STATE OF MICHIGAN

COURT OF APPEALS

STEPHEN D. BARKER and KRISTINA A. BARKER,

Plaintiffs-Appellants,

v

DOMINIC DICICCO and RIVER PARK PLACE DEVELOPMENT COMPANY,

Defendants-Appellees.

UNPUBLISHED
December 20, 2002

No. 234443
Oakland Circuit Court
LC No. 99-019183-CH

Before: Fitzgerald, P.J., and Wilder and Cooper, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's dismissal of their unjust enrichment claim. We affirm.

This claim arose from payments plaintiffs made on a property's first mortgage after a foreclosure and sale of that property by a second mortgagor. Plaintiff Stephen Barker purchased a parcel of commercial property in the city of Fenton in November 1990, through his company, Plaza One Eleven Limited Partnership (Plaza 111). To fund the purchase, Plaza 111 borrowed money from Franklin Bank and the Gerda H. Roth 1990 Trust. Plaza 111 delivered notes to its lenders, and both debts were secured with mortgages on the property. Plaintiffs personally guaranteed the note Plaza 111 delivered to Franklin Bank.

The trust's note was later assigned to B. Hunter Investments, Inc. (Hunter Investments), and when Plaza 111 defaulted, Hunter Investments foreclosed on the property. Hunter Investments purchased the property at the foreclosure sale and subsequently sold it to defendant Dominic DiCicco. Notwithstanding the property's foreclosure and subsequent sale, plaintiffs, through Plaza 111, continued to pay installments on the Franklin Bank note. Plaintiffs then brought suit to recover the amount that they paid on the loan.

Plaintiffs initially claim that the trial court erred when it required them to present proof of coercion or mistake to recover on unjust enrichment grounds. We disagree. This presents a question of law that this Court reviews de novo. *GMC v Dep't of Treasury*, 466 Mich 231, 236; 644 NW2d 734 (2002).

Plaintiffs argue that unjust enrichment requires only a showing that: 1) one party has been enriched; and 2) between the parties, equity demands restitution. *Dumas v Auto Club Ins Ass'n*, 437 Mich 521, 546; 473 NW2d 652 (1991). While this is a correct statement of the law, this recitation merely reflects the general rule for all unjust enrichment claims. "A person who without mistake, coercion or request has unconditionally conferred a benefit on another is not entitled to restitution . . . ." *In re McCallum Estate*, 153 Mich App 328, 335; 395 NW2d 258 (1986), quoting Restatement Restitution, § 112, p 461. Thus, those who confer *unsolicited* benefits must show some form of inequitable manipulation before restitution is warranted. See *In re McCallum*, *supra* at 335. In the instant case, defendants did not solicit the payments that plaintiffs made under their obligation as guarantors. While the outcome in this case may seem inequitable on its face, the law in Michigan is clear. Accordingly, we find that the trial court properly required plaintiffs to show some form of mistake or coercion.

Plaintiffs next assert that the trial court erred when it found that defendant DiCicco was not bound by a deed that he received and filed, but failed to sign. After a careful review of the record, we find that plaintiffs have misstated the trial court's conclusions. While the trial court initially disagreed with plaintiffs, it later agreed during closing arguments that defendant's acceptance of the deed was binding.

The law is clear that an individual who accepts and records a deed is bound by its terms. *Kollen v Sooy*, 172 Mich 214, 219; 137 NW 808 (1912). After listening to counsel quote the pertinent language from *Kollen*, the trial judge responded, "that's my understanding of the law, counsel." The trial court did not find that DiCicco was free of the obligations imposed by the deed. Rather, the trial court found that plaintiff failed to prove that those obligations included an assumption of the mortgage. Therefore, the assignment of error is misplaced.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder
/s/ Jessica R. Cooper