IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

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FILED: 06/18/2013
RUTH A. WILLINGHAM, CLERK
BY: GH

CAROLINE BROWN,	)	No. 1 CA-CV 12-0550
	)	
Plaintiff/Appellant,	)	DEPARTMENT A
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
PINNACLE RESTORATION LLC,	)	Rule 28, Arizona Rules
	)	of Civil Appellate
Defendant/Appellee.	)	Procedure)
	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CV2011-008669

The Honorable Dean M. Fink, Judge

VACATED AND REMANDED

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C A T T A N I, Judge

¶1 Caroline Brown appeals from the superior court's grant of a motion for judgment on the pleadings in favor of Pinnacle Restoration LLC ("Pinnacle"). Brown argues the court erred by

concluding she had failed to state a claim for unjust enrichment against Pinnacle. We agree. We therefore vacate the judgment in favor of Pinnacle and remand the case for further proceedings consistent with this decision.

FACTS AND PROCEDURAL BACKGROUND[1]

¶2 Brown owns a condominium in the Village at Camelback Mountain and, as an owner, is a member of the community's homeowners association, Camelback Village Improvement Association ("CVIA"). By the terms of the covenants, conditions, and restrictions ("CC&Rs") governing the relationship between CVIA and its members, CVIA may purchase a blanket insurance policy insuring the condominium owners against casualty loss and liability. Although the CC&Rs required insurance proceeds to be payable to CVIA and the relevant owner jointly, the policy actually purchased by CVIA provided for payments to CVIA alone as the only named insured. Each owner pays the portion of premiums required to cover that owner's unit through assessments to CVIA, and Brown paid all such assessments for insurance premiums.

¶3 A fire damaged Brown's condominium in mid-2008. A detailed, itemized estimate for repairs to Brown's unit assessed

[1] On review of a judgment on the pleadings, we assume the truth of the non-moving party's well-pleaded factual allegations. *Shannon v. Butler Homes, Inc.*, 102 Ariz. 312, 315, 428 P.2d 990, 993 (1967).

the total repair cost to be over $247,000. CVIA hired Pinnacle to perform the repair work set forth in the itemized estimate at the cost stated, and the estimate became Pinnacle's work order. After CVIA received the insurance proceeds, it paid Pinnacle in full. Brown alleges that although Pinnacle completed certain repairs, it "did not perform anywhere near all of the work set forth in the estimate/work order." Thus CVIA's full payment to Pinnacle allegedly overcompensated Pinnacle for "almost $100,000 for work it did not perform." Brown further asserts that she had to hire a separate contractor to complete the work for which Pinnacle had been hired and had been paid, costing Brown in excess of $50,000.

¶4 Brown filed suit against both Pinnacle and CVIA, alleging CVIA had breached its duties under the CC&Rs and as a fiduciary and that Pinnacle had been unjustly enriched.[2] Specifically, Brown alleged (1) Pinnacle had been enriched by "receiving payments for work it did not perform," (2) Brown had been impoverished by not receiving completed repairs despite full insurance payment to Pinnacle and by having to pay a different contractor to complete the work, (3) a connection between the two due to Brown's payment of insurance premiums for the proceeds used to allegedly overpay Pinnacle, (4) no

[2] The superior court denied CVIA's motion for judgment on the pleadings, and Brown's claims against CVIA remain outstanding in superior court and are not at issue in this appeal.

justification for the impoverishment or enrichment, and (5) no remedy at law because Brown was not a party to the insurance agreement or the contract between CVIA and Pinnacle.

¶5 Pinnacle disputed Brown's unjust enrichment allegations and moved for judgment on the pleadings, arguing that Brown had not stated a claim for unjust enrichment as a matter of law. After hearing argument, the superior court granted Pinnacle's motion. The court reasoned that "Brown has no claim in equity for unjust enrichment because, even if Pinnacle was enriched by its failure to perform, she did not enrich it." The court denied Brown's subsequent motion for new trial and awarded Pinnacle a portion of its attorney's fees. The court entered judgment in favor of Pinnacle pursuant to Arizona Rule of Civil Procedure 54(b).

¶6 Brown timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) and -2101(A)(1).[3]

DISCUSSION

¶7 A motion for judgment on the pleadings tests the sufficiency of the complaint; judgment should only be entered for the defendant if the complaint fails to state a claim for

[3] Absent material revisions after the relevant date, we cite the current version of statutes.

relief. *Shannon v. Butler Homes, Inc.*, 102 Ariz. 312, 315, 428 P.2d 990, 993 (1967). On review, we accept the well-pleaded factual allegations of the complaint as true, but review de novo the superior court's legal conclusion. *Save Our Valley Ass'n v. Ariz. Corp. Comm'n*, 216 Ariz. 216, 218-19, ¶ 6, 165 P.3d 194, 196-97 (App. 2007).

¶8 A claim for unjust enrichment requires a showing that the defendant "received a benefit and [that] it is unjust that [the defendant] retain that benefit without being required to compensate plaintiff for the value received." *Murdock-Bryant Constr., Inc. v. Pearson*, 146 Ariz. 48, 53, 703 P.2d 1197, 1202 (1985). To establish unjust enrichment, the plaintiff must prove five elements: "(1) an enrichment, (2) an impoverishment, (3) a connection between the enrichment and impoverishment, (4) the absence of justification for the enrichment and impoverishment, and (5) the absence of a remedy provided by law." *Freeman v. Sorchych*, 226 Ariz. 242, 251, ¶ 27, 245 P.3d 927, 936 (App. 2011).

¶9 Assuming the truth of Brown's factual allegations, *See Save Our Valley*, 216 Ariz. at 218, ¶ 6, 165 P.3d at 196, Pinnacle received a payment of over $247,000, but it performed only approximately $147,000 worth of repairs. Pinnacle thus received a $100,000 enrichment in the form of overpayment for work it did not perform. Brown was impoverished by not

receiving the full benefit of the casualty insurance for which she paid premiums. Although Brown's condominium was insured through a blanket policy held by CVIA and not in her own name, Brown's complaint nevertheless alleges a reasonable expectation of coverage for repairs under the terms of the CC&Rs as well as actual payment of proceeds sufficient to cover complete repairs as detailed in the estimate. Accordingly, Brown was impoverished to the extent she did not receive the benefit of the full scope of repairs covered under the insurance policy.

¶10 The crux of this case is the third element: whether the connection between Pinnacle's alleged enrichment and Brown's alleged impoverishment is sufficient to sustain an unjust enrichment claim. Pinnacle argues "Brown provided nothing of benefit directly to Pinnacle" and that Brown's payment of insurance premiums for a portion of the blanket policy held by CVIA -- the policy that paid for Pinnacle's repair work -- is too "tenuous, remote and indirect." Brown's complaint alleges, however, that each owner pays the premiums attributable to that owner's condominium, albeit through assessments to CVIA. Although effectuated through CVIA as a middleman, Brown herself paid the premiums necessary to insure her condominium. The payment of proceeds from the policy, although directed to CVIA, were "for purposes of restoration and repair of [Brown's condominium]." Brown thus paid for the benefit of casualty

insurance coverage, the insurance proceeds were intended to provide a benefit directed to Brown, and Pinnacle usurped a portion of that benefit by allegedly failing to perform the full scope of repair work for which it was paid. This connection suffices.

¶11 Alternatively, Brown was impoverished by the need to pay a separate contractor to complete the repair work covered by insurance but unperformed by Pinnacle. Pinnacle's enrichment -- retaining almost $100,000 in insurance premiums provided for repairs it allegedly did not perform -- thus caused Brown's impoverishment -- separate payment for repairs meant to be covered by insurance proceeds. In this sense, although Brown's impoverishment may not have caused Pinnacle's enrichment, that enrichment was at Brown's expense. *See Pyeatte v. Pyeatte*, 135 Ariz. 346, 352, 661 P.2d 196, 202 (App. 1983). Because Brown's complaint stated a claim for unjust enrichment against Pinnacle, the superior court erred by entering judgment on the pleadings in favor of Pinnacle.[4]

[4] Pinnacle asserts that allowing an unjust enrichment claim in Brown's circumstances would eviscerate third-party beneficiary law, but Pinnacle provides no legal authority supporting the proposition that unjust enrichment and third-party beneficiary claims cannot coexist. Indeed, this court has previously found on third-party beneficiary and unjust enrichment claims to be alternative theories of recovery. *See Stratton v. Inspiration Consol. Copper Co.*, 140 Ariz. 528, 530-31, 683 P.2d 327, 329-30 (App. 1984).

CONCLUSION

¶12 Brown requests an award of attorney's fees expended on appeal pursuant to A.R.S. § 12-341.01. Because Brown did not seek attorney's fees against Pinnacle in her pleadings before the superior court, we deny her request. *Cf. Robert E. Mann Constr. Co. v. Liebert Corp.*, 204 Ariz. 129, 60 P.3d 708 (App. 2003) (failure to request trial or appellate fees on appeal precluded award on remand).

¶13 Although we recognize that this unjust enrichment claim (in which the intended recipient of services sues a service provider for the value of services paid for but not rendered) is the mirror image of typical unjust enrichment claims (in which a service provider sues the recipient of services for unpaid costs), the facts as alleged in Brown's complaint nevertheless state a claim for unjust enrichment under Arizona law. We therefore vacate the ruling below and remand for proceedings consistent with this decision.

/S/
KENT E. CATTANI, Judge

CONCURRING:

/S/
JON W. THOMPSON, Presiding Judge

/S/
LAWRENCE F. WINTHROP, Judge