
Commercial division update

Pleading and Proving Unjust Enrichment Claims

Thomas J. Hall and Judith A. Archer,* *New York Law Journal* – April 18, 2019

The doctrine of unjust enrichment allows a plaintiff to recover from a defendant, without the benefit of an enforceable contractual obligation, where the defendant has unfairly benefited from the plaintiff's efforts without compensation. In New York, the elements of an unjust enrichment claim are “that (1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered.” *Mandarin Trading Ltd. v. Wildenstein*, 16 N.Y. 3d 173, 182 (2011).

As the viability of an unjust enrichment claim depends on broad considerations of equity and justice, several factors can drive the determination of whether these elements are adequately pleaded or later proven. For one, a close relationship between the plaintiff and defendant is required. In addition, the plaintiff's actions must have been induced in reliance on that relationship. Finally, essential to the claim is the absence of a valid contractual relationship governing the acts giving rise to the claim. We examine below recent Commercial Division decisions addressing the application of these factors.

Degree of Relationship

The degree of the relationship between the parties necessary for an unjust enrichment claim has been heavily litigated in New York case law. The courts have routinely held that an unjust enrichment claim may not survive dismissal where the parties' alleged relationship is “too attenuated.”

Instead, an unjust enrichment claim requires a close relationship between parties. In *Sperry v. Crompton Corp.*, 8 N.Y. 3d 204 (2007), the plaintiff, the purchaser of tires,

asserted an unjust enrichment claim against the producers of chemicals used to manufacture the tires. The plaintiff alleged that those producers engaged in a price fixing conspiracy that inflated the cost of tires to consumers and unjustly enriched the defendants. In affirming dismissal of that claim for lack of a sufficient relationship, the Court of Appeals reasoned that, “[w]hile we agree ... that a plaintiff need not be in privity with the defendant to state a claim for unjust enrichment . . . the connection between the purchaser of tires and the producers of chemicals used in the rubber-making process is simply too attenuated to support such a claim.”

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In a more recent case, *Georgia Malone & Co., Inc. v. Rieder*, 19 N.Y. 3d 511 (2012), the Court of Appeals likewise held that while a “plaintiff is not required to allege privity, the pleading must assert a connection between the parties that is not too attenuated.” In *Mandarin Trading Ltd v. Wildenstein*, the Court of Appeals held that an unjust enrichment claim must plead facts “that would indicate a relationship between the parties, or at least an awareness by” the defendant of the plaintiff’s existence. 16 N.Y. 3d at 182. A defendant’s awareness, however, requires more than a mere knowledge of the other party’s existence. *Georgia Malone & Co., Inc. v. Rieder*, 19 N.Y.3d 511 (2012).

Following this precedent, in *Robinson v. Oz Master Fund, Ltd.*, No. 654009/2013, 2015 WL 6126956, at 5 (N.Y. Co. Oct. 16, 2015), Justice Saliann Scarpulla of the New York County Commercial Division concluded that the defendants’ alleged connection to plaintiffs was too weak to sustain plaintiff’s claim for unjust enrichment. Although a complex fact pattern, the plaintiff, the beneficiary of notes on which a bankrupt third party had defaulted, essentially alleged that other creditors of that third party who received payment on their claims were unjustly enriched. The court dismissed that claim finding that the defendants’ connections to plaintiffs were indirect, through other entities, and thus were too weak to support the claim.

Unjust Reliance or Inducement

Unjust enrichment requires not just the existence of a close relationship between the parties, but that the relationship must have caused the plaintiff’s reliance or inducement. In *Xaleron Pharmaceuticals, Inc. v. Actavis, Inc.*, No. 150587/2016, 2016 WL 4764970 (N.Y. Co. Sept. 12, 2016), Justice Barry R. Ostrager of the New York County Commercial Division refused to dismiss an unjust enrichment claim where the complaint adequately pleaded a sufficiently close relationship with defendant that “could have caused reliance or inducement.”

The plaintiff in *Xaleron*, a pharmaceutical company, claimed it had been approached by a patent owner to explore strategies for the exploitation of that patent to treat allergic reactions to a toxin that defendants, among others, used in their products. The plaintiff allegedly spent a year developing a plan to commercialize that patent, and then approached defendants

with its plan “on condition that the defendants would treat the [s]trategy confidential and not circumvent Xaleron in its plans to commercialize and license the . . . [p]atent from” the patent owner. While the defendants had expressed interest, and indeed allegedly offered \$75 million to acquire the plaintiff company, the defendants thereafter terminated their dealings with plaintiff, and engaged in direct negotiations with the patent owner.

In support of its unjust enrichment claim, plaintiff alleged that “defendants [purposefully and] surreptitiously interfered with Xaleron’s prospective business relationship with [the patent owner] and initiated direct and secret discussions with [the patent owner] to license” the patent. Further, plaintiff asserted that the defendants were enriched at Xaleron’s expense, and that the defendants “caused or induced [plaintiff] to rely on the defendant’s good faith.” The complaint alleged that the defendants, taking advantage of their relationship with plaintiff, acquired information on the business strategy developed by plaintiff, which the defendants allegedly valued at \$75 million. Those allegations, the court found, were sufficient to withstand dismissal.

A Contract Relationship

As another consideration, the Commercial Division courts have consistently recognized that an unjust enrichment claim, as a quasi-contract theory, must arise outside of any contract between the parties, and that the existence of a valid contract governing the services at issue will destroy the viability of an unjust enrichment claim.

“The determination of whether a quasi-contractual claim such as unjust enrichment should be dismissed as duplicative looks only to whether there is a valid written agreement, the existence of which is undisputed, and the scope of which clearly covers the dispute between parties, and not whether plaintiff may recover under that contract.” Yet, where a valid and enforceable contract would ordinarily preclude quasi-contractual recovery but “a bona fide dispute exists as to the existence, or applicability, of a contract, the plaintiff may proceed on both breach of contract and quasi-contract theories.” *Pressley v. Ford Models, Inc.*, No. 653001/2016, 2018 WL 2136448, at 6 (N.Y. Co. May 9, 2018) (Sherwood, J.).

Justice Scarpulla declined to dismiss a claim for unjust enrichment where, although a contract between the parties addressed the services that gave rise to the unjust enrichment claim, the court found that aspect of the contract to be unenforceable. In *Crespo v. Biyombo*, No. 651616/2014, 2015 WL 5222872 (N.Y. Co. Sept. 4, 2015), a sports manager sued a professional basketball player for monies allegedly due under the parties' Development Agreement. The plaintiff alleged that he had invested substantial time and money arranging for the defendant, who was playing in a European basketball league, to be exposed to NBA scouts, leading to his participation in the 2011 NBA draft. Plaintiff allegedly introduced defendant to several certified agents to negotiate his NBA contract, culminating in defendant signing a contract with the Charlotte Bobcats.

Plaintiff alleged that the Development Agreement obligated the defendant to pay him a portion of his earnings for this success. The court dismissed this contract claim, finding this aspect of the contract was void because the plaintiff was not a certified agent with the National Basketball Players Association ("NBPA"), a prerequisite under NBPA regulations. The plaintiff alternatively asserted a claim for unjust enrichment to recover monies spent in developing the defendant's professional basketball career. Because the court found the parties' contract did not permit plaintiff to recover contractually for those services, Justice Scarpulla allowed plaintiff's unjust enrichment claim to proceed. Despite the absence of defendant's breach of an enforceable contract with plaintiff, the circumstances "created an equitable obligation running from the defendant to the plaintiff."

Equity and Good Conscience

Ultimately, even if the other elements are met, a court must be persuaded that it is against equity and good conscience to allow the defendant to receive the benefit of plaintiff's performance without compensating the plaintiff. Recently, in *Razzak v. Juno, Inc.*, No. 656428/2017, 2019 WL 316719 (N.Y. Co. Jan. 24, 2019), Justice Barry R. Ostrager denied the defendants' motion to dismiss plaintiff's unjust enrichment claim. In that case, a defendant allegedly recruited Uber and Lyft drivers to join a competing start-up, Juno, by allegedly promising them equity in Juno. During the pre-launch

period, those drivers -- while still working for Uber and Lyft -- allegedly were asked to have their Juno mobile apps turned on while driving so Juno could collect data necessary to build a competing mobile app. Once they joined Juno, the drivers were in fact offered equity, but only equity that would vest if and when Juno went public. Instead of going public, Juno was sold in a private sale for \$200 million, with no proceeds going to the drivers. The court found that the complaint adequately pleaded that the services plaintiffs provided defendants, allegedly resulting in a \$200 million valuation and sale, enriched the defendants. Justice Ostrager concluded that "it is highly likely and illogical to conclude that plaintiffs are entitled to no benefit for the services they provided"

Conclusion

To survive a motion to dismiss an unjust enrichment claim, a plaintiff must allege a direct relationship that unjustly induced the plaintiff's reliance and that equity and good conscience requires the court to compensate the plaintiff for the benefit provided, all of which a plaintiff must later prove to prevail on that claim. Moreover, the claim will likely fail where a valid contract addresses the parties' rights and obligations concerning the benefit received. While earlier caselaw may have led to some inconsistent application of the unjust enrichment standards, with direction from the Court of Appeals, the more recent analyses of the Commercial Division have consistently applied this criteria.

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