies whereby the law implies a contract to prevent an unjust result. *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 478; 666 NW2d 271(2003). The law will only imply a contract where there is no express contract on the same subject matter. *Id.* Because, as discussed above, the trial court rightly found an express contract between the parties, it erred to the extent it held plaintiff was entitled to recover in unjust enrichment and quantum meruit. Beyond that, we decline to address defendant's remaining arguments because they are not necessary to the resolution of this appeal. See *Kosmyna v Botsford Community Hosp*, 238 Mich App 694, 702; 607 NW2d 134 (1999).

Affirmed.

/s/ Michael J. Talbot  
/s/ E. Thomas Fitzgerald  
/s/ Alton T. Davis