

STATE OF MAINE  
CUMBERLAND, ss.

SUPERIOR COURT  
BUSINESS AND CONSUMER COURT  
LOCATION: PORTLAND  
DOCKET NO. BCD-CV-2018-02✓

CHARLES R. MAPLES, et al., )  
)  
Plaintiffs/ Counterclaim- )  
Defendants, )  
)  
v. )  
)  
EVAN CONTORAKES, et al., )  
)  
Defendants/ )  
Counterclaim- Plaintiffs. )

ORDER ON COUNTERCLAIM-  
DEFENDANTS' MOTION TO DISMISS  
COUNTS II AND III OF THE  
COUNTERCLAIM.

This matter comes before the Court on Plaintiffs'/ Counterclaim-Defendants' Charles R. Maples ("Maples") and Kathy S. Brown's ("Brown") (collectively "Counterclaim-Defendants") motion to dismiss Count II and Count III of Defendants'/ Counterclaim-Plaintiffs' Compass Harbor Village, LLC and Compass Harbor Village Condominium Association's (collectively "Compass") Counterclaim pursuant to M.R. Civ. P. 12(b)(6). Compass opposes the motion. Pursuant to the authority granted it by M.R. Civ. P. 7(b)(7), the Court exercised its discretion and will rule on the motion without holding oral argument.

**PROCEDURAL POSTURE AND FACTUAL BACKGROUND**

Compass Harbor Village, LLC is the developer and declarant of the Compass Harbor Village Condominiums ("Compass Harbor") in Bar Harbor, Maine. (Pl's Compl. ¶ 5.) The Counterclaim-Defendants are the owners of Compass Harbor condominium units. (Pl's Compl. ¶¶ 1-2.) Compass is responsible for the management of the condominium units, including but not limited to: payment of on-going bills, regular maintenance, and collection of dues from the owners of condominiums. (Pl's Compl. ¶ 30.) In their Complaint, Maples and Brown assert eleven causes

of action against Compass arising out of the latter's alleged mismanagement of Compass Harbor, including a count for breach of contract. (Pl's Compl. ¶¶ 37-40.) In its answer to the Complaint, Compass responded with a Counterclaim against the Counterclaim-Defendants based on their alleged failure to pay association dues and other fees. The Counterclaim asserts three causes of action: breach of contract (Count I), unjust enrichment (Count II), and quantum meruit (Count III).

### STANDARD OF REVIEW

In reviewing a motion to dismiss under Rule 12(b)(6), courts "consider the facts in the complaint as if they were admitted." *Bonney v. Stephens Mem. Hosp.*, 2011 ME 46, ¶ 16.17 A.3d 123. The complaint is viewed "in the light most favorable to the plaintiff to determine whether it sets forth elements of a cause of action or alleges facts that would entitle the plaintiff to relief pursuant to some legal theory." *Id.* (quoting *Saunders v. Tisher*, 2006 ME 94, ¶ 8, 902 A.2d 830). "Dismissal is warranted when it appears beyond doubt that the plaintiff is not entitled to relief under any set of facts that he might prove in support of his claim." *Id.*

### DISCUSSION

The issue on this motion to dismiss is whether the purported acknowledgement by both parties that a binding contract exists between the parties precludes Compass from pleading claims for unjust enrichment and quantum meruit.<sup>1</sup> The Counterclaim-Defendants argue that because recovery for unjust enrichment is limited to those situations in which "there is no contractual relationship," the apparent mutual acknowledgement of the existence of a valid contract precludes such a claim. *See, e.g., Lynch v. Ouellette*, 670 A.2d 948 (Me. 1996); *see also Hodgkins v. New Eng. Tel. Co.*, 82 F.3d 1226, 1231 (1st Cir. 1996). Compass argues that its Counterclaim merely permissibly pleads alternative theories of relief and, furthermore, that the existence of a contract

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<sup>1</sup> For purposes of deciding the instant motion, the analysis is analogous for unjust enrichment and quantum meruit claims.

does not preclude claims for unjust enrichment that arise out of issues outside the subject matter of the contract.

I. MAINE LAW ALLOWS PLEADING IN THE ALTERNATIVE EVEN WHERE A PARTY ALLEGES THE EXISTENCE OF A BINDING CONTRACT

Maine law has long recognized that a plaintiff may allege the existence of a contract and seek recovery under an unjust enrichment theory in the same pleading. Under the Maine Rules of Civil Procedure, a party is specifically permitted to plead in the alternative. M.R. Civ. P. 8(e). Acknowledging a change under Maine law, the Reporter's Note of 1959 provides: "Rule 8(e)(2) permits pleading in the alternative or in hypothetical form. This is a change in Maine law. *Macurda v. Lewiston Journal Co.*, 104 Me. 554, 72 A.490 (1908)." M.R. Civ. P. 8(e) reporter's notes.

While our Law Court has recognized "that the existence of a contract precludes recovery on a theory of unjust enrichment because unjust enrichment describes recovery . . . when there is no contractual relationship," *June Roberts Agency, Inc. v. Venture Properties, Inc.*, 676 A.2d 46, 49 n. 1 (Me.1996), a party "is not precluded from pleading both theories because a factfinder may find that no contract exists and may still award damages on a theory of unjust enrichment." *Id.*; see also *Bates v. Anderson*, 614 A.2d 551, 552 (Me.1992).

Furthermore, Counterclaim-Defendants' reliance on *Lynch* is misplaced. In *GMAC Comm'l Mortg. Corp. v. Gleichman*, the United States District Court for the District of Maine distinguished *Lynch*, explaining that that case merely held that a plaintiff is precluded from any recovery under a theory of unjust enrichment where the trial court had already determined that a contractual relationship existed between the parties. 84 F. Supp. 2d 127, 137 (D. Me. 1999). Here, as in *GMAC Comm'l Mortg. Corp* and unlike in *Lynch*, no such express finding has been made. *Id.* The alleged contract was not attached to any pleading and is thus not before the Court. In the

absence of a judicial determination that a valid contract governs the dispute between the parties, Compass cannot be foreclosed from seeking relief under an unjust enrichment theory.

II. CLAIMS FOR UNJUST ENRICHMENT ARE ALLOWED WHERE THE CLAIM ARISES OUT OF SUBJECT MATTER NOT COVERED BY THE CONTRACT

The United States District Court for the District of Maine has held that a party is not precluded from bringing a claim for unjust enrichment where the claim arises out of subject matter not covered by the contract. *See Fed. Ins. Co. v. Maine Yankee Atomic Power Co.*, 183 F. Supp. 2d 76, 84 (D. Me. 2001) (“It is reasonable to understand [the Law Court’s pronouncement that that the existence of a contract precludes recovery on a theory of unjust enrichment] . . . as stating that a contract *covering the same subject matter* forecloses an unjust enrichment claim.”) (emphasis added). Compass suggests that this may apply to its claims against the Counterclaim-Defendants, arguing that “as discovery continues evidence will show that Compass provided benefits to [Counterclaim-Defendants] that would be outside any contract and [Counterclaim-Defendants] are obligated to repay to Compass for those benefits that the [Counterclaim-Defendants] should not be allowed to keep without payment.” (Def’s Opp. Mot. Dismiss 5.)

The Court agrees with the reasoning of *Fed. Ins. Co.* In Counterclaim Counts II and III, Compass claims that it has conferred a benefit on the Counterclaim-Defendants for which it is entitled to compensation. (Def’s Countercl. ¶¶ 17-20, 22-24.) At this stage of the proceedings, the Court cannot determine whether the claims stated in those counts fall within the subject matter of the alleged contract.

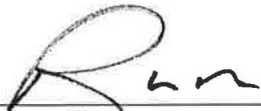
CONCLUSION

By the reason of the foregoing it is hereby ORDERED:

That the Plaintiffs’ motion to dismiss Counts II and III of the Counterclaim is DENIED.

The Clerk is requested to enter this Order on the docket for this case by incorporating it by reference pursuant to Maine Rule of Civil Procedure 79(a).

Dated: 4/13/18

  
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Richard Mulhern,  
Judge, Business and Consumer Court

Entered on the Docket: 4-13-18  
Copies sent via Mail  Electronically