

**IN THE COURT OF APPEALS OF IOWA**

No. 3-583 / 12-1989  
Filed August 21, 2013

**LAWRENCE HANDLOS and  
DORIS HANDLOS,**  
Plaintiffs-Appellants,

**vs.**

**INTERCREDITOR COMMITTEE,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Polk County, Douglas F. Staskal,  
Judge.

Partners and creditors of a limited liability partnership appeal a district  
court's order dismissing their petition seeking declaratory judgment and equitable  
relief. **AFFIRMED.**

Jason Casini of Whitfield & Eddy, P.L.C., Des Moines, for appellants.

Rebecca Ann Brommel, Des Moines, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

**TABOR, J.**

Lawrence and Doris Handlos, partners and creditors of Natural Pork Production II, L.L.P. (NPP), appeal a district court's order dismissing their petition seeking a declaratory judgment and equitable relief against the Intercreditor Committee (ICC).<sup>1</sup> A few hours before the Handloses filed suit, the NPP filed a separate action against the ICC, requesting declaratory judgment on the same issues listed in the first division of the Handloses' petition. The ICC moved to dismiss the Handloses' petition for failure to state a claim under Iowa Rule of Civil Procedure 1.421(1)(f), or in the alternative to consolidate the actions.

The district court dismissed the Handloses' petition, finding the couple could seek declaratory relief by joining the earlier-filed suit. The court also dismissed their claims for unjust enrichment and restitution.

Our rules of civil procedure imbue district courts with discretion to refuse to render a declaratory judgment under certain conditions. Because the Handloses may pursue their claims for declaratory judgment and general equitable relief by seeking to intervene in the already-filed case, the district court acted within its discretion by dismissing the first and third counts in their petition. As to the petition's second count, we agree the Handloses did not state a claim upon which any relief can be granted. Because neither the multi-million-dollar payout nor the terms of the SIA contract can be considered benefits conferred on the ICC, the ICC was not unjustly enriched by the disbursement.

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<sup>1</sup> The Handloses describe the Intercreditor Committee as a committee of dissociated partners of NPP organized pursuant to a settlement and intercreditor agreement (SIA). The defendant-appellee contends the correct name of the entity involved is the IC Committee. We will use the designation ICC throughout this opinion.

***I. Background Facts and Proceedings***

NPP is a limited liability partnership engaged in the business of farrowing and raising hogs. Created in 2002, NPP operates under its limited liability partnership agreement, which incorporates by reference a buy-sell agreement that provides the manner in which partnership units may be transferred.

When Lawrence and Doris Handlos purchased their seventy-five percent partnership interest in NPP, they also acquired subordinate debt from the partnership, a common requirement in NPP's various equity offerings. At the time this suit was filed, the couple held approximately \$3.8 million in subordinate debt.

Five years after the company's inception, NPP began experiencing severe financial difficulties, caused in part by escalating input costs for raising hogs. On March 28, 2008, partners Craton Capital, L.P. and Kruse Investment Co. delivered notices of dissociation to NPP. One week later, NPP's managing partners declared an "impairment circumstance." Defined in Article VII<sup>2</sup> of the buy-sell agreement, an impairment circumstance prohibits or restricts NPP's obligation to purchase partnership units and make payment for units when managing partners determine "that any such purchase or payment would materially impair or otherwise adversely affect the working capital, cash flow or other financial means, condition or operation of the Partnership." The partners then adopted a resolution to approve "one or more restructuring transactions" for the company.

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<sup>2</sup> Article VII governs when payment to partners may be prohibited or restricted.

In an April 14, 2008 letter from NPP to its partners, former managing partner Gary Weihls explained partnership payouts would occur in the following order: “Secured creditors, as their collateral is sold; ‘senior liabilities,’ including trade payables; subordinate debt; payments to dissociated partners for their partnership units, pursuant to the Buy Sell Agreement; and partnership units.”

On May 28, 2008, the partnership agreement was amended to permit dissociated partners to continue to vote on partnership matters and serve as managing partners. After this amendment, the majority of the remaining partners sent dissociation notices to NPP, including managing partners Ron Beach, Steve Schmitz, and Wendell Burge. On May 19, 2009, the three circulated a “priority schedule” for the company’s debt payout, ordered as “Senior secured liabilities; trade payables; ‘senior unsecured’; subordinate debt, including subordinate debt held by partners; and ‘dissociated obligation,’ for payments to dissociated partners for their partnership units, pursuant to the Buy Sell Agreement.”

Craton Capital and Kruse Investment filed suit against NPP in September 2009, seeking a declaratory judgment (1) on whether NPP must purchase partnership units of those dissociated partners who sent notices of dissociation before the partners declared the impairment circumstance; and (2) to determine the priority of debts. The district court ruled against the partners, holding NPP was not obligated to purchase their units. On interlocutory appeal, our court reversed the district court’s ruling and remanded the case for entry of partial

summary judgment in favor of Craton Capital and Kruse Investment.<sup>3</sup> We did not address debt priorities. The district court entered an order that although NPP was obligated to purchase the partnership units, payment obligations would remain suspended until NPP lifted the impairment circumstance.

On November 30, 2011, managing partner Beach signed a “Settlement and Intercreditor Agreement” (SIA) with Craton Capital and Kruse Investment. The SIA delegates to non-partners control over NPP management decisions. The agreement was executed without notifying partners or providing them an opportunity to vote. The following day, all other dissociated partners received a letter proposing to extend the SIA terms to all other dissociated partners, even if they had already provided NPP with their notices to dissociate. Most partners took up this invitation to become “SIA parties.” Once again, no notice was provided to other NPP partners, nor was there a partner vote. The SIA parties established the Intercreditor Committee or ICC to represent their legal interests.

On January 27, 2012, NPP distributed about \$10.5 million in payments to dissociated partners, including Beach, Schmitz, and Burge, who continued to act as managing partners.<sup>4</sup> The NPP partners held a special meeting on April 3, 2012, in which they voided the May 2008 provisions that allowed dissociated partners to vote on partnership matters and serve as managing partners. The partners then elected Lawrence Handlos as managing partner.

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<sup>3</sup> See *Craton Capital, L.P. v. Natural Pork Production II, L.L.P.*, No. 10-0680 (Iowa Ct. App. Feb. 9, 2011).

<sup>4</sup> Lawrence and Doris Handlos filed a petition, jury demand, and combined motion for temporary injunction and appointment of a receiver against NPP, all of which were dismissed without prejudice on February 19, 2012.

On April 20, 2012, NPP and the Handloses filed separate actions for declaratory judgment. At 11:12 am, NPP filed a petition for declaratory judgment against ICC (NPP petition) to determine the rights and obligations of NPP, partners, and dissociated partners, and determine whether the SIA is a valid contract.

The Handloses filed their three-count petition for declaratory judgment and equitable relief four hours later (Handlos petition). The first count requested declaratory judgment on issues similar to those included in the NPP petition. The second and third counts of the Handlos petition alleged unjust enrichment and restitution, and sought “general equitable relief.” The ICC moved to dismiss the Handlos petition or to alternatively recast and consolidate the two suits.

After a hearing on the ICC’s motions, the district court dismissed the Handlos petition. The court found any declaration of rights in response to the Handlos petition would not be binding on NPP, and because the NPP petition “raises exactly the same issues,” it would be “a complete waste of resources” to allow both cases to proceed—even with consolidation. As to the second count in the Handlos petition, the court held because the dissociated partners, rather than the ICC, received any benefit recoverable under the doctrine of unjust enrichment, it would be impossible for the Handloses to recover from ICC. Addressing the third count, the court categorized the Handloses’ request for general equitable relief as “merely a restatement of the claim for declaratory judgment regarding the legality of the SIA.” The court dismissed the third count for the same reasons as it dismissed the first count. The Handloses now appeal.

## **II. Scope and Standards of Review**

We review a district court's refusal to render a declaratory judgment for an abuse of discretion. *Ostrander v. Linn*, 22 N.W.2d 223, 226 (Iowa 1946).

We review a ruling on a motion to dismiss for failure to state a claim for correction of legal error. *Dier v. Peters*, 815 N.W.2d 1, 3–4 (Iowa 2012). In determining the petition's legal sufficiency we accept the facts alleged as true, viewing them in the light most favorable to the plaintiff. *Berry v. Liberty Holdings, Inc.*, 803 N.W.2d 106, 108 (Iowa 2011). "Dismissal is proper only if the petition shows no right of recovery under any state of facts." *Hawkeye Foodservice Distribution, Inc. v. Iowa Educators Corp.*, 812 N.W.2d 600, 604 (Iowa 2012) (internal quotation marks omitted).

## **III. Analysis**

### **A. Should the District Court Have Dismissed the Handloses' Declaratory Judgment Request?**

The Handloses argue because their petition includes a viable claim for declaratory relief, it was improperly dismissed. They assert either consolidating the two petitions or joining NPP to the suit would be the proper remedy. The couple also criticizes the district court's reliance on *Ostrander*, 22 N.W.2d at 227–28, contending the case does not control the present facts.

In response, the ICC characterizes the Handloses' argument as "much ado about nothing." Noting all parties consented to consolidating the two cases, the ICC asserts the court's decision to dismiss the Handlos petition reaches the same result since the couple will have an opportunity to intervene in the NPP

suit. The ICC concludes it was within the discretion of the district court to proceed with declaratory judgment or dismiss the action based on the pendency of the NPP petition.<sup>5</sup>

In a declaratory judgment, a court declares the parties' status, rights, duties, or other legal relationships. *Zimmer v. Vander Waal*, 780 N.W.2d 730, 732 (Iowa 2010); see Iowa R. Civ. P. 1.1101 (setting out purpose, scope, and effect of declaratory judgment).

The district court explained the "bottom line reason" for dismissing the Handloses' declaratory judgment is because the NPP suit seeks a declaratory ruling on the same issues raised in the first count of the Handlos petition. Since NPP's suit was filed beforehand, to which NPP and the ICC are already parties, the court used its discretionary authority to deny the requested declaratory judgment, citing *Ostrander*, 22 N.W.2d at 227–28. The court noted even though the Handloses are not parties to the NPP suit, they may seek to intervene to enforce their own rights rather than "waste resources to allow two separate but identical cases to proceed, even if they are consolidated."

We first address the Handloses' contention the district court incorrectly applied *Ostrander*. The district court cited *Ostrander* to support its proposition, "the court has discretionary authority to deny a request for declaratory judgment where another case is pending that will afford the plaintiff the same relief." The *Ostrander* court considered whether a declaratory judgment action regarding

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<sup>5</sup> The ICC additionally argues even if the court required NPP to join the action, NPP's bankruptcy filing on September 11, 2012, would have stayed the action, and asserts the Handloses have no concrete legal interests adverse to the ICC. Because we resolve the issue on other grounds, we need not address these arguments.



statutory interpretation should be dismissed where the plaintiff was being prosecuted for violating the same statute in a pending criminal action. 22 N.W.2d at 224–25. The portion of the *Ostrander* ruling to which the district court cites, *id.* at 227-28, is a compilation of extra-jurisdictional quotations regarding the discretion of a district court in dismissing declaratory judgment actions, with our supreme court concluding:

Declaratory judgment relief may be denied if there is another action then pending between the parties and, in such action, the parties will be able to procure a full and immediate adjudication of their rights, or the issues involved in the case already pending can be tried with equal facility or the suit for declaratory relief will serve no useful purpose.

*Id.* at 228 (internal quotation marks omitted).

The Handloses argue the *Ostrander* quote from a federal case, which holds declaratory judgment is not appropriate “when another suit between the same parties, involving the same subject matter, is pending in another court,” forces the conclusion that because the NPP petition does not involve the same parties, declaratory judgment must be rendered. See *id.* at 227 (quoting *Western Supplies Co. v. Freeman*, 109 F.2d 693, 695 (6th Cir. 1940)). We disagree with the Handloses’ deduction. The *Ostrander* court immediately follows the above-quoted excerpt with another federal authority forbidding declaratory judgment “for the purpose of trying *issues involved in cases already pending, especially where they can be tried with equal facility in such cases . . .*” See *id.* (quoting *Aetna Cas. & Sur. Co. v. Quarles*, 92 F.2d 321, 324 (4th Cir 1937) (emphasis added)). As discussed below, the issues listed in both petitions for declaratory relief are the same.

*Ostrander* does not dictate a strict “same parties, same subject matter” test. Following its summary of federal case law, the court endorses the possibility of denying declaratory relief in three scenarios: (1) when another action between two parties will procure full and immediate adjudication of parties’ rights, (2) when issues involved in the pending case “can be tried with equal facility,” and (3) when the suit will serve no useful purpose. See *id.* at 227–28; see also *First Midwest Corp. v. Corporate Fin. Assocs.*, 663 N.W.2d 888, 892 (Iowa 2003). Accordingly, the district court’s proposition that it “has discretionary authority to deny a request for declaratory judgment where another case is pending that will afford the plaintiff the same relief” is an accurate statement of the law.<sup>6</sup>

The Handloses contend rather than dismissing the suit, the district court should have either consolidated the two cases or required NPP to join the action. They contend NPP was actually “before the court” since all parties in the NPP petition and the Handlos petition consented to consolidate both cases.

Iowa Rule of Civil Procedure 1.913 permits a district court to consolidate separate actions:

Unless a party shows the party will be prejudiced thereby the court may consolidate separate actions which involve common questions of law or fact or order a single trial of any or all issues therein. In such cases it may make such orders concerning the proceedings as tend to avoid unnecessary cost or delay.

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<sup>6</sup> The Handloses additionally argue *Ostrander* stands only for the general principle of “discretionary authority” in declaratory judgment cases. While the couple is correct that *Ostrander* does not control the outcome of this case, the opinion does support the district court’s reasoning.

Consolidation rulings are discretionary, and the court must exercise discretion to determine whether (1) the actions involve common questions of fact or law, and (2) any party has shown prejudice. See *Johnson v. Des Moines Metro. Wastewater Reclamation Auth.*, 814 N.W.2d 240, 245 (Iowa 2012).

NPP filed its petition in response to questions “raised by some partners as to whether the SIA is a valid contract due to alleged conflicts of interest, alleged self-dealing and alleged breaches of the Partnership Agreement and Buy-Sell Agreement.” The petition listed the issues to resolve:

- a. whether [NPP] is obligated to make the April 23, 2012 payment as demanded by the [ICC] or similar payments that could be demanded in the future;
- b. whether the SIA is a valid contract, binding on and enforceable against [NPP] in accordance with its terms; and
- c. the respective rights and obligations of the partners, dissociated partners who are SIA Parties and dissociated partners who are not SIA Parties under the Agreements, including the proper priority of debt between partners and dissociated partners who are holders of subordinated notes under the Partnership Agreement and dissociated partners who are holders of buy-sell notes under the Buy-Sell Agreement or SIA.

The Handlos petition framed its challenge as “multiple legal issues, regarding the rights, status and legal relationships of [NPP]’s partners . . . and dissociated partners . . . .” They also challenged “the status of the SIA, and certain material terms of the SIA,” alleging conflicts of interest and self-dealing, among other bases for invalidity. The Handloses requested the following declaratory relief:

- a. A declaration concerning the proper priority of debt, as between holders of subordinate debt, including partners with subordinate debt, and any payment obligations to dissociated partners, pursuant to the Buy Sell Agreement;

- b. A declaration concerning [NPP]’s obligations to purchase the partnership units of dissociated partners who sent Notices of Dissociation *after* the Impairment Circumstance was declared, along with any related obligations regarding issuance of promissory notes and/or accumulation of interest; and
- c. A declaration concerning the status of the SIA, and/or certain material terms of the SIA, including, but not limited to, whether it may be revoked by [NPP] and/or subject to equitable rescission or, in the alternative, whether it is subject to modification and/or reformation, to the extent it: was not executed by a person with legal authority to bind [NPP]; was not approved by vote of partners of [NPP]; contains certain material terms and conditions that are contrary to the material terms of the Limited Liability Partnership Agreement and Buy Sell Agreement; and contains material terms and conditions that are contrary to Iowa Code Chapter 486A.

Reviewing both petitions reveals the duplicative nature of declaratory relief sought. And by encouraging consolidation, the Handloses and the ICC acknowledge the petitions involve common questions of fact or law. With common questions of fact and law, and with no party claiming prejudice, the district court could have acted within its discretion to consolidate the actions. *See Johnson*, 814 N.W.2d at 245.

But the availability of consolidation under rule 1.913 does not force consolidation without considering alternative means to promote judicial efficiency. *See Kent Feeds, Inc. v. Manthei*, 646 N.W.2d 87, 90 (Iowa 2002) (“But rulings on such request are discretionary with the court . . . as consolidation is merely a method of achieving judicial economy in the proper case.”). “To prove abuse of discretion, it must be shown that the court’s decision rested on clearly untenable reasons or grounds.” *Id.* The district court’s decision to dismiss the Handlos petition in deference to NPP’s pending action to resolve the same issues did not constitute an abuse of discretion.

The Handloses contend the court erred by refusing to order NPP to join the present dispute. Rule 1.234(1) generally requires all persons with a joint interest in an action be joined.

A party is indispensable if the party's interest is not severable, and the party's absence will prevent the court from rendering any judgment between the parties before it; or if notwithstanding the party's absence the party's interest would necessarily be inequitably affected by a judgment rendered between those before the court.

Iowa R. Civ. P. 1.234(2). If a party is indispensable and not a party to the case, the court "shall order the party brought in." Iowa R. Civ. P. 1.234(3).

The district court agreed with the Handloses that NPP is an indispensable party, but noted the pendency of the suit between NPP and ICC involving the same issues of law and fact. Because rule 1.234 does not contemplate multiple petitions asserting the same claim, its mandatory language does not apply here. Rule 1.234 is aimed at circumstances in which there is only one suit and an indispensable party is otherwise unaccounted for in the litigation, not when two alternative cases assert the same claim. While joinder was another potential avenue for the court to take, it was not the only one available to reach the goal of judicial economy.

Our decision to affirm the district court's dismissal of the Handloses' request for a declaratory judgment is not based on rule 1.421(1)(f). We agree with the Handloses that a dismissal for failure to state a claim upon which any relief can be granted is not an appropriate means to dispose of their request for declaratory judgment. Instead, we find the district court was correct in cleaving to the accepted notion articulated in *Ostrander* that Iowa courts have

discretionary authority to deny a request for declaratory judgment where another pending action can afford the litigant relief. See *generally* Iowa R. Civ. P. 1.1105 (discussing court's discretion to refuse to render declaratory judgment if rendering judgment would not settle the uncertainty or controversy giving rise to the proceeding); *Wright v. Thompson*, 117 N.W.2d 520, 526–27 (Iowa 1962).

**B. Did the Handloses Make a Viable Claim for Unjust Enrichment and Restitution?**

The Handloses next assert the district court erred in dismissing their claim for unjust enrichment. The court held that count of the Handlos petition did not state a claim upon which relief could be granted because the couple could not recover any of the \$10.5 million payout considering the money was disbursed to the SIA parties rather than the ICC. The Handloses now argue the ICC's benefit did not relate to the payout, but to SIA terms delegating control over management decisions to the ICC and establishing the ICC as a collateral agent for mortgage, pledge agreements, and security agreements.

“The doctrine of unjust enrichment serves as a basis for restitution.” *State Dep't of Human Servs. ex rel. Palmer v. Unisys Corp.*, 637 N.W.2d 142, 154 (Iowa 2001). It is an equitable theory based on the principle that one party should not be unjustly enriched at the expense of the other or receive benefits or property without tendering just compensation. *Id.* To recover under the theory, one must prove: “(1) defendant was enriched by the receipt of a benefit; (2) the enrichment was at the expense of the plaintiff; and (3) it is unjust to allow the defendant to retain the benefit under the circumstances.” *Id.* at 154–55. Benefits

conferred may be direct or indirect, and may involve third-party-conferred benefits. *Id.* at 155.

The Handloses correctly identify the doctrine as “a broad principle with few limitations.” *Id.* at 155. But our definition of “benefit” for purposes of restitution does not reach the contracted-for rights in the agreement they list:

“A person confers a benefit upon another if he gives to the other possession of or some other interest in money, land, chattels, or choses in action, performs services beneficial to or at the request of the other, satisfies a debt or a duty of the other, or in any way adds to the other’s security or advantage. He confers a benefit not only where he adds to the property of another, but also where he saves the other from expense or loss. The word ‘benefit,’ therefore, denotes any form of advantage.”

*Okoboji Camp Owners Co-op v. Carlson*, 578 N.W.2d 652, 654 (Iowa 1998) (quoting Restatement of Restitution § 1, at 12 (1937)).

The Handloses provide no authority for recovery where “material terms and conditions” in a contract are themselves the benefit that unjustly enriched the defendant. Because neither the \$10.5 million payout nor the terms of the SIA contract can be considered benefits conferred on the ICC, the district court properly dismissed the claim under rule 1.421(1)(f).

**C. Should the District Court Have Dismissed the Handloses’ Claim for “General Equitable Relief?”**

In their final assignment of error, the Handloses contend the district court should not have dismissed their prayer for “general equitable relief”—in which they seek revocation, equitable rescission, modification, reformation, or injunction. The district court determined their third claim was “merely a restatement” of their declaratory judgment request. The Handloses argue to the extent the district

court erroneously dismissed their declaratory judgment claim, the court also erred in dismissing their claim for general equitable relief. They also assert these equitable remedies are not identical to their declaratory judgment claims.

For the same reasons we discussed above in regard to the declaratory judgment claim, the district court properly exercised its discretion in dismissing the Handloses' claim for "general equitable relief." Although the equitable claims invoke separate theories for relief differing from their overarching request for declaratory judgment, the underlying subject matter is the same. Recognizing the intertwined nature of the two petitions, the district court "emphasize[d] that its dismissal of this petition is without prejudice to any right the plaintiffs may have to intervene in [the NPP–ICC case]." Accordingly, the Handloses would be free to include their claims for general equitable relief in any motion to intervene in NPP's previously filed case.

**AFFIRMED.**