

BOISE, MONDAY, NOVEMBER 2, 2020 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

TERRY ASHER and PAMELA KITCHENS,)	
husband and wife,)	
)	
Plaintiffs-Respondents,)	
)	
v.)	Docket No. 47684
)	
LESTER MCMILLAN,)	
)	
Defendant-Appellant.)	
_____)	

Appeal from the District Court of the Third Judicial District of the State of Idaho,
Gem County, George A. Southworth, District Judge.

Jones & Swartz, PLLC, Boise, for Appellant.

William F. Lee, Emmett, for Respondents.

This is an appeal from an award of unjust enrichment damages. In 2009, the parties entered into an oral agreement for the purchase and improvement of a dilapidated house. Pursuant to the agreement, Lester McMillan bought the house from a third party and made certain initial repairs. Terry Asher and Pamela Kitchens (“the Ashers”) agreed to make additional repairs, rent the house from McMillan, and then buy it from him after five years. For reasons that are disputed, the sale was never consummated. However, the Ashers continued to live in the house, make improvements to the property, and pay monthly rent to McMillan.

Relations between the parties soured and McMillan filed an unlawful detainer action against the Ashers in early 2019. The Ashers answered and filed a separate complaint against McMillan seeking specific performance to sell the house, or damages in the alternative. After trial, the district court denied the claim for specific performance, but found the Ashers were entitled to damages on a theory of unjust enrichment. The court determined the improvements made by the Ashers were a benefit conferred on McMillan that it would be inequitable for him to retain without payment of their value. McMillan appeals, arguing the district court erred by finding him unjustly enriched and by incorrectly measuring the damages.