COURT OF APPEALS
DECISION
DATED AND RELEASED

FEBRUARY 18, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62(1), STATS.

NOTICE

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No. 96-1693

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

LA VERNE SWANSON and EVELYN M. SWANSON, husband and wife,

Plaintiffs-Respondents,

v.

RONALD W. NELSON,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Pierce County: ROBERT WING, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. This appeal arises out of a landlord-tenant dispute. Ronald Nelson appeals a judgment granting his former landlords LaVerne and Evelyn Swanson $4,000 damages and dismissing Nelson's counterclaim. Nelson argues that the trial court erroneously directed a verdict against him because (1) there was credible evidence that the parties agreed that Nelson would be reimbursed for repairs he made on the rental premises; (2) that the parties' agreement is found in the lease; (3) that under § 704.25(2)(b),

STATS., a periodic tenancy was created with the same terms as those found in the lease; and (4) the Swansons were unjustly enriched by the repairs. Because Swanson failed to show that he made capital improvements, and there was no evidence that the Swansons agreed to make repairs, we reject Nelson's arguments and affirm the judgment.

In 1977, when the Swansons decided to retire, they leased their 200-acre dairy farm, including the home and buildings, to Nelson for a one-year term. The written lease provided for an annual $7,200 rental payment and that Nelson would "perform all work of making repairs and improvements on said land as soon as the same become necessary, provided, however, that it shall be the obligation of [the Swansons] to provide materials for any capital improvements to the buildings now existing on the land."

At the end of the one-year term, the parties agreed to an extension until March 31, 1980, and indicated their agreement by their initials. After March 31, 1980, the parties orally agreed to a rent increase to $800 per month. Nelson testified that when he moved in, the farm was operational and everything was working. Nelson stayed on the farm until March 31, 1993.

The Swansons paid for all the repairs and improvements until 1980, including new electric wiring of the house and barn, a new sewer system for the house, new shingles on the barn, new grainer and corn crib, new furnace in the house, new kitchen floor, insulation for the house and new carpeting to the living room. Nelson does not dispute that several times between 1980 and 1993, the Swansons told Nelson that they would not make further repairs.

In 1992, the Swansons entered into a contract to sell the farm to a third party for $150,000. Nelson had rejected the Swansons' offer to sell it to him at the same price, insisting that the price should be lower in consideration of the repairs he made. Nelson estimated that he made approximately $10,000 of repairs over a twelve-year period, amounting to $69 per month. Nelson testified that the $10,000 sum included amounts he paid for parts and labor to fix farm equipment, such as a silo unloader and the barn cleaner. He used the expenses as tax deductions over the years. Nelson testified that the Swansons told him that some day the farm would be his or if he did not buy the farm, they would "make it right."

Nelson stopped paying rent on November 1, 1992, and made no payments for the following five months, at which time he moved from the premises. After he moved out and the Swansons demanded the back due rent, Nelson first sought payment for repairs he made over the previous twelve-year period. He testified that he never asked for reimbursement before, "because I kind of always assumed that I was going to buy it anyway." However, he had been having health problems and "I was kind of hesitant about buying it at that time, and so I was putting that off, you know, trying to find out what was wrong at first."

The Swansons initiated this action to collect $4,000 in back rent. Nelson counterclaimed for breach of contract and unjust enrichment. The case was tried before a jury. After all the evidence was presented, the Swansons moved for a directed verdict. The trial court rejected Nelson's counterclaim because it concluded that there was no agreement to pay for repairs. The trial court rejected the unjust enrichment claim because there is no proof that the farm had any greater value as a result of the repairs. The trial court granted the motion, entered judgment for $4,000 in favor of the Swansons and dismissed Nelson's counterclaim. Nelson appeals.

We conclude that the trial court properly entered a directed verdict. No motion challenging the sufficiency of the evidence as a matter of law to support a verdict shall be granted unless the court is satisfied that, considering all credible evidence in the light most favorable to the party against whom the motion is made, there is no credible evidence to sustain a finding in favor of such party. Section 805.14, STATS. Whether the trial court erroneously directed the verdict is a question of law we review de novo. *See* ***Weiss v. United Fire & Cas. Co.,*** 197 Wis.2d 365, 388, 541 N.W.2d 753, 761 (1995).

With this test in mind, we conclude that there is no evidence that the Swansons had any obligation to pay for repairs. The lease states that the Swansons would pay for materials for capital improvements, not repairs. An improvement to real property is distinguished from repairs. An improvement is defined as "a permanent addition to or betterment of real property that enhances its capital value and that involves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs." ***United States Fire Ins. Co. v. E.D. Wesley Co.,*** 105 Wis.2d 305, 309, 313 N.W.2d 833, 835 (1982) (citations omitted). Nelson does not

argue, and the record does not disclose, that Nelson's expenditures were in the nature of capital improvements to the farm.[1]

Second, it is undisputed that the Swansons advised Nelson that they would pay for no more repairs. Nelson's claim that the Swansons stated that they would "make it right" is insufficient to support a jury finding that the Swansons were contractually liable to make repairs over the term of his tenancy.[2]

We also reject Nelson's argument that § 704.25, STATS., confers an obligation on the Swansons to reimburse Nelson $10,000 for repairs. Section 704.25(3) provides that a periodic tenancy, taking effect after a lease expires, is upon the same terms and conditions as those of the original lease. As we previously observed, the lease provided not that the Swansons would pay for repairs, but that they would be obligated to make capital improvements. Nelson does not argue that his repairs were in fact capital improvements.

We further reject that the Swansons had a duty to reimburse Nelson under § 704.07, STATS. This section applies when there is no contrary agreement in writing. Under the parties' written agreement, the Swansons had no obligation to make repairs, but only to pay for capital improvements.

If the written agreement was found to have expired, we reach the same result. There is no showing that Nelson's expenditures were of the nature a landlord would be responsible for under § 704.07(2), STATS., such as "necessary structural repairs," or plumbing and wiring not in reasonable working condition.

Also, in the absence of a written agreement, the "tenant is also under a duty to keep plumbing, electrical wiring, machinery and equipment furnished with the premises in reasonable working order if repair can be made at cost which is minor in relation to the rent." Section 704.07(3)(b), STATS.

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[1] An issue not briefed or argued will be deemed abandoned. ***Reiman Assocs., Inc. v. R/A Adver., Inc.,*** 102 Wis.2d 305, 306 n.1, 306 N.W.2d 292, 294 n.1 (Ct. App. 1981).

[2] Nelson brought his counterclaim based on contract and does not make any claim based on tort.

Nelson does not demonstrate whether the repairs he made were in the nature of those listed in this section, nor does he argue that the sums expended, which averaged approximately $69 per month, were not minor in relation to the $800 per month rent. We conclude the record falls short of supporting a claim under § 704.07.

We reject Nelson's claim that the court's statement to the effect that a "contract is not a lease" is reversible error. *See* ***Sampson Investments v. Jondex Corp.,*** 176 Wis.2d 55, 62, 499 N.W.2d 177, 180 (1993) (a lease shares the qualities of both contracts and conveyances). Here, the lease did not require the Swansons to pay for repairs. Whether the lease was found to be in effect or to have expired, the result is the same. Nelson failed to make the necessary showing that the Swansons had an obligation to pay for the repairs Nelson made.

Finally, we agree with the court that the record fails to demonstrate that the Swansons were unjustly enriched. To show unjust enrichment, a plaintiff must show that the plaintiff must have conferred a benefit on the defendant. *See* ***Ramsey v. Ellis,*** 168 Wis.2d 779, 784-85, 484 N.W.2d 331, 333 (1992). There is no claim that the premises were not in good working order when Nelson first rented them. Nor is there a showing that the repairs Nelson made exceeded the normal maintenance required under the parties' written agreement and § 704.07, STATS. There is no showing that Nelson's expenditures in any way increased the value of the premises. Because the trial court's finding that no benefit was supported by the record, the trial court properly rejected Nelson's unjust enrichment claim.[3]

By the Court.—Judgment affirmed.

This opinion will not be published. RULE 809.23(1)(b)5, STATS.

[3] Nelson's argument implies he is entitled to a jury trial on his unjust enrichment claim. Because it is an equitable remedy, it is not a question for a jury. *See* ***Tri-State Home Improvement Co. v. Mansavage,*** 77 Wis.2d 648, 660-61, 253 N.W.2d 474, 479 (1977).