

2012 IL App (2d) 110649-U
No. 2-11-0649
Order filed March 23, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

CENTER FOR PAIN CONTROL,)	Appeal from the Circuit Court
GRAND OAKS SURGICAL CENTER,)	of Lake County.
and GRAND OAKS ANESTHESIA, Illinois)	
Professional Corporations,)	
)	
Plaintiffs-Appellants,)	
)	
v.)	No. 08-CH-3380
)	
KAREN S. McCALL,)	
)	
Defendant-Appellee)	
)	
(John G. McCall a/k/a Jack McCall,)	
Harry R. Halperin, H. Halperin and)	Honorable
Associates, Inc., and Wellington Financial)	Mitchell L. Hoffman,
Group, Inc., defendants).)	Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Justices Schostok and Birkett concurred in the judgment.

ORDER

Held: The trial court erred in dismissing plaintiffs' constructive trust and unjust enrichment claims. However, the trial court properly dismissed the remaining counts in plaintiffs' complaint, which included aiding and abetting a breach of fiduciary duty, conversion, civil conspiracy, and injunctive relief.

¶ 1 Plaintiff corporations, Center for Pain Control, Grand Oaks Surgical Center, and Grand Oaks Anesthesia, appeal the trial court's dismissal, with prejudice, of their multi-count complaint against defendant Karen S. McCall. The complaint sought to recover embezzled funds on grounds of breach of fiduciary duty, conversion, unjust enrichment, injunctive relief, imposition of a constructive trust, and civil conspiracy. On June 7, 2011, the trial court dismissed all claims against Karen pursuant to her motion to dismiss filed under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)). The trial court included language pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010), allowing plaintiffs to appeal the order without delay. We affirm in part and reverse in part.

¶ 2 I. BACKGROUND

¶ 3 Plaintiffs, which are involved in the practice of medicine, filed their original complaint on September 9, 2008. The complaint alleged that defendant John G. McCall, plaintiffs' comptroller, systematically stole over \$750,000 from plaintiffs during the period of May 2001 through April 2007. The complaint alleged that John stole the funds with the actual or implicit knowledge and assistance of his wife, Karen, and defendant Harry R. Halperin, an attorney whom John brought into plaintiffs' businesses to assist in recovering payments on worker's compensation and personal injury claims. According to the complaint, defendants engaged in a fraudulent scheme to take 30% of all payments plaintiffs received from worker's compensation claims, personal injury medical liens, settlements, or judgments and deposit the funds into accounts owned or controlled by defendants to pay their own personal expenses. The funds were diverted to accounts belonging to defendant Wellington Financial Group, which was an entity controlled by John and Harry. John and Harry then transferred funds into one or more LaSalle bank accounts under their control, allegedly with Karen's

actual or implied knowledge and assistance. Other funds were misappropriated by John by depositing checks into an account belonging to defendant H. Halperin and Associates, which was Harry's law practice, and then transferring the funds to the LaSalle bank accounts.

¶ 4 Count I sought injunctive relief to bar defendants from spending or using plaintiffs' funds, alleging that they had no adequate remedy at law if defendants were allowed to conceal or otherwise dispose of the funds because defendants would no longer have assets sufficient to satisfy a judgment. Further, plaintiffs alleged that defendants would not suffer harm if the injunction was granted because they had no legal right to the funds, and plaintiffs would likely succeed on the merits.

¶ 5 Count II alleged conversion against all defendants, alleging that they had engaged in the unauthorized, wrongful assumption of ownership of plaintiffs' funds.¹

¶ 6 Count IV alleged breach of fiduciary duty against Karen, stating that she knew that John owed plaintiffs a fiduciary duty on the basis of his position and that she conspired with and provided substantial assistance to John by allowing her personal bank accounts to be used as the conduit for the misappropriations.

¶ 7 Count VI alleged civil conspiracy against Karen in that all of the defendants had an implied or express agreement to conspire and defraud plaintiffs by diverting money from them. Plaintiffs alleged that Karen knew or should have known that the wealth she and John enjoyed came from the wrongful acts of her husband, that she understood the general objectives of the scheme to defraud plaintiffs, that she accepted the objectives and participated in them.

¹ Count III alleged breach of fiduciary duty against John and count V alleged fraudulent concealment against John, and those counts are not at issue in this appeal.

¶ 8 Count VII sought imposition of a constructive trust against Karen's assets. Plaintiffs alleged that because of the unlawful acts that led to defendants wrongfully diverting plaintiffs' funds, the court should place all of Karen's assets in a constructive trust for the benefit of plaintiffs.

¶ 9 Count VIII requested an accounting by all defendants for any and all financial gains and dealings involving plaintiffs' funds.

¶ 10 On October 31, 2008, Karen filed a motion to dismiss all counts against her pursuant to section 2-615 of the Code. The motion argued that plaintiffs' complaint did not set forth any facts that Karen had any role in the formation of the two entities that plaintiffs' money was diverted to (Wellington Financial Group and H. Halperin and Associates) or that she had any knowledge that John or Harry made deposits into those accounts with plaintiffs' funds. The trial court granted Karen's motion, without prejudice, on January 20, 2009.

¶ 11 On March 3, 2009, plaintiffs filed their first amended complaint. Count I again sought injunctive relief against all defendants. Count II realleged conversion against all defendants, including the following new facts that John and Karen used plaintiffs' funds for the following personal benefits: improvements to their Lake Geneva, Wisconsin home, acquisition of a 2001 Chevrolet Impala LS, paid for residential electrical bill, hotel costs, auto repairs and gas charges, and other shopping and dining expenses.² Count VII again sought the imposition of a constructive trust against all of Karen's assets. The amended count included the following new fact that John and Karen had used the stolen funds to pay for their own personal living expenses, including those mentioned in count II. It also requested that the stolen funds and any property that was purchased,

² Count III realleged breach of fiduciary duties against John; Count IV alleged breach of fiduciary duties against Harry; Count V realleged fraudulent concealment against John; and count VI alleged civil conspiracy against John and Harry.

maintained or improved with plaintiffs' money should be held in a constructive trust. Count VIII again requested an accounting from all defendants.

¶ 12 On April 2, 2009, Karen moved to dismiss the amended complaint, again arguing that plaintiffs failed to state any facts supporting their claims against her. In fact, Karen argued that the amended complaint alleged fewer facts pertaining to her despite the court's earlier dismissal of the claims against her. Shortly thereafter, plaintiffs filed their second amended complaint, which included the following additional facts about Karen: that John and Karen had a joint checking account at Bank One/JPMorgan Chase and both made cash deposits into that account; that John and Karen controlled the Wellington Financial Group account, which was an entity maintained by them for the sole purpose of embezzling plaintiffs' funds; that Karen drafted at least 39% of the checks written from the Wellington account by having John sign or using a rubber stamp of his signature, including checks for rent, home repairs, and grave plots; that Karen wrote over 55% of the checks written out of the H. Halperin and Associates account by having John sign or by using a rubber stamp of his signature; that John or Karen electronically paid their personal Capital One credit card and other credit card accounts or personal expenses through the H. Halperin account; that John and Karen paid personal expenses using checks drawn from the H. Halperin account; and that Karen wrote checks drafted from the H. Halperin account to pay their Chase mortgage bill, their son, their cleaning lady, insurance bill, and other personal expenses.

¶ 13 The second amended complaint again sought injunctive relief in count I and conversion in count II. In this complaint, count IV alleged Karen assisted in the breach of John's fiduciary duties to plaintiffs by her acts of drafting checks from the H. Halperin and Associates and Wellington Financial Group accounts. It alleged that Karen also allowed her personal joint bank accounts to be

used as a conduit and means for her and John to divert funds from plaintiffs. Count VI realleged civil conspiracy against Karen, alleging that she participated in the conspiracy to steal plaintiffs' money by spending the funds that she should have known were not her personal funds. Count VII argued for the imposition of a constructive trust over Karen's assets. Finally, count VIII again sought an accounting from all defendants.

¶ 14 Karen moved to dismiss plaintiffs' second amended complaint on June 5, 2009. Karen argued that the second amended complaint failed to set forth any factual allegations substantiating any claims against her. She argued that plaintiffs failed to allege any instance in which she allegedly stole any of their money. Rather, taking plaintiffs' allegations as true, the complaint only alleges that she spent money that John misappropriated from plaintiffs. The trial court granted, without prejudice, Karen's motion on September 1, 2009. Plaintiffs were given time to file an amended complaint and did so on January 15, 2010.

¶ 15 Plaintiffs' third amended complaint against Karen realleged the same facts as the dismissed second amended complaint. This complaint added count IX, which sought an imposition of a constructive trust against Karen specifically. In count IX, plaintiffs alleged that John diverted their money to the H. Halperin and Associates account and the Wellington Financial Group account. Both of those accounts were held at LaSalle Bank. Plaintiffs alleged that the only funds deposited into those accounts were those funds wrongfully diverted from them. Karen had access to and control over both accounts, and accordingly "was the constructive trustee of Plaintiffs' funds which had been wrongfully diverted into those accounts." According to plaintiffs, Karen benefitted from the wrongful diversion of their funds by using those accounts to pay for all sorts of personal expenses and depositing some of the funds into a joint bank account held with John. Plaintiffs alleged that

Karen knew or should have known that the funds in those accounts were fraudulently obtained because she knew or should have known that H. Halperin and Associates and Wellington Financial Group had no offices and conducted no business, and she was not employed by those alleged businesses.

¶ 16 On February 9, 2010, Karen moved to dismiss count IX of the third amended complaint, arguing in part that the complaint did not allege any new facts from the previously dismissed complaint. On April 6, 2010, the trial court granted, without prejudice, Karen's motion to dismiss count IX.

¶ 17 On April 29, 2010, plaintiffs filed their fourth amended complaint against Karen. This complaint included count X, which sought imposition of a constructive trust against Karen. The facts were unchanged from the prior dismissed complaints. Naturally, Karen moved to dismiss count X since the trial court had dismissed the largely identical count IX on her previous motion. Karen requested that the complaint against her be dismissed with prejudice because this was now the fifth time that plaintiffs had unsuccessfully attempted to state a claim against her. On August 31, 2010, the trial court dismissed count X, without prejudice.

¶ 18 On January 5, 2011, plaintiffs filed their fifth amended complaint against Karen. Like the third and fourth amended complaints, this complaint alleged the same facts and previously dismissed counts against Karen: count I (injunctive relief); count II (conversion); count IV (assisting breach of fiduciary duty); count VI (civil conspiracy); count VII (constructive trust); count VIII (accounting); count IX (constructive trust); and count X (constructive trust). It further alleged a claim of unjust enrichment in count XI. On February 4, 2011, Karen moved to dismiss the fifth amended complaint, arguing that this complaint merely regurgitated the same facts and claims and

added a new single claim for unjust enrichment. On April 12, 2011, the trial court granted Karen's motion to dismiss with prejudice all claims against her. On June 7, 2011, the trial court amended its dismissal order to include language pursuant to Supreme Court Rule 304(a)(eff. Feb. 26, 2010).

¶ 19 Plaintiffs timely appealed. Plaintiffs argue on appeal that the trial court erred by finding that they failed to properly plead a claim for: (1) the imposition of a constructive trust; (2) unjust enrichment; (3) assisting a breach of fiduciary duty; (4) conversion; (5) civil conspiracy; and (6) injunctive relief.

¶ 20

II. ANALYSIS

¶ 21 When reviewing a section 2-615 motion to dismiss, all well-pleaded facts in the complaint are taken as true, and a reviewing court must determine whether the allegations of the complaint, construed in the light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted. *King v. First Capital Financial Services Corp.*, 215 Ill. 2d 1, 11-12 (2005). We review a trial court's dismissal of a complaint under a section 2-615 attack *de novo*. *Id.*

¶ 22

A. Constructive Trust Claims

¶ 23 We first address plaintiffs' argument regarding their constructive trust claims. Plaintiffs argue that they alleged that Karen had received their money under circumstances that, in equity, they should be allowed to retain. They argue that the complaint alleged that John diverted plaintiffs' funds to the Wellington Financial and H. Halperin accounts, which Karen then used for personal expenses. Plaintiffs argue that under these circumstances, Karen never acquired title to the funds transferred into those accounts, and that constructive trusts are appropriate remedies for instances where one spouse has fraudulently transferred property. Defendants argue that plaintiffs have failed to plead any alleged wrongdoing by Karen, which plaintiffs counter is not required for imposition

of a constructive trust. Defendants further argue that plaintiffs cannot establish an identifiable *res* over which any constructive trust may be imposed. Plaintiffs counterargue that Karen's residence and grave plots were acquired, maintained, or improved with their funds constitute the trust *res*. They further argue that when trust property is money and has been commingled with private funds, the victim may recover an equivalent amount from the mixed fund if he can show the particular fund into which the money had gone, and here they demonstrated that plaintiffs' funds had been mixed into Karen's joint accounts. We agree with plaintiffs.

¶ 24 “When a person has obtained money to which he is not entitled, under such circumstances that in equity and good conscience he ought not to retain it, a constructive trust can be imposed to avoid unjust enrichment.” *Smithberg v. Ill. Municipal Retirement Fund*, 192 Ill. 2d 291, 299 (2000). While wrongdoing is generally required for the imposition of a constructive trust, wrongdoing is not always a necessary element. *Id.* A constructive trust may be imposed in the case of mistake even though wrongdoing is not involved. *Id.* Constructive trusts are also appropriate remedies “where one spouse has transferred property in fraud of the rights of another.” *Id.* A constructive trust is created when a court declares a party in possession of wrongfully acquired property the constructive trustee of that property because it would be inequitable for that party to retain possession of it. *Id.* The sole duty of the constructive trustee is to transfer title and possession of the wrongfully acquired property to the beneficiary. *Id.* “Except where a *bona fide* purchaser for value is concerned ***, a constructive trust may be imposed even though the person wrongfully receiving the benefit is innocent of collusion.” *Id.* at 300.

¶ 25 There are two essential elements of a constructive trust action: (1) the existence of identifiable property to serve as the *res* upon which a trust can be imposed; and (2) possession of that

res or its product by the person whom is to be charged as the constructive trustee. *People ex. rel. Neil F. Hartigan v. Candy Club*, 149 Ill. App. 3d 498, 502 (1986). At the pleading stage, the plaintiff is not required to make detailed assertions as to where the money or property is to be found, provided the complaint alleges that the money was misappropriated in some specific form. *Id.* In *Candy Club*, the State filed suit against a club and the estate of the club's former manager, alleging that the decedent had earned profits in violation of the club's not-for-profit status. *Candy Club*, 149 Ill. App. 3d at 499. The complaint alleged that the decedent collected the funds and converted the funds to his personal use, and the State sought a constructive trust be imposed over the estate's assets. *Id.* The estate filed a motion to dismiss, arguing that a constructive trust could not be imposed because it did not identify any specific property to serve as the trust *res* and the funds to serve as the *res* could not be traced to the estate. *Id.* at 502. The appellate court noted that prior to discovery, it would not be possible for the plaintiffs to determine whether the original profits of the club remained segregated in an identifiable fund following the misappropriation of the funds or if the decedent's estate was in possession of the funds. *Id.* at 502. The complaint alleged that the deceased misappropriated the club's assets and that the misappropriated assets were all to be found within the defendant-estate. *Id.* The appellate court held that these allegations were sufficient to state a cause of action for both an accounting and the imposition of a constructive trust, especially knowing that the plaintiff would be better able to locate the monies more precisely within the estate following discovery. *Id.* at 502-03.

¶ 26 Similarly, in *Sadacca v. Monhart*, 128 Ill. App. 3d 250, 252-53 (1984), the defendant argued that the trial court erred in refusing to impose a constructive trust in her favor over certain funds received by the plaintiff-widow from her husband's estate after he fraudulently sold the defendant

a condominium held in joint tenancy. The decedent-husband forged the plaintiff-wife's signature in order to sell the condo to the defendant, who paid the \$255,000 purchase price to the husband. *Id.* at 252. After her husband's death, the plaintiff discovered the sale and sought to quiet title to the property. *Id.* at 253. After a trial, the trial court found that the husband forged the plaintiff's signature, that the plaintiff had not received her share of the consideration, and that the plaintiff and the defendant were tenants in common. *Id.* at 254. In refusing to impose a constructive trust over the plaintiff's property, the trial court found that the defendant's claim against the husband's estate for the half-interest she paid to it for the wife's share would best be dealt with in probate court. *Id.* The trial court ordered that the defendant be awarded clear title to the property once she paid the plaintiff-wife her half-interest. *Id.*

¶ 27 On appeal, the defendant argued that the decedent-husband had breached his contract and conveyed only a half-interest in the property while receiving the total purchase price, and the trial court should have imposed a constructive trust over monies that the plaintiff-wife had received from her husband's estate. *Id.* at 255. The plaintiff-wife argued that a constructive trust could not be imposed because she did not perpetrate the fraud and her assets could not be traced to the money her husband fraudulently obtained. *Id.* at 256-57. The appellate court agreed with the defendant, stating that it was a well-established principle that the trust *res*, if capable of identification, may be followed by the beneficiary into any and all forms that it may assume. *Id.* at 256. The court stated that when a person's property had been misappropriated and converted into a different form, equity impressed a constructive trust upon the new form not only while in the hands of the original wrongdoer but to subsequent hands except those of a bona fide purchaser for value. *Id.* In its case, the court determined that the monies obtained by the plaintiff-wife from the fraudulent practices of her

husband should be held in a constructive trust for the benefit of the defrauded-defendant even though the plaintiff-wife was innocent. *Id.* Further, the court held that if the trust property was money and had become commingled with private funds of like character, the defrauded person may recover an equivalent amount from the mixed fund if he can show the particular fund into which the money had gone. *Id.* at 258. However, the court cautioned, where the trustee commingles trust funds with his own and subsequently withdraws sums from the combined fund for his own use, the conclusive presumption is that the trustee withdrew his funds first and the burden was on the defrauded party to establish that the trustee actually depleted the trust *res.* *Id.* In that case, the defendant had established certain funds received by the plaintiff-wife were traceable to the wrongfully obtained funds but as to one account with commingled funds, she had not met her burden to prove that the plaintiff-wife had depleted the *res.* *Id.*

¶ 28 In this case, it was not necessary for plaintiffs to plead that Karen herself misappropriated their funds. It was sufficient for them to plead that her husband stole their money and transferred the monies into the Wellington Financial Group, H. Halperin, and their joint accounts, which Karen had access to and had expended funds from. Further, like in *Candy Club* and unlike in *Sadacca*, the case at bar is in the pleading stage. It is therefore unfair to expect plaintiffs at this stage to establish with certainty what accounts or assets constituted the trust *res.* It was sufficient for the plaintiffs at this stage to plead that funds wrongfully taken were used on Karen's home, car, grave plots, and possibly contained in joint checking accounts. At this point in the proceedings, it would be impossible to expect plaintiffs to know what other, potentially legitimate funds were also contained in the accounts where John transferred the stolen funds. While it will be plaintiffs' burden to

overcome the presumption that Karen first expended her lawful funds, they are not required to do so at the pleading stage.

¶ 29 Defendants further argue that a constructive trust is inappropriate where an adequate remedy at law exists. While it is true that oftentimes where there is an adequate remedy at law, a constructive trust is inappropriate (*Small v. Sussman*, 306 Ill. App. 3d 639, 647 (1999)), the fact that a remedy at law is available does not eliminate the jurisdiction of an equity court (*Frederickson v. Blumenthal*, 271 Ill. App. 3d 738, 742 (1995)). The question to be determined is whether the remedy at law compares favorably with the remedy afforded by the equity court. *Frederickson*, 271 Ill. App. 3d at 742. Defendants cite *Volini v. Dubas*, 245 Ill. App. 3d 846, 859 (1993), and *Hagshenas v. Gaylord*, 199 Ill. App. 3d 60,78 (1990), in support of the proposition that a constructive trust is not available because an adequate remedy of law exists. We find *Volini* distinguishable because that court, in finding a constructive trust inappropriate, had found that the plaintiff failed to prove any wrongful conduct or fraud by the defendant. *Volini*, 245 Ill. App. 3d at 859. In *Hagshenas*, the court did not consider the defendants' argument for the imposition of a constructive trust over lost profits because the court found that money damages based on the reduction in the company's stock value was an adequate remedy at law in its breach of fiduciary duty case. *Hagshenas*, 199 Ill. App. 3d at 78. In this case, unlike in *Volini*, plaintiffs have pleaded fraud and breach of fiduciary duty claims and have not yet gone through discovery or trial. Further, unlike in *Hagshenas*, in this case there may not be an adequate remedy at law where John had fraudulently transferred plaintiffs' funds and moved them into accounts that Karen had lawful access to use. Therefore, we reverse the trial court's dismissal as to count X of the fifth amended complaint, which superceded the prior dismissed count VII and count IX that pleaded the same claim for imposition of a constructive trust.

¶ 30

B. Unjust Enrichment

¶ 31 Plaintiffs next argue that the trial court erred in dismissing their claim of unjust enrichment against Karen. They argue that the alleged facts were sufficient to support a claim that Karen was unjustly enriched at the expense of plaintiffs by being allowed to retain the stolen funds. To state a cause of action for unjust enrichment, a plaintiff must allege that the defendant unjustly retained a benefit to the plaintiff's detriment and that the defendant's retention violated the fundamental principles of justice, equity, and good conscience. *Board of Managers of Hidden Lake Townhome Owners Ass'n v. Green Trails Improvement Ass'n*, 404 Ill. App. 3d 184, 193 (2010). Unjust enrichment is based on an implied contract, and the theory does not apply where there is a specific contract that governs the relationship of the parties. *Id.* Damages in an unjust enrichment claim are restitution measured by the defendant's gain, not the plaintiff's loss. *Id.* The doctrine of unjust enrichment underlies several legal and equitable actions and remedies, including the equitable remedy of constructive trusts. *HPI Healthcare v. Mount Vernon Hospital*, 131 Ill. 2d 145, 160 (1989). While most unjust enrichment cases involve situations where the plaintiff seeks to recover directly from defendant, this case involves a different situation in which plaintiffs are seeking recovery of a benefit that was transferred to Karen by John. Courts have found that retention of such a benefit would be unjust where: (1) the benefit should have been given to the plaintiff but the third party mistakenly gave the benefit to the defendant; (2) the defendant procured the benefit from the third party through some type of wrongful conduct; or (3) the plaintiff for some other reason had a better claim to the benefit than the defendant. *HPI*, 131 Ill. 2d at 162. Here plaintiffs argue that they have a better claim to the benefits Karen received from John because John embezzled the funds from them, and she has no rightful claim to the funds.

¶ 32 In *Douglass v. Wones*, 120 Ill. App. 3d 36, 44-45 (1984), a similar situation was presented to the court. The plaintiff filed an unjust enrichment claim against the defendant after a third-party defendant had defrauded the plaintiff of funds and delivered to the defendants (the Woneses) a check made payable to Citizens National Bank to pay a debt that the Woneses owed to the bank. *Id.* at 41. The plaintiff alleged that the Woneses knew that the check was obtained fraudulently, that they used it for their benefit to pay off a debt, that they refused to return the funds to the plaintiff, and that they had no legal claim to the money. *Id.* The appellate court held that these allegations were sufficient to sustain a claim for unjust enrichment because the complaint alleged that the check was obtained fraudulently, the money was used to benefit the Woneses, and that the Woneses did not give any value or consideration for the money. *Id.* The court noted that the Woneses did not claim to have any legal right to the money but only argued that where one of two innocent persons must suffer a loss, it must be borne by the one who could have prevented it. *Id.* at 45. However, the court explained that the question of whether the Woneses and the plaintiffs were equally innocent parties to the check-writing fraud of the third-party defendant was a question of fact which was not to be resolved in a motion on the pleadings. *Id.*

¶ 33 Likewise, in this case, plaintiffs have pleaded that the funds used by Karen were fraudulently obtained by John, consumed for expenses to Karen's benefit and plaintiffs' detriment, that Karen did not give any value or consideration for the funds, and Karen had no legal claim to the funds. Like in *Douglass*, if there is a question of whether Karen and plaintiffs were equally innocent parties to John's fraudulent scheme, it is not a question to be resolved on a section 2-615 motion. Karen argues that *People ex rel. Hartigan v. E & E Hauling, Inc.*, 153 Ill. 2d 473, 497 (1992), somehow supports her claim that plaintiffs' unjust enrichment claim fails by superseding the *HPI* court, but

she does not explain how it does so. *Hartigan* merely provides that a claim for unjust enrichment is improper where an express contract exists to govern the parties' relationship. We fail to see how *Hartigan* somehow changed *HPI*'s language providing that allowing a party to retain a benefit would be unjust in the three scenarios discussed. See *HPI*, 131 Ill. 2d at 162. We therefore reverse the trial court's decision to dismiss plaintiffs' claim for unjust enrichment as set forth in count XI of the fifth amended complaint.

¶ 34 C. Assisting a Breach of Fiduciary Duty

¶ 35 Plaintiffs next argue that the trial court erred in dismissing count IV of the fifth amended complaint, which asserted that Karen conspired and assisted John in his breach of the fiduciary duties he owed to them. A claim for aiding and abetting requires: (1) the party whom the defendant aids must perform a wrongful act that causes an injury; (2) the defendant must be regularly aware of his role as part of the overall or tortious activity at the time he provides the assistance; and (3) the defendant must knowingly and substantially assist the principal violation. *Time Savers, Inc. v. LaSalle Bank NA*, 371 Ill. App. 3d 759, 772-73 (2007). Here, plaintiffs alleged that Karen knew John was breaching his duties by fraudulently transferring funds to the H. Halperin and Wellington accounts and that she substantially assisted in the scheme by drawing checks on those accounts. We disagree with plaintiffs that their conclusory allegations are sufficient to state a claim for aiding and abetting. There are no allegations that lead to the conclusion that Karen was aware that John was fraudulently obtaining the funds contained in the H. Halperin or Wellington accounts. There are also no allegations supporting that Karen knew and substantially assisted John in obtaining the funds, such as her encouraging him or assisting him in setting up the accounts or funding the accounts out of which she lawfully wrote checks on. Karen's spending of the funds after John had diverted the

money does not constitute assistance to the principal violation. Further, we find the cases relied upon by plaintiffs distinguishable: *Conant v. Karris*, 165 Ill. App. 3d 783, 790-91 (1987) (involved a real estate broker breaching his own fiduciary duty), and *Village of Wheeling v. Stavros*, 89 Ill. App. 3d 450, 455 (1980) (involved allegations that the defendant induced public official to breach his duties by essentially blackmailing village officials into issuing building permits for builders that paid the defendant money). Therefore, as to count IV, the trial court properly dismissed the claim for failure to state a claim upon which relief may be granted.

¶ 36

D. Conversion

¶ 37 Next, plaintiffs argue that the trial court erred in dismissing count II, which was their claim for conversion. We disagree. To state a claim of conversion, a plaintiff must allege: (1) he has a right to the property; (2) he has an absolute and unconditional right to immediately possess the property; (3) he has made a demand for possession; and (4) the defendant wrongfully and without authorization assumed control, dominion, or ownership over the property. *Loman v. Freeman*, 229 Ill. 2d 104, 127 (2008). Here, plaintiffs did not allege that Karen wrongfully assumed control of their money but rather John did. Karen had lawful access to the accounts upon which she wrote checks or electronically paid bills from. Plaintiffs did not allege that Karen ever unlawfully diverted their money from their accounts into her accounts. Plaintiffs also failed to allege that they ever demanded any funds back from Karen. Accordingly, the trial court did not err in dismissing count II.

¶ 38

E. Civil Conspiracy

¶ 39 Count VI of the fifth amended complaint alleged civil conspiracy. The elements of civil conspiracy are: (1) the combination of two or more persons, (2) for the purpose of accomplishing by some concerted action either an unlawful purpose or a lawful purpose by unlawful means, (3) in

the furtherance of which one of the conspirators committed an overt tortious or unlawful act. *Time Savers*, 371 Ill. App. 3d at 771. “Conspiracies are often intentionally ‘shrouded in mystery,’ which by nature makes it difficult for the plaintiff to allege with complete specificity all of the details of the conspiracy.” *Id.* A plaintiff is therefore not required to plead with specificity and precision the facts that are within the defendant’s control and knowledge. *Id.* However, the complaint must set forth more than the conclusion that there was a conspiracy; it must allege specific facts from which the existence of a conspiracy may be properly inferred. *Id.* at 772.

¶ 40 Plaintiffs complaint contained the conclusion that Karen knew of John’s fraudulent scheme. To support this conclusion, plaintiffs alleged that Karen systematically wrote checks from the H. Halperin and Associates and Wellington Financial Group accounts. According to the complaint, Karen knew that John was not an attorney and therefore knew using money from the H. Halperin and Associates account, which contained the words “Attorney at Law” in its title, was wrongful. We disagree with plaintiffs that these allegations lead to an inference of a conspiracy on the part of Karen. The fact that the H. Halperin account was titled “Attorney at Law” does not lead to an inference that Karen knew she was using fraudulently obtained money. Karen had lawful access to all accounts that she expended money from, and the allegation that she spent money out of accounts she had rightful access to does not constitute an “overt tortious or unlawful act.” There are simply no allegations that Karen committed any act in furtherance of John’s unlawful act of diverting plaintiffs’ money. Therefore, we find that the trial court did not err in dismissing count VI.

¶ 41 F. Injunctive Relief

¶ 42 Count I of the fifth amended complaint sought preliminary and permanent injunctive relief. Plaintiffs argument on this issue is undeveloped and unsupported by any relevant case law or citation

to the record. Supreme Court Rule 341(h)(7) requires that the appellant's brief contain contentions of error along with citations to the authorities and pages in the record relied upon. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). Arguments that violate Rule 341 do not merit consideration and may be forfeited for this reason. *Kic v. Bianucci*, 2011 IL App. (1st) 100622, ¶23. “ ‘The appellate court is not a depository in which the appellant may dump the burden of argument and research.’ ” *Id.*, (quoting *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986)). Because plaintiffs have failed to submit a cogent argument supported by relevant case law or record citations, we deem this issue forfeited.

¶ 43

III. CONCLUSION

¶ 44 Based on the foregoing reasons, we reverse the trial court's dismissal as to counts X (constructive trust) and XI (unjust enrichment). We affirm as to the remaining counts: count I (injunctive relief); count II (conversion); count IV (aiding and abetting breach of fiduciary duty), and count VI (civil conspiracy).

¶ 45 Affirmed in part and reversed in part; cause remanded.