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Reeve v. Abraham

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Case Comment

REEVE V. ABRAHAM—CONTRACT—QUASI-CONTRACT—UNJUST ENRICHMENT—IMPROVEMENT OF LAND UNDER MISTAKE OF TITLE—REMEDIES —In *Reeve v. Abraham*,[1] a decision of Buchanan C.J.D.C., sitting as a local Judge of the Supreme Court of Alberta, certain interesting questions arose as to the application of the developing law of *Quasi-contract*.[2] The facts, as found by the learned trial Judge, were that Reeve purchased a farm for the dual purpose of assisting Abraham, his nephew by marriage, and of securing better than a bank-rate of interest on his investment. A lease of the property to Abraham was drawn up, including an option to purchase, and during his tenancy, Abraham made extensive improvements on the land. The Judge found that Abraham's tenancy was terminated by the act of the plaintiff Reeve, and that money was still owing on the work done on the property. In reply to Reeve's suit for crop-rent (withheld on advice of counsel), and payment of money owing on a note, Abraham counterclaimed for the cost of the improvements. The learned Judge held for Abraham on the broad ground of unjust enrichment, setting off Reeve's claims against the award.[3] It is submitted that the Court's disposition of the lease is open to serious criticism. The learned Judge says:

> "I am driven to the conclusion that the lease-option failed to express the mind of either party. I hold, therefore, that I am at liberty to seek outside the instrument for the terms of the agreement at which the parties did arrive, an agreement which was in part performed by the Defendant entering into possession of, farming and improving the said lands during a period of four to five years."[4]

Both parties contended that the lease-option was not drawn according to the instructions of either of them. The Defendant's understanding was a lease for four years, at the end of which period, "it automatically and without the execution of a further document, became an agreement of sale."[5] The Plaintiff's interpretation of the agreement is difficult to pinpoint in view of his contradictory evidence. First, he emphatically insists that there was to be no lease; then, he suggests that the lease was to be for five years, but without any option to purchase, and finally, he says that the land was to be purchased for cash at the end of the term. Although the substantial disagreement may indicate that the lease-option did not conform with the instructions of either party, thus allowing for the admission of extrinsic evidence, it is submitted that this factor does not justify

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1 (1957), 22 W.W.R. 429.

2 At the time of writing, this case was under appeal.

3 The writer acknowledges the assistance of Mr. E. F. Murphy, solicitor for the defendant, who generously provided transcripts of all pleadings, evidence and exhibits in the case.

4 (1957), 22 W.W.R. 429 at p. 430.

5 *Ibid.*, at p. 430.

the complete disregard of the provisions of the instrument. In effect, this procedure was adopted by the learned Judge.

The terms of the lease-option were very clear, and it is material to reproduce a portion of it here:

> ". . . IN CONSIDERATION of the execution of this lease by the LESSEE the LESSOR hereby grants to the LESSEE the option irrevocable within the time hereby limited to purchase the said lands at and for the price of TWELVE THOUSAND ($12,000.00) DOLLARS cash plus the value of any improvements put on by the LESSOR during the time of this lease. THIS OPTION may be exercised by the LESSEE at any time during the term of this lease. In view of the fact that this land was purchased by the LESSOR to assist, if possible, the present LESSEE, it is definitely understood that in the event of light crops or crop failure the LESSEE may purchase the said land at the end of the period, namely, APRIL 30th, 1955, on such terms as he may deem necessary to enable him to complete the purchase, it being understood, however, that the full purchase price should be paid within ten (10) years from the date of the Agreement for Sale, interest rate to be five (5%) per cent per annum."[6]

Both the parties had heard the document read and signed it and, therefore, despite their alleged misunderstanding, must be taken to know the nature and content of the instrument. This conclusion is re-inforced by the fact that both acted as if they were bound by the terms of the lease, the Plaintiff by acceptance of the annual crop-rent, and the Defendant by taking possession and farming for a period of more than three years. In these circumstances, would it not have been more appropriate for the learned Judge to have confined himself to an interpretation of the instrument which purported to express the bargain between the parties?

According to the above-quoted clause, it is specified that the lease was to terminate on April 30th, 1955. The term was, therefore, four years and not a "four- to five-year period",[7] as found by the learned Judge. Even more important, the option in the above clause is clearly stated to be exerciseable during the currency of the lease up to April 30th, 1955. It was shown at the trial that the defendant made no attempt whatever to exercise the option. Therefore, the lease, and with it the option, simply lapsed on that date. Thus, it is difficult to justify the finding that "the defendant's occupancy of the lands was terminated by action of the plaintiff, not the defendant."[8]

In referring to the improvements, the learned Judge says:

The evidence in support of this finding would appear to be rather inconclusive.[10]

There was neither obligation on the lessee to make any improvements, nor agreement to pay for them, but they were made. The lease is silent on the matter and therefore we are thrown on the law. What is the proper relief, if any, in a case of this type, and can the relief actually given be justified on the facts as found?

There is some question as to the nature of the relief granted to the defendant. The learned Judge holds:

> "In my opinion the facts as found by me in the case at bar justify my invoking the law of *quasi*-contract or, to adopt Professor Goodhart's term, the law of unjust enrichment, on the defendant's behalf."[11]

and also remarks:

> "His (defendant's) pleadings are adequate to support a claim for equitable relief and in argument he addressed himself to that form of relief solely."[12]

and further says:

> "I am of the opinion that it would be inequitable, and against conscience, an unjust enrichment, to permit the plaintiff to secure and retain the improvements so placed upon the lands by the defendant without recompense therefor to the maker."[13]

These statements render it difficult to determine whether the basis of the judgment is Equity or *Quasi*-Contract, or both. On balance, it would appear that the second ground, i.e. *Quasi*-Contract, is the effective basis of relief.

The idea of an obligation, *quasi-ex contractu* is of Roman origin and rests on the philosophic base of *aequitas*.[14] Early English Law indicates the action of "account" as a *quasi*-contractual remedy. The growth of *"indebitatus assumpsit"* kept the idea within the Common Law while the developing jurisdiction of Equity took over situations which formerly would have fallen into "account" rather than "debt" or "detinue".

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[10] The only evidence which might support this finding is in the cross-examination of Reeve which appears contradictory and unreliable.

Q. MR. MURPHY: Did you ever discuss these improvements with Mr. Abraham?
A. MR. REEVE: No. I can't say we ever had any discussion about them at the time it was being done....
Q. Yes. Go ahead.
A. The day we went back across the farm to see the man that owned it, we walked across the ground and Mr. Abraham said, "Why don't you buy this place? I will break 50 acres here." I said, "Alright Irvine."

Mr. Abraham testified that he had mentioned improvements to Reeve and Reeve had replied "It is your farm, go ahead and improve it." It would seem that this testimony would require generous interpretation for a finding of "active encouragement", yet the learned Judge so found.

[11] *Reeve v. Abraham, ante,* p. 431. Buchanan, C.J.D.C. is referring to the term used by the learned author in his book *English Law and the Moral Law* (1953), at p. 127.

[12] *Ibid.*, at p. 431.

[13] *Reeve v. Abraham, ante* at p. 432.

[14] Baxter, *Unjust Enrichment in the Canadian Common Law and in Quebec Law* (1954), 32 Can. Bar Rev., 855.

Lord Mansfield, the great commercial Judge, saw the advantages in recovery of unjust benefits and tried to extend the scope of "indebitatus assumpsit", and in doing so, expressed the theory behind such actions as lying "only for money which *ex aequo et bono* the defendant ought to refund. . . . In one word, the gist of this kind of action is that the defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity to refund the money."[15] It is clear that the "equity" referred to is not the equity of the Chancery Court, but the *"aequitas"* mentioned above. "Lord Mansfield was referring to the *jus naturale* of the Roman Law."[16]

The abolition of the old forms of action and the technicalities of procedure produced legal thinking directed towards classification of cases into recognized fields of substantive law, e.g., tort, property or contract. That *quasi*-contract is a category of substantive law *sui generis* has been denied.[17] However, later authority indicates that *quasi*-contract may be gaining recognition as a remedy distinct from recovery in contract, which is based upon mutual consent.[18] It has only been in the past several decades that this Common Law remedy of such respectable vintage has been returning to the fore and re-developing its legal muscles.

In view of this recent development and of the difference of opinion as to whether the rationale of *quasi*-contract is the fiction of implied promise or the prevention of unjust enrichment, it would be helpful to the profession if the Bench would express reasons for judgment in the clearest and most precise terminology. If, in a given factual situation, it is desired to accord relief to a claimant, the field of law applied, i.e. *quasi*-contract, equity or statute, should be plainly specified. The result would be the avoidance of confusion between remedies.

The learned Judge bases his finding for the plaintiff by counter-claim almost entirely on the judgment of Coyne, J. S. in *Morrison v. Canadian Surety,*[19] a decision of the Manitoba Court of Appeal in which the law of *quasi*-contract is dealt with from the historical point of view and the most authoritative cases and authors are referred to. After citing leading definitions, Coyne, J.A. goes on to give some illustrations of the application of *quasi*-contract. Among these examples is "improvement of land under mistake".[20] The list of heads set out is taken from Munkman's monograph "*Quasi*-Contract"[21] where the learned author sets out in list form all the heads of *quasi*-contract.

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15 *Moses v. Macferlan* (1750), 2 Burr. 1005.

16 *Baylis v. Bishop of London,* [1913] 1 Ch. 127 at p. 137, per Farwell L.J. See generally Cheshire and Fifoot, *Law of Contract,* 4th ed., pp. 548-550, Baxter, op. cit., pp. 857-859.

17 *Sinclair v. Brougham,* [1914] A.C. 398. See particularly the speech of Lord Sumner at p. 452.

18 *Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour, Ltd.,* [1943] A.C. 32, and see particularly Lord Wright at p. 61. *Deglman v. Guaranty Trust Co. of Canada and Constantineau,* [1954] 3 D.L.R. 785.

19 (1954), 12 W.W.R. (N.S.) 57.

20 *Ibid,* at p. 81 per Coyne J.A.

21 Sir Isaac Pitman & Sons, Ltd., London (1950), p. 20.

Under the general category of "Recompense" he includes *quantum meruit,* maritime salvage,[22] and improvements to land under mistake, and goes on to state that this category of the subject is the most doubtful—less developed than Restitution proper or Reimbursement. He cites no authority of any kind, but merely states that "improvement of land under mistake" is one category (and a weak one) of *quasi*-contract.[23] Thus Buchanan C.J.D.C. bases his judgment in this case on a simple example cited in obiter by Coyne J.A. and taken from one author's acceptance of a doubtful head, unsupported by authority.

Since there is disagreement as to whether the true basis of *quasi*-contract is the implication of a promise or the retention of a benefit unjustly, it is material to consider whether, in this particular state of facts, either of these possible rationales is applicable. Firstly, can a promise to reimburse the defendant for improvements be inferred in these circumstances? The existence of the written contract does not operate as a bar to implication in view of the silence of the lease on the subject. However, it is submitted that the lease is an explicable and viable transaction as it stands and therefore implication of a promise is not necessary. That the Court will not imply a promise that is not necessary to the transaction appears well-settled.[24] Considering the notion of the presumed intention of the parties as a justification for the implication of a contractual term,[25] it could be strongly contended that neither party contemplated reimbursement. Indeed, the divergence in the evidence of the parties[26] renders it difficult to ascertain with any certainty what they did, in fact, contemplate. Therefore, the general rule that, in the absence of special agreement to the contrary, improvements follow the reversion, should have commended itself to the attention of the Court. As to unjust enrichment, the real question is whether the plaintiff has acquired a benefit at the expense of the defendant which he ought to disgorge. On this point, it must be observed that the defendant enjoyed the advantage of the improvements during the whole of the currency of the lease in that he tilled increased acreage with increased yield. Even more important is the fact that it was within his power to keep the permanent benefit of the improvements *simply by exercising the option in the lease.* However he did not offer payment, nor did he indicate any desire to avail himself of the general instalment provisions of the option. In these circumstances, it can hardly be said to be unjust to the lessee if he does not regain what he himself has taken no steps to retain.

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22 From the Roman *negotiorum gestio,* and the only true example thereof in our law.

23 Reference to "improvement of land under mistake" is not found in the considerations of the subject by Cheshire and Fifoot or Winfield.

24 "A term can only be implied if it is necessary in the business sense to give efficacy to the contract." Per Scrutton, L.J. in *Reigate v. Union Manufacturing Co. (Ramsbottom),* [1918] 1 K.B. 592, at p. 605. See also, *Hivac, Ltd. v. Park Royal Scientific Instruments, Ltd.,* [1946] Ch. 169, [1946] 1 All E.R. 350, and *Kimber v. Willett (William), Ltd.,* [1947] K.B. 570.

25 ". . . what the law desires to effect by the implication is to give such business efficacy to the transaction as must have been intended at all events by both parties. . . ." *The Moorcock* (1889), 14 P.D. 64, at p. 68.

26 See footnotes 4, 5 and 6 *ante.*

As to equitable relief in cases of this type, the rule which is most often cited is that propounded by Lord Wensleydale in the leading case of *Ramsden v. Dyson*:[27]

> "If a stranger builds on my land, supposing it to be his own, and I, knowing it to be mine, do not interfere, but leave him to go on, equity considers it to be dishonest in me to remain passive and afterwards to interfere and take the profit; but if a stranger build knowingly upon my land, there is no principle of equity which prevents me from insisting on having back my land, with all the additional value which the occupier has imprudently added to it. If a tenant of mine does the same thing, he cannot insist on refusing to give up the estate at the end of his term. It was his own folly to build."[28]

This formulation of the rule in *Ramsden v. Dyson* was approved as recently as 1941 by the Supreme Court of Canada.[29] The relief given in these cases is grounded upon a *bona fide* but mistaken belief as to title on the part of the improver which is known to the true owner of the property.[30]

Here, therefore, the question is whether Abraham had such a mistaken belief. His evidence clearly indicates that he knew that he was a lessee and not an owner. But he further testified that he thought that the property would pass to him immediately upon the end of the term and without any further action by either party. He cannot reasonably have expected, however, that he was to receive the land without either payment of the price or some agreement therefor. If mistake there was, it was engendered by his own carelessness in that he neglected to read the copy of the lease in his possession. To permit him to rely on such a mistake would appear to place a premium on carelessness.[31]

It is noteworthy that the Alberta legislature has enacted a statutory provision which deals with factual situations of this nature. Sec. 183 of the Land Titles Act,[32] reads:

> 183(1). Where a person at any time has made lasting improvements on land under the belief that the land was his own, he or his assigns
> (a) are entitled to a lien upon the same to the extent of the amount by which the value of the land is enhanced by the improvements, or
> (b) are entitled or may be required to retain the land if the court is of the opinion or requires that this should be done having regard to what is just under all the circumstances of the case.
> (2) The person entitled or required to retain the land shall pay such compensation as the court may direct.

Under subsection (1), Abraham would have to show a "belief that the land was his own" which, as above submitted, was not the case. If,

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27 (1866), L.R. 1 H.L., 129.

28 *Ibid.*, at p. 168.

29 *Easterbrook v. The King*, [1931] S.C.R. 210, at p. 219 where Newcombe J. reproduces the words of Lord Wensleydale verbatim as "very aptly (stating) the law as applicable in such cases."

30 *Ramsden v. Dyson, ante*, per Cranworth L.C. p. 140 *et seq.*

31 This contention is supported by the reasoning in *Fletcher v. Claggett* (1927), 3 D.L.R. 751, at p. 754, where Mackenzie J. remarked ". . . a belief engendered by careless or indifferent conduct . . . cannot justly in the language of the authorities be termed a reasonable or bona fide belief". Although the case was concerned with statutory relief, it is submitted that this proposition has equal application in this case.

32 R.S.A. 1955, c. 170. See also *The Conveyancing and Law of Property Act*, R.S.O. 1950, c. 68, s. 37.

however, the learned Judge was of the opinion that there was such a belief, it would have been open to him to apply subsection (1) (b) so as to require the defendant to retain the land on appropriate terms fixed by the Court. One of those terms would inevitably be the payment of the purchase price, either at once or by instalments. The net effect of this procedure would be the same as if the option had been exercised and the agreement performed. This solution would hold the parties to their original bargain, and be at least as consistent with the circumstances as the disposition of the case by the trial judge. In passing, a problem may be raised as to the basis of calculation of the *quantum* of recovery.[33] Even accepting the method of assessment as correct, the amount awarded is in error.[34]

In conclusion, it is submitted that the learned judge erred in his findings of fact, his application of law to the facts as found, and his computation of the amount of recovery. Abraham knew or had means of knowing his position. He enjoyed the fruits of his improvements while in possession of the land and could have continued to do so if he had taken any steps to exercise the option in the lease. It is regrettable that slightly more precision was not used by the learned judge in dealing with the case, especially in invoking the law of *quasi*-contract, and finally, it is submitted that the enrichment of the defendant by counterclaim, if such there was, was anything but unjust.

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[33] In *Stuart v. Taylor* (1914), 33 O.L.R. 20, Riddell J. stated that the proper direction to a Master for the assessment of quantum "will not be as to the value of the improvements but as 'the amount by which the value of the land is enhanced by the improvements', quite a different thing." The cost of the improvements, therefore, is *not* the test, at least in cases where the value of the whole land has, in fact, increased. In the instant case, the learned Judge made no finding as to whether the value of the land had increased, decreased or remained constant, but merely awarded the cost of the improvements.

[34] The learned Judge says at page 432: "I award the defendant $3,000 in respect of the improvements made by him on the lands in question . . . to be set off against this award are $590 admittedly due on the defendant's promissory note to the plaintiff and the further $1,000, the value of the plaintiff's one-third share of the 1955 crop on one of the quarter sections." He does not see fit to enlighten us as to how he arrived at this figure, but in his finding of fact he stated at page 430: "These improvements cost the defendant not less than $3,000, together with extensive labour both by himself and his family." To be sure, the figure $3,000 was the total amount owing to a contractor, Scott and Plomas, for improvement work, but $500 of this was with respect to another property belonging to Abraham and in no way the subject-matter of this action. The figure $2,500 was mentioned six times in evidence, i.e.

Q. MR. MURPHY: So the cost of the work done on Mr. Reeve's land is $2,500?

A. MR. ABRAHAM: Approximately $2,500.

On the Statement of Account from Scott and Plomas which was accepted by the court as Exhibit 2, we find the statement, "On Section 20 (the land in question here) we cut and piled and broke for the approximate amount of $2,500. . ." Abraham also states in evidence that: "I paid out $200 to different men for picking roots." This would make $2,700 "money cost" as the learned Judge called it, and one wonders where the other $300 came from unless the judge in his discretion is having the plaintiff pay for work done on the defendant's *own* land.