STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
ADDISON UNIT

SHANNON DOOLAN, **Docket No. 207-10-19 Ancv**
Plaintiff

v.

KEITH FRANKLIN,
Defendant

KEITH FRANKLIN, **Docket No. 228-11-19 Ancv**
Plaintiff

v.

SHANNON DOOLAN,
Defendant

DECISION

Findings of Fact and Conclusions of Law

A court trial was held on August 10, 2021 in the above two related cases. For many years Mr. Doolan has resided on a property owned by Mr. Franklin. In the case filed in October of 2019 (207-10-19 Ancv), Mr. Doolan seeks a declaration that he holds an interest in the property under a rent-to-own agreement or alternatively "to be paid for work performed that a renter would not do." Mr. Franklin denies the existence of a rent-to-own agreement and counterclaimed seeking a declaration that a contractor's lien filed by Mr. Doolan was invalid and also seeking damages based on a slander of title claim. In 228-11-19 Ancv, filed shortly after Mr. Doolan's suit, Mr. Franklin seeks eviction based on a claim of nonpayment of rent.

Mr. Doolan represented himself. Mr. Franklin was represented by Attorney John M. Mazzuchi. Based on the credible evidence, the court makes the following findings of fact and conclusions of law.

Facts

In 2005, Mr. Doolan was a construction worker who did work for Mr. Franklin, who had a small construction business. Mr. Franklin purchased a property in Middlebury consisting of 8.7 acres, a barn, sheds, and a dilapidated house that had not been lived in for many years. The yard was in the nature of a junkyard, with old appliances, motors, pipes, trash bags, and all kinds of junk strewn around the property. Several witnesses, including Mr. Franklin, testified without

contradiction that it was not a safe place for children. Mr. Franklin's intent was to rehabilitate the property and subdivide it into four lots. Through his construction business, with Mr. Doolan as a worker, he improved the house and obtained a certificate of occupancy. Mr. Doolan and his partner and three children moved into the property in late February of 2006. While the house had been improved, the yard remained in junkyard condition.

The terms on which the arrangement began are disputed and at the heart of the competing claims of the parties. They both agree that Mr. Doolan was to pay, initially, $800 per month which included electricity. They agree that the long term intent was that Mr. Doolan would eventually become the owner of the property. Mr. Franklin testified that "my thought was I wanted to help him buy the house." Otherwise, at trial they disagreed about the terms of the arrangement established at the beginning.

Mr. Doolan, who had never owned property before, testified that it was a rent-to-own agreement based on a "handshake" with a trusted person with whom he worked closely. Mr. Doolan and Mr. Franklin had a very good working relationship and Mr. Doolan trusted and looked up to Mr. Franklin. Mr. Doolan's testimony is that his rental payments were to be credited toward a purchase price of $130,000 such that once he reached that amount, he would own the property. There is no written agreement with such terms, and the evidence did not include details of an oral agreement. Nonetheless, the conduct of both parties over time as described below support the proposition that Mr. Doolan had reason to believe that the parties had made such an arrangement.

Mr. Franklin now relies on a standard form lease document that contains no rent-to-own terms, Exhibit F3. There are several facts that undermine a finding that it represents agreed upon terms between the parties. Mr. Franklin testified that he had never been a landlord before and downloaded the form document from the internet and only modified the first few paragraphs that pertained to rent. He dropped the form off at the house some time after Mr. Doolan had moved in and later picked it up. There is no evidence that there was any conversation with Mr. Doolan about it. Someone had signed Mr. Doolan's name on the line for his signature, but it is clearly not his signature. It is unknown who placed his name on the signature line. Mr. Doolan did not have a copy and first saw it in November of 2019 after this litigation started.

The standard form lease document purports to be dated and signed on January 1, 2006 with rent starting as of that date, but Mr. Doolan was renting elsewhere then and did not move in until late February, indicating that the date is not accurate. It has paragraphs with restrictions concerning children and pets that are not consistent with the facts of Mr. Doolan's family at the time they moved in. When questioned about this, Mr. Franklin testified repeatedly that he took the form off the internet and only changed the first part, implying that the later paragraphs did not matter to him, although he now relies on the paragraph that says all improvements become the property of the landlord, which is boilerplate in a later paragraph. His testimony amounts to acknowledging that the document did not represent a full set of terms about which there had been communication and a meeting of the minds between the two men at the time the tenancy started. Although the court finds that the document did not contain the terms of the parties' agreement,

they did have an agreement that Mr. Doolan would pay monthly rent of $800 with electricity included.

On the one hand there was no written or enforceable rent-to-own agreement, and on the other the written lease document does not represent terms agreed upon by the parties. The actions of the parties over time provide the best evidence of their arrangement.

Not long after Mr. Doolan's family moved in, the furnace failed. Mr. Doolan contacted Mr. Franklin about it. While there is somewhat conflicting testimony, the court finds credible the evidence that Mr. Franklin declined to assume responsibility for the problem in the manner that a regular landlord is obliged to do and told Mr. Doolan that under the rent-to-own arrangement it was his problem. This was inconsistent with legal obligations of a landlord under Vermont law and inconsistent with the terms of the lease document he purports to rely on, but consistent with Mr. Doolan's understanding that since he was going to become the owner of the property through rent payments, he was responsible for it. Mr. Doolan dealt with the heating issue and created an alternative heat source. His credible testimony is that Mr. Franklin consistently made it clear that any issues with the condition of the property were Mr. Doolan's problem. Accordingly, Mr. Doolan essentially assumed full responsibility for the condition of the property thereafter.

In July of 2006, just a few months after Mr. Doolan moved in, Mr. Franklin sent Mr. Doolan a "Notice of Change in Rent and Intent to Sell." In it, the rental amount was reduced to $750 per month and Mr. Doolan was advised that electricity would no longer be provided and Mr. Doolan was advised to transfer the service into his own name. In the same document, Mr. Franklin indicated an intent to sell the house and 2 acres and offered a right of first refusal for Mr. Doolan to buy for $135,000 to be exercised in 30 days. Mr. Doolan acknowledged receipt of the notice and created his own electricity account, but did not respond to the offer to purchase. It is a reasonable inference that he was not in a financial position to purchase, and Mr. Franklin's subsequent listing of the property indicates that the price was higher than market.

Mr. Franklin had obtained a survey and a subdivision permit to divide the 8.7 acre parcel into four lots, with the parcel occupied by Mr. Doolan consisting of the house and 2 acres. He listed the property for sale from October of 2006 to July of 2007 for $129,000 but it did not sell and he took it off the market. There is no evidence that Mr. Doolan objected to a reduction in the acreage of the property in 2006. However, Mr. Franklin was giving Mr. Doolan work at that time, and Mr. Doolan had not yet made many rent payments or made many improvements except for yard cleanup. Given the power imbalance and lack of written agreement, it is not surprising that there was no objection at that time, particularly since the agreement could still apply to the house lot.

After Mr. Franklin's attempt to sell the house lot in 2006-2007 was not successful, Mr. Franklin did not attempt to sell the property again over the next 12 years during which Mr. Doolan paid rent, although he sold off the other three lots in 2007, 2008, and 2009.

Mr. Doolan paid rent regularly, usually by direct deposit. He has records for payments from January 1, 2009. The rent increased to $900 in the middle of 2009. There were one or two

occasions when that rent for a particular month was reduced because it was offset by some amount Mr. Franklin owed Mr. Doolan. Mr. Franklin continued to hire Mr. Doolan to do construction work on other jobs on weekends off and on, for which he paid Mr. Doolan under the table. Mr. Franklin was paying the property taxes. Mr. Doolan testified that his understanding was that approximately $200 of his monthly rental payments was used to pay property taxes.

Mr. Doolan spent a great deal of time over the first two years cleaning up the grounds and disposing of the junk on the land, using his own labor and at his own expense. Over the 12 years he did other significant improvement work on the house:

--jacked up the house to replace sill beams twice, once to replace 23 feet in the front of the house and a second time to replace 10 feet in the back
--rebuilt the side porch with stairs
--rebuilt basement stairs
--patched roof after storm Sandy, and reflashed chimney
--removed tree in driveway
--rebuilt well booster
--rebuilt front porch
--replaced rotted trim and soffit and repainted
--replaced vinyl siding damaged from tree fall and storm
--electrical work from rodent damage
--replaced faucets

This work improved the condition of the house and grounds and increased its value. The first item alone represents a major structural renovation that would have cost approximately $10,000 if a contractor had been hired to do it. Mr. Doolan never sought payment from Mr. Franklin for any of these items, and there is no evidence that Mr. Franklin offered to pay him for any of this work, although he paid him for work done at other job sites.

Mr. Franklin claims not to have known about many of these items, which is understandable if he had made it clear to Mr. Doolan that the condition of the property was Mr. Doolan's responsibility, and if they were both operating under a rent-to-own understanding. He now seeks to rely on Paragraph 15 of the lease document, which is a boilerplate paragraph that says that improvements by tenant require advance written permission and become the property of the owner. His behavior over the years was not consistent with the terms of that paragraph or with the obligations of a landlord.

In 2012 or 2013, a tree on the property fell and damaged Mr. Doolan's truck and a portion of the house. Mr. Doolan contacted Mr. Franklin. The court finds credible the testimony that Mr. Franklin responded with, "Your tree, your truck, your problem." This was consistent with Mr. Doolan's understanding that because he was purchasing the property with his rental payments, he was responsible for the condition of the property and its consequences. He repaired the damage to the house himself.

In 2017, the issue of what would happen with the property began to be discussed. Mr. Franklin wanted Mr. Doolan to buy the property and encouraged him to apply for financing. Mr. Franklin, by his own testimony, told Mr. Doolan "not to worry about the down payment." This is consistent with Mr. Franklin recognizing that Mr. Doolan's improvements had increased the value of the property in a manner that would be recognized by Mr. Franklin as an equity contribution from Mr. Doolan. Mr. Doolan did meet with a mortgage originator about financing, but was no longer committed to that property for a variety of reasons related to conditions of neighboring properties. He did not list the property address as his goal and considered walking away from the equity he believed he had built up.

In 2018, Mr. Doolan and his partner went to Williston for a meeting with Mr. Franklin at his home. Mr. Franklin wanted Mr. Doolan to sign a purchase and sales agreement to buy the property for $135,000. Although a few lines of a standard form document were filled out, Mr. Doolan did not agree to the proposed purchase and did not complete or sign the document. Mr. Doolan wanted to know the total amount he had paid on the rent-to-own basis and asked for a quitclaim deed. Mr. Franklin apparently declined to honor an equity interest. His offer to sell to Mr. Doolan was $135,000; otherwise he intended to offer it for sale for $160,000. Although Mr. Franklin refused to recognize a rent-to-own relationship, the difference in his offering price to Mr. Doolan and to others on the open market was $25,000, again reflecting a recognition of value that Mr. Doolan himself had added to the property. After the meeting Mr. Doolan sought legal advice.

Mr. Franklin wrote favorable letters of recommendation in 2018 and 2019 to provide Mr. Doolan with support for obtaining financing to buy the property. By this time Mr. Doolan apparently realized that Mr. Franklin was not going to deed him the property based on rent paid, and he also knew that the property did not qualify for financing by a first-time home buyer. He was also dissatisfied with conditions on the neighboring lots, including encroachments onto the house lot. Mr. Franklin was eager to sell as he was selling his Williston home and buying property in Florida.

On August 31, 2019, Mr. Franklin accepted a neighbor's offer to buy the subject property for $150,000 with a closing in mid-November. He then went to tell Mr. Doolan and offered him an incentive to agree to leave by November 1st on the following terms, which he documented in a letter: no rent payable for September and October, vacate by November 1, 2019, and a cash payment of $10,000 from the closing. Mr. Doolan accepted these terms by signing the letter on September 19, 2019. It seems doubtful that Mr. Franklin would have offered a $10,000 cash payment if he were not conscious that Mr. Doolan had made significant improvements that contributed to its value and had done so with the expectation of owning the property. He was also eager for the closing to take place in November because he was buying property in Florida and his financing plans depended on closing on the Middlebury property in November.

On September 26, 2019, Mr. Doolan filed a contractor's lien for $21,350.00 in the land records for the work he had performed on the property. He acknowledges that he did not have an agreement with Mr. Franklin to be paid for that work and had not sent him a bill. On October 4,

2019, he filed suit seeking to enforce his claimed rent-to-own agreement or be paid for the value of his work. He did not pay rent for September or October.

On October 15, 2019, Mr. Franklin's lawyer sent a notice of termination of tenancy for nonpayment of rent with a termination date of October 30. On October 24, 2019, Mr. Franklin counterclaimed in Mr. Doolan's suit, seeking a declaration that the contractor's lien was invalid and also seeking damages for slander of title based on the contractor's lien. On November 1, 2019, Mr. Franklin filed his separate suit for eviction based on nonpayment of rent. Pursuant to a subsequent Rent Escrow Order, Mr. Doolan has paid rent for all months from November 1, 2019 to the present. He has never paid rent for September or October of 2019 (he was current up to that point), believing incorrectly that he paid for those months as part of the initial payment required by the Rent Escrow Order. [1]

Mr. Franklin claims damages based on slander of title in two amounts. When no sale took place in November, he did a refinancing that he says cost him $4,672.88. There is no evidence that the loss of two months' rent (September and October) caused him to have to refinance any loan on the Middlebury property. Rather, the evidence suggests that he needed to refinance in order to meet other property transaction commitments he had made, i.e., the purchase of Florida property. Thus there is no evidence that this expense was proximately caused by the existence of the contractor's lien. He also testified that he has incurred $15,153.70 in attorneys' fees. This undocumented figure apparently represents the total amount of attorneys' fees for the overall litigation. There is no evidence showing any specific amount attributable to removing the contractor's lien. Moreover, even the lease document relied on by Mr. Franklin does not provide for attorneys' fees in the event of litigation.

There is a variety of evidence usable to determine a reasonable amount of value added to the property by improvements made by Mr. Doolan. First, there is evidence that in 2006 Mr. Franklin offered it to Mr. Doolan for $130,000 and then accepted the neighbor's offer in 2019 of $150,000, indicating increased value of $20,000. Second, the property did not sell at a listed price of $129,000 after being actively marketed in 2006-2007, indicating it was worth less than that at that time and probably worth less than $125,000. Mr. Franklin's acceptance of $150,000 in 2019 suggests an increase in value of $25,000.

Mr. Doolan's 'contractor's lien' shows that he himself valued the increase at $21,350, although some of that was for lawnmowing and snow removal. There is also the evidence that Mr. Franklin, in urging Mr. Doolan to apply for financing, told him not to worry about the down payment, suggesting he was entitled to credit for value added, and an amount in the neighborhood of $20,000 would not be unreasonable as a down payment amount.

Taking all this evidence into account, the court concludes that the reasonable value of the increase in property value attributable to the improvements made by Mr. Doolan is $20,000.

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[1] Total payments to date are $161,300. Except for the two months of September and October of 2019, payments are current through August 31, 2021.

Conclusions of Law

Mr. Doolan's Claim of a Rent-to-Own Contract

The evidence is clear that there was no written right-to-own agreement, and a signed agreement would be required by the Statute of Frauds in order to be enforceable. The Statute of Frauds requires contracts for the sale of land to be "in writing, signed by the party to be charged therewith." 12 V.S.A. § 181(5). While part performance of an oral agreement can support enforcement of an unwritten agreement, *Jasmin v. Alberico*, 135 Vt. 287, 289 (1977), the evidence does not clearly show an oral agreement with well-defined terms. Judgment shall issue for Mr. Franklin on this claim.

Mr. Franklin's Counterclaim for a Declaration that the Contractor's Lien is Unenforceable

Vermont's contractors' lien statute provides that when a contract has been made for "erecting, repairing, moving, or altering improvements to real property or for furnishing labor or material [for that purpose]," the person who was hired to make the improvements may secure payment via a lien on the property. 9 V.S.A. § 1921(a). The purpose of the contractors' lien statute is to "provide[] protection for those who contribute to construction projects by giving them a method for obtaining compensation for their products." *Wharton v. Tri-State Drilling*, 2003 VT 19, ¶ 19, 175 Vt. 494.

Mr. Doolan had no agreement with Mr. Franklin to be paid on a contract basis for any of the work he performed on the property. While most of that work would ordinarily be the landlord's obligation under Vermont law, 9 V.S.A. § 4457, Mr. Doolan accepted Mr. Franklin's representation that such work was Mr. Doolan's responsibility because that was consistent with his own understanding and belief that he was renting to own and therefore acquired responsibility for the condition of the property, including major maintenance items. While he was wrong about having an enforceable rent-to-own agreement, Mr. Doolan undertook the responsibility in reliance on the belief that he was doing it for himself as prospective owner under a rent-to-own arrangement—not as a party to a contract with Mr. Franklin to do jobs on property for which Mr. Franklin was exercising responsibility.

If Mr. Doolan had not believed he was renting to own, it would have been logical for him to seek permission and payment from Mr. Franklin or deduction from rent. As it was, Mr. Doolan did not notify Mr. Franklin about needed maintenance, as a "regular" tenant would have done, and when he made improvements, he did not seek payment from Mr. Franklin. Therefore, he had no basis for a contractor's lien under the specific requirements of the contractor's lien statute. Mr. Franklin is entitled to judgment on this claim.

Mr. Franklin's Counterclaim for Slander of Title

Mr. Franklin claims that the filing of the contractor's lien constituted slander of title that caused him to lose a closing in November and resulted in refinancing costs and attorneys' fees.

The elements of a claim for slander of title are (a) a false statement, (b) that causes pecuniary harm or "special damages," and (c) was done with malice. *Wharton*, 2003 VT 19, ¶ 14.

The second requirement in a slander of title claim, pecuniary harm, "must be proved by the injured party as a prerequisite to recovery. At minimum, the injured party must demonstrate that any damages result from the 'slander' and not from other factors." *Gardner v. West-Col., Inc.*, 136 Vt. 381, 387–88 (1978) (citations omitted). Put another way, "the trier of fact must be furnished data sufficient to determine damages without resort to mere speculation or conjecture." *Macia v. Microsoft Corp.*, 152 F.Supp.2d 535, 542 (D. Vt. 2001); see also *Maragos v. Union Oil Co.*, 584 N.W.2d 850, 852 (N.D. 1998) ("Special damages must be specifically pled, and must be proved to a reasonable degree of certainty and are not recoverable if deemed to be too remote.).

Mr. Franklin's evidence does not prove the kind of pecuniary harm required for recovery on a slander of title claim. There is insufficient evidence to prove that the refinancing costs were caused by the filing of the contractor's lien rather than "other factors," specifically, Mr. Franklin's independent need to refinance in order to meet other personal financial obligations he voluntarily undertook. *Gardner*, 136 Vt. at 387. As to the attorneys' fees claim, attorneys' fees are recoverable for the reasonable costs of removal of a false title document, but not for litigation over the issue. "[S]pecial damages may … include [legal] 'expenses incurred in removing the effects of the slander'" but "not the costs of litigation in the action for slander of title itself." *Macia*, 152 F.Supp.2d at 542; see also *Colquhoun v. Webber*, 684 A.2d 405, 410–11 (Me.1996) ("The prevailing party in a slander of title action may recover as special damages those attorney fees and expenses incurred to remove the cloud on the title but not those incurred to prosecute the slander of title action.")(citatations omitted). Mr. Franklin has not shown that any portion of the fees he has incurred are attributable to removal of the lien, as opposed to general litigation expenses for these cases, for which he is not entitled to recovery. Mr. Doolan is entitled to judgment on this claim. Because there is no successful claim, the request for punitive damages is moot.

Mr. Franklin's Claim for Eviction for Nonpayment of Rent

The legal relationship between Mr. Franklin and Mr. Doolan was that of landlord and tenant, with agreement as to the amount of rent, even though the court has found that the written document admitted as Exhibit F3 did not contain agreed upon terms. It is clear that Mr. Doolan did not pay rent for the months of September and October of 2019. Therefore, Mr. Franklin is entitled to judgment for possession for nonpayment of rent. 12 V.S.A. § 4773.

Mr. Doolan's Claim for Payment for Improvements Made during Tenancy

Under Vermont's betterment statute, 12 V.S.A. § 4811, a tenant has a claim for the value of improvements made during the tenancy if the tenant reasonably believed that he had a valid legal interest in the property. See *Rutland R. Co. v. Chaffee*, 72 Vt. 404 (1900) ("constructive notice … is not sufficient to preclude one from recovering for betterments who in fact purchased

in good faith"); *Kellogg v. Shushereba*, 2013 VT 76, ¶ 43, 194 Vt. 446 (offsetting an award of mesne profits to plaintiff under 12 V.S.A § 4814 by the value of improvements defendant had made to the property). The purpose of state betterment statutes is to "prevent the unjust enrichment of the record owner of the land and to do equity between the parties." 75 Am. Jur. Proof of Facts 3d 1. Finally, even when an agreement is unenforceable under the Statute of Frauds, a party may still recover "based on unjust enrichment, rather than breach of contract." *Kellogg*, 2013 VT 76, ¶ 19.

The findings show that Mr. Doolan did not have an enforceable right to acquire ownership on a rent-to-own basis, but that he did have a valid basis for believing that he had such a right. Mr. Franklin's actions over many years in his relations with Mr. Doolan were not those of a normal landlord. The parties had a personal relationship of trust and confidence when the arrangement was established, and from the beginning the intent of both parties was that Mr. Doolan would become owner of the property. Mr. Doolan's testimony that they had a handshake deal in 2006 for him to rent to become owner once he had paid $130,000 is consistent with the evidence of Mr. Franklin's opinion of value at the time: in 2006-2007 Mr. Franklin tried to sell the property in the regular real estate market for $129,000. It is also consistent with the nature of the relationship they had.

It is also consistent with the evidence that from the beginning of the tenancy, Mr. Franklin made clear to Mr. Doolan that any problems related to the condition of the property were Mr. Doolan's responsibility and not his. Those are not the actions of a "regular" landlord, and reasonably led Mr. Doolan to have a reasonable belief that his payments were creating an equity interest. The parties had a clear agreement as to monthly payments, but the evidence shows that the lease document that Mr. Franklin downloaded from the internet did not represent an actual agreement between the parties except as to the amount of monthly payments and the obligation for electricity. Other terms were never agreed upon and any other terms in the written lease document were not observed by the parties.

Although it is true that Mr. Franklin did actively list the property for sale on the open market in 2006-2007, which was inconsistent with an original handshake agreement for a rent-to-own agreement, that was shortly after the tenancy began and before Mr. Doolan had put much money or labor into the property. There is no evidence that putting the property on the market at that time was inconsistent with the parties' relationship and willingness to accommodate each other. However, once Mr. Franklin took the property off the market in 2007, he made no further attempts to sell it for 12 years while paying virtually no attention to any responsibility for the condition of the property. This conduct is consistent with a recognition of a rent-to-own plan under which Mr. Doolan was making full payments and improving the property. Throughout that period, Mr. Franklin did not act like a landlord but shifted total responsibility to Mr. Doolan, thus reasonably leading Mr. Doolan to believe during that long period that he was building up equity in the property.

It would be inequitable for Mr. Franklin to have ignored his landlord responsibilities all those years, shift full responsibility to Mr. Doolan, allow Mr. Doolan to make improvements—including significant structural improvements--in the belief that he was doing it in conjunction

with acquiring ownership of the property, and then retain the fruits of Mr. Doolan's work. See *DJ Painting, Inc. v. Baraw Enters. Inc.*, 172 Vt. 239, 243 (2001) (recovery based on unjust enrichment is appropriate when "in light of the totality of the circumstances, it is against equity and good conscience" to allow one party "to retain what is sought to be recovered"). The principle of unjust enrichment embodied in the betterment statute, as well as the statute itself, support payment to Mr. Doolan for the betterments he created.

"The increase in the value of the land in consequence of betterments so made shall be held to be the value of the betterments." 12 V.S.A. § 4811. Based on the findings above, judgment shall issue for Mr. Doolan for betterments in the amount of $20,000. See 12 V.S.A. § 4813 regarding procedural consequences of a betterment judgment in an eviction action.

Order

Attorney Mazzuchi shall submit proposed forms of judgment for both dockets, which may be in either a single document or separate documents. Mr. Doolan shall have five business days to submit objections. The parties are encouraged to communicate to see if an agreement can be reached for a date for transfer of possession.

The court will establish a date at least three weeks after transfer of possession by which any follow-up damages claims must be filed together with a request for hearing.

Electronically signed pursuant to V.R.E.F. 9(d) on August 19, 2021 at 3:35 PM.

Mary Miles Teachout

Mary Miles Teachout
Superior Court Judge