

STATE OF MICHIGAN
COURT OF APPEALS

ARLINGTON TRANSIT MIX, INC.,

Plaintiff,

v

MGA HOMES, INC.,

Defendant/Counter-
Defendant/Cross-Defendant/Third-
Party-Plaintiff,

and

SALVATORE INTORRE and MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC.,

Defendants/Counter-
Defendants/Cross-
Defendants/Third-Party Defendants,

and

COUNTRYWIDE HOME LOANS, INC.,

Defendant/Counter-
Defendant/Cross-
Defendant/Appellee,

and

NMC COMPANIES, CENTRAL CUSTOM
HOMES, INC., R & F PLUMBING &
HEATING, INC., MGA ROOFING, LLC,
JOHN'S LUMBER & HARDWARE CO., AND
FIBER CLASS INSULATION,

Defendants/Counter-
Defendants/Cross-
Defendants/Third-Party Defendants,

and

UNPUBLISHED

June 26, 2012

No. 295530

Macomb Circuit Court

LC No. 2008-002714-CH &
2008-002011-CH

WEST FRIENDSHIP MATERIALS, INC.,

Defendant/Counter-Plaintiff/Cross-
Defendant/Appellant,

and

MLC WINDOW COMPANY, STAR HEATING,
and N.G. TILE & MARBLE, INC.,

Defendants/Counter-
Defendants/Cross-
Defendants/Third-Party Defendants,

and

GIUSEPPE ALUIA ,

Defendant/Third-Party Defendant,

and

AMERICAN CONCRETE WALL, INC.,
MICHELE ALUIA and L & F GRANITE &
MARBLE CORPORATION,

Third-Party Defendants/Cross-
Defendants,

and

ROS CABINETS II, INC.,

Third-Party Defendant/Cross-
Plaintiff,

and

CITIZENS FIRST MORTGAGE, LLC,

Cross-Defendant.

Before: SERVITTO, P.J., and METER and FORT HOOD, JJ.

PER CURIAM.

West Friendship Materials, Inc. appeals as of right the trial court's denial of its motion for summary disposition, its grant of summary disposition in favor of Countrywide Home Loans,

Inc. pursuant to MCR 2.116(C)(10), and its dismissal of West Friendship Materials, Inc.'s counter/cross-claim. We affirm.

Defendant, Countrywide Home Loans, Inc. is a mortgage lender. In 2006, it provided a future advance mortgage to Salvatore Intorre for purposes of constructing a residential home on a parcel of property in Washington Township, Michigan. Intorre defaulted on his loan to Countrywide Home Loans, Inc. ("Countrywide") and, in 2008, Countrywide foreclosed on the property and obtained a quitclaim deed to the same.

Defendant Central Custom Homes, Inc. was the general contractor on the construction project and it contracted with several subcontractors and material suppliers as part of the project. Arlington Transit Mix, Inc. ("Arlington") initiated the instant lawsuit in 2008, seeking an account stated debt of MGA Homes, Inc. for construction materials Arlington supplied at MGA Home Inc.'s request for improvements to the subject property, and foreclosure of its construction lien on the property. Arlington named other known lien claimants, including West Friendship Materials, Inc. ("West"), a building material supplier, as necessary defendants in the lawsuit. In addition to answering Arlington's complaint, West filed a counter/cross claim and a third-party complaint.

Relevant to the instant appeal, West claimed in its cross-claim that Countrywide received a benefit from West in the form of materials, services, and the use of West's monies when it foreclosed upon and took title to the property for which West furnished building materials and did not receive payment. West asserted that because Countrywide knew at the time it foreclosed on the property that the financing it had provided for construction purposes on the property had not been used to pay West for the materials it had supplied and that West had not yet been paid, an inequity would result if Countrywide were permitted to retain the benefit without paying West for the value of the benefit. West thus asserted a claim of unjust enrichment against Countrywide. West thereafter moved for summary disposition in its favor on its claim pursuant to MCR 2.116(C)(10), and Countrywide counter-moved for summary disposition pursuant to MCR 2.116(I)(2), (C)(8) and (C)(10). As previously indicated, the trial court denied West's motion and granted summary disposition in Countrywide's favor, dismissing West's unjust enrichment claim.

We review de novo a trial court's decision on a motion for summary disposition. *Coblentz v City of Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). While the trial court did not state the rule upon which it relied in granting Countrywide's motion, it referenced documents outside the pleadings. Thus we will treat the motion as though granted pursuant to MCR 2.116(C)(10). In ruling on a motion for summary disposition under MCR 2.116(C)(10), "a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party." *Scalise v Boy Scouts of America*, 265 Mich App 1, 10; 692 NW2d 858 (2005). Summary disposition should be granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

Whether a claim for unjust enrichment can be maintained is a question of law, which we review de novo. *Liggett Restaurant Group, Inc v Pontiac*, 260 Mich App 127, 137; 676 NW2d

633 (2003). We also review de novo a trial court's dispositional ruling on an equitable matter. *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005).

On appeal, West contends that there was no genuine issue of material fact that Countrywide was unjustly enriched at West's expense. West further contends that summary disposition in Countrywide's favor was premature because answers to West's discovery requests were outstanding, and was otherwise inappropriate because Countrywide knew of West's lien when it obtained title to the home. We disagree.

Unjust enrichment is an equitable doctrine defined as the unjust retention of "money or benefits which in justice and equity belong to another." *McCreary v Shields*, 333 Mich 290, 294; 52 NW2d 853 (1952) (internal quotation and citation omitted). Thus, a plaintiff may establish a claim of unjust enrichment by showing: "(1) the receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant." *Morris Pumps v Centerline Piping, Inc.*, 273 Mich App 187, 195; 729 NW2d 898 (2006). If a plaintiff can establish the above, "the law will imply a contract in order to prevent unjust enrichment." *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 478; 666 NW2d 271 (2003).

In support of its position, West relies heavily upon the case of *Morris Pumps*, 273 Mich App 187. In that case, the City of Detroit contracted with EBI-Detroit, as general contractor, to construct a wastewater treatment facility. EBI then subcontracted with Centerline Piping to complete the mechanical portion of the contract. *Id.* at 190. Centerline, in turn, contracted with several materials suppliers for equipment and supplies. The materials suppliers provided the various contracted-for goods, but Centerline did not pay the suppliers. *Id.* Shortly after the suppliers made their deliveries, in fact, Centerline went out of business and abandoned the construction project. EBI thereafter retained a replacement contractor to finish the mechanical portion of the contract. The replacement contractor used the equipment and materials that were already present at the site when it arrived, i.e., those delivered by the suppliers, but did not pay the suppliers for the materials. EBI also did not pay the suppliers for the materials. *Id.* at 191. The suppliers thus brought an action against Centerline for breach of contract and against EBI for unjust enrichment. While EBI argued that the suppliers could not maintain an action against it for unjust enrichment due to the existence of an express contract between the suppliers and Centerline concerning the same subject matter, this Court found that because there were no express contracts *between the same parties* on the subject matter, EBI's argument failed. *Id.* at 195. This Court further found that while not all enrichment is necessarily unjust, in this instance it was. Noting that EBI was the general contractor and was thus responsible for overseeing Centerline and then its replacement, this Court determined that EBI was not only aware of but was necessarily directly involved in the decision to use and retain the materials without paying the suppliers, such that it was not a third-party who innocently received a benefit/enrichment at the suppliers expense. *Id.* at 196-197.

The instant matter contrasts greatly from the situation present in *Morris Pumps*. Countrywide loaned monies, secured by a mortgage, to Salvatore Intorre to finance the construction of a home. When Intorre defaulted on the loan, Countrywide simply foreclosed on its mortgage lien. By West's assertion, it delivered its materials to the property between February and May 2007. Countrywide did not foreclose on the property until May 2008—a year

after the materials were furnished. There has been no allegation and no evidence presented that the materials furnished by West simply remained, unused, at the property, for that year-long period and then after foreclosure, Countrywide used the materials on the property with the knowledge that West had not been paid for the same. It is just as likely that West's materials had already been put to use and Countrywide foreclosed on the property "as is" to recoup the benefit of the bargain into which it had entered with Intorre.

Unlike in *Morris Pump*, there is no indication that Central left the job and went out of business. There is also no indication that Countrywide was part of the decision making process with respect to contractors on the project, subcontractors, or material suppliers, or that it encouraged Central to not pay West or allowed/consented to the use of West's materials to finish the project. In short, there is no allegation or proof that Countrywide was an active participant in the decision to use the materials provided by West or even that the materials were used after the foreclosure occurred. While the primary defendant in *Morris Pumps* was the contractor who knew that materials at the jobsite it was responsible for had not been paid for and, nevertheless, consented to a third party's use of said materials to complete a project it was in charge of, the primary defendant in this case is a mortgage lender who entered into a contract with a homeowner and foreclosed on its mortgage interest. Countrywide was not the contractor on the job site and did not have control of or responsibility over completing the building project. The facts in *Morris Pump* provide little support for West's position, thus, we look to the general elements of unjust enrichment to determine whether West has nevertheless established its claim.

The very first element of unjust enrichment requires "the receipt of a benefit by the defendant from the plaintiff." West has not shown that it conferred a benefit on Countrywide, given that Countrywide acquired its interest in the property (and thus the materials West provided through its agreement with Central for improvements to the property) through foreclosure on Salvatore Intorre's interest in the property, not through any action of West. There was thus no receipt of a benefit by Countrywide *from West*. Further, as stated in *Morris Pumps*:

In general, [a] third party is not unjustly enriched when it receives a benefit from a contract between two other parties, where the party benefited has not requested the benefit or misled the other parties Otherwise stated, the mere fact that a third person benefits from a contract between two other persons does not make such third person liable in quasi-contract, unjust enrichment, or restitution. Moreover, where a third person benefits from a contract entered into between two other persons, in the absence of some misleading act by the third person, the mere failure of performance by one of the contracting parties does not give rise to a right of restitution against the third person. [*Id.* at 196](internal citation omitted).

To the extent that Countrywide received the benefit of West's materials without having paid for them, it received such benefit as a third party to the contract between West and Central. There is no allegation or evidence that Countrywide requested such a benefit or misled Central or West in order to receive such a benefit. Further, there is no claim that Countrywide gave assurance that it would pay West for the materials. According to *Morris Pumps*, Countrywide's knowledge of the contract, and/or its knowledge of Central's failure to perform its end of the bargain, i.e., paying West, is irrelevant, and does not give rise to a claim against Countrywide. While Countrywide may have received a benefit to some degree, said benefit must have been unjust to prompt

recovery. West has not established the same. Accordingly, the trial court properly granted summary disposition in Countrywide's favor on West's claim of unjust enrichment.¹

As to West's claim that summary disposition in Countrywide's favor was premature due to outstanding discovery requests, we note that the basis for the discovery request was to establish Countrywide's knowledge that West furnished materials to the home. As indicated above, however, Countrywide's knowledge that one of the parties to a contract (to which it personally was not a party) performed while the other one did not is irrelevant to the issue of whether Countrywide was *unjustly* enriched. Again, "where a third person benefits from a contract entered into between two other persons, in the absence of some misleading act by the third person, the mere failure of performance by one of the contracting parties does not give rise to a right of restitution against the third person." *Morris Pumps*, 273 Mich App at 196.

Affirmed.

/s/ Deborah A. Servitto
/s/ Patrick M. Meter
/s/ Karen Fort Hood

¹ While the trial court granted summary disposition in Countrywide's favor based upon its finding that the proofs did not demonstrate that Countrywide was aware of the contract between Central and West or that Countrywide had knowledge of that fact that West had not been paid for its services, we will not reverse the trial court's order when the right result was reached for the wrong reason. See, *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229, 234 (2000).