

[J-115-2005]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CAPPY, C.J. CASTILLE, NIGRO, NEWMAN, SAYLOR, EAKIN, BAER, JJ.

WILSON AREA SCHOOL DISTRICT,	:	No. 45 MAP 2005
	:	
Appellant	:	
	:	Appeal from the Order of the
	:	Commonwealth Court entered on October
v.	:	28, 2004, at No. 2550 CD 2003, affirming
	:	the Order of the Court of Common Pleas
	:	of Northampton County, entered on
FRANKLIN E. SKEPTON, JOSEPH	:	October 16, 2003 at No. C-48-CV-2001-
BOZZELLI, INDIVIDUALLY AND T/A J.B.	:	1166.
PLUMBING COMPANY, AND DUAL	:	
TEMP COMPANY, INC.,	:	860 A.2d 625 (Pa. Cmwlth. 2004)
	:	
Appellees	:	
	:	ARGUED: October 18, 2005

CONCURRING OPINION

MR. JUSTICE SAYLOR

DECIDED: April 21, 2006

I concur in the result obtaining under the majority opinion. I note, however, that I would apply the bright-line rule that a written contract precludes recovery based on unjust enrichment as a general, but not an inviolable, one. In this regard, I would not foreclose the possibility that an action for unjust enrichment might lie in some set of circumstances in which services or benefits are conferred in connection with a contractual relationship that are clearly beyond the contemplation of the parties to the agreement. Such an exception would seem to me to be particularly appropriate in the arena of public contracts. Indeed, it was based on this understanding that I joined the majority opinion in the initial Skepton appeal, with its dictum suggesting that the District

might possess a restitutionary interest in some portion of the proceeds from the permit-fees refunds. See Skepton v. Borough of Wilson, 562 Pa. 344, 352 n.4, 755 A.2d 1267, 1272 n.4 (2000).

Here, however, in the litigation that ensued, the District did not go forward with evidence to the effect that the understanding under the lump-sum construction contracts resulting from an open bidding process was not merely to secure the best available fixed price for the construction of a new school building, while allocating the risks associated with increased expenses, as well as benefits associated with cost savings, to the contractors. Nor did the District adduce factual support for the proposition that it was unaware of the potential that permitting fees might be challenged as excessive. In the absence of proofs along such lines, I conclude that the District did not satisfy its burden relative to the unjust enrichment claim.

Mr. Justice Baer joins this concurring opinion.