

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

CHERRYLAND ELECTRIC CO-OP,
Plaintiff/Appellee,

vs

File No. 91-9577-AV
HON. PHILIP E. RODGERS, JR.

DANELLE M. ROUND,
Defendant/Appellant.

Craig W. Elhart (P26369)
Attorney for Plaintiff/Appellee

Gary Bergstrom (P 3 6 9 18)
Attorney for Defendant/Appellant

DECISION ON APPEAL

Defendant/Appellant filed a Claim of Appeal seeking relief from a Judgment imposed by the 86th District Court in File No. 91-7333 on November 31, 1991. Both parties filed Briefs on Appeal and requested oral argument. A hearing was held on this matter on May 26, 1993. Pursuant to the Court's order at the hearing, both parties filed supplemental briefs on the issue of the District Court's equitable jurisdiction.

The Court has heard the parties' proofs and reviewed the evidence and written arguments. The Court concludes that Plaintiff's complaint seeking to collect monies owed by Robert Booth from Defendant, under the theory of quantum meruit, should have been dismissed. Further, the Court holds that this matter was never properly within the jurisdiction of the 86th District Court. The Court's findings of fact and conclusions of law will now be discussed. MCR 2.517.

This action was commenced in small claims court. The parties stipulated to amend the complaint to allow Plaintiff to pursue its claims under the equitable theory of quantum meruit in the District Court. Plaintiff claims that a contract implied in law exists between the parties for the cost of electrical services delivered during an approximately four and a half month period, from November 3, 1990 to until March 20, 1991. The facts are not in dispute.

Defendant and Mr. Robert Booth rented an apartment located at 3242 East Hammond Road, Traverse City, Michigan in early November,

1990. At the commencement of their occupancy, Mr. Booth entered into a contract with Plaintiff for electrical services. For approximately four months, those individuals and Defendant's infant daughter resided in the apartment. Late in February, 1991, Mr. Booth vacated the premises without prior notice to Defendant.

Plaintiff's employee, Connie Levandowski, testified that she met Defendant after Plaintiff's shut-off notice was left at the apartment. On March 20, 1991, the day Defendant received the shut-off notice, she entered into a contract with Plaintiff for electrical services. From the inception of the contractual relationship between Plaintiff and Defendant, Plaintiff tried to collect arrearages which existed on Mr. Booth's account from Defendant.

Witnesses for both parties testified that Defendant never agreed that she was responsible for the arrearages which existed on Mr. Booth's account. Witness Connie Levandowski testified that Defendant "argued that it was Scott's bill." (Trial tr., p 15.) The arrearages in total equal \$319.20. Later, Jane Bashore, Plaintiff's employee, wrote to Defendant advising her she was at least responsible for 50% of the bill. (Plaintiff's Exhibit #3.) Unsuccessful in its collection efforts, Plaintiff eventually commenced the small claims action.

Prior to litigation, in her attempt to defend herself against Plaintiff's collection efforts, Defendant contacted Mr. Wally Schneider of the Michigan Public Service Commission, Consumer Services Division. Plaintiff/utility operates in Michigan under the supervision of the MPSC pursuant to MCL 460.1 et seq. Mr. Schneider that he advised Defendant that her refusal to pay Mr. Booth's bill was sanctioned by MPSC regulations.

Mr. Schneider also testified that after he learned of this situation he personally telephoned Ms. Bashore who had written collection letters on behalf of Plaintiff to Defendant. He averred that, during their telephone conversation, he advised Ms. Bashore of the regulatory proscription of Plaintiff's efforts to collect Mr. Booth's bill from Defendant. (Trial tr., p 80.)

Under the heading, Discontinuance of service; reconciliation of accounts, MPSC regulation R460.2162 reads in pertinent part as follows:

(1) None of the following shall constitute sufficient

cause for a utility to discontinue service:

* * *

(d) The failure of a customer, such as a landlord, to pay for service where service is used by another person, such as a tenant. A utility may discontinue service, however, in any of the following circumstances:

* * *

(iii) *** A utility shall not attempt to recover any outstanding bills or other charges due upon the account of any other person." (Emphasis added.)

Plaintiff contends that reference in this regulation to "landlord" and "tenant" only precludes the utility from collecting contractual debts from third parties in those situations involving landlords and tenants. The Court finds this position to be without merit. Clearly, the regulation moves from a discussion of situations which warrant discontinuance of service to the very specific statement which limits utilities to collecting their bills from only those individuals with whom they have contracts. The attempt to distinguish tenants from other third parties is without any foundation in the language of the regulation, public policy or common sense.

The Court, then, finds merit in Appellant's argument that only customers who have a contractual relationship with the utility are obligated to pay for its services. Further, the Court finds no evidence that the parties reached an agreement which could be termed an implied contract. As shown above, MPSC regulation R460.2162(1)(d)(iii) prohibits Plaintiff's collecting Mr. Booth's debt from Defendant. Michigan case law also does not support the implication of a contract on these facts. *Cascaden v Magryta*, 247 Michigan 267, 270 (1929); *Moll v County of Wayne*, 332 Michigan 274 (1952).

There are 2 kinds of implied contracts: 1 implied in fact, and the other implied in law. The first does not exist unless the minds of the parties meet, by reason of words or conduct. The second is quasi or constructive, and does not require a meeting of minds, but is imposed by fiction of law, to enable justice to be accomplished, even in case no contract was intended.

In order to afford the remedy demanded by exact

justice and adjust such remedy to a cause of action, the law sometimes indulges in the fiction of a quasi or constructive contract, with an implied obligation to pay for benefits received. The courts, however, employ the fiction with caution, and will never permit it in cases where contracts, implied in fact, must be established, or substitute one promisor or debtor for another. *Cascaden v Maqryta*, 24, Mich 267, quoted with approval in *City of Detroit v City of Highland Park*, 326 Mich 78. (Emphasis supplied.)

Moll, *supra*, p 278. Defendant's brief on appeal also presented a broad review of the common law cases in other states and regions which share this view. Those citations will not be reproduced here but establish the widely held and long recognized principles at issue here.

Supported by the holdings in *Cascaden*, *Moll*, and *City of Detroit*, this Court finds that Plaintiff cannot substitute Defendant for Mr. Booth in its efforts to collect an outstanding utility bill. The burden of proof "rests on plaintiff in this case to establish by competent proofs and a preponderance of the evidence" that Defendant is obligated to pay Mr. Booth's debt. *Moll, supra*, p 277. Plaintiff did not and cannot meet the burden of proof.

The legal theory of quantum meruit is inapplicable in this controversy. Plaintiff provided electrical services to Mr. Booth and Defendant Round when they shared a rental unit for more than four months. Mr. Booth expressly contracted with the utility for that service in exchange for his commitment to pay the cost thereof. Recovery under quantum meruit may be appropriate where, absent an express contract, one person or entity benefits from another's acts or services. *United States v Snider*, 779 F2d 1151 (CA 6, 1985). This is not such a case.¹

At the Court's request, the parties filed post-hearing briefs on jurisdiction. The perspectives presented by the opposing sides were radically divergent. Defendant's brief was filed more than one month before Plaintiff's brief was submitted. Defendant's brief presented a comprehensive review of jurisdiction which included a listing of quantum meruit cases. Defendant pointed out that all of the cited quantum meruit cases had been heard in circuit court.

Plaintiff's brief did not analyze or discuss the divergent

perspectives. Plaintiff simply argued that the district court had jurisdiction of the quantum meruit action since Plaintiff sought solely money damages. Plaintiff's counsel ignored the pertinent legal authority which describes the long-established recognition of quantum meruit as an equitable remedy which must be heard in the circuit court, the court of equity. The Court finds Plaintiff's pursuit of this matter to be frivolous. MCR 2.114(F) and MRPC 3.1.

Early on, Plaintiff was apprised of a regulation which precluded its efforts to recover the Booth debt from Defendant. Despite Mr. Schneider's admonition that the utility was prohibited from seeking recovery for another person, Plaintiff persisted with this litigation. Further, Plaintiff presented no argument for extending, modifying or reversing the applicable MPSC regulations. Plaintiff's brief presents no "good-faith argument on the merits of the action". Rather, Plaintiff casually dismisses Defendant's reliance on MPSC's clearly stated regulation proscribing the

Footnote 1: Plaintiff has recourse against Mr. Booth. Plaintiff's witnesses and Defendant testified that Plaintiff's workers, Ms. Levandowski and Ms. Bashore, knew of Mr. Booth's whereabouts prior to the trial. Both Ms. Levandowski and Ms. Bashore testified that they intend to commence an action against Mr. Booth to collect the arrearage. (Trial tr. pp 29 and 51.)

instant action and knowingly violated it.

Plaintiff submitted a brief which presents the simplistic conclusion that "Reasonable men understand that persons who receive electrical service or other utilities are obligated to pay for such service." Plaintiff did not, in good-faith, argue to change a known and clear requirement that public utilities collect debts only from those who subscribe for their services. The decision of the trial court is reversed and the complaint against Defendant dismissed with prejudice. The Court will also require that Plaintiff pay Defendant, through her attorney, in full for the reasonable costs and fees incurred by legal services in defending against the charges brought against Defendant.

IT IS SO ORDERED.

HONORABLE PHILIP E. RODGERS, JR.

Circuit Court Judge

Dated: 8/17/93