IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 95-CA-01293 COA

JOE H. FOSTER AND KATHERINE M. FOSTER **APPELLANTS**

v.

CARL MELCHERT, JR. AND GRACE MELCHERT **APPELLEES**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	11/16/95
TRIAL JUDGE:	HON. JASON H. FLOYD JR.
COURT FROM WHICH APPEALED:	HARRISON COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANTS:	DAVID P. OLIVER
ATTORNEY FOR APPELLEES:	FRANK P. WITTMAN, III
NATURE OF THE CASE:	CIVIL - REAL PROPERTY
TRIAL COURT DISPOSITION:	BOTH PARTIES ARE ENJOINED FROM CROSSING ONTO EACH OTHER'S LAND AND USING THE PROPERTY OWNED BY THE OTHER AFTER THEIR RESPECTIVE PROPERTY IS RETURNED
DISPOSITION:	AFFIRMED - 10/7/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	10/28/97

EN BANC

COLEMAN, J., FOR THE COURT:

Joe H. Foster and Katherine Foster, husband and wife, (the Fosters) have appealed from a judgment of the Chancery Court of the First Judicial District of Harrison County in which that court ordered both the Fosters and the appellees, Carl Melchert and Grace Melchert, husband and wife, (the Melcherts) to perform certain acts and not to perform certain other acts. The Fosters and the Melcherts were next door neighbors, and the genesis of this litigation was Joe Foster's cutting and removing four pine trees which grew on the Melcherts' lot. We affirm the judgment.

I. FACTS

The Melcherts lived in Metairie, Louisiana, but they had owned Lots 32, 33, 34, Section 2, Bayou Pines Subdivision in Pass Christian, Harrison County since May, 1978. The Melcherts built a second home on these three lots, and they spent most of their week-ends in their second home. The Fosters had owned Lot 35, which was located south of and contiguous to the southern boundary of the Melcherts' Lot 34, since January 1, 1984. The Melcherts and the Fosters had been friends since approximately 1984; they visited each other regularly in the other's homes. Melchert would visit Foster to drink coffee on Saturday mornings, and Foster would drink coffee with Melchert in Melchert's home on Sunday mornings.

Soon after the Fosters moved to their home in 1984, Melchert, who did not then own a boat, gave Foster permission to use a boat slip, or boat ramp, which was located on Melchert's property near the southern boundary of Lot 34 to launch his boat into a canal which formed the eastern boundaries of their respective lots. The boat slip was originally not made of concrete. Melchert's and Foster's first joint project was to concrete the boat slip. While there was a bit of controversy about who paid for what, it appears that Melchert, a plumber by occupation, provided the lumber for the forms and the labor for placing the forms, while Foster, who was seventy three years old when this case was tried, bought the concrete and paid for the labor in finishing the concrete. However, Melchert testified that his son, son-in-law, and he finished the "lower one-third" of the boat slip.

To use the boat slip, Foster had to drive across the lawn on lot 34, and his driving across the lawn created ruts in Melchert's lot. Thus, sometime in 1989 or 1990, Melchert and Foster built a twelve-foot wide concrete driveway from the boat slip to Foster Drive, which formed the western boundary of their respective lots. As with the boat slip, Melchert provided the forms and the labor to set them and to excavate for the concrete to be poured within the forms, and Foster paid for the concrete and the finishing of the concrete. By that time Melchert had acquired a boat, and he used the newly built concrete driveway to launch his boat into the canal on the east side of his property.

Other projects in which Melchert and Foster cooperated were the construction of a pump house and the installation of a pump located on the boundary of lots 34 and 35 to be used for a water supply for both of their homes and the dredging of the canal on the east side of their respective lots so that their boats could traverse it after they had been launched from the boat slip. They had bought a used drag-line somewhere in north Mississippi, and Melchert's son used it to dredge the canal. The material dredged from the canal was deposited on Foster's lot, where it was smoothed into his property.

In June, 1990 Foster asked Melchert for permission to build a truckport with a concrete entry pad on the south side of lot 34, which would be located immediately south of the concrete drive-way which Melchert and Foster had completed from Foster Drive to the boat slip. The truckport would abut Foster's shop which was located behind Foster's house on the north side of Foster's lot 35 approximately three feet south of the northern boundary of Foster's property. Thus, the truckport, which was fifteen feet, eight inches wide, projected approximately twelve feet over onto the south side of Melchert's lot 34. Melchert acquiesced in Foster's request and assisted Foster in excavating the area in which the concrete was to be poured to connect the driveway on the north to and under the truckport located immediately south of the driveway. Foster paid for the concrete, most of the forms, and a canopy for the truckport. Foster parked one of his two trucks in the truckport,

approximately four-fifths of which was located on Melcherts' land.

Sometime in 1994, Foster employed Mississippi Tree Services (MTS) to remove some trees that were growing on his lot and a cypress tree which the Fosters had planted in the very southeast corner of the Melcherts' lot 35 but which Carl Melchert suggested that Foster remove because its knees rendered mowing the grass impossible. Also included in MTS's services was its limbing four pine trees which grew on the south side of the Melcherts' lot 34 because they had become infested with pine beetles. Foster testified that he had spoken with Grace Melchert about limbing these four pine trees and that she had consented to limbing them. Foster was concerned that the limbs on the pines trees might fall and damage Foster's house. Instead of merely limbing these trees, MTS cut them down and removed them on Foster's orders because, according to Foster, MTS would charge less to remove them if it could do so while it was already on location with its equipment.

With Foster's felling of these four pine trees also fell the friendship between Melchert and Foster. Melchert instructed Foster that he could no longer park his truck in the truckport. When Foster failed to remove his truck, Melchert parked a trailer across the truckport's concrete entry pad and chained the trailer with a lock attached to the boat launch chain. The trailer blocked Foster's truck parked under the truck port. Foster testified that his stepson-in-law cut the lock and moved the trailer so that he could use the truck parked under the truckport to pull a boat trailer when he went fishing. In retaliation, Melchert parked the dragline which had been purchased to dredge the canal to block Foster's truck. The dragline remained where Melchert had parked it until the trial of this case.

II. TRIAL

The Melcherts filed a complaint against the Fosters to recover damages for the loss of their four large pine trees and to require the Fosters to remove the truckport and the concrete entry pad as encroachments on their property. The Fosters answered the Melcherts' complaint and filed a "counterclaim and third party complaint," in which they prayed for a variety of relief against the Melcherts, including, *inter alia*: (1) a decree of specific performance which would direct the Melcherts "to execute an appropriate conveyance to the [Fosters] of an easement to the subject property," (2) "a constructive or resulting trust upon the subject property in favor of the [Fosters]," and (3) "a judgment . . . for the fair market value of the expenditures for improvements on Lot 34 by [the Fosters]."

Melchert and Foster were the only two witnesses at the trial of this case. In addition to the evidence which established our recital of the facts in this case, the parties' testimony developed the facts that the Fosters had filed written instruments with the chancery clerk's office in which they asserted the creation of an easement for the Fosters' benefit to gain ingress and egress to and from the truckport. The Fosters asked the Melcherts to sign the instruments, but the Melcherts refused to sign them. Mr. Foster explained why his wife and he recorded them anyway by his following testimony: "Then my wife says then we will sign it in order to substantiate that an oral agreement existed." "Easement For Property Line Extension" was the title of the instrument which the Fosters filed with the chancery clerk. The instrument attempted to give the Fosters rights in the Melcherts' land where the truckport and entry pad had been constructed.

Following the bench trial, the chancellor found that the documents filed by the Fosters in chancery

court were "insufficient conveyances or evidence of title and by agreement of the parties, and should be removed as potential clouds upon the title of lot 34." He then ordered the Melcherts to remove the dragline which had blocked Foster's truck parked in the truckport, after which Foster was to remove the truck and all other personal property in the truckport to Foster's own property. The chancellor gave the Fosters ninety days in which to remove the truckport cover from the Melcherts' land but further provided that if the Fosters did not remove the truckport cover within the ninety-day period, then the truckport cover would become the property of the Melcherts. He then ordered the Melcherts to "mark with a conspicuous line the common boundary of Lots 34 and 35 on the concrete pad for the truckport," after which "both parties shall be enjoined from crossing such line and using the property owned by the other."

Next, the chancellor ordered the Fosters to pay the Melcherts the statutory sum of fifty-five dollars ($55) per severed pine tree for a total of two hundred twenty dollars. He provided that the pumphouse on the common boundary of the Melcherts' lot 34 and the Fosters' lot 35 was to remain open to access by all parties and that any party using the pump would be responsible for the pump's maintenance. The chancellor ended the judgment by denying all other relief requested by either party and dividing the court costs equally between the Melcherts and the Fosters.

III. ANALYSIS AND RESOLUTION OF THE ISSUES

In their brief, the Fosters set out the following two issues which we quote verbatim from their brief:

1. That the Appellants proved that they had an implied easement.

2. That the Appellants hereto proved that the Appellees were unjustly enriched and that an equitable lien should have been granted against the Appellees in that the Appellees were equitably estopped to deny the Appellants' interest in the real property in dispute.

A. Standard of review

The standard of review this Court must employ in its analysis and resolution of these two issues has been well established by the Mississippi Supreme Court. In *Denson v. George*, 642 So 2d 909, 913 (Miss. 1994), the court opined: "This Court always reviews a chancellor's findings of fact, but we do not disturb the factual findings of a chancellor unless such findings are manifestly wrong or clearly erroneous." (citations omitted). However, "[w]here a lower court misperceives the correct legal standard to be applied, the error becomes one of law, and we do not give deference to the findings of the trial court." *Brooks v. Brooks*, 652 So. 2d 1113, 1117 (Miss. 1995). With these standards of review in mind, this Court now reviews and resolves both issues which the Fosters have presented to it in this appeal.

B. Issue 1. That the Appellants proved that they had an implied easement.

We begin our appraisal of this issue with the observation that in their counterclaim, the Fosters did not pray for an implied easement on and across the Melcherts' property. The record does not reflect that the Fosters confronted the chancellor with this particular issue; thus, he did not decide it. Therefore, pursuant to precedent established by the Mississippi Supreme Court, we need not consider

this issue. *See Touart v. Johnston*, 656 So. 2d 318, 321 (Miss. 1995) (reciting that an appellant is not entitled to raise new issues on appeal since to do so denies the trial court the opportunity to address the matter).

Nevertheless, we analyze and resolve the Fosters' first issue because they did seek to impose an easement on the Melcherts' land for reasons unrelated to an implied easement. In *Gulf Park Water v. First Ocean Springs Dev. Co.*, 530 So. 2d 1325 (Miss. 1988), the Mississippi Supreme Court dealt with this very issue. The supreme court explained that, "[i]t is well established in our law that an easement may be created by grant, implication, or prescription. Our law provides '[t]hat an implied easement must be continuous, apparent, permanent and necessary.'" *Id.* at 1330 (citations omitted).

In *Rowell v. Turnage*, 618 So. 2d 81, 85 (Miss. 1993), the court cited R. Eubanks and R. Bouchard, *Harvey Law of Real Property and Title Closing*, § 301.02 at p. 177 (1985), which read:

An easement born of necessity is termed an easement by implication or an implied easement. The necessity must be real and not merely convenience. Such an easement is created, if at all, by conveyance. Implicit in a sale by the owner of a tract of land, bordering on a main road of a rear section of the land having no access to the road, may be a right of way easement over the vendor's land to the road.

To further explain the application of an implied easement, the Mississippi Supreme Court has opined:

The doctrine of implied grant of easement is based upon the principle that where, during unity of title, the owner imposes an apparently permanent and obvious servitude on one tenement in favor of another, which at the time of severance of title, is in use and is reasonably necessary for the fair enjoyment of the tenement to which such use is beneficial, then, upon a severance of ownership, a grant of the dominant tenement includes by implication the right to continue such use. That right is an easement appurtenant to the estate granted to use the servient estate retained by the owner. Under the rule that a grant is to be construed most strongly against the grantor, all privileges and appurtenances that are obviously incident and necessary to the fair enjoyment of the property granted substantially in the condition in which it is enjoyed by the grantor are included in the grant.

Hutcheson v. Sumrall, 220 Miss. 834, 72 So. 2d 225, 228 (Miss. 1954).

Cognizant of these maxims recited with approval by the Mississippi Supreme Court, we review the Fosters' argument on this issue. The Fosters contend that when the Melcherts denied them access to the driveway and the boat launch, which were built as joint projects, and the truckport, the Fosters suffered the following hardships: (a) Foster can no longer launch his boat, (b) he can no longer move his truck freely as he had previously done, and (c) he no longer enjoys the use of the boat slip and the truckport. Thus, the conduct and the intent of the Melcherts created an implied easement across the south side of the Melcherts' lot 34 for the Fosters' use of the boat slip, the driveway to the boat slip, and the truckport.

The Fosters had the burden to establish every element of their counterclaim. *See Minnesota Mining & Mfg. Co. v. Williamson*, 675 S.W. 2d 951, 953 (Mo. Ct. App. 1984) (holding that counterclaimant had the burden to produce substantial evidence supporting every element of his cause of action and that "[n]o fact . . . may be inferred in the absence of a substantial evidentiary basis"). However, the

evidence adduced by the Fosters is insufficient to establish the facts which the law requires to create an implied easement upon and across the south side of the Melcherts' lot 34. To establish an implied easement over and across one parcel of land to a second parcel of land, there must have been unity of title between both parcels of land prior to their having been separated by conveyance. In *Hutcheson v. Sumrall*, 220 Miss. 834, 842, 72 So. 2d 225, 229 (Miss. 1954), the Mississippi Supreme Court explained the necessity of unity of title as follows:

Where owner of land makes an apparent, permanent, and necessary use of one part thereof in favor of another part, and transfers either or both parts, the grant or reservation of an easement to continue such existing use will be implied.

There is no evidence in the record of the case *sub judice* that the Melcherts owned and then conveyed lot 34 to the Fosters. Instead, among the exhibits in this case is a copy of the deed to the Melcherts for lots 32, 33, and 34 in Section 2, Bayou Pines Subdivision, which was dated May 4, 1978. Joe H. Foster testified that he bought lot 35 on January 1, 1984. Therefore, the Fosters have failed to establish the *sine qua none* on which the judicial imposition of an implied easement must rest, which is the Melcherts' conveyance of lot 35 to the Fosters when lot 35 had been a part of the parcel of land which had been first conveyed to the Melcherts. This failure of evidence is alone sufficient to warrant resolving the Fosters' first issue against them.

There is yet another reason to resolve this issue against the Fosters. The Fosters owned lot 35, but the boat slip and the truckport, to which the Fosters sought access, were located on or near the south side of lot 34, which belonged to the Melcherts. The boat launch, the concrete driveway to the boat slip, the truckport, and the concrete pad from the concrete driveway to the truckport were all built after the Melcherts and the Fosters bought their respective properties. *Shipman v. Lovelace*, 214 Miss. 241, 58 So. 2d 657 (Miss. 1952), demonstrates the significance of these facts. In *Shipman* the owner of a lot built a house on one end of the lot and ran a sewer line from the opposite end of the lot to the house. Subsequently, the half of the lot on which the house was located was conveyed to another person. *Id.* at 657. The Mississippi Supreme Court held that "[t]he house, without sewerage, would have been incomplete . . . ." *Id.* at 659. Therefore, the sewer line was an adjunct of the lot with the house, and it was "essential and necessary to the free and normal use and enjoyment of the same." *Id.* The supreme court allowed the appellant to preserve her right to "retain, repair, maintain and use the sewerage line from her house across the south half of the lot." *Id.* A sewerage line was necessary to maintain, use, and enjoy the appellant's property. In the case *sub judice*, the Fosters in no way need the boat slip, the driveway to the boat slip, the truckport, or the concrete pad to the truckport for the use and enjoyment of their property which, of course, is lot 35.

The Melcherts rebut the Fosters' argument on this issue by asserting that they gave the Fosters a license to use the boat slip and truckport, and not an easement. In Mississippi, "a license is defined to be an authority to do some act or a series of acts on the land of another without passing an estate in the land. It amounts to nothing more than an excuse for the act, which would otherwise be a trespass." *Hotel Markham v. Patterson*, 202 Miss. 451, 458, 32 So.2d 255, 256 (1947). A "licensee" has been defined as one who enters upon the land of another for his own convenience, pleasure, or benefit, pursuant to the license or implied permission of the owner. *Lucas v. Buddy Jones Ford Lincoln Mercury*, 518 So.2d 646, 647 (Miss. 1988). The evidence in the case *sub judice* was sufficient to establish that the Melcherts had granted the Fosters a license to use the boat slip and the

truckport on lot 34 which belonged to the Melcherts. Thus, this Court finds that Joe H. Foster was licensee because he entered upon the Melcherts' lot 34 for his own convenience, pleasure, and benefit pursuant to license which the Melcherts had granted to him. "Generally, a mere license to enter or use premises is revocable at any time at the pleasure of the licensor." 25 Am Jur. 2d *Easements and Licenses* § 12. *See also Towles v. Hodges*, 235 Miss. 258, 108 So. 2d 884, 885 (1959) (holding that "courts give effect to a parol grant of the right of entry [to cut timber which] [t]hey consider [to be] a mere license, which confers only a revocable privilege and does not pass an estate in realty [and] . . . is revocable at any time."). The Melcherts were entitled to cancel the license they had given Joe Foster to use the boat slip, the driveway to the boat slip, the truckport, and the concrete pad which extended from the driveway to the truckport.

We cannot affirm a ruling which the chancellor never made, but we can resolve against the Fosters their first issue, which is that they had an implied easement. We do so for three reasons. First, the Fosters could not, and thus did not, prove that lot 35 was a part of the Melcherts' property when it was conveyed to the Fosters. Second, the boat slip and the concrete driveway to the boat slip were entirely on the Melcherts' lot 34, and most of the truckport and the concrete pad to and under the truckport were on the Melcherts' property. Only approximately the western three feet of the truckport were on the Fosters' lot 35, and the Fosters already had access to that part of the truckport. Hence the Fosters had no necessity for an easement to enjoy any part of their property, lot 35; what the Fosters wanted to use and to enjoy was located on the Melcherts' property. Third, the evidence in this case established that what the Melcherts gave the Fosters was a license to use the improvements on lot 34, which license the Melcherts remained at liberty to cancel as indeed they did after Joe Foster hired Mississippi Tree Services to cut the four pine trees which were growing on the south side of the Melcherts' lot 34.

C. Issue 2. That the Appellants hereto proved that the Appellees were unjustly enriched and that an equitable lien should have been granted against the Appellees in that the Appellees were equitably estopped to deny the Appellants' interest in the real property in dispute.

Joe Foster testified that he spent $400 for the concrete that was used in the boat slip and $200 for two days' labor in finishing the concrete, for a total out-of-pocket expense of $600. He further testified that he spent $700 for the concrete used in the driveway which ran from Foster Drive to the boat slip and $200 for labor in finishing the concrete. Later, when Foster built the truckport, he spent $500 for the concrete pad beneath the truckport and $200 for the labor in finishing the concrete. However, Foster could not remember what the concrete for the entry pad to the truckport cost, although he was sure that the labor to finish the concrete entry pad would have been $200. Foster further testified that he spent $4,000 for a custom built "Alumna-Shield" cover for the truckport.

The Fosters' objective in this issue is to recover their costs for the construction of the boat slip, the concrete driveway to the boat slip, the truckport, and the concrete entry pad to the truckport. The sum of these costs was approximately $6,400, including the $200 for the finishing of the concrete entry pad to the truckport. However, the chancellor allowed the Fosters ninety days in which to remove and to repossess the "Alumna-Shield" cover for the truckport, for which Joe Foster spent $4, 000. The balance of $2,400 appears to be the amount of the Fosters' claim. The Fosters argue that the Melcherts' denying them access to the boat slip, driveway, and truckport unjustly enriches the

Melcherts because they would then have the sole use and benefit of these improvements.

Unlike the Fosters' first issue, this issue was adjudicated by the chancellor. The record reflects that the chancellor delivered his ruling from the bench after both parties rested. During his ruling, the Fosters' counsel inquired: "Your honor, just so I can make sure my record is clear, the request for the fair market value of the improvements that Mr. . . . ." The chancellor responded, "That's denied." The Fosters' counsel proceeded to seek clarification about the chancellor's requirement that a line be drawn on the truckport slab and entry pad to mark the boundary between lots 34 and 35.

Our task is to determine whether the chancellor erred when he denied the Fosters' prayer that an equitable lien be imposed against the Melcherts' lot to secure the Melcherts' payment of those expenses which Joe Foster testified he had incurred in the construction of the boat slip, driveway, truckport, and concrete entry pad to the truckport. In *Koval v. Koval,* 576 So. 2d 134, 136 (Miss. 1991), the Mississippi Supreme Court has defined the concept and explained application of the equitable doctrine of unjust enrichment as follows:

Unjust enrichment is an equitable remedy closely associated with "implied contracts" and trusts.

The doctrine of unjust enrichment or recovery in quasi-contract applies to situations where there is no legal contract but where the person sought to be charged is in possession of money or property which in good conscience and justice he should not retain but should deliver to another, the courts imposing a duty to refund the money or the use value of the property to the person to whom in good conscience it ought to belong. (citations omitted).

Recovery in unjust enrichment is "that to which the claimant is equitably entitled." *Id.*

In *Hicks v. Blakeman*, 74 Miss. 459, 21 So. 7 (1896), the guardian of Frances Hicks sold Hicks' land without complying with the provisions of the court order which authorized the guardian to sell it, among which provisions was the requirement that the court confirm the sale. *Id.* at 7. Blakeman, the purchaser of Hicks' land, sought to recover the value of the improvements which she had made on the land in the amount of $1,600, and the trial court allowed Blakeman to recover the full amount of $1, 600. *Id.* at 8. Hicks appealed to challenge the trial court's allowing Blakeman to recover for the improvements which she had made on Hicks' land after Blakeman had purchased it and to challenge the trial court's awarding her the full amount of her expenditure for those improvements instead of the actual value of the land after Blakeman had made the improvements. *Id.* at 7. The evidence showed that the value of the land without the improvements was $500 and that the value of the land with the improvements was $1,500. The value of the improvements alone was $1,600, which exceeded the value of the land with improvements by $100. *Id*. at 9. The Mississippi Supreme Court affirmed the trial court's allowing Blakeman to recover for her improvements, but it restricted the value of her recovery to the "enhanced vendible or rental value of the lands." *Id.* The supreme court opined: "The enhanced vendible or rental value means nothing more or less than the actual cash value of the improvements, if they were sold for their fair value, as they affect the vendible value of the land." *Id*. The supreme court concluded "that the court below erred in allowing defendants the cost of the improvements, instead of allowing them the amount of the enhanced value imparted to the lands by reason of the improvements, and for this error, the decree will be reversed." *Id.*

In the case *sub judice*, the Fosters offered no evidence about the "vendible," or fair market value, of the Melcherts' entire property after the boat slip, driveway, truckport, and concrete entry pad to the truck port had been added. "The law is settled that a party must prove that he is entitled to an award of damages to a 'reasonable certainty.'" *Lovett v. E.L. Garner, Inc.*, 511 So.2d 1346, 1353 (Miss.1987). The amounts which the Fosters spent on the improvements which were the subject of this neighborly spat were not the correct measure of the Fosters' damages. Because the Fosters failed to prove the value of the Melcherts' lot after the boat slip, concrete driveway leading to the boat slip, truckport, and concrete entry pad to the truckport had been added to the Melcherts' property, the chancellor had no basis on which to compute the amount to which the Melcherts had been unjustly enriched. Therefore, the chancellor did not err when he declined to adjudicate that the Melcherts had been unjustly enriched by the Fosters' financial contributions to the construction of the improvements on the Melcherts' property. We affirm the chancellor's denial of the Fosters' request for the imposition of an equitable lien to secure the Melcherts' unjust enrichment because the Fosters utterly failed to establish the appropriate amount of such unjust enrichment.

IV. CONCLUSION

While we would decline to put the chancellor in error on an issue which the Fosters never presented to him for his determination, we have nevertheless analyzed the Fosters' first issue only to hold that the evidence in this case cannot support the award of an implied easement because lot 35 was not a part of the Melcherts' property when it was conveyed to the Fosters, because the Fosters had no necessity for an easement to enjoy any part of their property, lot 35, and because the Melcherts gave the Fosters a license to use the improvements on lot 34, which license the Melcherts canceled as they were lawfully entitled to do. The chancellor did not err when he refused to impose an equitable lien against the Melcherts' lots to secure the Fosters' recovery from the Melcherts for their unjust enrichment because the Fosters failed to establish the fair market value of the Melcherts' lots after the boat slip, driveway, truckport, and entry pad to the truckport had been added to the south side of the Melcherts' lot 34. Before the Fosters could recover their damages by way of the Melcherts' unjust enrichment, they were obliged to prove them.

THE JUDGMENT OF THE HARRISON COUNTY CHANCERY COURT IS AFFIRMED. COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANTS.

BRIDGES, C.J., McMILLIN, P.J., DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR. THOMAS, P.J., NOT PARTICIPATING.