

# Reliance or inducement in pleading an unjust enrichment claim

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**In this column, Commercial Division Update writers Thomas J. Hall and Judith A. Archer examine the role of reliance or inducement when pleading a sufficiently close relationship in an unjust enrichment claim.**

Our April 18, 2019, column addressed the Commercial Division's assessments of the various elements of unjust enrichment claims. "[Pleading and Proving Unjust Enrichment Claims](#)," *N.Y.L.J.* Apr. 18, 2019. Since then, one element, reliance or inducement, has taken center stage in more recent Commercial Division cases.

While New York Court of Appeals precedent seemed to suggest that pleading a sufficient connection also required pleading reliance or inducement, at least one recent decision indicates that may be reading too much into that precedent. In this column, we examine the role of reliance or inducement when pleading a sufficiently close relationship in an unjust enrichment claim.

## General standard

The Court of Appeals has long held that, while a plaintiff does not need to show privity with the defendant to support an unjust enrichment claim, the connection between the two cannot be "too attenuated." See *Sperry v. Crompton*, 8 N.Y.3d 204, 216 (2007).

The application of this principal crystallized in the now-familiar case involving a Paul Gauguin painting, *Mandarin Trading v. Wildenstein*, 16 N.Y.3d 173 (2011). Mandarin was interested in acquiring the painting *Paysage aux Trois Arbres* for investment purposes, so it requested an appraisal. Acclaimed art expert Guy Wildenstein presented an appraisal to a third party that valued the painting at over \$15 million. Mandarin received the letter, which nowhere acknowledged Mandarin, and purchased the

painting. Unbeknownst to Mandarin, Wildenstein was entitled to a substantial portion of the purchase price. Thereafter, Mandarin put the painting up for auction, but was unable to resell it even for its purchase price. Mandarin brought suit against Wildenstein including for fraud and unjust enrichment. The trial court granted defendants' motion to dismiss, and the First Department affirmed.

On appeal, the plaintiff's failure to plead a sufficiently close relationship between Wildenstein and Mandarin was dispositive of Mandarin's claims. The Court of Appeals found the unjust enrichment claim was doomed by the lack of allegations as to any relationship between the parties, explaining "there are no indicia of an enrichment that was unjust where the pleadings failed to indicate a *relationship between the parties that could have caused reliance or inducement*." 16 N.Y.3d at 182 (emphasis added). The court continued: "Without further allegations, the mere existence of a letter that happens to find a path to a prospective purchaser does not render this transaction one of equitable injustice requiring a remedy to balance a wrong."

The Court of Appeals soon revisited the pleading standard for an unjust enrichment claim in *Georgia Malone & Co. v. Rieder*, 19 N.Y.3d 511 (2012). Georgia Malone was a real estate brokerage firm that prepared due diligence reports for a developer in connection with the potential purchase of commercial properties. Georgia Malone alleged that a rival firm was unjustly enriched when, at the eleventh hour, it acquired Malone's due diligence reports from the developer, arranged the sale of the subject properties and received a commission. The issue before the court was whether

a sufficient relationship existed between the two brokerage firms to sustain the unjust enrichment claim. Recounting the analysis of *Mandarin Trading* and other Court of Appeals precedent, the court explained that the pleadings must allege “a relationship between the parties that could have caused reliance or inducement.” The court reaffirmed the importance of pleading a “sufficient connection” and held that the relationship between Malone and defendant was “too attenuated because they simply had no dealings with each other.”

Chief Judge Lippman dissented, finding that, at the early stage of the litigation and evaluating Malone’s claim under “broad considerations of equity and justice,” it was “only fair” to allow the claim to proceed. Judge Lippman disagreed with the majority that a plaintiff must plead a “sufficient relationship” with defendant involving “dealings with each other,” which he opined “treads too close to requiring privity.” Turning to the *Mandarin Trading* opinion, he asserted that the language “describing the connection between Mandarin Trading and Wildenstein as not a ‘relationship ... caus[ing] reliance or inducement’ was merely for illustrative purposes and was dicta alluding back to how Mandarin also failed to meet the standard for negligent misrepresentation. *It was not a statement of the standard for unjust enrichment actions.*” 19 N.Y.3d at 521 (emphasis added).

Notwithstanding Judge Lippman’s cautionary dissent, the reliance or inducement language from *Mandarin Trading* and *Georgia Malone* soon became an integral part of lower courts’ unjust enrichment analysis. Some courts even went so far as to interpret those decisions as requiring a plaintiff to plead actual reliance upon, or inducement by, defendant’s actions.

For example, the Third Department recently held that “[u]nlike a claim sounding in quantum meruit, a cause of action for unjust enrichment requires a showing of reliance.” See *Matter of Santander Consumer USA v. Kobi Auto Collision & Paint Center*, 183 A.D.3d 984, 988 (3d Dep’t 2020) (emphasis added). *Santander* affirmed dismissal of an unjust enrichment claim where reliance was “manifestly absent” given the lack of a prior relationship between the parties.

Likewise, in *L.I. City Ventures v. Sismanoglou*, 158 A.D.3d 567 (1st Dep’t 2018), the plaintiff sought to recover a commission allegedly due under an exclusive brokerage agreement with defendant. Citing *Mandarin Trading*, the First Department held that plaintiff had stated a cause of action for unjust enrichment where the complaint “alleg[ed] facts sufficient to establish a relationship that caused reliance or inducement between [defendants] and plaintiff.”

## Commercial division application

Numerous decisions from the Commercial Division have also required plaintiffs to plead a connection sufficient to cause reliance or inducement, even if not going so far as to require allegations of actual reliance or inducement.

For example, after *Mandarin Trading* but before *Georgia Malone*, New York County Commercial Division Justice Bernard Fried applied *Mandarin Trading* to his consideration of a motion to dismiss an unjust enrichment claim. *Goeke v. Naxos of America*, 950 N.Y.S.2d 491 (N.Y. Co. 2012). Goeke, a world-renowned tenor, alleged that defendant Naxos, a music distribution company, was disseminating recordings of Goeke’s performances without authorization and without paying him royalties. Goeke alleged that Naxos was the exclusive distributor for the successor to the television company with which Goeke had a royalty contract. Citing *Mandarin Trading*’s language regarding reliance or inducement, Justice Fried dismissed the unjust enrichment claim because the complaint did not sufficiently plead a relationship between Naxos and Goeke.

Similarly, in *Weil v. Stenzler*, No. 652661/2018, 2019 WL 1571593, at \*5 (N.Y. Co. Apr. 11, 2019), Justice Andrea Masley of the New York County Commercial Division found that plaintiffs—who alleged that defendants had misappropriated their proprietary ideas and concepts in forming Rumble, a group exercise boxing business—had stated a claim for unjust enrichment where the complaint indicated that they and defendant Stenzler “clearly had some relationship ... which at least contemplated an agreement to conduct business with each other in some respect.”

In *Cadus Stockholder Litigation*, No. 653318/2018, 2020 WL 905767 (N.Y. Co. Feb. 25, 2020), a minority stockholder class action, plaintiffs alleged that the controlling stockholders breached their fiduciary duties of care and loyalty and were therefore unjustly enriched. Although Justice O. Peter Sherwood of the New York County Commercial Division applied Delaware law, he also looked to *Georgia Malone* and explained that “[s]pecifically, plaintiffs must establish they had a sufficiently close relationship with the Controlling Stockholders ... that could have caused reliance or inducement.” Because those elements were not alleged, Justice Sherwood held that plaintiffs had failed to state a claim for unjust enrichment.

## The ‘Advance Entertainment’ decision

Recently, in what may be one of the first decisions to consider Judge Lippman’s dissent in *Georgia Malone*, Justice Andrea Masley squarely rejected the idea that *Mandarin Trading* created a heightened pleading standard for unjust enrichment by its reference to reliance and inducement. *Vincent V Hodes Family Irrevocable Trust v. Advance Entertainment*, No. 151712/2017, 2020 WL 3060892 (N.Y. Co. June 05, 2020), arose from an alleged Ponzi scheme in which plaintiff invested. The plaintiff alleged that certain defendants—other victims of the Ponzi scheme—were unjustly enriched with plaintiff’s contributions. Justice Masley denied the motion to dismiss the unjust enrichment claim, finding that the plaintiff had pleaded a sufficient connection to the defendants by virtue of being victims in the same scheme.

The defendants moved for leave to reargue, asserting that the court misapplied *Georgia Malone* and *Mandarin Trading* because, in addition to pleading a connection, the plaintiff must also allege reliance or inducement. Looking to Judge Lippman’s dissent, Justice Masley agreed that *Mandarin Trading’s* reliance or inducement language was simply dicta, as it was based upon the specific facts of that case where the plaintiff “hinged his unjust enrichment claim” upon his reliance on the appraisal letter. Justice Masley observed that the Court of Appeals had not applied a “heightened reliance/inducement standard” in *Georgia Malone* either, as that analysis focused on the alleged connection between the parties, which was not sufficiently pleaded. The

court denied the motion to reargue, holding that the *Advance Entertainment* plaintiff pleaded enough of a connection with the defendants, who “were allegedly transferred stolen funds belonging to plaintiff and have had contact with plaintiff in regard to returning those funds.”

## Conclusion

These recent decisions are a reminder that plaintiffs must carefully and thoughtfully plead, no matter their claims. While the role of reliance and inducement in pleading unjust enrichment claims may be clarified in the future, given the current spectrum of lower court decisions, plaintiffs are well-advised to specifically plead where possible a relationship with defendant that could have caused reliance or inducement, and, if applicable, actual reliance or inducement.

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