

FILED

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Clerk of the  
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
July 18, 2019 Session

**BREWCO, LLC ET AL. v. MARTHA R. SCENT**

**Appeal from the Circuit Court for Scott County**  
**No. 8247     John D. McAfee, Judge**

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**No. E2018-02133-COA-R3-CV**

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The plaintiffs filed a complaint seeking recovery for improvements they had made to real property that had been purchased at a foreclosure sale by the defendant. When the plaintiffs originally purchased the property, the defendant as mortgagee held a deed of trust on it. Due to a fraudulently recorded release of that deed of trust, however, the plaintiffs purchased and improved the property, believing that they had clear title. The defendant did not learn of the various improvements to the property until after the improvements were complete. At approximately the same time, the defendant discovered that a third party had recorded a release of the deed of trust without her consent, with such release containing a forgery of her signature. The defendant filed suit against the third party who purportedly forged the release, the plaintiffs, and others, and she ultimately received a monetary judgment that resulted in a judicial foreclosure to enforce her deed of trust. At the foreclosure sale, the defendant purchased title to the property in question with a credit bid. Shortly before the foreclosure sale, the plaintiffs filed this action, ultimately asserting claims of unjust enrichment, *quantum meruit*, constructive trust, and an equitable lien. The trial court granted the defendant's motion for summary judgment concerning the plaintiffs' claims, determining that the plaintiffs had not demonstrated facts supporting their theories of recovery. The plaintiffs have appealed. Discerning no reversible error, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court**  
**Affirmed; Case Remanded**

THOMAS R. FRIERSON, II, J., delivered the opinion of the court, in which D. MICHAEL SWINEY, C.J., and FRANK G. CLEMENT, JR., P.J., M.S., joined.

Walter N. Winchester and Joshua R. Holden, Knoxville, Tennessee, for the appellants, Brewco, LLC, and Brewster Builders, Inc.

Stephen A. Marcum, Huntsville, Tennessee, for the appellee, Martha R. Scent.

## OPINION

### I. Factual and Procedural Background

On November 29, 2011, the plaintiffs, Brewco, LLC (“Brewco”), and Brewster Builders, Inc. (collectively, “Plaintiffs”) filed a complaint against the defendant, Martha R. Scent, in the Scott County Circuit Court (“trial court”). In their complaint, Plaintiffs alleged that Brewco had purchased a tract of unimproved real property (“the Property”) from Ellen W. Hood at a public auction held on September 28, 2006. Plaintiffs asserted that Ms. Hood had acquired title to the Property via quitclaim deed from the Community Bank of the Cumberland on March 30, 2005.

According to Plaintiffs, Ms. Scent, who was a resident of Kentucky, had previously recorded a deed of trust regarding the Property in 2001. Plaintiffs alleged that a release of Ms. Scent’s deed of trust was recorded on March 26, 2006, prior to Plaintiffs’ purchase of the Property. Plaintiffs further averred that they relied on the recordation of the release when purchasing the Property from Ms. Hood, believing that the title was clear of such encumbrance. Ms. Scent subsequently filed a Complaint for Declaratory Judgment in the trial court on December 31, 2008, against Plaintiffs, Ms. Hood, and several other parties concerning Ms. Scent’s encumbrance on the Property, alleging that the release was a forgery.

Plaintiffs also averred that they had entered into a joint venture to improve the Property and made various improvements between Brewco’s purchase of the Property in September 2006 and the filing of Ms. Scent’s lawsuit in December 2008. Plaintiffs specifically alleged that they had “improved the real property with roads, driveways, and residential structures.” Plaintiffs contended that when undertaking such improvements, at significant cost, they had acted in reliance upon the recorded release of Ms. Scent’s deed of trust.

Plaintiffs stated in the complaint that the trial court had entered an order in the separate action declaring that the release of the deed of trust was fraudulently procured and recorded. The court had accordingly ruled that Ms. Scent held the priority mortgage lien on the Property, affording her the right to judicially foreclose. Plaintiffs claimed that if Ms. Scent foreclosed on the Property, she would receive the benefit of the valuable improvements made by Plaintiffs without payment. Therefore, Plaintiffs asked the trial court to grant them recovery of the value of their improvements made to the Property during the 2006-2008 timeframe.

Ms. Scent thereafter purchased the Property at the foreclosure auction conducted on January 10, 2012, by bidding in her judgment from the related lawsuit in the amount of \$345,000. Ms. Scent concomitantly moved for the dismissal of Plaintiffs’ claims in

this action, contending that Plaintiffs could not recover under an unjust enrichment theory because they had not yet exhausted their remedies against their seller, Ms. Hood. Ms. Scent argued, in the alternative, that Plaintiffs had failed to state a claim for relief because they had not yet sustained a loss.

Ms. Hood appealed the trial court's judgment allowing foreclosure. This Court affirmed the trial court's decision on November 29, 2012. *See Scent v. Shoemaker*, No. E2011-02711-COA-R3-CV, 2012 WL 5960839, at \*1 (Tenn. Ct. App. Nov. 29, 2012) ("*Scent*"). Plaintiffs do not appear to have participated in that appeal.

Following the appeal, on September 14, 2017, Plaintiffs filed a response to Ms. Scent's motion to dismiss. In their response, Plaintiffs asserted that they were not required to exhaust their remedies against the seller when doing so would be futile. Plaintiffs posited that because Tennessee law barred their recovery of improvements made to the Property in their action for breach of warranty of title against the grantor of the Property, Ms. Hood, they were entitled to pursue their unjust enrichment claim against Ms. Scent. Plaintiffs therefore sought recovery of the \$600,000 they had invested through improving the Property, minus any damages received in the separate action against Ms. Hood's estate.<sup>1</sup>

Following the filing of various motions by both parties, Ms. Scent filed a supplemental motion to dismiss and an accompanying memorandum of law on November 8, 2017, wherein she argued that Plaintiffs were barred from bringing an unjust enrichment claim against her. She contended that because Plaintiffs had failed to raise the unjust enrichment claim in the previous related action involving these parties, they were barred from making such claim in any subsequent action. On November 13, 2017, Plaintiffs filed a response in opposition to Ms. Scent's supplemental motion to dismiss. On February 7, 2018, the trial court entered an order denying Ms. Scent's supplemental motion to dismiss.

After obtaining permission from the trial court, Plaintiffs filed an amended complaint on February 13, 2018. Plaintiffs therein alleged that Ms. Scent's actions entitled them to recovery under application of any or all of the following theories: *quantum meruit*, unjust enrichment, equitable lien, and constructive trust. Plaintiffs further sought a lien *lis pendens*. Plaintiffs requested that the trial court enter a judgment requiring Ms. Scent to (1) pay \$600,000 in monetary damages; (2) disgorge all rental profits and sale proceeds she had received from the Property; and (3) reimburse Plaintiffs for *ad valorem* taxes on the Property paid by Plaintiffs between 2006 and 2014. Plaintiffs also sought a lien and/or equitable trust against the Property, as well as an award of attorney's fees and costs.

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<sup>1</sup> The pleadings indicate that Ms. Hood passed away during the pendency of the proceedings.

On March 29, 2018, Ms. Scent moved for summary judgment. In support, Ms. Scent contended that because she had purchased the Property at the foreclosure sale for a fair value, consideration had been furnished for any improvements made before and as of that date. Having provided consideration to purchase the Property, Ms. Scent argued that unjust enrichment or *quantum meruit* claims pertaining to the Property would be unavailing. She additionally posited that Plaintiffs could not recover under such theories because she lacked knowledge of and never acquiesced in Plaintiffs' improvements to the Property.

Ms. Scent also maintained that Plaintiffs could present no facts to support their claim of constructive trust because Plaintiffs had failed to show that Ms. Scent had acted wrongfully in obtaining title to the Property. Finally, Ms. Scent argued that Plaintiffs could not support their claim for an equitable lien because the parties never had the mutual intent for an equitable lien favoring Plaintiffs to be placed on title to the Property.

On April 19, 2018, Plaintiffs also moved for summary judgment. Plaintiffs asserted that Ms. Scent had unjustly benefited from their improvements to the Property. They suggested that because Ms. Scent ultimately became aware of Plaintiffs' improvements to the Property and proceeded to keep those improvements, she had acquiesced to those benefits and should have expected to pay for them. Plaintiffs claimed that Ms. Scent's acquiescence to the improvements entitled Plaintiffs to seek the value thereof. Relying on those arguments, Plaintiffs requested that the trial court allow their recovery under theories of *quantum meruit* and unjust enrichment. Plaintiffs further argued that they were entitled to imposition of an equitable lien against the Property. In support of that position, Plaintiffs maintained that they had made improvements to the Property by installing "roads, sewers, and residential dwellings"; paid taxes on the Property; insured the Property; and obtained all permits for improvements to and upkeep of the Property. Plaintiffs asserted that they possessed the Property in good faith and under color of title. Plaintiffs also alleged that because Ms. Scent had notice of Plaintiffs' improvements to the Property at the time she purchased title at the foreclosure sale, a constructive trust was an appropriate remedy to prevent the unjust enrichment of Ms. Scent.

On April 23, 2018, Ms. Scent filed an answer to the amended complaint and a counterclaim against Plaintiffs. In her counterclaim, she asked the trial court to award her a judgment for "any and all rents taken after January 10, 2012, plus interest." She also alleged that Plaintiffs were represented at the foreclosure auction and knew that she had successfully purchased the Property. Ms. Scent stated that Plaintiffs nevertheless continued profiting from the rental of structures on the Property despite her ownership of the Property and its improvements.

After considering oral argument regarding the pending motions on August 22, 2018, the trial court entered a memorandum opinion and order. In its order, the court found that Plaintiffs, in reliance on what appeared to be a properly recorded release of Ms. Scent's deed of trust, purchased the Property and expended over \$600,000 in improving it. The court further found that Plaintiffs had improved the Property by adding roads, installing utilities, and building four houses. The court determined that Ms. Scent and Plaintiffs had no agreement concerning improvement of the Property, that Ms. Scent lacked awareness of the improvements prior to the completion of the work at the Property, and that Plaintiffs lacked awareness of the continued existence of Ms. Scent's mortgage lien on the Property. The court then noted in its findings that Ms. Scent subsequently filed an action seeking to set aside the release of her deed of trust and later purchased the Property following a court-ordered foreclosure sale held to enforce her deed of trust.

The trial court ultimately concluded that there were no genuine issues of material fact and that Ms. Scent was entitled to summary judgment as a matter of law. The court further concluded that neither the law nor the facts supported Plaintiffs' claims of unjust enrichment, *quantum meruit*, equitable lien, or constructive trust. The court determined that although Ms. Scent was "aware of Plaintiffs' improvements to the property prior to the foreclosure sale, without a showing of fraud, duress or any other inequitable conduct on her part, that knowledge is irrelevant as to Plaintiffs' claim that she was not a bona fide purchaser." Explaining that Ms. Scent had lacked knowledge of the improvements made by Plaintiffs prior to the completion of those improvements, the court granted Ms. Scent's motion for summary judgment, dismissing Plaintiffs' claims with prejudice. Plaintiffs timely appealed.

## II. Issues Presented

Plaintiffs present the following issues for our review, which we have restated slightly as follows:

1. Whether the trial court erred by denying recovery to Plaintiffs under any of the following theories: (a) unjust enrichment, (b) *quantum meruit*, (c) constructive trust, or (d) equitable lien.
2. Whether the trial court erred in determining that Ms. Scent was a bona fide purchaser of the Property at the foreclosure sale.
3. Whether the foreclosure sale cleared all encumbrances on the title to the Property.

### III. Standard of Review

The grant or denial of a motion for summary judgment is a matter of law; therefore, our standard of review is *de novo* with no presumption of correctness. *See Rye v. Women's Care Ctr. of Memphis, M PLLC*, 477 S.W.3d 235, 250 (Tenn. 2015); *Dick Broad. Co. of Tenn. v. Oak Ridge FM, Inc.*, 395 S.W.3d 653, 671 (Tenn. 2013) (citing *Kinsler v. Berkline, LLC*, 320 S.W.3d 796, 799 (Tenn. 2010)). As such, this Court must “make a fresh determination of whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied.” *Rye*, 477 S.W.3d at 250. As our Supreme Court has explained concerning the requirements for a movant to prevail on a motion for summary judgment pursuant to Tennessee Rule of Civil Procedure 56:

[W]hen the moving party does not bear the burden of proof at trial, the moving party may satisfy its burden of production either (1) by affirmatively negating an essential element of the nonmoving party's claim or (2) by demonstrating that the nonmoving party's evidence *at the summary judgment stage* is insufficient to establish the nonmoving party's claim or defense. We reiterate that a moving party seeking summary judgment by attacking the nonmoving party's evidence must do more than make a conclusory assertion that summary judgment is appropriate on this basis. Rather, Tennessee Rule 56.03 requires the moving party to support its motion with “a separate concise statement of material facts as to which the moving party contends there is no genuine issue for trial.” Tenn. R. Civ. P. 56.03. “Each fact is to be set forth in a separate, numbered paragraph and supported by a specific citation to the record.” *Id.* When such a motion is made, any party opposing summary judgment must file a response to each fact set forth by the movant in the manner provided in Tennessee Rule 56.03. “[W]hen a motion for summary judgment is made [and] . . . supported as provided in [Tennessee Rule 56],” to survive summary judgment, the nonmoving party “may not rest upon the mere allegations or denials of [its] pleading,” but must respond, and by affidavits or one of the other means provided in Tennessee Rule 56, “set forth specific facts” *at the summary judgment stage* “showing that there is a genuine issue for trial.” Tenn. R. Civ. P. 56.06. The nonmoving party “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co.*, 475 U.S. [574,] 586, 106 S. Ct. 1348 [89 L.Ed.2d 538 (1986)]. The nonmoving party must demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party. If a summary judgment motion is filed before adequate time for discovery has been provided, the nonmoving party may seek a continuance to engage in additional discovery as provided in Tennessee Rule 56.07. However, after adequate time for

discovery has been provided, summary judgment should be granted if the nonmoving party's evidence *at the summary judgment stage* is insufficient to establish the existence of a genuine issue of material fact for trial. Tenn. R. Civ. P. 56.04, 56.06. The focus is on the evidence the nonmoving party comes forward with at the summary judgment stage, not on hypothetical evidence that theoretically could be adduced, despite the passage of discovery deadlines, at a future trial.

*Rye*, 477 S.W.3d at 264-65. “Whether the nonmoving party is a plaintiff or a defendant—and whether or not the nonmoving party bears the burden of proof at trial on the challenged claim or defense—at the summary judgment stage, ‘[t]he nonmoving party must demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party.’” *TWB Architects, Inc. v. The Braxton, LLC*, 578 S.W.3d 879, 889 (Tenn. 2019) (quoting *Rye*, 477 S.W.3d at 265)). Pursuant to Tennessee Rule of Civil Procedure 56.04, the trial court must “state the legal grounds upon which the court denies or grants the motion” for summary judgment, and our Supreme Court has instructed that the trial court must state these grounds “before it invites or requests the prevailing party to draft a proposed order.” See *Smith v. UHS of Lakeside, Inc.*, 439 S.W.3d 303, 316 (Tenn. 2014).

#### IV. Unjust Enrichment Claim

Plaintiffs contend that the trial court erred by granting summary judgment in favor of Ms. Scent regarding their claim of unjust enrichment. As this Court has previously explained concerning an unjust enrichment claim:

Unjust enrichment is a quasi-contractual theory or an equitable substitute for a contract claim in which a court may impose a contractual obligation where one does not exist. *Whitehaven Cmty. Baptist Church v. Holloway*, 973 S.W.2d 592, 596 (Tenn. 1998) (citing *Paschall's Inc. v. Dozier*, 219 Tenn. 45, 407 S.W.2d 150, 154-55 (Tenn. 1966)). Courts may impose a contractual obligation under an unjust enrichment theory if there is no contract between the parties or the contract has become unenforceable or invalid, and the defendant will be unjustly enriched unless the court imposes an obligation. *Paschall's*, 407 S.W.2d at 154.

A party who has provided goods and services to another may recover the reasonable value of these goods and services when the following five circumstances exist:

- (1) there must be no existing, enforceable contract between the parties covering the same subject matter,

- (2) the party seeking recovery must prove that it provided valuable goods and services,
- (3) the party to be charged must have received the goods and services,
- (4) the circumstances must indicate that the parties involved in the transaction should have reasonably understood that the person providing the goods or services expected to be compensated, and
- (5) the circumstances must also demonstrate that it would be unjust for the party benefitting from the goods or services to retain them without paying for them.

*Forrest Constr. Co. LLC v. Laughlin*, 337 S.W.3d 211, 227 (Tenn. Ct. App. 2009) (citing *Castelli v. Lien*, 910 S.W.2d 420, 427 (Tenn. Ct. App. 1995)).

*In re Estate of Ross*, No. M2013-02218-COA-R3-CV, 2014 WL 2999576, at \*3-4 (Tenn. Ct. App. June 30, 2014). Plaintiffs argue that they demonstrated sufficient evidence at the summary judgment stage to establish the elements of this claim. *See Rye*, 477 S.W.3d at 264. Upon our thorough review of the record and applicable law, we disagree.

As our Supreme Court has elucidated with regard to a claim of unjust enrichment:

Actions brought upon theories of unjust enrichment, quasi contract, contracts implied in law, and quantum meruit are essentially the same. Courts frequently employ the various terminology interchangeably to describe that class of implied obligations where, on the basis of justice and equity, the law will impose a contractual relationship between parties, regardless of their assent thereto.

It is well established that want of privity between parties is no obstacle to recovery under quasi contract.

The apparent reason is that such contracts are not based upon the intention of the parties but are obligations created by law. They are founded on the principle that a party receiving a benefit desired by him, under circumstances rendering it inequitable to retain it without making compensation, must do so.



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The most significant requirement for a recovery on quasi contract is that the enrichment to the defendant be unjust. Consequently, if the landowner has given any consideration to any person for the improvements, it would not be unjust for him to retain the benefit without paying the furnisher.

*Paschall's, Inc. v. Dozier*, 407 S.W.2d 150, 154-55 (Tenn. 1966) (emphasis added) (internal citations omitted).

In the case at bar, the improvements made by Plaintiffs to the Property prior to foreclosure were paid for by Ms. Scent when she purchased the Property at the foreclosure sale. As this Court has previously explained, “a mortgagee who bids in the full amount of [the mortgage] debt at the foreclosure sale accepts the property itself in full payment of the underlying debt.” *First Inv. Co. v. Allstate Ins. Co.*, 917 S.W.2d 229, 231 (Tenn. Ct. App. 1994). Accordingly, this Court went on to explain:

Property should bring its fair market value at foreclosure sales. Mortgagees who bid in the property for the full amount of the debt must have determined that the property was worth at least as much as the debt since reasonably prudent lenders would not purchase property for more than its fair market value and would not imprudently relinquish their right to pursue a deficiency against the mortgagor.

*Id*; see also Tenn. Code Ann. § 35-5-118(b) (2015) (providing that a creditor seeking a deficiency judgment following foreclosure “is entitled to a rebuttable prima facie presumption that the sale price of the property is equal to the fair market value of the property at the time of the sale.”).

In this matter, the amount of Ms. Scent’s original mortgage lien on the Property, which was the result of a loan Ms. Scent made to a mining company in 2001 when the Property was unimproved, was \$150,000. In the related action filed by Ms. Scent, the trial court awarded Ms. Scent \$150,000 for the original debt plus interest, attorney’s fees, and costs, for a total judgment of \$345,000. Determining that Ms. Scent’s claim was “the first and superior lien” upon the Property, the trial court ordered that Ms. Scent could foreclose upon the Property. At the foreclosure sale, Ms. Scent was the high bidder with a bid of \$345,000, representing the amount of her judgment.

Because Ms. Scent purchased the Property at the foreclosure sale for \$345,000 after Plaintiffs had made the improvements at issue, this amount would be presumed to be the Property’s fair market value with those improvements. See, e.g., *First Inv. Co.*,

917 S.W.2d at 231. Accordingly, Ms. Scent has given consideration for the improvements at issue and was not unjustly enriched. *See Paschall's*, 407 S.W.2d at 155; *see also Bennett v. Visa U.S.A. Inc.*, 198 S.W.3d 747, 756 (Tenn. Ct. App. 2006) (“If a third-party defendant ‘has given any consideration to any person’ for the benefits received from the plaintiff, there is no injustice in allowing the defendant to retain those benefits without paying the plaintiff.”); *Venture Constr. Co. v. Apple Music City, Inc.*, 847 S.W.2d 509, 511 (Tenn. Ct. App. 1992) (“[I]f the landowner has given any consideration to any person for the improvements, it would not be unjust for him to retain the benefit without paying the furnisher.”); *D.T. McCall & Sons v. Seagraves*, 796 S.W.2d 457, 464 (Tenn. Ct. App. 1990) (same) (all quoting *Paschall's* in full or in part). Based on the pertinent law and the circumstances of this case, we determine that the trial court properly granted summary judgment in favor of Ms. Scent concerning Plaintiffs’ unjust enrichment claim.

#### V. *Quantum Meruit* Claim

Plaintiffs argue that the trial court erred by granting summary judgment in favor of Ms. Scent on their *quantum meruit* claim. As this Court has explained:

A quantum meruit action is an equitable substitute for a contract claim pursuant to which a party may recover the reasonable value of goods and services provided to another if the following circumstances are shown:

- (1) There is no existing, enforceable contract between the parties covering the same subject matter;
- (2) The party seeking recovery proves that it provided valuable goods or services;
- (3) The party to be charged received the goods or services;
- (4) The circumstances indicate that the parties to the transaction should have reasonably understood that the person providing the goods or services expected to be compensated; and
- (5) The circumstances demonstrate that it would be unjust for a party to retain the goods or services without payment.

*Doe v. HCA Health Servs. of Tenn., Inc.*, 46 S.W.3d 191, 197-98 (Tenn. 2001) (citing *Swafford v. Harris*, 967 S.W.2d 319, 324 (Tenn. 1998)). This Court has further elucidated that “[q]uantum meruit is an equitable doctrine that one should not be unjustly enriched by the labor and materials of another, and thus the law implies a promise to pay a

reasonable amount therefor.” *John J. Heirigs Constr. Co., Inc. v. Exide*, 709 S.W.2d 604, 607 (Tenn. Ct. App. 1986).

In the instant action, Plaintiffs and Ms. Scent were not “parties to a transaction” wherein it was or should have been understood that Ms. Scent would provide compensation to Plaintiffs for their improvements. Having determined that Ms. Scent purchased the Property at the foreclosure sale for what was presumably fair market value after Plaintiffs’ improvements had been made, we further determine that Ms. Scent paid for those improvements as part of that purchase.<sup>2</sup> *See Paschall’s*, 407 S.W.2d at 155. Plaintiffs’ claim sounding in *quantum meruit* therefore fails for the same reason as Plaintiffs’ claim of unjust enrichment. *See John J. Heirigs Constr. Co.*, 709 S.W.2d at 607 (holding that the plaintiff could not recover in *quantum meruit* when the defendants had paid another party for the improvements to the property). We accordingly conclude that the trial court properly granted summary judgment in favor of Ms. Scent with respect to Plaintiffs’ *quantum meruit* claim.

## VI. Constructive Trust

Plaintiffs also postulate that the trial court erred by granting summary judgment in favor of Ms. Scent on their claim that a constructive trust should have been established for their benefit. “A constructive trust requires some element of fraud, concealment, duress, etc., such that a person has obtained property ‘which he ought not, in equity and good conscience, hold and enjoy.’” *Estate of Queener v. Helton*, 119 S.W.3d 682, 687 (Tenn. Ct. App. 2003) (quoting *Roach v. Renfro*, 989 S.W.2d 335, 341 (Tenn. Ct. App. 1998)). Accordingly, a constructive trust may be imposed when:

- 1) a person procures the legal title to property in violation of a duty to the actual owner;
- 2) the title to property is obtained by some inequitable means;
- 3) a person makes use of some influence in order to obtain title on better terms than it otherwise would have been obtained;

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<sup>2</sup> Plaintiffs apparently raised no issue concerning the validity or fairness of the foreclosure sale in the related lawsuit filed by Ms. Scent. *See Scent*, 2012 WL 5960839. As our Supreme Court has explained, “[i]f a foreclosure sale is legally held, conducted and consummated, there must be some evidence of irregularity, misconduct, fraud, or unfairness on the part of the trustee or the mortgagee that caused or contributed to an inadequate price, for a court of equity to set aside the sale.” *Holt v. Citizens Cent. Bank*, 688 S.W.2d 414, 416 (Tenn. 1984). *See McKenzie v. Brandywine Homeowners’ Ass’n, Inc.*, No. W2018-01859-COA-R3-CV, 2019 WL 2453276, at \*2 (Tenn. Ct. App. June 12, 2019) (applying this rule from *Holt* despite the fact that the foreclosure sale price was “extremely low relative to the property’s value”).

- 4) a person acquires property with notice that someone else is entitled to its benefits.

*Estate of Queener*, 119 S.W.3d at 687.

In this action, absolutely no proof was presented that Ms. Scent obtained title to the property in violation of a duty to the actual owner or by inequitable or unlawful means. Ms. Scent obtained title when she purchased the property for value at the foreclosure sale. Ergo, the trial court properly determined that Ms. Scent was entitled to a grant of summary judgment concerning this claim because Plaintiffs could not demonstrate sufficient evidence at the summary judgment stage to establish the claim's elements. *See Rye*, 477 S.W.3d at 264.

## VII. Equitable Lien

Finally, Plaintiffs posit that the trial court erred by granting summary judgment to Ms. Scent concerning their claim that an equitable lien should be imposed on title to the Property in their favor. As this Court has long recognized, an equitable lien "has the nature of, or is analogous to, a trust and really grows out of the doctrine of constructive trusts." *Shipley v. Metro. Life Ins. Co.*, 158 S.W.2d 739, 741 (Tenn. Ct. App. 1941). Our Supreme Court has further elucidated:

As a general rule an equitable lien may arise from a contract based upon a valuable consideration, but in those cases where the instrument purporting to create such a lien is incomplete, or otherwise falls short of actual creation, a court of equity will implement the intent of the contracting parties. . . .

An equitable lien is a right, not recognized at law, to have a fund or specific property, or its proceeds, applied in whole or in part to the payment of a particular debt. It is not an estate or property in the thing itself, nor is it a right to recover the thing; that is, it is not a right which may be made the basis of a possessory action, but is merely a charge upon it.

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Thus it is apparent that, even in the absence of an express contract, an equitable lien may be created by implication, based upon the intention and circumstances of the parties. An equitable lien cannot, however, be based merely upon moral obligations alone, but must find a basis in established equitable principles.

*Greer v. Am. Sec. Ins. Co.*, 445 S.W.2d 904, 906-07 (Tenn. 1969) (internal citations omitted).

A plaintiff seeking to impose an equitable lien must demonstrate that:

1. the parties intended to make the particular property a security for an obligation,
2. valuable consideration passed between the parties, and
3. there is an equitable reason for imposing the lien.

*Ewing v. Smith*, No. 85-294-II, 1986 WL 2582, at \*5 (Tenn. Ct. App. Feb. 26, 1986). For example, the mistaken release of a deed of trust by the creditor can be the basis for imposition of an equitable lien in favor of the creditor. *See, e.g., Holiday Hospitality Franchising, Inc. v. States Res., Inc.*, 232 S.W.3d 41, 52 (Tenn. Ct. App. 2006). In the instant action, Plaintiffs failed to show that there was any intent between Plaintiffs and Ms. Scent to make the Property a security for any obligation. In fact, there were no dealings or transactions whatsoever between Plaintiffs and Ms. Scent that would afford a basis from which such intent could be presumed. Ms. Scent came to own the Property by lawfully foreclosing on her mortgage lien and then purchasing the Property for value at the resultant sale. This being the case, Plaintiffs have failed to demonstrate facts supporting imposition of an equitable lien.

Plaintiffs seek to rely on cases allowing recovery to a “mistaken” improver of land under color of title when the land is ultimately determined to belong to another. *See Uhlhorn v. Keltner*, 723 S.W.2d 131, 137 (Tenn. Ct. App. 1986); *Mercy v. Miller*, 166 S.W.2d 628, 633 (Tenn. Ct. App. 1942). We find reliance upon these cases to be unavailing. There is no question that Brewco held title to the Property at the time the improvements were made. As such, Brewco did not mistakenly believe that it owned the property—Brewco did own it at that time. Ms. Scent subsequently came to hold title to the Property when she purchased it for value at the foreclosure sale after the improvements had been made. Based on the law and the facts presented, we accordingly determine that the trial court properly granted summary judgment in favor of Ms. Scent regarding Plaintiffs’ claim seeking an equitable lien.

Having determined that the trial court properly granted summary judgment to Ms. Scent, dismissing all of the claims contained in Plaintiffs’ amended complaint, all remaining issues raised by Plaintiffs are pretermitted as moot.

## VIII. Conclusion

For the foregoing reasons, we affirm the trial court's grant of summary judgment in favor of Ms. Scent regarding Plaintiffs' claims. We remand this matter to the trial court for collection of costs assessed below. Costs on appeal are taxed to the appellants, Brewco, LLC, and Brewster Builders, Inc.

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THOMAS R. FRIERSON, II, JUDGE