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Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1435-15T2

LESLIE P. BAHLER,

Plaintiff-Respondent,

v.

CHINH LY,

Defendant-Appellant.

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Submitted February 13, 2017 – Decided March 2, 2017

Before Judges Sabatino and Nugent.

On appeal from Superior Court of New Jersey,  
Law Division, Special Civil Part, Union  
County, Docket No. SC-1283-15.

Chinh Ly, appellant pro se.

Leslie P. Bahler, respondent pro se.

PER CURIAM

Defendant Chinh Ly appeals from the Special Civil Part's decision following a November 17, 2015 trial. The court determined that he owes \$859 in a homestead property tax credit, plus \$42 in court costs, to plaintiff Leslie P. Bahler. We affirm.

The record reflects that Ly purchased a home from Bahler in Berkeley Heights. The closing of that sale took place in January 2015. Prior to the closing, Bahler, a senior citizen, had filed a homestead rebate application for calendar year 2012 with the Division of Taxation. The lawyers for the buyer and seller at the real estate closing did not specify an allocation of the anticipated homestead rebate credit, and the matter thus was left unaddressed. Later in 2015, Ly<sup>1</sup> received the homestead tax rebate approved by the Division of Taxation as a credit on his property tax bill because he was at that point a current owner.

Bahler requested Ly to pay him the amount of the approved rebate. Ly refused, asserting that the sum should have been allocated to Bahler by his attorney at closing if he wanted the rebate. Since the lawyer did not do so, Ly claims he is entitled to the credit as a current property owner. Bahler disagreed, and sued Ly in the Small Claims Section of the Special Civil Part to recover the amount.<sup>2</sup>

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<sup>1</sup> The property tax bill reproduced in the appendix lists a co-owner with Ly. That individual is not a party to this litigation. Ly did not argue in the trial court that plaintiff Bahler failed to name an indispensable party, see Rule 4:28-1, and the co-owner did not move to intervene.

<sup>2</sup> The Division of Taxation declined to get involved in the dispute, noting in response to emails from Ly that it was a matter for the previous and current property owner to "work out."

After hearing the testimony of the two parties, Judge John M. Deitch agreed with Bahler that Ly must pay him the rebate amount. The judge found that allowing Ly to keep it would be a windfall and a form of unjust enrichment. We agree.

The homestead rebate statute, N.J.S.A. 54:4-8.59, makes clear that eligibility for a homestead rebate does not hinge solely upon an applicant's status as an owner of residential property in this State. Rather, eligibility depends on several characteristics of the applicant, including whether he or she is a senior citizen sixty-five years of age or older, or is allowed to claim a personal tax deduction as a blind or disabled taxpayer. See N.J.S.A. 54:4-8.59(b)(1). In addition, the calculated amount of the rebate depends upon on the level of the claimant's gross income. See N.J.S.A. 54:4-8.59(a)-(b). Other personal characteristics of the claimant also can affect entitlement to and the amount of the rebate. See N.J.S.A. 54:4-8.59(c)-(e), see also N.J.A.C. 18:29-2.1 (noting that homestead rebate eligibility depends upon the "age and income" requirements expressed in the taxation statutes). The amount the applicant actually paid in taxes also impacts the amount of the rebate. N.J.S.A. 54:4-8.59(a).

Ly does not claim that he is a senior citizen or otherwise has the personal characteristics of an individual eligible for a homestead rebate under N.J.S.A. 54:4-8.59. He further does not

claim he paid the property taxes in 2012. Instead, his argument to retain the rebate amount is based upon the mere fact that he was a record owner of the property at the time the rebate, previously applied for by Bahler, was approved administratively by the Division of Taxation.

It definitely would have been preferable for the attorneys at the real estate closing to have negotiated or specified who was to retain the anticipated rebate. Even so, their failure to do so does not preclude the trial court from equitably determining which party has a greater entitlement to the amount, in the absence of such agreement.


We concur with the trial judge that principles of unjust enrichment favor Bahler's claim to the rebate that he had applied for originally when he owned the house, having filed an application based upon his personal characteristics. Unjust enrichment is an appropriate remedy, particularly in matters involving real estate, where there is "no express contract providing for remuneration." Caputo v. Nice-Pak Prods., Inc., 300 N.J. Super. 498, 507 (App. Div.), certif. denied, 151 N.J. 463 (1997); see also Heim v. Shore, 56 N.J. Super. 62, 74-75 (App. Div. 1959) (applying principles of unjust enrichment in a real estate context).

In addition, we endorse the trial court's application of sound equitable principles in this case by affording relief to

Bahler. Equitable recovery has been allowed "'in a variety of situations upon varied theories [including] the equitable maxim that he who seeks equity must do equity[.]'" Twp. of Middletown v. Simon, 193 N.J. 228, 244 (2008) (quoting Twp. of Brick v. Vannell, 55 N.J. Super. 583, 594 (App. Div. 1959)).

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION