

defendant's explanation of the incident was as probable as the plaintiff's explanation and consequently the plaintiff did not meet her burden for the product malfunction theory. *Id.*

In the instant case, both parties examined the component parts extracted from the subject vehicle. Thus, there is at least some circumstantial evidence to support plaintiffs' assertion, as opposed to the unsupported allegations in *Roselli*. The defendant in the instant case has not offered an explanation that is wholly uncontradicted and unsupported by the plaintiffs' evidence. The court finds that because there is evidence to support plaintiffs' allegations in the instant case, the destruction of the remainder of the vehicle does not render impossible the plaintiffs' burden of eliminating abnormal use and reasonable secondary causes. The destruction of the subject vehicle does not unduly prejudice the defendant because of the opportunity to examine the extracted components and its limited burden of identifying only other reasonable possible explanations for the fire. As the Supreme Court stated in *Rogers*, as long as the plaintiffs present a case-in-chief free of secondary causes which justify the inference of a product defect, the jury is free to accept that scenario. 523 Pa. at 184, 565 A.2d at 755.

In conclusion, the plaintiffs are permitted to proceed under the theory of product malfunction.

#### ORDER OF COURT

October 21, 1992, the Court orders that the Defendants' motion to prohibit plaintiffs from proceeding under the product malfunction theory of strict product liability is denied.

BUILDERS, INC. V. KERNS, ET AL., C.P. Fulton County Branch, No. 289 of 1991-C

*Contract - Consumer Protection Law - Rescission - Unjust Enrichment*

VALCOA BUILDERS, INC. V. KERNS, ETAL., C.P. Fulton County Branch, No. 289 of 1991-C

*Contract - Consumer Protection Law - Rescission - Unjust Enrichment*

1. Where the defendants father-in-law entered into a contract for work on defendant's home with plaintiff, the contract may be rescinded when it does not contain notice of the three-day rescission period required by the Consumer Protection Law.
2. Using a theory of unjust enrichment, a plaintiff cannot merely allege the cost to plaintiff of providing services to defendant.
3. Where defendants were not parties to a contract with plaintiff, the Consumer Protection Law does not apply.

*Travis L. Kendall, Esq., Attorney for Plaintiff*  
*Dwight C. Harvey, Esq., Attorney for Defendants*

#### OPINION AND ORDER

WALKER, J., September 22, 1992:

#### FINDINGS OF FACT

Plaintiff entered into a contract with defendants' father to install aluminum siding and a bay window at the defendants' residence. The contract did not contain the notice and three-day rescission provisions as required by the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-7. Subsequent to the plaintiff's performance of the contract, defendants' father rescinded the contract pursuant to the Unfair Practices and Consumer Protection Law, 73 P.S. § 201-7. Plaintiff initially named the defendants' father as a defendant but amended the complaint to exclude him from the proceedings.

Defendants were not parties to the contract. Plaintiff installed the aluminum siding and the bay window at the defendants' residence and seeks damages for unjust enrichment. This opinion addresses the defendants' preliminary objections, consisting of two demurrers and a motion to strike for failure to comply with Rules of Law.

## DISCUSSION

In short, the court denies defendants' demurrers and the motion to strike for failure to comply with Rules of Law and orders the plaintiff to amend its complaint to comply with the following opinion.

Defendants assert that under a theory of unjust enrichment, plaintiff cannot merely allege the cost to the plaintiff of providing services to the defendants. The court agrees with defendants' assertion, but believes granting the demurrer would be inappropriate and instead orders the plaintiff to amend its complaint.

The Restatement of Contracts states:

If a sum of money is awarded to protect a party's restitution interest, it may as justice requires be measured by either

(a) the reasonable value to the other party of what he received in terms of what it would have cost him to obtain it from a person in the claimant's position, or

(b) the extent to which the other party's property has been increased in value or his other interests advanced.

Restatement (Second) of Contracts § 371 (1981).

Plaintiff requests damages for the "value of the materials and labor rendered to the benefit of defendants' property" in the amount of five thousand, four hundred (\$5,400) dollars. The amount represents plaintiff's cost in providing its services. Although § 371(a) includes the term "cost" in its measure of damages, this section requires the plaintiff to allege the amount it would have cost the defendant to obtain the benefit from a similar service provider in the community, not simply the cost to the plaintiff. This is evident from the use of the language "from a person in the *claimant's position*" on § 371(b). *See also* Restatement (Second) of Contracts § 371, illus. 1-3 (1981) (benefit conferred measured by what it would have cost the defendant to engage a similar service provider to do the same work).

The court finds the plaintiff's measure of damages insufficient to state a cause of action for unjust enrichment. The court grants the plaintiff twenty (20) days from the date of this order to amend the complaint to allege either (1) the amount it would have cost the defendants to obtain the same services from a local construction company or (2) the extent of the increase in value of the defendants' residence as a result of plaintiff's services performed on the residence.

Defendants also assert that the Unfair Trade Practices and Consumer Protection Law provides the exclusive remedy for the plaintiff and moved to strike the complaint for failure to comply with Rules of Law. The law provides that upon rescission of a contract,

"if a seller elects to repossess, he must do so within twenty (20) days of the buyer's notice of cancellation or forfeit all rights to the delivered goods." 73 P.S. § 201-7 (i).

The Unfair Trade Practices and Consumer Protection Law governs the actions between parties to certain contracts and the court finds it inapplicable to this case. The defendants were not parties to the contract plaintiff entered into with defendants' father. The law would have been applicable if defendants' father was a defendant in this case, but plaintiff amended the complaint to exclude defendants' father. Thus, the defendants' motion to strike the complaint for failure to comply with Rules of Law is denied.

## ORDER OF COURT

September 24, 1992, plaintiff's demurrers and the motion to strike the complaint for failure to comply with Rules of Law are denied. The court further grants plaintiff twenty (20) days from the date of this order to amend the complaint to allege either (1) the amount it would have cost the defendants to obtain the same services from a local construction company or (2) the extent of the increase in value of the defendant's residence as a result of the plaintiff's services performed on the house.