

STATE OF MICHIGAN
COURT OF APPEALS

TARA HOMES, INC,

Plaintiff-Appellee,

v

PAMELA JO NASH,

Defendant-Appellant,

and

BRIAN MCCARREN and CARRIE
MCCARREN,

Defendants.

UNPUBLISHED

August 25, 2005

No. 252460

Wayne Circuit Court

LC No. 03-306494-CZ

Before: Cooper, P.J., and Fort Hood and R.S. Gribbs*, JJ.

PER CURIAM.

Defendant Nash appeals as of right from the trial court's order granting plaintiff's motion for summary disposition and entering a judgment against defendant. We affirm.

Defendants McCarren entered into a contract for the purchase of a mobile home. Defendant Brian McCarren represented that he was issued a refund check for overpayments from the Wayne County Friend of the Court in the amount of \$18,239.32. The down payment for the purchase of the mobile home was \$6,227. Defendants McCarren asked plaintiff to accept the friend of the court check to cover the down payment on the mobile home and issue a refund check for the remainder. Based on the representations of defendants McCarren, plaintiff agreed to accept the friend of the court check. Consequently, defendant Brian McCarren endorsed the check to plaintiff on August 27, 2002. Plaintiff deposited the check in its bank account and learned that it cleared both the depositing bank and the bank on which it was drawn.

On August 30, 2002, defendant Carrie McCarren and her mother, defendant Pamela Jo Nash, came to plaintiff's offices to request the refund for the amount of the check that exceeded the down payment. It was requested that the refund be issued to defendant Nash. Plaintiff wrote a check for the refund amount of \$12,204.32 to defendant Nash, as requested. That same day,

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

defendant Nash endorsed plaintiff's check and obtained a cash payment for the full amount of the check. On September 3, 2002, plaintiff was notified that the friend of the court check in the amount of \$18,239.32 was a forgery. Consequently, plaintiff's account was debited for the full amount of the forged check. Plaintiff sought reimbursement from defendant Brian McCarren for the \$18,239.32 from the fraudulent friend of the court check and also sought reimbursement from defendant Nash for the refund check amount of \$12,204.32. When payment did not occur, plaintiff filed this litigation seeking restitution. Specifically, plaintiff's complaint alleged a claim of unjust enrichment against defendant Nash.¹

Plaintiff moved for summary disposition of the unjust enrichment claim against defendant Nash, relying on her receipt and redemption of the refund check. Defendant Nash opposed the motion, alleging that she did not keep any of the proceeds of the refund check, but rather, gave all monies to defendant McCarrens. Defendant Nash alleged that summary disposition was appropriate in her favor pursuant to MCR 2.116(I)(2). The trial court granted plaintiff's motion for summary disposition, and defendant Nash appeals as of right.

We review summary disposition decisions de novo. *In re Capuzzi Estate*, 470 Mich 399, 402; 684 NW2d 677 (2004). The moving party has the initial burden to support its claim to summary disposition by affidavits, depositions, admissions, or other documentary evidence. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the nonmoving party to demonstrate a genuine issue of disputed fact exists for trial. *Id.* To meet this burden, the nonmoving party must present documentary evidence establishing the existence of a material fact, and the motion is properly granted if this burden is not satisfied. *Id.* Affidavits, depositions, and documentary evidence offered in support of and in opposition to a dispositive motion shall be considered only to the extent that the content or substance would be admissible as evidence. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Mere conclusory allegations that are devoid of detail are insufficient to demonstrate that there is a genuine issue of material fact for trial. *Quinto, supra* at 371-372.

Unjust enrichment is the process of imposing a contract in law. *Hollowell v Career Decisions, Inc*, 100 Mich App 561, 570; 298 NW2d 915 (1980). "The essential elements of such a claim are (1) receipt of a benefit by the defendant from the plaintiff and (2) which benefit it is inequitable that the defendant retain." *Id.* "Restitution may be imposed under the equitable theory of implied contract or quasi-contract to prevent the unjust enrichment of one party at the expense of another." *Hofmann v Auto Club Ins Ass'n*, 162 Mich App 424, 429; 413 NW2d 455 (1987). A party is entitled to restitution based on a mistake of fact or law unless it is inequitable or inexpedient for restitution to be awarded. *Id.* The equity exception arises in the situation where the party receiving the money has changed position in consequence of the payment, and it would be inequitable to allow a recovery. *Wilson v Newman*, 463 Mich 435, 441-442; 617

¹ The trial court granted plaintiff's motion for default judgment against the McCarren defendants based on their failure to provide requested documents. The default judgment against the McCarren defendants is not at issue in this appeal.

NW2d 318 (2000) citing *General Motors Corp v Enterprise Heat & Power Co*, 350 Mich 176; 86 NW2d 257 (1957).

In the present case, plaintiff presented an affidavit from the company representative indicating that the down payment for purchase of a mobile home was made through payment of a friend of the court check based on the representations of defendant Brian McCarren. The company representative agreed to issue a refund check for the amount the check was in excess of the down payment. Three days later, defendant Nash and defendant Carrie McCarren personally came to plaintiff's office to obtain the refund. After plaintiff's bank confirmed that the check had cleared, the affiant wrote the refund check to defendant Nash in the amount of \$12,204.32. The allegations in the pleadings provided that defendant Nash was involved in the transaction because she had a bank account at National City. However, in her deposition testimony, defendant Carrie McCarren acknowledged that she had an open National City account at the time of this transaction.² Moreover, in her deposition, defendant Carrie McCarren testified that after defendant Nash cashed the refund check from plaintiff she was given \$1,000. This documentary evidence established that plaintiff mistakenly made payment to defendant Nash and that defendant Nash received a benefit. In opposition to the affidavits and deposition testimony submitted by plaintiff, defendant Nash presented a conclusory affidavit stating that she did not "keep any money from the cashing of the refund check." Moreover, the affidavit does not address the equity exception; it does not allege how defendant Nash changed her position. A mere conclusory affidavit, devoid of detail, is insufficient to oppose a motion for summary disposition. *Quinto, supra*. Accordingly, the trial court properly granted plaintiff's motion for summary disposition.

Affirmed.

/s/ Jessica R. Cooper
/s/ Karen M. Fort Hood
/s/ Roman S. Gribbs

² Defendant Carrie McCarren acknowledged that the account was later closed. She further acknowledged that there was a dispute concerning a withdrawal from the account at the time of the transaction. There is no documentary evidence from a bank employee to indicate that a deposit would not have been permitted at the time of the transaction at issue.