

1988

John Holland, dba Property Management Systems v. Donner Crest Homeowner's Association : Brief of Appellant

Utah Court of Appeals

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Wendy G. Bates; Attorney for Respondent.

Warren M. Weggeland; Attorney for Appellant.

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UTAH COURT OF APPEALS
BRIEF

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IN THE UTAH COURT OF APPEALS

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DOCKET NO. 88-0603

JOHN HOLLAND, dba)
PROPERTY MANAGEMENT SYSTEMS,)

Plaintiff and Respondent,)

Case No. 880603-CA

vs.)

DONNER CREST HOMEOWNERS')
ASSOCIATION,)

Priority Classification No.
14 b

Defendant and Appellant.)

Appeal from Judgment of the Third Circuit Court,
Salt Lake County, West Valley Department
Honorable Edward A. Watson, Judge

BRIEF OF APPELLANT

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FILED

IN THE UTAH COURT OF APPEALS

JOHN HOLLAND, dba)	
PROPERTY MANAGEMENT SYSTEMS,)	
)	
Plaintiff and Respondent,)	Case No. 880603-CA
)	
vs.)	
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STATEMENT OF JURISDICTION

Jurisdiction of this appeal is conferred on the Utah Court of Appeals by Utah Code Ann. §78-2a-3(2)(d) (1988) and Rule 3(a) R. Utah Ct. App.

NATURE OF THE PROCEEDINGS

This appeal is taken from a summary judgment granted in favor of plaintiff by Judge Edward A. Watson of the Third Circuit Court of Salt Lake City, West Valley Department, Case No. 873-000531-CV.

STATEMENT OF ISSUES

The following constitute the significant issues on appeal:

1. Did the trial court commit error by allowing plaintiff to maintain this action absent plaintiff's compliance with statutory requirements of pleading and proof?
2. Did the trial court commit error in granting summary judgment to plaintiff on the grounds of unjust enrichment?

DETERMINATIVE STATUTES AND RULES

The following Statutes and Rules are believed to be determinative of the respective issues stated:

1. Statutes:

(a) Utah Code Ann. §58A-1-26 (1981), Utah Code Ann. §58A-1a-13 (1985) and Utah Code Ann. §58-50-11 (1987) are identical and provide:

No contractor may act as agent or commence or maintain any action in any court of this state for collection of compensation for the performance of any act for which a license is required by this chapter without alleging and proving that he was a properly licensed contractor when the contract sued upon was entered into and when the alleged cause of action arose.

2. Rules:

Rule 56(c), U.R.C.P. provides:

(c) Motion and Proceedings thereon. The motion shall be served at least ten days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone, although there is a genuine issue as to the amount of damages.

STATEMENT OF THE CASE

This case involves an action on a contract initiated by plaintiff against defendant in August, 1987, in which plaintiff seeks judgment in the principal sum of \$2,521.00 claimed by plaintiff to be the balance due and owing under the contract sued upon. (See Amended Complaint, R.16).

On August 30, 1982, the parties entered into a Management Agreement (R.3) for the management of that condominium complex known as the Donner Crest Condominium, which contract became effective September 1, 1982. The contract was terminated by defendant effective November 30, 1986.

During the course of the employment agreement, plaintiff employed two subcontractors to perform certain services for and on behalf of defendant: (a) Cover-Pools, Inc., for the installation of a swimming pool cover on defendant's property in October, 1985, for which plaintiff charged defendant \$606.70 (R.35); and (b) HanDayMen for painting interior walls, railings and other surfaces at the condominium complex during March and April of 1986, for which HanDayMen charged plaintiff \$2,057.00 and plaintiff in turn charged defendant the amount of \$2,202.00 (R.54,55,101,102).

At no time between August 30, 1982 and November 30, 1986 was plaintiff licensed as a general or specialty contractor by the Utah Department of Business Regulation, Division of Contractors (now known as the Division of Occupational and Professional Licensing) (R.56), nor were Cover-Pools, Inc. or HanDayMen

licensed as a general or specialty contractor by the Utah Department of Business Regulation at the time the services were performed by them at the Donner Crest Condominium. (R.51,52).

Plaintiff filed its original complaint (R.6) in this case on August 5, 1987, and filed an amended complaint (R.16) on September 11, 1987. In neither plaintiff's original complaint nor in plaintiff's amended complaint did plaintiff allege that plaintiff was a properly licensed contractor when the contract sued upon was entered into and when the cause of action arose.

During the course of the proceedings, the parties submitted interrogatories and request for production of documents, following which defendant moved for summary judgment against plaintiff essentially on the grounds that since neither plaintiff nor its subcontractors were licensed as required by the Contractor's Licensing Act (Utah Code Ann. §58-50-1 et seq. 1987) and its predecessor statutes, the plaintiff could not commence or maintain this action without alleging and proving that he was a properly licensed contractor when the contract sued upon was entered into and when the alleged cause of action arose, and for the further reason that the contract sued upon by plaintiff is deemed void and unenforceable. (See Memorandum in Support of Plaintiff's Motion for Summary Judgment, R.62). Shortly thereafter plaintiff filed a cross-motion for summary judgment against defendant in the sum of \$2,521.39 representing the balance due under the contract. (See plaintiff's Motion for Summary

Judgment and Notice of Hearing, R.82).¹ The respective motions were argued before the Honorable Edward A. Watson, Circuit Judge, on August 16, 1988.

On September 27, 1988, the trial court entered its Findings of fact and Conclusions of Law and entered Judgment in favor of plaintiff and against defendant for the value of goods and services in the sum of \$2,808.70 on grounds of unjust enrichment. [The Findings of Fact and Conclusions of Law and the Judgment are included in the Addendum to this Brief].

SUMMARY OF ARGUMENT

POINT I

THE TRIAL COURT COMMITTED MANIFEST ERROR BY ALLOWING PLAINTIFF TO MAINTAIN THIS ACTION ABSENT PLAINTIFF'S COMPLIANCE WITH STATUTORY REQUIREMENTS OF PLEADING AND PROOF

The trial court in its Findings of Fact and Conclusions of Law correctly found that during the time period [while the management contract was in force from September 1, 1982 until November 30, 1986] plaintiff was not licensed as a general or specialty contractor by the Utah Department of Business Regulation, Division of Contractors, the statute in effect when the contract was entered into and the work in question was performed required plaintiff to be licensed, and the contract between plaintiff and

(1) It should be pointed out that there were no controverted facts by either party. Further, plaintiff acknowledged that neither plaintiff, HanDayMen nor Cover-Pools, Inc. was licensed as a general or specialty contractor by the Division of Contractors. (See paragraph 4 of Plaintiff's Response to Defendant's Motion For Summary Judgment, R.115,116).

defendant violated the statute which was in place at the time the contract was entered into (Findings of Fact, ¶¶2,3,8). The trial court correctly concluded that the contract between plaintiff and defendant was unenforceable (Conclusions of Law, ¶1). Yet the trial court totally ignored the prohibition of Utah Code Ann. §58-50-11 (1987) and its predecessor statutes precluding plaintiff as acting as agent or commencing or maintaining any action in any court of this state for collection of compensation for the performance of any act for which a license is required, and entered judgment against defendant in excess of the amount demanded by plaintiff. The trial court failed to acknowledge that plaintiff did not allege and plead that plaintiff was a properly licensed contractor when the contract sued upon was entered into and when the alleged cause of action arose. The trial court improperly allowed plaintiff to maintain his action against defendant contrary to the statutory mandate requiring plaintiff to allege and prove that plaintiff was licensed in order to maintain his action against defendant.

POINT II

THE TRIAL COURT COMMITTED ERROR IN GRANTING SUMMARY JUDGMENT TO PLAINTIFF ON GROUNDS OF UNJUST ENRICHMENT

In this case there was no genuine issue as to any material of fact. Accordingly, the trial court was obligated to granted summary judgment to plaintiff only if plaintiff was entitled judgment as a matter of law. Defendant alleges that plaintiff was not entitled to summary judgment as a matter of law but, contrarily, defendant was entitled to judgment against plain-

tiff as a matter of law since the Utah Supreme Court has held that an unlicensed contractor who was statutorily barred from collecting compensation on his contract for work done could not alternatively recover on a theory of unjust enrichment. Further, plaintiff was not entitled to judgment as a matter of law on the theory of unjust enrichment since plaintiff's only claim for relief in his amended complaint was for the alleged balance due under the contract.

ARGUMENT

POINT I

THE TRIAL COURT COMMITTED ERROR BY ALLOWING PLAINTIFF TO MAINTAIN THIS ACTION ABSENT PLAINTIFF'S COMPLIANCE WITH STATUTORY REQUIREMENTS OF PLEADING AND PROOF

The current Utah Code Ann. §58-50-11 (1987) and its predecessor statutes deal with a contractor's right to maintain an action in the courts of this state. The operative statute in effect at the time the contract sued upon was entered into was Utah Code Ann §58A-1-26 (1981), and when plaintiff's cause of action arose the operative statute was Utah Code Ann. §58A-1a-13 (1985). These sections remain unchanged since the initial adoption in 1981.⁽²⁾ Section 58-50-11 provides:

No contractor may act as agent or commence or maintain any action in any court of this state for collection of compensation for the performance of any act for which a license is

(2) Utah Code Ann. §58A-1-26, (1981), Enacted Laws 1981 Ch. 23, §26, effective May 12, 1981; Utah Code Ann. §58A-1a-13, (1985), Enacted Laws 1985, Ch. 171, §2, effective July 1, 1985; Utah Code Ann. §58-50-11, (1987), Enacted Laws 1987, Ch. 247, §11, effective July 1, 1987.

required by this Chapter without alleging and proving that he was a properly licensed contractor when the contract sued upon was entered into and when the alleged cause of action arose. (Emphasis added).

The statute is specific in its requirement that the plaintiff allege and prove that he was a properly licensed contractor when the contract sued upon was entered into and when the alleged cause of action arose. Absent such pleading and proof, plaintiff cannot maintain this action against defendant since the contract upon which plaintiff sues is deemed void and unenforceable. Olsen vs. Reese, 114 Utah 411, 416, 200 P.2d 733, 736 (1948); Meridian Corporation vs. McGynn-Garmaker Company, 567 P.2d 1110, 1111 (Utah 1977); Fillmore Products, Inc. vs. Western States Paving, Inc., 561 P.2d 687, 689 (Utah 1977); George vs. Oren Ltd. & Associates, 672 P.2d 732, 735 (Utah 1983).

The trial court in its Findings of Fact and Conclusions of Law correctly found that during the time period [while the management contract was in force from September 1, 1982 until November 30, 1986], plaintiff was not licensed as a general or specialty contractor by the Utah Department of Business Regulation, Division of Contractors [Findings of Fact, ¶2]; the statute in effect when the contract was entered and the work in question was performed required plaintiff to be licensed [Findings of Fact, ¶3]; and that the contract between plaintiff and defendant violates the statute which was in place at the time the contract was entered [Findings of Fact, ¶8]. The trial court concluded that the contract between plaintiff and defendant is

unenforceable [Conclusions of Law, ¶1]. The court nonetheless entered judgment in favor of plaintiff and against defendant on a theory of unjust enrichment [Conclusions of Law, ¶2]. The trial court totally ignored the prohibition of Utah Code Ann. §58-50-11 (1987) and its predecessor statutes precluding plaintiff from acting as agent or commencing or maintaining any action in any court of this state for collection of compensation for the performance of any act for which a license is required. The court failed to acknowledge that plaintiff did not allege and plead that plaintiff was a properly licensed contractor when the contract sued upon was entered into and when the alleged cause of action arose.

The court correctly acknowledged that the statute in effect when the contract was entered into and the work in question was performed required plaintiff to be licensed, that plaintiff was not licensed as a general or specialty contractor, and that the contract sued upon was unenforceable, yet the trial court nonetheless allowed plaintiff to maintain his action against defendant contrary to the statutory mandate requiring plaintiff to allege and prove plaintiff was licensed in order to maintain his action against defendant. It was manifest error for the trial court to ignore the statutory prohibition precluding plaintiff from maintaining this action.

II

THE TRIAL COURT COMMITTED ERROR IN GRANTING SUMMARY JUDGMENT TO PLAINTIFF ON GROUNDS OF UNJUST ENRICHMENT

Rule 56(c), Utah Rules of Civil Procedure, provides:

[Summary] Judgment . . . shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. (Emphasis added).

In this case there was no genuine issue as to any material fact. Accordingly, the trial court was obligated to grant summary judgment to plaintiff only if plaintiff was entitled to judgment as a matter of law. Defendant asserts that plaintiff was not entitled to summary judgment as as matter of law.

The Utah Supreme Court repeatedly has held that Utah statutes requiring the licensing of contractors are for the protection of the public. Olsen vs. Reese, op.cit.; George vs. Oren Ltd. & Associates, op.cit.; Fillmore Products, Inc. vs. Western States Paving, Inc., op.cit.; Ecklund vs. Elwell, 116 Utah 521, 211 P.2d 849 (1949). The Utah Supreme Court also has held that an unlicensed contractor who was statutorily barred from collecting compensation on his contract for work done could not alternatively recover on a theory of unjust enrichment. Wilderness Building Systems, Inc. vs. Chapman, 699 P.2d 766, 768 (Utah 1985).

In a case involving a statute requiring well drillers to secure and maintain annual permits, the Utah Supreme Court has held that such statute is designed for the protection of the people of this State, and that one who drills a well in Utah without first securing such permit cannot recover for work done, either on a contract or on a theory of quantum meruit. Mosely vs. Johnson, 22 Utah 2d 348, 453 P.2d 149 (1969). The court stated:

We are unable to see why this plaintiff, whose contract is void, should be able to recover on the theory of quantum meruit. To permit him to do so would permit him to evade the law and recover for work which he was forbidden to pursue. If he got the reasonable value of his services, he might even prove more than his contract would have given him had it been valid.

* * *

Where a contract is unenforceable by one of the parties thereto by reason of his noncompliance with a license . . . law, such party may not recover for services which he has performed under such contract.

453 P.2d at 151.

It is obvious that the statute . . . is designed for the protection of the people of this State, and the one who drills a well in Utah without first securing an annual permit cannot recover in the courts of this State for the work done, either on a contract or on a theory of quantum meruit.

* * *

The court will no more assist one who fails to secure a required license to recover money by means of a lien foreclosure than it will in an action on the contract or on a theory of quantum meruit.

Id at 152.

Based on the prior holdings of the Utah Supreme Court, plaintiff was not entitled to judgment as a matter of law on a theory of unjust enrichment, a theory which was not pleaded by plaintiff in plaintiff's initial or amended Complaint. (R.6; R.16).

It would appear that the trial court failed to view all of the facts and circumstances in a light most favorable to defendant in defendant's opposition to plaintiff's motion for summary

judgment, a view by the trial court to which defendant was entitled. Amjacs Interwest, Inc. vs. Design Assocs., 635 P.2d 53 (Utah 1981); Bihlmaier vs. Carson, 603 P.2d 790 (Utah 1979); Norton vs. Blackham, 669 P.2d 857 (1983); Bowen vs. Riverton City, 656 P.2d 434 (1987); B.R. Woodward Marketing, Inc. vs. Collins Food Services, Inc., 754 P.2d 99 (Utah App. 1988).

The trial court should have denied plaintiff's motion for summary judgment and granted defendant's motion for summary judgment. Defendant moved for summary judgment essentially on the grounds that since neither plaintiff nor his subcontractors were licensed as required by law the contract sued upon was void and unenforceable, and plaintiff was prohibited from maintaining his action by Utah Code Ann. §58-50-11 (1987) and its predecessor statutes. Assuming the trial court viewed all of the facts and circumstances in a light most favorable to plaintiff in considering defendant's motion for summary judgment, the trial court nonetheless should have granted judgment to defendant as a matter of law.

The trial court awarded plaintiff judgment against defendant in the total principal sum of \$2,808.70 (Judgment, ¶1), yet plaintiff only requested judgment in its initial and amended complaint in the sum of \$2,521.39 (See ¶A of Prayer for Relief, Complaint, (R.5); ¶A of Prayer for Relief, Amended Complaint, (R.15)). Plaintiff admitted that the balance claimed to be due under the contract was \$2,521.39 (See Affidavit of John Holland, ¶9 (R.85); ¶5, Plaintiff's Motion for Summary Judgment and Notice of Hearing (R.81)). There is absolutely nothing in the record to

record to support the judgment awarded plaintiff in the sum of \$2,808.70.

Defendant asserts it was manifest error for the court to deny defendant's motion for summary judgment and grant plaintiff's motion for summary judgment on grounds of unjust enrichment, and in an amount not supported by the record.⁽³⁾

CONCLUSION

It is apparent that the trial court committed manifest error in granting summary judgment in favor of the plaintiff and against defendant. Not only did the trial court ignore the mandate of Utah Code Ann. §58-50-11 (1987) and its predecessor statutes, but also the trial court committed error in awarding summary judgment to plaintiff on grounds of unjust enrichment since the case law prevents recovery either on contract or on a theory of quantum meruit.

Defendant urges this court to reverse the judgment of the trial court and order entry of summary judgment in favor of defendant.

(3) Plaintiff moved for summary judgment on the management contract only and not on grounds of quantum meruit.

RESPECTFULLY SUBMITTED this 20th day of January, 1989.


WARREN M. WEGGELAND
Attorney for Defendant and Appellant

MAILING CERTIFICATE

I hereby certify that I mailed four copies of the foregoing Brief of Appellant to Wendy G. Bates, Attorney for Plaintiff and Respondent, 4126 South 3055 West, West Valley City, UT 84119, this 20th day of January, 1989, postage prepaid.


WARREN M. WEGGELAND

ADDENDUM

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Telephone: 966-2253

CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, WEST VALLEY DEPARTMENT

JOHN HOLLAND DBA PROPERTY
MANAGEMENT SYSTEMS,

Plaintiff,

vs.

DONNER CREST HOMEOWNERS'
ASSOCIATION,

Defendant.

JUDGMENT

Civil No. 873-000531-CV


Plaintiff's and defendant's respective Motions for Summary Judgment came on regularly for hearing on Tuesday, August 16, 1988, the honorable Edward A. Watson presiding. Plaintiff appeared through counsel, Wendy G. Bates and defendant appeared through counsel, Warren M. Weggeland. Having listened to the arguments of counsel and considered the memoranda on file, and good cause appearing, the court enters the following Judgment based upon the Findings of Fact and Conclusions of Law entered herein:

1. The plaintiff is granted judgment against the defendant in the total principal sum of \$2,808.70.
2. No interest shall be awarded to date of judgment, but plaintiff is awarded interest from the date of judgment until

paid in full as provided for by law.

3. Each party shall bear its own costs of court and attorney's fees.

DATED this 27th day of September, 1988.




JUDGE EDWARD A. WATSON
CIRCUIT COURT JUDGE

Approved as to form:

MAILING CERTIFICATE

I hereby certify that on September 21, 1988, I mailed a true and correct copy of the foregoing in an envelope addressed to the following and by depositing the same, sealed, with first class postage pre-paid thereon, in the United States Mails at West Valley City, Utah:

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Salt Lake City, Utah 84108



Wendy G. Bates, #4270
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**CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, WEST VALLEY DEPARTMENT**

JOHN HOLLAND DBA PROPERTY
MANAGEMENT SYSTEMS,
Plaintiff,

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

vs.

DONNER CREST HOMEOWNERS'
ASSOCIATION,
Defendant.

Civil No. 873-000531-CV

Plaintiff's and defendant's respective Motions for Summary Judgment came on regularly for hearing on Tuesday, August 16, 1988, the honorable Edward A. Watson presiding. Plaintiff appeared through counsel, Wendy G. Bates and defendant appeared through counsel, Warren M. Weggeland. Having listened to the arguments of counsel and considered the memoranda on file, and good cause appearing, the court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiff and defendant entered into a management contract which was in force from September 1, 1982 until November 30, 1986.

2. During that time period, plaintiff was not licensed as a general or specialty contractor by the Utah Department of Business Regulation, Division of Contractors.

3. The statute in effect when the contract was entered and the work in question was performed required plaintiff to be licensed.

4. Plaintiff rendered to defendant materials and services with a value totalling \$2,808.70.

5. Said materials and services were satisfactory.

6. Defendant has not paid plaintiff for said materials and services.

7. Plaintiff failed to plead common law causes of action except that plaintiff's Amended Complaint prayed for "such other and further relief as the court deems just and equitable in the premises."

8. The contract between plaintiff and defendant violates the statute which was in place at the time the contract was entered.

CONCLUSIONS OF LAW

1. The contract between plaintiff and defendant is unenforceable.

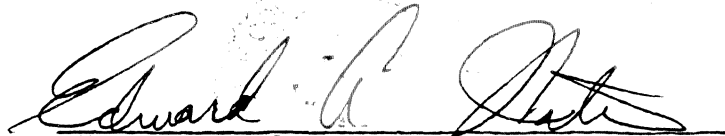
2. It would be unjust enrichment for defendant to receive satisfactory materials and services without paying plaintiff for the value thereof.

3. Plaintiff is entitled to judgment against defendant for the value of the goods and services in the sum of \$2,808.70.

4. No interest shall be awarded until date of judgment, but will be awarded after the date of judgment as allowed by law.

5. Each party will bear its own costs and attorney's fees.

DATED this 27th day of September, 1988.


JUDGE EDWARD A. WATSON
CIRCUIT COURT JUDGE

Approved as to form:
