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**DISTRICT II**

May 7, 2025

*To:*

Hon. Robert P. Dewane  
Circuit Court Judge  
Electronic Notice

Andrew J. Krajnek  
Electronic Notice

April Higgins  
Clerk of Circuit Court  
Manitowoc County Courthouse  
Electronic Notice

Robert C. Pautz  
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

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2024AP643

Robert C. Pautz v. John Gleichner (L.C. #2021CV108)

Before Gundrum, P.J., Neubauer, and Grogan, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Robert C. Pautz, pro se, appeals from a judgment of the circuit court dismissing his eviction action against John Gleichner and finding that Gleichner is co-owner of a duplex that Pautz bought in 2002. Pautz takes issue with the court's findings that the parties entered into an oral agreement to jointly purchase the duplex and that the agreement is enforceable under the statutory exceptions to the statute of frauds. Based upon our review of the briefs and Record, we

conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).<sup>1</sup> We summarily affirm.

Pautz filed a small claims action seeking to evict his stepbrother, Gleichner, from one half of the duplex that Pautz owned. Pautz asserted that he was the sole owner of the entire duplex, and Gleichner merely rented one half of the duplex from Pautz. In response, Gleichner filed a counterclaim seeking to enforce an oral agreement between Pautz and Gleichner to jointly purchase the duplex in question.

After a bench trial and briefing by both parties, the circuit court made several explicit findings. Notably, it found that Pautz and Gleichner had “entered into an oral agreement to jointly purchase the [duplex,]” and that the “oral agreement is enforceable pursuant to WISCONSIN STATUTE § 706.04 as all of the elements of the transaction have been clearly and satisfactorily proved to the court[.]” The court also found, as pertaining to § 706.04, that “the deficiency of the conveyance may be supplied by reformation in equity, and [Pautz] would be unjustly enriched if enforcement of the transaction were denied.”

The circuit court determined that the parties’ tax returns, presented as exhibits at trial, demonstrated their joint intention to be co-owners of the duplex. Particularly telling to the court were Gleichner’s tax returns claiming deductions for both mortgage interest payments and property taxes Gleichner paid on the duplex. Pautz, a certified public accountant, had prepared those tax returns on Gleichner’s behalf. Because the evidence at trial demonstrated that Gleichner had consistently made “monthly purchase payments” to Pautz for over 20 years by the

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version.

time of trial, and Gleichner had made significant improvements to the property both indoors and out, the court found that Pautz would be unjustly enriched if the purchase agreement was not enforced. Thus, the court dismissed Pautz’s eviction action and ordered enforcement of the parties’ oral purchase agreement for the duplex. Pautz appeals.

We generally review a decision in equity, such as that at issue here, for an erroneous exercise of discretion. *Production Credit Ass’n of Madison v. Jacobson*, 131 Wis. 2d 550, 555, 388 N.W.2d 655 (Ct. App. 1986). If the circuit court bases its decision to grant relief on findings of fact, we will affirm unless the findings are clearly erroneous. WIS. STAT. § 805.17(2); *Otto v. Cornell*, 119 Wis. 2d 4, 8, 349 N.W.2d 703 (Ct. App. 1984). We will affirm the circuit court’s ultimate decision to grant equitable relief if the court examined the relevant facts, applied a proper standard of law, and using a demonstrated rational process, reached a conclusion that a reasonable judge could reach. *Loy v. Bunderson*, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982).

Pautz first argues on appeal that the circuit court erroneously found that the parties had an enforceable oral agreement to jointly purchase the duplex—Pautz maintains that it was a rental agreement. Whether Pautz and Gleichner entered into an agreement to purchase or to rent the duplex presents a question of fact. In actions tried to the court, we will affirm the circuit court’s findings unless clearly erroneous. See WIS. STAT. § 805.17(2); *Halverson v. River Falls Youth Hockey Ass’n*, 226 Wis. 2d 105, 115, 593 N.W.2d 895 (Ct. App. 1999). We also defer to circuit court findings regarding the credibility of witnesses after a bench trial. *Gehr v. City of Sheboygan*, 81 Wis. 2d 117, 122, 260 N.W.2d 30 (1977) (explaining that “when more than one reasonable inference can be drawn from the credible evidence, the reviewing court must accept the inference drawn by the trier of fact”).

In the present case, there is ample evidence supporting the circuit court's factual finding that the parties agreed to jointly purchase the duplex, as opposed to enter into a rental agreement. First, trial testimony supported the court's finding. Although Pautz testified that he and Gleichner had only a rental agreement, Gleichner testified that the parties had always agreed to joint ownership of the duplex. Gleichner explained that Pautz purchased the duplex with a VA loan, and given that Gleichner was not a veteran, the mortgage was necessarily in Pautz's name alone. However, among other facts indicating co-ownership, Gleichner paid exactly half of the mortgage payment each month. In finding that the parties had a purchase agreement, the court clearly found Gleichner's testimony more credible than Pautz's and based its findings on that credibility determination. Pautz fails to persuade us that there was an erroneous exercise of discretion under these circumstances. *See Gehr*, 81 Wis. 2d at 122.

In further support of the circuit court's finding that there was an ownership agreement rather than a rental agreement, Gleichner testified that he personally picked out the carpet, ceramic tile, countertops, and appliances while the property was under construction. He also performed maintenance and landscaping at the property, including building a deck on his half of the duplex. In addition, Gleichner paid not only exactly half of the mortgage but also half of the escrow payment during the entire time that he lived at the property, and Gleichner's monthly payment changed each time the mortgage was refinanced or the escrow amount changed. Because there is ample evidence to support the court's finding that the parties had entered into a joint-ownership agreement, and not a rental agreement, when the duplex was first built, we conclude that Pautz has failed to demonstrate that the court's factual findings are flawed.

Pautz next challenges the circuit court's determination that the alleged oral agreement could be enforced because Gleichner met the threshold evidentiary requirements for an exception

to the statute of frauds. Under WIS. STAT. § 706.02, a contract to convey land must meet several prerequisites in order to be valid and enforceable, including that it is in writing and identifies the parties, land, and the interest conveyed. However, WIS. STAT. § 706.04 provides conditions “under which a trial court may use equitable doctrines to enforce a promise to convey real estate[.]” *Lenhardt v. Lenhardt*, 2000 WI App 201, ¶7, 238 Wis. 2d 535, 618 N.W.2d 218. A request for specific performance is an equitable remedy which rests in the discretion of the trial court. *Id.*, ¶6.

Pautz argues that even if the evidence supports the existence of an ownership agreement as opposed to a rental agreement, the circuit court erred in concluding that Pautz would be unjustly enriched absent enforcement of the ownership agreement.<sup>2</sup> WISCONSIN STAT. § 706.04 authorizes the enforcement of a transaction “which does not satisfy one or more of the requirements of s. 706.02 ... in whole or in part under doctrines of equity,” if the “elements of the transaction are clearly and satisfactorily proved” and, as relevant to this case, if “[t]he party against whom enforcement is sought would be unjustly enriched if enforcement of the transaction were denied[.]” Sec. 706.04(2). To prove unjust enrichment, the party seeking to enforce the agreement must prove: (1) a benefit conferred on the receiving party; (2) knowledge or appreciation by the receiving party of the benefit; and (3) acceptance or retention by the receiving party of the benefit under circumstances making it inequitable for the receiving party to

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<sup>2</sup> Pautz advances several other arguments in his briefing to this court, including that the circuit court erred by not considering expert tax testimony (neither party offered any such testimony) and that the court’s factual findings that the parties had an agreement of any sort are flawed. We decline to address these arguments—they have been forfeited because Pautz raises them for the first time on appeal. *See, e.g., Schill v. Wisconsin Rapids Sch. Dist.*, 2010 WI 86, ¶45 & n.21, 327 Wis. 2d 572, 786 N.W.2d 177. We therefore address above the only two arguments that Pautz has preserved and sufficiently developed on appeal—whether the circuit court erred in (1) concluding that the parties had a purchase agreement versus a rental agreement, and (2) enforcing the oral agreement.

retain the benefit without payment of its value. *Puttkammer v. Minth*, 83 Wis. 2d 686, 689, 266 N.W.2d 361 (1978).

The circuit court found that Pautz would be unjustly enriched if Gleichner were not permitted to be a co-owner of the duplex. The Record supports the court's conclusion. Evidence presented at trial established Gleichner had been paying towards the mortgage for approximately 20 years at the time of trial; in fact, only a small balance of the mortgage remained. Gleichner paid for all of the upkeep and maintenance at his half of the duplex for the past 20 years. Gleichner paid for a deck to be installed at the duplex, performed considerable landscaping, installed a water heater, and replaced all of the appliances. All of these contributions made by Gleichner would benefit Pautz without Pautz having to pay for these benefits and improvements—a classic example of unjust enrichment. The court found that it would be unjust for Pautz to receive the benefit of the improvements Gleichner made to the property over the years while Gleichner receives none. Pautz fails to persuade us that the court's finding is clearly erroneous.

In sum, we conclude that the circuit court correctly awarded equitable relief under WIS. STAT. § 706.04 because the court properly found that the elements of the agreement were clearly and satisfactorily proved and that the transaction fell within one of three exceptions under the statute, unjust enrichment. Simply put, it would be unjust for Pautz to receive a free and improved duplex at Gleichner's expense.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*