

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (4th) 110842-U

Filed 3/27/12

NO. 4-11-0842

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

STEVEN B. COLE,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Greene County
CHARLES R. COLE,)	No. 10L10
Defendant-Appellee.)	
)	Honorable
)	Eric S. Pistorius,
)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Appleton and Cook concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where the benefit bestowed upon defendant was by a third party and the facts did not fall into one of the recognized situations where courts have allowed a plaintiff to recover unjust enrichment based on a benefit bestowed by a third party, plaintiff could not sustain his unjust-enrichment action as argued in the trial court.
- ¶ 2 Where the parties' relationship was governed by an express agreement, plaintiff could not recover on an unjust-enrichment theory.
- ¶ 3 In July 2010, plaintiff, Steven B. Cole, filed an unjust-enrichment action against defendant, Charles R. Cole. In July 2011, Charles filed a motion for summary judgment, which the Greene County circuit court granted. Steven then filed a motion to reconsider the grant of summary judgment, which the court denied.
- ¶ 4 Steven appeals, asserting (1) the trial court erred by granting Charles summary-judgment, and (2) he sustained his unjust-enrichment claim under the agreed facts. We affirm.

¶ 5

I. BACKGROUND

¶ 6 Steven and Charles are the sons of Richard and Gertrude Cole and were their only surviving children when Richard passed away on October 8, 1991. Gertrude also survived Richard. During his lifetime, Richard owned an approximately 500-acre farm in Greene County (Family Farm), which was where he and Gertrude resided. Under Richard's will, the Family Farm went into a trust with Gertrude as trustee. Gertrude was entitled to the income from the trust, and at the trust's termination, Richard's surviving children were to receive the trust's principal. (For the purposes of his summary-judgment motion, Charles accepts Steven's assertion Gertrude inherited the farm.) After his death, Gertrude continued to live on the Family Farm, and Charles and Steven farmed the land together.

¶ 7 Also, during his lifetime, Richard had held an interest in another farm. In 1977, Richard and Charles purchased a farm in Macoupin County (Macoupin County Farm). Under the warranty deed, Richard received a one-fourth interest in the Macoupin County Farm and Charles received a three-fourths interest in the property. Richard paid the down payment on the Macoupin County Farm, which was 25% of the purchase price and later paid two installments on that farm when Charles could not afford to make them. For the purposes of his summary-judgment motion, Charles accepts Steven's assertion Richard obtained the down payment and the later two payments by borrowing money from the Federal Land Bank. According to Steven, Richard borrowed a total of \$256,891.04 against his farm to help purchase the Macoupin County Farm. Sometime in the mid 1980's, Richard transferred his interest in the Macoupin County Farm to Charles.

¶ 8 In 1993, Charles and Steven learned the Family Farm was going to be foreclosed

by the Federal Land Bank. At that time, Steven did not know how his father had accumulated so much debt. Charles arranged for financing with the Greene County National Bank (Greene Bank) to retire the Federal Land Bank debt of \$460,216. The Greene Bank would only provide a mortgage under the following conditions: (1) the financing would be in Charles's name only, (2) the proceeds of the mortgage would also have to pay off the outstanding debt on Charles's Macoupin County Farm (totaling \$36,672), and (3) the mortgage would be secured by both the Family Farm and the Macoupin County Farm. Steven was present at the meetings with the Greene Bank and was aware some of the mortgage proceeds would be used to pay off the debt on Charles's Macoupin County Farm. Charles and Steven agreed Charles would obtain the financing, and they would equally pay off the debt by continuing to operate the Family Farm together. On February 23, 1993, Charles signed a \$496,888.02 mortgage with the Greene Bank.

¶ 9 Thereafter, Charles and Steven operated the Family Farm together. After paying farm expenses and the installment to the Greene Bank, Charles and Steven equally split any remaining profit.

¶ 10 In 2001, Charles and Steven executed quitclaim deeds, which divided the Family Farm in half. Charles and Steven were listed as the grantors on both deeds. One quitclaim deed gave Charles an approximately 255-acre tract with no improvements. The other quitclaim deed gave Steven and his wife, Tammy Johnson Cole, an approximately 246-acre tract with the residence and other farm buildings. (The record is not clear how the parties got ownership of the Family Farm. Charles accepts Steven's assertion Gertrude deeded the Family Farm to Charles to enable him to obtain the financing from the Greene Bank. However, the record on appeal does not include a deed showing such a transfer.)

¶ 11 In April 2004, Charles and Steven refinanced the Greene Bank mortgage with a \$295,000 mortgage from the White Hall National Bank (White Hall Bank). On the White Hall Bank mortgage, Charles and Steven were both listed as borrowers, and the Family Farm was the only property listed as secured property. After the refinancing, Charles and Steven each farmed only their half of the property but continued to equally pay down the debt to the White Hall Bank.

¶ 12 On December 31, 2004, Charles, Steven, and Tammy executed a written agreement. The agreement stated the Family Farm was split in two on December 2, 2004, with Charles owning part and Steven and Tammy owning the other part. It further memorialized Steven and Charles's agreement to each pay half of the White Hall Bank debt and set forth what should take place if one of them could not pay their half of the mortgage.

¶ 13 In 2006, Steven contends he first learned that a significant part of the original Federal Land Bank debt was incurred by Richard to give money to Charles to pay for the Macoupin County Farm. For purposes of his summary-judgment motion, Charles did not contest that assertion.

¶ 14 In July 2010, Steven brought this unjust-enrichment action. In his complaint, Steven noted he and Charles have continued to equally repay the White Hall Bank debt. Steven argued Charles had been unjustly enriched by Steven's payments on the Family Farm debt since a large portion of the debt was used to purchase Charles's Macoupin County Farm, which Steven was unaware of until 2006. Steven also alleged Charles kept secret the fact that Steven's payments were going to a debt created in large part to buy the farm for Charles. In September 2010, Charles answered Steven's complaint, denying he was unjustly enriched.

¶ 15 In May 2011, Charles filed the summary-judgment motion at issue in this appeal. To his motion, he attached the following documents: (1) a transcript of Steven's deposition; (2) a transcript of Charles's deposition; (3) the original deed for the Macoupin County Farm, which listed Richard's one-fourth interest; (4) documents allegedly showing payments made by Richard on the Macoupin County Farm; (5) Richard's will and documents from his probate case (In re Estate of Cole, No. 91-P-65 (Cir. Ct. Greene Co.)); (6) the Greene Bank mortgage; (7) the White Hall Bank mortgage; (8) the December 2004 agreement; and (9) the September 2001 quit-claim deeds. Steven filed a response, agreeing the fundamental facts were not in dispute and requesting summary judgment in his favor. Steven did not attach any supporting materials to his response. Charles filed a reply.

¶ 16 In June 2011, the trial court heard oral arguments on Charles's motion for summary judgment. At the conclusion of the hearing, the court granted Charles's motion and ordered his counsel to prepare a written judgment.

¶ 17 In July 2011, Steven filed a motion to reconsider, asserting the trial court erroneously viewed Richard's purchase of the farm for Charles as separate from Charles and Steven's repayment of Richard's debt. After an August 2011 hearing, the court denied the motion to reconsider. On August 24, 2011, the court entered a written judgment in favor of Charles and against Steven. On September 15, 2011, Steven filed his timely notice of appeal from the court's August 24, 2011, final judgment, and thus this court has jurisdiction under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 18 II. ANALYSIS

¶ 19 A. Standard of Review

¶ 20 A grant of summary judgment is only appropriate when the pleadings, depositions, admissions, and affidavits demonstrate no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2010); *Williams v. Manchester*, 228 Ill. 2d 404, 417, 888 N.E.2d 1, 8-9 (2008). With regard to analyzing summary-judgment motions, our supreme court has stated the following:

"In determining whether a genuine issue as to any material fact exists, a court must construe the pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the opponent. A triable issue precluding summary judgment exists where the material facts are disputed or where, the material facts being undisputed, reasonable persons might draw different inferences from the undisputed facts. Although summary judgment can aid in the expeditious disposition of a lawsuit, it remains a drastic means of disposing of litigation and, therefore, should be allowed only where the right of the moving party is clear and free from doubt." *Williams*, 228 Ill. 2d at 417, 888 N.E.2d at 9.

Additionally, a reviewing court "may affirm a grant of summary judgment on any basis appearing in the record, regardless of whether the lower court relied upon that basis." *Salerno v. Innovative Surveillance Technology, Inc.*, 402 Ill. App. 3d 490, 496, 932 N.E.2d 101, 108 (2010). We review *de novo* the trial court's grant of a motion for summary judgment. See *Williams*, 228 Ill. 2d at 417, 888 N.E.2d at 9.

¶ 21

B. Unjust Enrichment

¶ 22 To recover under an unjust-enrichment theory, a plaintiff must prove the defendant unjustly retained a benefit to the plaintiff's detriment, and defendant's retention of that benefit violates the fundamental principles of justice, equity, and good conscience. *HPI Health Care Services, Inc. v. Mt. Vernon Hospital, Inc.*, 131 Ill. 2d 145, 160, 545 N.E.2d 672, 679 (1989). Our supreme court has recognized "[m]any unjust-enrichment cases involve 'situations in which the benefit the plaintiff is seeking to recover proceeded directly from him to the defendant.'" *HPI Health Care Services, Inc.*, 131 Ill. 2d at 161, 545 N.E.2d at 679 (quoting 4 G. Palmer, *The Law of Restitution* § 21.1, at 291 (1978)). However, a plaintiff may also pursue an unjust-enrichment claim when the benefit was transferred to the defendant by a third party and (1) the benefit should have been given to the plaintiff, but the third party mistakenly gave it to the defendant instead; (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 Health Care Services, Inc.*, 131 Ill. 2d at 161-62, 545 N.E.2d at 679.

¶ 23 Steven does not argue this case falls under one of the three aforementioned situations where courts have allowed unjust enrichment based on a benefit bestowed by a third party. An examination of the facts also indicates none of the three situations apply here. Thus, plaintiff cannot sustain his unjust-enrichment claim based on a benefit bestowed by Richard.

¶ 24 As to a direct benefit from Steven to Charles, the detriment Steven alleges is his payments of the Family Farm debt that were incurred to purchase the Macoupin County Farm for Charles. In the trial court, Steven alleged Charles received a financial benefit because the payments went to a debt incurred to buy property for Charles. However, that financial benefit

was only bestowed upon Charles by Richard, not Steven. This is so because, if Steven had not agreed to the refinancing and his subsequent payments on the Family Farm debt, nothing would have happened to Charles's Macoupin County Farm. Richard's gift to Charles was already complete, and Charles was the Macoupin County Farm's sole owner, the Macoupin County Farm was not security for the Federal Land Bank debt on the Family Farm, and no facts suggest the refinancing was necessary to help Charles make payments on the Macoupin County Farm. Accordingly, Steven's repayment of the debt on the Family Farm did not directly benefit Charles.

¶ 25 For the first time in his reply brief, Steven argues that, if Richard's debts were going to be repaid, Charles had a moral obligation and "justice" required Charles to pay Richard's debt incurred for the Macoupin County Farm. Thus, Steven's payments directly benefitted Charles because Charles was required by "justice" and a moral obligation to pay the debt related to his property. Steven has forfeited this argument by (1) not raising it in the trial court (*Forest Preserve District of Du Page County v. First National Bank of Franklin Park*, 401 Ill. App. 3d 966, 975, 930 N.E.2d 477, 486 (2010)) and (2) failing to cite legal authority for his assertion (*Grimes v. Saikley*, 388 Ill. App. 3d 802, 811, 904 N.E.2d 183, 190 (2009) (citing Illinois Supreme Court Rule 341(h)(7) (eff. Sept. 1, 2006))).

¶ 26 Regardless of how Steven alleges Charles received a direct benefit from him, his unjust-enrichment action still fails. The theory of unjust enrichment is based on an implied contract, and thus "where there is a specific contract which governs the relationship of the parties, the doctrine of unjust enrichment has no application." (Internal quotation marks omitted.) *People ex rel. Hartigan v. E & E Hauling, Inc.*, 153 Ill. 2d 473, 497, 607 N.E.2d 165, 177 (1992) (quoting *La Throp v. Bell Federal Savings & Loan Ass'n*, 68 Ill. 2d 375, 391, 370

N.E.2d 188, 195 (1977)). The rationale behind the aforementioned rule is the following:

"When parties enter into a contract they assume certain risks with an expectation of a return. Sometimes, their expectations are not realized, but they discover that under the contract they have assumed the risk of having those expectations defeated. As a result, they have no remedy under the contract for restoring their expectations. In desperation, they turn to quasi-contract for recovery. This the law will not allow. Quasi-contract is not a means for shifting a risk one has assumed under contract. [Citation.]" *F.H. Prince & Co. v. Towers Financial Corp.*, 275 Ill. App. 3d 792, 804, 656 N.E.2d 142, 151 (1995) (quoting *Industrial Lift Truck Service Corp. v. Mitsubishi International Corp.*, 104 Ill. App. 3d 357, 361, 432 N.E.2d 999, 1002 (1982)).

Moreover, the "rule holds the contract parties to their agreement and prevents a party who made a bad business decision from asking the court to restore his expectations." *Prodromos v. Poulos*, 202 Ill. App. 3d 1024, 1032, 560 N.E.2d 942, 948 (1990).

¶ 27 In this case, the parties had a verbal agreement in 1993 to equally pay the mortgage Charles obtained to pay off the debt on the Family Farm incurred by Richard. Then in 2004, the parties and Steven's wife entered into a written agreement that also provided for Charles and Steven to equally pay the mortgage on the Family Farm, which had since been divided between them. Thus, in this case, a specific agreement exists governing the parties' relationship. Steven attempts to distinguish the case law regarding specific contracts, by

asserting he is fine with the agreement to pay Richard's debt that related to the Family Farm but not Richard's debt related to the Macoupin County Farm. However, Steven expressly agreed with Charles to pay half of the refinanced mortgage, which Steven *knew* included a small amount of debt for the Macoupin County Farm. The fact it was not disclosed to him a larger portion of the Family Farm debt had resulted from Richard's gift to Charles does not negate the fact an express agreement governs the parties' relationship in this case. Accordingly, Steven cannot recover on an unjust-enrichment theory because an express agreement covered their relationship regarding repayment of the Family Farm debt.

¶ 28

III. CONCLUSION

¶ 29

For the reasons stated, we affirm the Greene County circuit court's judgment.

¶ 30

Affirmed.