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ELWOOD GRIMM, Plaintiff vs. CRAWFORD WISHARD and
LOIS WISHARD, Defendants, Franklin County Branch, Civil
Action-Law A.D. 1997 - 146

Grimm v. Wishard

Quasi-contract; implied or constructive contract; quantum meruit.

1. Quasi-contract allows the court to impose a duty on a person who has been unjustly enriched at the expense of another to pay restitution to the disadvantaged party.
2. Quasi-contract is a legal fiction which imposes on the benefiting party the duty to pay *quantum meruit* damages equal to the value of the benefit conferred with an eye toward ensuring justice.
3. Where plaintiff inadvertently left a front-end loader on defendant's property, and defendant, while knowing the loader belonged to plaintiff, used the loader in his own business for four months but did not pay plaintiff for use of the loader during that period, plaintiff was entitled to *quantum meruit* damages for those four months according to the fair rental value of that type of loader.

Donald L. Kornfield, Esq., Counsel for Plaintiff
James K. Reed, Esq., Counsel for Defendants

OPINION AND VERDICT

Herman, J., August 11, 1998:

OPINION

Introduction:

Plaintiff filed a complaint seeking restitution for defendant's retention and use of his property. Defendant through new matter sought recovery of the costs of storing plaintiff's property. A trial without jury was held on April 14, 1998. Counsel submitted post-trial memoranda and this matter is ready for decision.

Discussion:

Plaintiff Elwood Grimm owns and uses seventeen loaders and crushers in his business which does salvage work in Virginia, West Virginia, Maryland and Pennsylvania. Plaintiff performed a salvage job for defendant Crawford Wishard in November 1989. (The other defendant named in the complaint is Crawford Wishard's wife Lois Wishard). Plaintiff and defendant, who have known each other for fifty years, had an oral agreement that

plaintiff would remove vehicles from defendant's yard and pay defendant for those vehicles.

One crusher and two loaders were used in the three-week job. When the job was completed, plaintiff's employees mistakenly left one of the vehicles, a Fiat Allis 345B loader, in defendant's yard. Like all Fiat Allis loaders, it was a beige-yellow color and featured a flat plate on the side bearing particular serial numbers. The loader remained in defendant's yard between November, 1989 and March, 1997, a period of seven years and five months. The tires went flat, the battery expired and other mechanical parts became non-functional during that time. Sitting on the same spot, grass and weeds grew up around the loader and the exterior began to rust.

Defendant knew the loader was in his yard and that it belonged to plaintiff. Defendant never contacted plaintiff about retrieving it even though plaintiff's business phone number and address were listed in the yellow and white pages of the local telephone book throughout the seven years and plaintiff continued doing business under the trade name he had used for approximately forty-five years. Despite knowing the loader was plaintiff's property, defendant and his son undertook repairs to the loader to make it operational. They used it in their business for four months between October, 1996 and January, 1997. During that time, some of the serial numbers were scratched off and the plate bearing the name Fiat Allis was removed, patched and painted over with green paint as was the rest of the loader. (plaintiff's exhibits #4, 6 and 7, - photographs taken September 23, 1997). The Court viewed the loader at the beginning of the trial.

Plaintiff did not know where the loader was located between November, 1989 and February, 1997. In fact, he did not even realize it was missing until he embarked on a search for another of his missing vehicles and in the process found the loader with the assistance of the Pennsylvania State Police using documentation pertaining to its serial number. Defendant initially was evasive, deceptive and uncooperative with the police and plaintiff about the loader's identity but finally conceded it belonged to plaintiff. The loader was removed from defendant's yard and returned to plaintiff.

Plaintiff's requested damages are the monthly fair rental value of the loader for the eighty-nine months it remained in defendant's possession. Plaintiff presented the testimony of Les Powlen, an expert in the sale and rental of heavy equipment who has direct experience with Fiat Allis 345B loaders. According to Mr. Powlen, a monthly fair rental value of that machine is \$1,400.00 on a long-term lease. Defendant did not present evidence to the contrary. Plaintiff seeks \$124,600.00 rental value plus attorney fees and costs.

Defendant counterclaimed for storage costs in the amount of \$1,000.00 per month for the eighty-nine months during which plaintiff left the loader on his property. He offered no evidentiary basis for that figure, however, and conceded it cost him no money to store the loader. Also, defendant presented no evidence about the value of the repairs he performed.

Both parties request relief under the doctrine of quasi-contract, also known as implied or constructive contract. Quasi-contract allows the Court to impose a duty upon a person who has been unjustly enriched at the expense of another. *Styer v. Hugo*, 619 A.2d 347 (Pa.Super. 1993). Quasi-contract is not based on the parties' express intention to fulfill particular duties. It is a legal fiction which imposes on the benefitting party the duty to pay restitution to the disadvantage party equal to the value of the benefit conferred with an eye toward ensuring justice. *Schenck v. K.E. David, Ltd.*, 666 A.2d 327 (Pa.Super. 1995); *Chesney v. Stevens*, 644 A.2d 1240 (Pa.Super. 1994); *Schott v. Westinghouse Electric Corporation*, 259 A.2d 443 (Pa. 1969).

Clearly plaintiff was careless to leave his loader on defendant's property and to forget about its existence for eighty-nine months. Defendant did not receive a benefit from the loader until he began using it in his own business for the four months of October, 1996 through January, 1997. Plaintiff's claim for \$124,600.00 representing eighty-nine months' worth of rental value is excessive under these circumstances and such an award would not serve the interests of justice.

Defendant knew the loader belonged to plaintiff but gave no explanation for his failure to let plaintiff know the loader had been left behind. The two men knew each other for fifty years

and have done business together several times in that period. Plaintiff's business was listed in the telephone book and his trade name was not changed. It cost defendant nothing to keep the loader in his yard. The repairs he made were done at his own risk and were based on a gamble that plaintiff would not come back for the loader some day. Defendant had the benefit of using the loader in his business for four months. Under those circumstances, defendant is not entitled to storage costs or reimbursement for the value of the repairs.

We find the interests of justice require that plaintiff receive restitution for the four-month period defendant actually used the loader. Using the uncontested figure of \$1,400.00 monthly rental value, plaintiff is entitled to *quantum meruit* damages in the amount of \$5,600.00.

Plaintiff also makes a claim for costs and attorneys fees. This claim appears to be grounded on defendant's alleged failure to fully answer interrogatories served by plaintiff. Defendant never revealed in his answers that the loader was left outside and that he used the loader in his business for four months. Plaintiff's counsel cross-examined the defendant on this point at trial but entered no documentation as an exhibit and defense counsel did not have the opportunity to respond to that claim during the trial. Plaintiff's counsel may petition the Court for this relief. The petition must include a reference to the specific subsection of 42 Pa.C.S.A. §2503 which applies and include the factual basis for that relief established of record. *Seghetti v. Heritage Resorts*, 19 D.&C. 4th 66.(1990).

An appropriate Verdict will be entered as part of this Opinion.

VERDICT

NOW, this 11th day of August, 1998, the Court having held a trial without jury and having reviewed the evidence, relevant law and briefs of counsel, finds that plaintiff Elwood Grimm is entitled to \$5,600.00 restitution under the doctrine of quasi-contract for the value of the benefit conferred on defendants. Defendants' counterclaim for storage costs is denied.

ORDER OF COURT

NOW, this 11th day of August, 1998, plaintiff's claim for reasonable attorneys fees is denied without prejudice. Plaintiff's counsel may file a petition for such relief citing the appropriate subsection of section 2503 of the Judicial Code and stating the facts of record on which the claim is based. The petition must be filed within 10 days of the entry of the verdict and will be decided under Pa.R.C.P. 206.7.