When are damages based on unjust enrichment appropriate?

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Ohio courts have long been in agreement that "[i]t is clearly the law in Ohio that an equitable action in quasi-contract for unjust enrichment will not lie when the subject matter of that claim is covered by an express contract or a contract implied in fact."[1] Nevertheless, courts are still being presented with the issue of when claims for unjust enrichment are appropriate.

For example, in *Michael E. LeVangie, Managing Member v. Linda K. Raleigh*,[2] the Second District Court of Appeals recently held that where a contractor alleged a claim only for breach of contract, it was not proper for the trial court to award the contractor damages based on unjust enrichment.

In this situation, an owner hired a general contractor to repair and rebuild a duplex that was severely damaged by a fire. The parties executed a one-page handwritten contract, which included the amount of payment and very little information about the work to be done. The owner received insurance proceeds in an amount greater than the agreed-upon price with the contractor. The contractor began performing work without obtaining a building permit, even though the permit is required by law. Nevertheless, the owner provided the contractor with the first requested progress payment but later refused to make a second progress payment, asserting that the documentation requested from the contractor to support the disbursement was not received. Shortly thereafter, the contractor filed an application for the required building permit but, one week later, stopped work, citing the owner's refusal to make a payment and the lack of a building permit. Three months after this suspension, the owner terminated the contract with the contractor, and the owner's son and ex-husband completed the work.

The contractor filed claims against the owner for breach of contract and marshalling of liens, and the contractor brought several counterclaims, including breach of contract and unjust enrichment. The trial court found that the contractor breached the

contract but awarded him damages on the grounds of unjust enrichment, even though the trial court found that the parties entered into an express contract. The trial court reasoned that "it was appropriate under these circumstances to award [the contractor] an amount for unjust enrichment. Since [the contractor] cannot recover under the contract because of his substantial breaches, he has, however, conferred a substantial benefit upon [the owner] for which he should be compensated."[3] The trial court further held that the owner did not prove any of her counterclaims.

The owner appealed to the Second District Court of Appeals, and it found that the trial court erred in awarding damages to the contractor under a theory of unjust enrichment. This is because a party to an express contract—such as the construction contract between the parties here—has no right to the remedy of *quantum meruit* to recover for unjust enrichment under Ohio law. Thus, the court concluded that it was an error for the trial court to award damages to the contractor based on a legal right that it did not possess. As such, the contractor was not entitled to any damages. The court further found that the owner did not incur any damages, because she did not spend more on the total cost of the repair (to both the contractor and her ex-husband and son) than she received from the insurance company.

In sum, a party alleging damages can recover damages based on the theory of unjust enrichment only when no express contract between the parties exists. However, the non-existence of an express contract does not automatically entitle a party to a proper claim for unjust enrichment. Specifically, counties and municipalities "cannot be held liable for unjust enrichment"[4] because they are "immune from assertions that rely on equity."[5] Ohio law does not provide courts leeway to create causes of action that were not specifically alleged by the parties.

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[1] *See e.g.*, *Ryan v. Rival Manufacturing Company*, 1st Dist. No. C-810032, 1981 WL 10160 (Dec. 16, 1981).

[2] 2d Dist. No. 27946, 2019-Ohio-810 (Mar. 8, 2019)

[3] *LeVangie* at ¶ 10

[4] *Morton v. Murray*, 8th Dist. No. 106759, 2018-Ohio-5178, ¶ 5 (Dec. 20, 2018)

[5] *NaphCare, Inc. v. Cty. Council of Summit Cty. Ohio*, 9th Dist. No. 24906, 2010-Ohio-4458, ¶ 23 (Sept. 22, 2010)

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