

STRAIT'S CONTRACTING SERVICES, LLC, Plaintiff,
v. RODNEY FIX and KRISTI FIX, his wife,
JACK A. CLARK and LOIS L. CLARK, t/d/b/a CLARK FARMS,
a general partnership, Defendants
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Fulton County Branch
Civil Action - Law, No. 194 of 2005

Preliminary Objection; Demurrer; Contract; Landlord/Tenant; Unjust Enrichment; Quantum Meruit

1. When challenged by preliminary objection in the nature of a demurrer, all material facts set forth in a complaint as well as all inferences reasonably deducible therefrom are admitted as true for the purposes of review.
2. The question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible.
3. In order to prevail under a theory of unjust enrichment, a plaintiff must show that the defendant wrongfully secured or passively received a benefit that would be unconscionable for the defendant to retain.
4. The mere fact that one party benefits from the act of another is not sufficient to justify restitution. Instead there must also be an injustice in permitting the benefit to be retained without compensation.
5. In the absence of some misleading by the third party, the mere failure of performance by the contracting party does not give rise to a claim of restitution against a third party.
6. When a landlord does not participate in the formation or implementation of a contract between a tenant and a contractor and the contractor does not allege any misleading or improper behavior on the part of the landlord that would make his passive receipt of any benefit incurred from the contractor's performance unconscionable, the landlord is not liable to the contractor under a theory of unjust enrichment.
7. A cause of action in *quantum meruit* is made out where one person has been unjustly enriched at the expense of another.
8. Because the Court held that the contractor cannot prevail on a cause of action for unjust enrichment, the *quantum meruit* claim must also be dismissed.

Appearances:

Shawn D. Myers, Esq., *Counsel for Plaintiff*

David A. Pertile, Esq., *Counsel for Defendants*

OPINION

Walker, P.J, August 31, 2005

Procedural History and Factual Summary

Jack and Lois Clark (hereinafter "the landlords") are the owners of real property located in Taylor Township, Fulton County. Situated on this property is an improvement commonly referred to as the old

Hustontown School. Rodney and Kristi Fix (hereinafter "the tenants") rent the second floor of the Old Hustontown School from the landlords.

In early 2004, the Plaintiff entered into a contract with the tenants in which the Plaintiff agreed to perform certain renovations to the old Hustontown School to convert the second floor into a restaurant. Plaintiff avers that he has fully performed the services due under the contract and that the tenants have failed to pay in full. The Plaintiff has brought suit against the landlords seeking restitution for the alleged breach of contract by the tenants under the theories of third-party unjust enrichment and *quantum meruit*. Jack and Lois Clark are petitioning the Court to dismiss the Plaintiff's claims against them for failure to plead facts sufficient to support a cause of action against them.

Discussion

When challenged by preliminary objection in the nature of a demurrer, all material facts set forth in a complaint as well as all inferences reasonably deducible therefrom are admitted as true for the purposes of review. The question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. Kyle v. McNamara & Criste, 506 Pa. 631, 633-4, 487 A.2d 814, 815 (1985).

I. Unjust enrichment

In order to prevail under a theory of unjust enrichment, a plaintiff must show that the defendant wrongfully secured or passively received a benefit that would be unconscionable for the defendant to retain. Scott v. Purcell, 264 Pa.Super 354, 399 A.2d 1088 (1979). The mere fact that one party benefits from the act of another is not sufficient to justify restitution. Instead there must also be an injustice in permitting the benefit to be retained without compensation. In the absence of some misleading by the third party, the mere failure of performance by the contracting party does not give rise to a claim of restitution against a third party. Meehan v. Cheltenham Township, 410 Pa. 446, 189 A.2d 593 (1963).

The Plaintiff alleges that it would be unconscionable for the landlords to retain the benefit of the renovations without compensating him because the landlords own the building and are receiving rent from the tenants. The landlords argue that they may be in passive receipt of the renovations because they own the building, but they were not involved in the formation or implementation of the contract between the tenants and the Plaintiff. The landlords also emphasize the point that the Plaintiff does not allege that the landlords misled him in any way.

In Roman Mosaic and Tile Company v. Vollrath, 226 Pa.Super 215, 313 A.2d 305 (1973), the court dealt with a similar situation in which a husband contracted with a contractor to install tile flooring in a laundromat owned by him and his wife. The contract was only between the husband and the contractor. After the husband failed to pay, the contractor brought an action against both the husband and the wife. The court concluded that the wife could not be held liable under the theory of unjust enrichment because it was insufficient to show that she reaped a benefit. The plaintiff must also prove that the wife engaged in behavior that was misleading or otherwise improper. Because the plaintiff failed to offer any evidence of such behavior, his claim for restitution failed.

The present case is quite similar because the landlords also did not participate in the formation or implementation of the contract between the Plaintiff and the tenants. Additionally, the Plaintiff has failed to allege any misleading or improper behavior on the part of the landlords. His sole allegation is that the landlords are liable because they own the building in which the tenants rent space. As the Plaintiff has failed to prove that the landlords acted in a way that would make their passive receipt of any benefit incurred from the Plaintiff's performance unconscionable, this Court finds that the Plaintiff's case against the Clarks for unjust enrichment must be dismissed.

This Court would have decided differently if the facts before it had been different. In the Court's opinion, the Plaintiff should have had the landlords sign on to the contract if he had any concerns regarding the tenant's ability to pay since the landlords are the owner of the building. Furthermore, if the landlords had been involved in the formation or implementation of the contract between the Plaintiff and the tenants, then the Court may have allowed this case to go to trial. In this type of situation, the tenants might have ordered renovations that the landlords were not in favor of, so it would be unreasonable to make them liable for the contract. However, if the landlords had received a significant increase in the rental value of the property such as a doubling or tripling of value as a consequence of the renovations, then the Court may have allowed this case to go to trial even if the landlords had not been involved in the contract.

II. *Quantum meruit*

A cause of action in *quantum meruit* is made out where one person has been unjustly enriched at the expense of another. Martin v. Little, Brown and Co., 304 Pa.Super 424, 450 A.2d 984 (1981). Because this Court has already held that the Plaintiff cannot prevail on a cause of action for unjust enrichment, the *quantum meruit* claim must also be dismissed.

ORDER OF COURT

August 31, 2005, the Court having sustained the demurrer of Jack A. Clark and Lois L. Clark, t/d/b/a Clark Farms, because plaintiff failed to plead a case of unjust enrichment, the Court orders that they be dismissed as defendants in this case.