

**NOTICE**

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2014 IL App (4th) 130292-U

NO. 4-13-0292

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

February 4, 2014

Carla Bender

4<sup>th</sup> District Appellate  
Court, IL

TAYLOR STRATMAN and CARRIE STRATMAN,	)	Appeal from
Plaintiffs-Appellees,	)	Circuit Court of
v.	)	Adams County
DEAN MOWEN,	)	No. 12LM119
Defendant-Appellant,	)	
and	)	Honorable
BETH MOWEN,	)	Robert K. Adrian,
Defendant.	)	Judge Presiding.

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JUSTICE HOLDER WHITE delivered the judgment of the court.  
Justice Steigmann concurred in the judgment.  
Justice Harris specially concurred.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, holding the parties formed a valid and enforceable contract and defendant owed damages for breach of that contract.

¶ 2 In December 2009, defendant, Dean Mowen, and his wife, Beth Mowen, purchased a mobile home for their daughter, Carrie Stratman, and her husband, Taylor Stratman, plaintiffs. The Stratmans agreed to reimburse the Mowens for (1) the cost of the mobile home and (2) expenses the Mowens accrued in transporting, affixing, and remodeling the home. The Stratmans vacated the home in March 2011, allegedly following an argument with Dean.

¶ 3 In June 2012, the Stratmans filed a complaint against the Mowens, alleging the Mowens owed plaintiffs \$19,628.13 as reimbursement for expenses and payments made toward the purchase of the mobile home. Following a March 2013 bench trial, the trial court found the

parties formed a contract, but Dean breached the contract by constructively evicting the Stratmans from the home. The court then ordered the Mowens to reimburse the Stratmans for all accrued expenses, minus reasonable rent.

¶ 4 Dean appeals, asserting (1) the trial court erred in determining the parties entered into a valid and enforceable contract and (2) plaintiffs were not entitled to damages for defendant's breach of contract because plaintiffs also failed to fulfill their obligation under the contract. We affirm.

¶ 5 I. BACKGROUND

¶ 6 In December 2009, Dean and Beth Mowen purchased a mobile home for their daughter, Carrie Stratman, and her husband, Taylor Stratman. The Stratmans moved into the home in the Spring of 2010 and lived there until March 2011.

¶ 7 On June 28, 2012, the Stratmans filed a complaint against the Mowens, alleging the Mowens owed plaintiffs \$19,628.13 as reimbursement for expenses and payments made toward the purchase of the mobile home. Specifically, the Stratmans requested the Mowens return (1) \$7,761.79 paid by the Stratmans toward rent and other expenses the Mowens accrued in transporting, affixing, and remodeling the mobile home; and (2) \$11,866.34 in renovation expenses the Stratmans incurred in renovating and updating the mobile home. Dean filed a counterclaim, alleging plaintiffs should reimburse him for (1) expenses he paid toward the mobile home and (2) two vehicles still in plaintiffs' possession. We note Beth is not a party on appeal. The case proceeded to bench trial in March 2013.

¶ 8 A. Taylor Stratman's Testimony

¶ 9 Taylor testified he and his wife were both attending college in southern Illinois, with a prospective graduation date in May 2010. They hoped to return to Adams County upon

graduation. On previous occasions, the parties discussed the possibility of placing a trailer on the Mowens' property where the Stratmans could live after graduation.

¶ 10 In December 2009, the Mowens discovered a mobile home for sale and showed it to the Stratmans. The Mowens purchased the mobile home for \$18,270 for the purpose of the Stratmans residing there for 5 to 10 years. Taylor believed Dean and Beth held the title to the mobile home, but the title listed Beth, Taylor, and Carrie as owners. Taylor testified, at the time of purchase, the parties discussed the Mowens buying the mobile home and the Stratmans repaying them. According to Taylor, at that time, the parties did not settle on the total amount owed or the manner in which the Stratmans would make payments. In addition to repaying the Mowens for the purchase price of the mobile home, Taylor stated he and his wife also agreed to reimburse the Mowens for the costs involved with (1) transporting the mobile home, (2) affixing the mobile home to the Mowens' property, (3) installing pipes and lines for utilities, and (4) renovating the property. However, in interrogatories answered prior to trial, Taylor indicated the parties had no agreement that the Stratmans would reimburse the Mowens for any expenses they incurred while affixing and renovating the mobile home.

¶ 11 As of March 2011, the Mowens had spent \$13,791.93 for various expenses in remodeling and affixing the home. Taylor described the terms of the agreement to include (1) the Stratmans living on the property for 5 to 10 years; (2) the Mowens reimbursing the Stratmans for rent paid during that period of time; and (3) the Mowens reimbursing the Stratmans for any expenses incurred while living in the home.

¶ 12 Taylor stated Dean chose to affix the trailer near the garage and add a drain to the concrete pad supporting the trailer in the event Dean later chose to build a workshop at that location. This also gave the Stratmans access to the garage. Together with the Mowens, the

Stratmans renovated the home with new doors, siding, carpet, painting, drywall, and roofing. The Stratmans paid for several items, such as carpet, siding, and drywall supplies.

¶ 13 Within two weeks of affixing the mobile home to the Mowens' property, the home was in livable condition, allowing the Stratmans to move into the home. After moving in, the Stratmans bought, among other items (1) a stainless steel refrigerator and stove, (2) lighting, (3) ceiling fans, and (4) door knobs. The expenditures made by the Stratmans prior to and after moving into the mobile home totaled \$11,866.34. During the time the Stratmans lived in the home, they made payments to the Mowens totaling \$7,761.79. The record does not reveal whether the monies paid by the Stratmans went toward rent payments or toward reimbursing the Mowens' expenses. Taylor explained he and Carrie were not required to pay the property taxes, only vehicle taxes and insurance. They were also responsible for paying half of the Mowens' electric bill.

¶ 14 Throughout the time the Stratmans lived in the home, the parties kept a "running tab" of the expenses the Mowens incurred and the payments the Stratmans made toward the balance. Though the parties raised minor discrepancies regarding the items listed in "the tab," they ultimately agreed the tab accurately depicted the expenses and payments. In March 2011, the tab reflected the Stratmans owed \$24,057.50 to the Mowens.

¶ 15 In late March 2011, Beth moved out of the Mowen home and filed for divorce from Dean. According to Taylor, Dean visited the mobile home a few days later and argued with the Stratmans over Beth. Taylor stated Dean was waving his arms around and yelling at Carrie, who was pregnant at the time. Dean allegedly told the Stratmans, if they wanted to side with Beth, they could leave the home so "he could burn the place down and get rid of it just as fast as he put it up." Taylor described Carrie as upset and crying, and they decided they could not

remain in the home because they (1) did not want to be involved in the Mowens' divorce, (2) worried about Carrie's safety due to her pregnancy, and (3) believed Dean would carry out his threat to burn down the mobile home. The next day, the Stratmans moved out of the home and later, over the course of a "few" weekends, returned for their belongings. In the end, the Stratmans removed all of their personal belongings from the home, except for the stove and refrigerator, which they believed would be safe in the home. Taylor denied leaving the home a mess.

¶ 16 B. Dean Mowen's Testimony

¶ 17 Dean testified at the time he purchased the mobile home in December 2009, he intended to pay for the home and related expenses in affixing it to his land with no expectation of repayment from the Stratmans. The Stratmans would live in the home for 5 to 10 years until they "got on their feet," then Dean's younger son could move into the home. Dean saw the mobile home as a more practical alternative to another option the parties had considered—the Stratmans moving into the Mowens' home. Once the Mowens purchased the home in December 2009, the home remained on the seller's property until April 2010, at which time Dean transported it to his property.

¶ 18 Dean outlined his role in moving the mobile home to his property, including (1) cleaning trash and limbs from the prior owner's property in lieu of rent from January to April 2010; (2) digging trenches for electrical wiring and plumbing; (3) pouring a concrete foundation; (4) disassembling the mobile home for transport; (5) transporting the home; (6) reassembling the home; and (7) installing carpet, siding, a roof, and other renovations. According to Dean, prior to the Stratmans moving into the home, the parties did not discuss any form of repayment, nor

did Dean expect any repayment. The Stratmans were only responsible for paying the electrical bill.

¶ 19 Dean testified the Stratmans returned from college and began moving into the home in May 2010, then decided in June 2010 they wanted to purchase the home. Dean said they could purchase the mobile home, but to maintain the structural integrity of the home it needed to always remain on his property. Dean agreed the parties never discussed a purchase price, but referred to the tab for the payments due. The parties also never discussed a payment plan or payment due dates for the Stratmans to repay the Mowens. According to Dean, he told the Stratmans that when they eventually moved out and his son moved in, he would return the money the Stratmans had paid toward the purchase of the property. Dean explained he believed that statement to mean he would repay the Stratmans the money they paid toward rent but not their largely cosmetic upgrades to the home. He agreed the tab was an accurate calculation of his expenses and the payments made by the Stratmans. Beth collected the funds from the Stratmans and updated the tab. As of the date of the trial, the mobile home remained on the Mowens' property, occupied by Dean's friend.

¶ 20 Dean denied making any threatening statements to the Stratmans in March 2011. He stated the Stratmans moved out in late March 2011, but they continued returning to the property and, in turn, leaving trash behind. Approximately six weeks after vacating the home, Taylor and Dean's father "got into it," at which time Dean told the Stratmans to leave the property and not return.

¶ 21

### C. Beth Mowen's Testimony

¶ 22 Beth testified solely to the appraisal she received on the Mowens' property during the divorce proceedings. The appraisal indicated \$450 to be a reasonable rate of rent for the mobile home; however, that rate did not reflect use of the garage.

¶ 23

### D. The Trial Court's Findings

¶ 24 After considering the evidence, the trial court found the tab demonstrated an agreement between the parties. The court determined the Stratmans partially performed their portion of the agreement but the actions of the Mowens prevented them from fulfilling the entirety of the contract. Thus, the court found the Mowens in breach of the contract. In so finding, the court awarded the Stratmans (1) \$11,866.34 for upgrades and other expenses and (2) \$7,761.79 in payments made to the Mowens, for a total of \$19,628.13. The court then ordered the Stratmans to pay the Mowens \$450 per month as reasonable rent for the 11 months the Stratmans resided in the trailer, for a total of \$4,950. After offsetting the reasonable rent owed to the Mowens, the court entered final judgment in favor of the Stratmans for the amount of \$14,678.13 plus costs. Because Dean presented no evidence as to his counterclaim regarding the vehicles and the court found the value of the trailer had increased, the court denied Dean any further recovery.

¶ 25 This appeal followed.

¶ 26

## II. ANALYSIS

¶ 27 On appeal, Dean argues (1) the trial court erred in determining the parties entered into a valid and enforceable contract and (2) plaintiffs were not entitled to damages for defendant's breach of contract because plaintiffs also failed to fulfill their obligation under the contract.

¶ 28

#### A. Standard of Review

¶ 29 We defer to the trial court's findings of fact in determining whether the parties entered into a contract and will not overturn the court's decision unless it is against the manifest weight of the evidence. *Quinlan v. Stouffe*, 355 Ill. App. 3d 830, 836, 823 N.E.2d 597, 602 (2005). Likewise, the manifest-weight standard of review applies to the court's determination that a party breached a contract (*Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 72, 866 N.E.2d 85, 96 (2006)) and the award of damages (*Gambino v. Boulevard Mortgage Corp.*, 398 Ill. App. 3d 21, 51, 922 N.E.2d 380, 409 (2009)).

¶ 30 A decision is against the manifest weight of the evidence when "the opposite conclusion is clearly evident or where a decision is unreasonable, arbitrary, and not based on any evidence." *Quinlan*, 355 Ill. App. 3d at 836, 823 N.E.2d at 602. If the court determined that the parties had, in fact, entered into a contract, we review the court's interpretation of the contract *de novo*. *Asset Recovery Contracting, LLC v. Walsh Construction Co. of Illinois*, 2012 IL App (1st) 101226, ¶ 57, 980 N.E.2d 708. When a case presents a mixed question of law and fact, we will overturn the court's decision only if it is clearly erroneous, meaning only where this court is left with a "definite and firm conviction" that the trial court made a mistake. *Quinlan*, 355 Ill. App. 3d at 836, 823 N.E.2d at 602.

¶ 31 B. Whether a Valid and Enforceable Contract Existed Between the Parties

¶ 32 Dean asserts the trial court erred by determining the parties entered into a valid and enforceable contract. In this case, no written contract exists, so we are left to determine whether the parties formed an oral contract. The Restatement (2d) of Contracts defines a contract as "a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty." Restatement 2d of Contracts

§ 1; see also *Artoe v. Cap*, 140 Ill. App. 3d 980, 985, 489 N.E.2d 420, 423 (1986). In Illinois, the elements of contract consist of (1) an offer, (2) acceptance of the offer, and (3) consideration. *Melena v. Anheuser-Busch, Inc.*, 219 Ill. 2d 135, 151, 847 N.E.2d 99, 109 (2006). "Any act or promise which is a benefit to one party or a detriment to the other is a sufficient consideration to support a contract." *De Fontaine v. Passalino*, 222 Ill. App. 3d 1018, 1028, 584 N.E.2d 933, 939 (1991) (citing *Steinberg v. Chicago Medical School*, 69 Ill. 2d 320, 330, 371 N.E.2d 634, 639 (1977)).

¶ 33 "[O]ral agreements are binding so long as there is an offer and acceptance to compromise and there is a meeting of the minds as to the terms of the agreement." *Quinlan*, 355 Ill. App. 3d at 837, 823 N.E.2d at 603. To be enforceable, the contract's essential terms must be definite and certain. *Quinlan*, 355 Ill. App. 3d at 837-38, 823 N.E.2d at 603. A contract will be deemed sufficiently definite and certain if the trial court can determine, by the use of the rules of construction and other principles of equity, the intentions of the parties upon entering into the contract. *Quinlan*, 355 Ill. App. 3d at 838, 823 N.E.2d at 603.

¶ 34 We disagree with Dean's assertion that the parties never entered into a valid and enforceable contract. Dean and Taylor both testified the parties entered into an agreement, but they disagree as to what point in time they reached that agreement. Taylor testified prior to the purchase of the mobile home, the Stratmans entered into an agreement to reimburse the Mowens for the purchase price of the home as well as for the expenses the Mowens accrued in transporting, affixing, and remodeling the home. In exchange, the Stratmans would live in the home for 5 to 10 years and leave the home affixed to the Mowen property. Dean testified any agreement reached by the parties occurred after the Stratmans moved into the home, which was also after Dean gratuitously paid for the mobile home and the costs associated with transporting,

affixing, and remodeling the home. It is for the trier of fact to determine the credibility of the witnesses. *In re Marriage of Manker*, 375 Ill. App. 3d 465, 477, 874 N.E.2d 880, 890 (2007). In this situation, the court believed Taylor's testimony that the parties reached the agreement before the purchase of the mobile home—the Stratmans would live in the home for 5 to 10 years and reimburse the Mowens for their expenses associated with the home; then, once the Stratmans moved, the home would remain with the Mowens. Thus, the court found an offer, acceptance, and the consideration necessary to form a contract.

¶ 35 Nevertheless, Dean contends the agreement was so vague and lacking in material terms that it could not constitute a valid and enforceable contract. For example, the agreement lacked both a purchase price and repayment terms. "Price is an essential element of every contract for the transfer of property and must be sufficiently definite or capable of being ascertained from the parties' contract." *Crestview Builders, Inc. v. Noggle Family Ltd. Partnership*, 352 Ill. App. 3d 1182, 1185, 816 N.E.2d 1132, 1134 (2004). At the time the parties entered into the agreement, the parties did not expressly agree on the purchase price owed by the Stratmans. See *Suarez v. Pierard*, 278 Ill. App. 3d 767, 773, 663 N.E.2d 1039, 1044 (1996) (mutuality can be express or implied). However, it would have been impossible for either party to know the amount the Stratmans owed the Mowens at the time of purchase because the Mowens' expenses were still accruing as they finalized the purchase of the mobile home and transported it to their property. It is the conduct of the parties following the agreement that demonstrates an implicit agreement as to the price. The court determined the tab provided evidence of the financial arrangement made by the parties, as both parties also agreed to the amounts set forth on the tab and the Stratmans began repaying their obligation accordingly. The

conduct of the parties showed the intentions of the parties to enter into an agreement for a specific and definite amount as set forth in the tab.

¶ 36 Additionally, though the parties did not expressly state the terms of repayment, it is clear from the record the Stratmans made consistent payments totaling over \$7,000 while they lived in the mobile home. The court could reasonably infer from the conduct of the parties that the Stratmans were to repay the Mowens within the 5 to 10 years that the Stratmans occupied the home. See *Yale Development Co. v. Aurora Pizza Hut, Inc.*, 95 Ill. App. 3d 523, 525, 420 N.E.2d 823, 825 (1981) (Where a contract fails to "specify the time for performance, the law will imply a reasonable time."). Dean testified he wanted to provide the Stratmans a home so they could "get on their feet," so it is also reasonable to assume the parties chose not to include the terms of repayment in their negotiations, and the lack of this term does not necessarily render the entire contract invalid. See *Midwest Builder Distributing, Inc. v. Lord and Essex, Inc.*, 383 Ill. App. 3d 645, 659, 891 N.E.2d 1, 16 (2007) ("the mere fact that more terms could potentially have been included in the agreement does not invalidate any terms that are actually present"). Thus, we conclude the trial court's decision that the parties entered into a valid and enforceable contract was not against the manifest weight of the evidence.

¶ 37 Moreover, we also conclude the trial court's finding that Dean breached the contract was not against the manifest weight of the evidence. Again, it is for the trier of fact to determine the credibility of witnesses. *Marriage of Manker*, 375 Ill. App. 3d at 477, 874 N.E.2d at 890. Taylor testified Dean's behavior in March 2011 frightened his family and forced them to vacate the home out of fear for their safety, from which the court could determine Dean constructively evicted the Stratmans. See *Perry v. Evanston Young Men's Christian Ass'n*, 92 Ill. App. 3d 820, 827, 416 N.E.2d 340, 346 (1981) (an act intended to deprive the tenant of the

enjoyment of the premises constitutes constructive eviction). Dean disputed Taylor's statement, testifying he never threatened the Stratmans, who had already vacated the residence prior to the argument between Taylor and Dean's father, which led Dean to ban the Stratmans from the property. However, the court clearly believed Taylor's statement. By constructively evicting the Stratmans from the home, Dean materially breached the contract because the Stratmans could no longer remain in the home for the 5 to 10 years contemplated by the agreement. Hence, we conclude the court's finding that Dean breached the contract was not against the manifest weight of the evidence.

¶ 38 C. Whether the Stratmans are Entitled to Damages

¶ 39 Dean next argues that, even if the parties entered into a contract, the Stratmans are not entitled to any recovery. The court ordered the Mowens to repay the Stratmans (1) \$11,866.34 for upgrades and other expenses and (2) \$7,761.79 in payments made to the Mowens, for a total of \$19,628.13 The court then ordered the Stratmans to pay the Mowens \$4,950 in reasonable rent (\$450 x 11 months).

¶ 40 Dean asserts the Stratmans are not entitled to damages because the Stratmans also breached the contract by not fulfilling their portion of the obligation to reimburse the Mowens for their expenses. See *Nation Oil Co. v. R. C. Davoust Co.*, 51 Ill. App. 2d 225, 238, 201 N.E.2d 260, 266 (1964) ("One cannot have all the benefits of a contract without taking therewith the obligations imposed by that contract."). We disagree.

¶ 41 Both parties noted they had no agreement as to the timeframe for or amount of payments and, as explained above, in the absence of such terms, the court may interpret the agreement to allow for a reasonable amount of time for the Stratmans to complete their performance. In its order, the trial court noted the Stratmans partially performed the contract but

were prevented from fulfilling their obligation due to Dean's breach. Even in instances where a party only partially performs a contract, that party "may recover the value of the benefit his good-faith partial performance has conferred upon another." *Herbert W. Jaeger & Associates v. Slovak American Charitable Ass'n*, 156 Ill. App. 3d 106, 109-10, 507 N.E.2d 863, 866 (1987).

The Stratmans made consistent payments totaling over \$7,000 over the course of several months, which demonstrates they had partially performed the agreement in good faith. Moreover, the Stratmans demonstrated their good faith by spending more than \$11,000 in upgrades to a home where, until Dean's breach, they intended to live for 5 to 10 years.

¶ 42 At the time of the trial, Dean possessed the mobile home and had a friend residing in it, which allowed him to reap the benefit of the Stratmans' remodeling. To adopt Dean's argument would allow the Mowens to (1) possess the mobile home, (2) immediately utilize the mobile home, (3) keep all payments made by the Stratmans and (4) immediately reap the benefits of the Stratmans' remodeling. This would place the Mowens in a better position than they would have been had the contract been fulfilled or if it had never been entered into in the first place. Thus, we conclude the trial court's decision to award the Stratmans \$14,678.13 (\$19,628.13 in damages offset by \$4,950 in reasonable rent) was not against the manifest weight of the evidence.

¶ 43

### III. CONCLUSION

¶ 44

For the reasons stated, we affirm the trial court's judgment.

¶ 45

Affirmed.

¶ 46 JUSTICE HARRIS, specially concurring.

¶ 47 I agree the trial court's judgment should be affirmed but for reasons other than those relied on by the majority. Contrary to the majority, I do not believe the record supports the existence of a valid contract between the parties due to missing essential terms.

¶ 48 The evidence presented at trial indicates the parties orally agreed that after defendants purchased and set up the mobile home plaintiffs would purchase it from defendants and live there for a period of 5 to 10 years, after which time they would turn it back over to defendants and presumably be refunded the purchase price. However, as the majority points out regarding the purchase of the mobile home by plaintiffs, "the parties did not expressly state the terms of repayment." *Supra* ¶ 36. According to their testimony, the parties did not discuss, let alone agree on, purchase terms such as the amount of the payments or a payment schedule.

"The principles of contract state that in order for a valid contract to be formed, an 'offer must be so definite as to its material terms or require such definite terms in the acceptance that the promises and performances to be rendered by each party are reasonably certain.' (1 Williston, Contracts §§ 38 through 48 (3d ed. 1957); 1 Corbin, Contracts §§ 95 through 100 (1963).) Although the parties may have had and manifested the intent to make a contract, if the content of their agreement is unduly uncertain and indefinite no contract is formed. 1 Williston § 37; 1 Corbin § 95." *Academy Chicago Publishers v. Cheever*, 144 Ill. 2d 24, 29, 578 N.E.2d 981, 983 (1991).

Further, "[t]o be enforceable the contract must be so definite and so certain in all

of its terms that a court can require the specific thing contracted for to be done." *Morey v. Hoffman*, 12 Ill. 2d 125, 130, 145 N.E.2d 644, 647 (1957). "The property must be sufficiently described to identify it, and it must state the price and the terms and conditions of the sale." *Morey*, 12 Ill. 2d at 131, 145 N.E.2d at 648. "The law is clear that where the material terms and conditions are not ascertainable no enforceable contract is created." *A.S. & W. Club of Waukegan, Illinois v. Drobnick*, 26 Ill. 2d 521, 525, 187 N.E.2d 247, 249 (1962).

¶ 49 Given the lack of important terms such as the amount of the purchase payments or a payment schedule, the parties' agreement cannot be considered a valid contract. Nor should we attempt to guess at what the missing terms might be. "A contract must be definite and certain in its conditions and courts will not supply missing terms so as to infuse a contract with the requisite certainty." *McCutcheon v. Chicago Principals Ass'n*, 159 Ill. App. 3d 955, 959, 513 N.E.2d 55, 58 (1987).

¶ 50 Even though in my opinion no valid contract existed, I would affirm the trial court's judgment as an appropriate award of equitable relief in the form of restitution. It is well settled that a reviewing court is not bound by the reasons given for a trial court's judgment and may affirm on any basis supported by the record regardless of whether the trial court relied on the same basis. *Messenger v. Edgar*, 157 Ill. 2d 162, 177, 623 N.E.2d 310, 317 (1993). The codefendant, Elizabeth Mowen, noted in a pleading below that "the underlying complaint in this matter does not explicitly state a theory of recovery, but appears to seek rescission, restitution, or recovery under unjust enrichment," an observation with which I agree. Plaintiffs' pleadings in this case more closely resemble a claim for restitution than an action for contractual damages. The doctrine of unjust enrichment underlies restitution or quasi-contract. *HPI Health Care Services, Inc. v. Mt. Vernon Hospital, Inc.*, 131 Ill. 2d 145, 160, 545 N.E.2d 672, 678 (1989). In

quasi-contract claims, including unjust enrichment actions, "the plaintiff must show that valuable services or materials were furnished by the plaintiff, received by the defendant, under circumstances which would make it unjust for the defendant to retain the benefit without paying." *Hayes Mechanical, Inc. v. First Industrial, L.P.*, 351 Ill. App. 3d 1, 9, 812 N.E.2d 419, 426 (2004).

¶ 51 As plaintiffs' counsel noted during his opening statement at trial, "[m]y clients just want the money back that they paid into this[.]" I believe both plaintiffs' pleadings and the evidence presented allow us to affirm the trial court's award of damages, not based on the existence of a contract, but on the equitable theory of restitution.