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## QUASI-CONTRACTS-RESCISSION FOR FRAUD-DEFRAUDING VENDEE'S RIGHT TO RECOVER FOR IMPROVEMENTS

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QUASI-CONTRACTS—RESCISSION FOR FRAUD—DEFAUDING VENDEE'S RIGHT TO RECOVER FOR IMPROVEMENTS—Defendant fraudulently obtained a conveyance of land from plaintiff and while in possession of the tract made repairs and improvements to a building thereon. Upon discovery of the fraud plaintiff sued in equity to cancel the deeds involved, and tendered into court the consideration received from defendant. The lower court cancelled the deeds, returning the consideration to defendant, but refused to admit defendant's evidence of repairs and improvements on the ground that equity will not allow a claim for the value of improvements when made by a defrauding party. *Held*, reversed in part. The evidence was admissible, and an accounting should be ordered for the value added to the land by improvements made in the bona fide belief that the title would stand. *Walker v. Galt*, (App. 5th, 1948) 171 F. (2d) 613.

Though the strict rule of the common law is that, in general, improvements made upon the land of another belong to the owner,<sup>1</sup> it is well settled that courts of equity will recognize the right of a bona fide possessor to the value of improvements made in good faith upon the land.<sup>2</sup> The question of the principal case would seem to be: will a court of equity give its protection to an improver who obtained possession of the land by fraud? There is little doubt that most courts will, as a general rule, refuse relief where one who obtained title by fraud seeks to recover the value which his improvements have added to the land.<sup>3</sup> On the other hand, the defrauding vendee has been allowed to recover money spent for taxes,<sup>4</sup> for discharge of encumbrances,<sup>5</sup> and for necessary repairs.<sup>6</sup> The distinction between these and the improvement cases seems to be that in the former the

<sup>1</sup> 27 AM. JUR., Improvements, §5, 2 TIFFANY, REAL PROPERTY, 3d ed., §625 (1939). Law courts generally departed from the strict rule to the extent that a bona fide possessor making improvements in good faith could set off the value of improvements against a claim for rents and profits by the owner. See *Jensen v. Probert*, 174 Ore. 143, 148 P. (2d) 248 (1944), for a summary of the improver's remedies. "Occupying claimant" and "betterments" statutes in most jurisdictions have carried the equitable principles into law actions. For a discussion of these statutes see 31 C.J., Improvements, §18; 137 A.L.R. 1078 (1942).

<sup>2</sup> WOODWARD, QUASI-CONTRACTS §§187, 188 (1913); RESTITUTION RESTATEMENT §42, comment c (1937); 104 A.L.R. 577 (1936). Some equity courts allow the improver an independent action for the value he has added. *Bright v. Boyd*, (C.C. Me. 1841) Fed. Case No. 1875; *Union Hall Assn. v. Morrison*, 39 Md. 281 (1873); *Hatcher v. Briggs*, 6 Ore. 32 (1876). A majority of the courts will give relief only as a condition to relief sought by the owner. 104 A.L.R. 577 (1936); RESTITUTION RESTATEMENT §42 (1) (1937), and notes to this section; 142 A.L.R. 310 (1943).

<sup>3</sup> *Blank v. Aronson*, (C.C.A. 8th, 1911) 187 F. 241; *In re Western Bond & Mortgage Co.*, (D.C. Ore. 1941) 44 F. Supp. 89; *Milw. & Minn. R.R. Co. v. Soutter*, 13 Wall. (80 U.S.) 517 (1871); *Griffin v. Bolen*, 149 Fla. 377, 5 S. (2d) 690 (1942); RESTITUTION RESTATEMENT §158 (d) (1937). *Contra*, *Kruger v. Block*, 114 Neb. 839, 211 N.W. 173 (1926). In *Hinton v. West*, 210 N.C. 712, 188 S.E. 410 (1936), it was held that constructive fraud would not bar reimbursement for improvements.

<sup>4</sup> *Blank v. Aronson*, (C.C.A. 8th, 1911) 187 F. 241; RESTITUTION RESTATEMENT §158 (b). See also 9 ORE. L. REV. 65 (1929). For discussion of the right of a grantee to reimbursement for taxes paid and encumbrances discharged when he took with notice that the conveyance was in fraud of creditors, see 8 A.L.R. 527 (1920).

<sup>5</sup> *Ibid.*

<sup>6</sup> *Lang v. Giraudo*, 311 Mass. 132, 40 N.E. (2d) 707 (1942); RESTITUTION RESTATEMENT §158 (c), (1937).

owner is made to reimburse for expenses which he would have been required to pay if he had title to the land, while in the latter he is not made to compensate the wrongdoer for improvements which he may not want or be able to afford. In the case of the innocent improver the desire to avoid penalizing action taken in good faith is controlling, but this consideration when applied to save a wrongdoer from the result of his fraud has little appeal to a court of equity.<sup>7</sup> In so far as the principal case allows defendant to recover the value of repairs it is in accord with the weight of authority. Though the court fails to make clear why it departs from the general rule as to improvements,<sup>8</sup> it would seem that the decision could be supported on either of two grounds constituting well-recognized exceptions to the general rule. If an owner actually desires the improvements made by the vendee the courts will generally allow reimbursement despite the vendee's fraud, since nothing unwanted is being forced upon the owner.<sup>9</sup> In the principal case the court indicates that there was evidence tending to show that plaintiff desired to have the property improved commercially, as was done by defendant.<sup>10</sup> Further, the court stresses the presence of evidence that the improvements were made, in the main, after plaintiff's agent had led defendant to believe that his title would not be disputed. If this is true, defendant could successfully invoke the rule that an owner is estopped to claim improvements made with his knowledge and apparent consent,<sup>11</sup> and it may well be that this is what the court means when it speaks of the defendant's bona fide belief that his title would stand.

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<sup>7</sup> *Gilbert v. West*, 211 N.C. 465, 190 S.E. 727 (1937); *RESTITUTION RESTATEMENT* §158 (1937); cases cited in note 3, *supra*.

<sup>8</sup> The court's attempt to distinguish *Griffin v. Bolen*, 149 Fla. 377, 5 S. (2d) 690 (1942), seems to indicate a rejection of the rule denying recovery to the wrongdoer. Certainly the court gives substance to this interpretation by intimating that defendant might recover if he "intended in good faith to live by the deed. . . ." On the other hand, the court stresses that a bona fide belief in title is necessary to the improver's success.

<sup>9</sup> *RESTITUTION RESTATEMENT* §158 (d) (1937); *Kimmel v. Peach*, 240 Mich. 697, 216 N.W. 374 (1927).

<sup>10</sup> Plaintiff owned and was hoping to develop a large tract of land, of which the land in question was a part. Moreover, a covenant in the deed restricted use of the property to business purposes.

<sup>11</sup> See 76 A.L.R. 304 (1932).