STATE OF MICHIGAN

COURT OF APPEALS

ABC PAVING COMPANY, Plaintiff-Appellant,	UNPUBLISHED October 2, 2008
v	No. 276703 Washtenaw Circuit Court
WASHTENAW COUNTY ROAD COMMISSION and YPSILANTI COMMUNITY UTILITIES AUTHORITY, Defendants-Appellees.	LC No. 05-001229-CK

Before: Saad, C.J., and Fort Hood and Borrello, JJ.

PER CURIAM.

Plaintiff, ABC Paving Company, appeals the trial court's grant of summary disposition to defendants, Washtenaw County Road Commission (WCRC) and Ypsilanti Community Utilities Authority (YCUA). For the reasons set forth below, we affirm.

I. Facts

In 2002, the WCRC advertised for bids to replace a water main and 1,283 meters of a three-lane road in Ypsilanti. The water main replacement was funded by the YCUA under a separate contract with the WCRC. ABC submitted the low bid for the project and agreed to perform the work for $1,591,545. On July 10, 2002, ABC entered into a contract with the WCRC, which specifically incorporated the Michigan Department of Transportation 1996 Standard Specifications for Construction (MDOT Standard Specifications).

ABC completed the job 40 days late on November 15, 2002. According to ABC, WCRC and/or YCUA refused to pay approximately $370,000 in extra expenses ABC incurred during construction. Accordingly, on November 14, 2005, ABC filed this action for breach of contract and unjust enrichment against WCRC and YCUA. On January 5, 2007, WCRC filed a motion for summary disposition under MCR 2.116(C)(8) and (10). WCRC argued that it paid for some of the "extras" claimed by ABC, but that the additional expenses ABC claimed in the lawsuit are expressly prohibited under the contract itself or pursuant to the MDOT Standard Specifications. YCUA filed a motion for summary disposition on January 10, 2007, and argued that it cannot be held liable for breach of contract because it was not a party to the construction agreement between ABC and WCRC and ABC cannot show that YCUA was a joint venture partner with WCRC or that they had an agency relationship. YCUA further asserted that ABC's claim for

unjust enrichment must fail because an express contract between ABC and WCRC covered the same subject matter.

In response, ABC conceded that the trial court should grant summary disposition to WCRC on ABC's unjust enrichment claim and that the court should grant summary disposition to YCUA on ABC's breach of contract claim. However, ABC maintained that WCRC breached the contract by failing to pay numerous extra expenses. ABC further argued that YCUA was unjustly enriched because ABC performed the exploratory excavations at YCUA's direction, but YCUA never reimbursed ABC for the work.

Following oral argument, the trial court granted summary disposition to both WCRC and YCUA. In a written opinion and order, the judge ruled that each of the expenses cited by ABC is prohibited by the unambiguous terms of the contract and the MDOT Standard Specifications. He further ruled that YCUA cannot be liable under an unjust enrichment theory because the work was covered under an express contract between ABC and WCRC.

II. Analysis

A. Standards of Review

ABC contends that the trial court erred when it granted summary disposition to WCRC on ABC's breach of contract claim. "A grant or denial of summary disposition is reviewed de novo to determine if the moving party is entitled to judgment as a matter of law." *Patrick v Shaw*, 275 Mich App 201, 204; 739 NW2d 365 (2007).[1] Both parties rely on the interpretation of the construction contract between ABC and WCRC. As our Supreme Court recently explained in *In re Smith Trust*, 480 Mich 19, 24; 745 NW2d 754 (2008):

> In interpreting a contract, it is a court's obligation to determine the intent of the parties by examining the language of the contract according to its plain and ordinary meaning. If the contractual language is unambiguous, courts must interpret and enforce the contract as written because an unambiguous contract reflects the parties' intent as a matter of law. However, if the contractual

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[1] The trial court granted summary disposition under MCR 2.116(C)(10). Our Supreme Court explained in *Maiden, supra* at :

> A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4). *Quinto v Cross & Peters Co*, 451 Mich 358; 547 NW2d 314 (1996).

language is ambiguous, extrinsic evidence can be presented to determine the intent of the parties.

B. Exploratory Excavations

ABC asserts that the trial court erred because ABC completed more than 100 exploratory excavations in order to avoid damaging individual homeowners' utility lines during construction and that WCRC wrongly refused to provide compensation for the work. In response, WCRC points out that the contract limits the number of exploratory excavations to 15 to locate the main sanitary sewer line and it does not state that further exploratory excavations are compensable.

WCRC is correct that the contract provides for 15 exploratory excavations to "verify the condition, size, material and alignment" of the sewer pipe. The contract does not contemplate that ABC would perform more exploratory excavations in order to locate individual sewer tie-ins, let alone 100 more exploratory excavations to do so. ABC's primary argument in the trial court was that a YCUA representative, Scott Martin, directed ABC to perform the additional exploratory excavations. WCRC countered that YCUA had no authority to approve additional or contrary terms for a contract between WCRC and ABC. WCRC pointed to a letter dated March 14, 2003, in which a WCRC representative stated that, at a utility meeting on July 16, 2002, Scott Martin said he believed exploratory excavations would be covered under the contract, but a WCRC representative made clear that the contract was limited to the 15 locations labeled on the main sewer line. On appeal, ABC continues to assert that YCUA authorized the additional exploratory excavations, but ABC primarily relies on an alternative argument it made in the trial court—that, although the contract states that ABC had to have prior written approval for additional work under the contract, WCRC waived this requirement by regularly approving and paying for extras after the work was completed. This was one basis for the trial court's ruling and ABC contends that its decision must be reversed because this is an issue of fact for the jury.

Specifically, the trial court ruled that the contract limits the number of exploratory excavations to 15 and the MDOT Standard Specifications, as incorporated by the contract, provide that modifications of the contract must be made by a WCRC engineer, either Michael Bernbeck or Roy Townsend. See MDOT Standard Specifications, § 103.02. The court observed that YCUA or its representatives are not authorized under the contract to approve work changes by ABC. The court further noted that change orders must be in writing and there is no evidence of any written approval for the additional exploratory excavations.

We hold that the trial court correctly ruled that the MDOT Standard Specifications require that construction changes, especially significant changes, must be approved by WCRC's engineer, either Bernbeck or Townsend. ABC presented no evidence that either engineer approved ABC's additional exploratory excavations, in writing or otherwise. Because the contract is clear and unambiguous, we need not consider any extrinsic evidence with regard to whether WCRC had a pattern and practice of approving change orders after ABC completed the work. However, even if ABC did not receive written authorization for other extras, approval by a WCRC engineer was nonetheless required, either before or after the completed work. A WCRC engineer did not approve the additional work or additional cost of the exploratory excavations before or after ABC completed them. Because approval by a WCRC engineer was required under the plain terms of the contract, ABC is not entitled to reimbursement, absent some other contractual basis for reimbursement. See MDOT Standard Specifications, §§103.02

and 103.03. Further, though ABC may have decided to complete certain work and seek payment afterwards, by choosing not to obtain prior approval for the additional work, including the exploratory excavations, ABC took the risk that it may not be reimbursed.

Furthermore, as WCRC asserts, ABC assumed responsibility under the contract to prevent damage to any utility lines. Though ABC contends that it merely agreed not to damage the utilities through its own negligence, the contract does not specify that ABC must simply avoid negligent conduct. Rather, the contract affirmatively states that ABC must protect utilities. Page 18 of the contract states that "[ABC] shall be responsible to contact any utilities that may be affected by this project and will be responsible for all costs as a result of damages to any utility by [ABC's] equipment." Further, the MDOT Standard Specifications, §107.12, provides that "[ABC] shall not begin work until arrangements are made for the protection of adjacent utilities, or other property where damage might result in considerable expenses, loss, or inconvenience." Moreover, though ABC claims it would have no way of knowing where the individual tie-ins were located, page two of the contract states:

> The submissions of a bid shall be considered prima facie evidence that the bidder has made a thorough examination of the plans, specifications and work sites an [sic] is satisfied as to the conditions to be encountered in performing the work. No allowance or extra consideration on behalf of the Contractor will subsequently be allowed by reason of error or oversight on the part of the Contractor.

The contract explicitly sets forth the nature, extent, and number of exploratory excavations for which WCRC would provide payment. ABC agreed to perform the construction with the understanding that it would arrange for the protection of the utilities. It appears that ABC concluded that, in order to do so, it needed to specifically locate individual utility tie-ins. However, ABC took these actions to protect its own interests, not to fulfill its construction obligation to WCRC under the contract. For these reasons, the trial court correctly granted summary disposition to WCRC on this issue and ABC is not entitled to additional compensation for the exploratory excavations.

C. Manhole Structures

ABC claims the trial court erred when it ruled that WCRC need not pay additional costs ABC incurred to raise and lower various manhole structures during construction. WCRC argued, and the trial court agreed that, as set forth on the contract bid form, pp 10-11, the adjustment of manhole structures is on the itemized bid list and is not an "extra" that may be added onto the contract price. As WCRC also notes, the plans provide:

> DRAINAGE STRUCTURES, MANHOLES, CATCH BASIS, GATE WELLS & VALVE BOXES WHICH MAY NEED TO BE ADJUSTED OR RECONSTRUCTED, SHALL ONLY BE PAID FOR ONCE AS EITHER ADJUST OR ADDL. DEPTH OF ADJUST, AT THE CONTRACT UNIT PRICE, REGARDLESS OF HOW MANY TIME THE INDIVIDUAL STRUCTURE IS ADJUSTED.

Page 8 of the contract also states that, by accepting the job, ABC agreed to complete the work "in strict accordance with the plans . . . ." Accordingly, under the plain language of the contract, which incorporates the project plans, ABC is entitled to only one payment for raising and lowering the manhole structures.

ABC appears to accept that the contract and plans provide that WCRC will only pay for manhole adjustments once. However, ABC takes the position that it would not have had to adjust the manhole structures as frequently if the project progressed correctly. According to ABC, because WCRC changed the project schedule and forced ABC to complete its work in one or two block increments instead of in two long sections, ABC is entitled to reimbursement for the additional work on the manhole structures. ABC bases its argument on page 26 of the contract which provides, in relevant part:

> [ABC] will be limited to the amount of roadway which can be opened and disturbed at any one time. The subgrade is to be constructed, aggregate base material placed and compacted prior to opening the next section of roadway. Traffic may be narrowed on the compacted aggregate base section to minimize contamination and damage to aggregate base material.
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> Work shall progress from the west end of the project and shall be limited to the following sequence unless otherwise approved by the Engineer:
>
> - Nevada to McCartney Rd.
> - McCartney Rd. to Wiard Rd.
>
> Proposed roadway construction shall not begin until the proposed water main below the construction has been tested and accepted.

ABC asserts that the above provision indicates that the project will progress in two large sections, from Nevada to McCartney, then from McCartney to Wiard. ABC complains that, instead of closing the roads to allow ABC to work in two sections, WCRC decided to keep all traffic flowing on the roads and this forced ABC to work in short, one block increments, which necessitated the repeated raising and lowering of the manholes.

The trial court disagreed with ABC's interpretation of the contract. The court observed that ABC's argument ignores the following provision on page 25 of the contract:

> Traffic shall be maintained according to Sections 103.05, 103.06 and 812 of the Michigan Department of Transportation 1996 Standard Specifications for Construction, including any Supplemental Specifications, and as specified here.

The MDOT Standard Specifications, § 103.05, provides as follows:

> Roads and bridges will remain open to traffic unless full or partial closures are provided for in the contract. No road, bridge or section shall be closed to traffic unless directed by the Engineer.

ABC asserts that the contract calls for partial closures and that, therefore, ABC submitted its bid with the understanding that the roads would otherwise be closed. Specifically, ABC notes that page 26 of the contract states that "[p]ublic bus access, including school buses, shall be maintained at all times." According to ABC, this provision contemplates that, except for buses, the street would be closed to normal traffic. ABC argues that, if the parties intended the roads to remain open to all traffic, the contract would not need to specify that bus traffic must be maintained.

We are not persuaded by ABC's reading of the contract. The provision that specifies that ABC must maintain public bus access does not constitute a "full or partial closure" of the road for purposes of the MDOT Standard Specifications, § 103.05. Rather, the provision merely clarifies that bus routes must remain open, regardless of whether there are other full or partial road closures. The contract sets forth no full or partial road closures and, therefore, under § 103.05, roads were required to remain open to traffic unless otherwise directed by a WCRC engineer. We also agree with WCRC that the contract's reference to the construction progression—from Nevada to McCartney Road and from McCartney Road to Wiard Road—states the *sequence* of the work, but in no way suggests that the roads would be entirely closed so that ABC could complete the work in two, undisturbed stages. Indeed, in the preceding paragraph, the contract specifically states that ABC would "be limited to the amount of roadway which can be opened and disturbed at any one time," and indicates that "[t]raffic may be narrowed" during the work. ABC's interpretation of the contract ignores these provisions, which clearly contemplate that the road will remain at least partially open to traffic.

ABC also fails to explain how the decision to keep the roads open to all traffic legally entitles it to compensation when the plans plainly state that WCRC will pay for manhole adjustments only once. In other words, were we to agree with ABC that WCRC altered the progression of construction, ABC makes no effort to explain why it is entitled to additional payment for the manhole adjustments under a breach of contract theory. In any case, the plain language of the contract, including the incorporated plans and MDOT Standard Specifications, vitiates ABC's argument and supports the trial court's decision to grant summary disposition to WCRC on this issue.

D. Surface Removal

ABC complains that it contracted with WCRC to remove 13,700 square meters of "pavement," but WCRC paid ABC for "soil" or "dirt" removal for material that was less than 130 mm thick. WCRC maintains that it paid ABC the appropriate rates under the MDOT Standard Specifications for removing material that was more than 130 mm thick and less than 130 mm thick. The trial court agreed with WCRC and ruled that ABC is not entitled to additional compensation at "pavement" removal rates.

The parties agree that under the MDOT Standard Specifications, the payment rate for surface removal depends upon the thickness of the material. They also agree that removal of material under 130 mm thick is paid at a lower rate than thicker surfaces. ABC also does not dispute that WCRC paid it for areas over 130 mm at the pavement rate and that WCRC paid it for the removal of material under 130 mm at the "dirt" or "soil" rate. In other words, ABC concedes that WCRC properly paid for the work ABC actually performed. ABC argues,

however, that WCRC should pay the "pavement" removal rates for all of ABC's removal work because the contract indicates that the job required 13,700 square meters of "pavement" removal.

We hold that the plain language of the contract precludes ABC's claim for damages. Page eight of the contract explicitly states that "the quantities shown [in the contract, plans, and specifications] are approximate only and are subject to either increase or decrease." Thus, the reference to 13,700 square meters of "pavement" is not a description of the exact amount of pavement to be removed. The MDOT Standard Specifications, as incorporated into the contract, further provide:

> The quantities appearing in the listing of Bid Items are estimated and will be used in the comparison of proposals. Payment to the Contractor will be for the actual quantities of work performed and accepted or materials furnished according to the contract. The quantities of work and materials as provided in the contract may be increased, decreased, or deleted, as provided herein. [§ 102.03.]

The above provisions make clear that the parties intended that ABC would be paid for the work completed based on actual site conditions, rather than based on estimates or preliminary quotes in the paperwork.

ABC contends that WCRC knew that much of the surface area was thinner than 130 mm before it represented that 13,700 square meters of thicker "pavement" removal would be required. This evidence, however, is not relevant in light of the unequivocal contract terms and ABC's acknowledgement that WCRC properly paid it for the work it actually performed. Simply because ABC hoped for a more lucrative job does not entitle ABC to damages. ABC also maintains that removal of material that is under 130 mm thick can be just as burdensome as thicker material because, even below 130 mm, the material may be four or five inches thick. This argument, however, does not alter the fact that the MDOT Standard Specifications explicitly provide that removal or surface material under the 130 mm cutoff is paid as removal of underlying material, not as pavement. Because the MDOT Standard Specifications were plainly incorporated into the contract, and because ABC agreed to those terms, the trial court correctly granted summary disposition to WCRC on this issue.

E. Storm Sewer Conflicts

In the trial court, ABC argued that WCRC should compensate it because YCUA failed to timely shut down the water main to allow ABC to perform some of its construction work. ABC also asserted that WCRC misrepresented job site conditions and this caused ABC to encounter storm sewer conflicts during construction. Importantly, ABC seeks compensation for "labor inefficiencies" because its workers had "to 'start and stop' its services more frequently than anticipated . . . ." According to ABC, "labor inefficiencies" means that "more manpower hours are required to complete the same amount of estimated work." WCRC argued that it did not cause any delay related to the water main shut down and it did not misrepresent the job site conditions. WCRC further argued that "labor inefficiencies" are not recoverable under the contract.

We reject ABC's argument that WCRC should pay damages for YCUA's alleged failure to timely shut down the water main because ABC has provided no legal support for its claim. ABC's argument on this issue is as follows:

> [S]ince the contract between ABC and WCRC is for both the water main aspect of the work as well as the road construction, ABC asserts that WCRC is still obligated for [the delayed water main shut down] costs notwithstanding those costs arose due to YCUA's failure to perform. Indeed, WCRC would have a third party claim against YCUA under their contract.

Later, ABC asserts that the water main shut down "was outside of ABC's control but within WCRC's control under its separate contract with YCUA."

As our Supreme Court explained in *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998):

> [A] mere statement without authority is insufficient to bring an issue before this Court. It is not sufficient for a party "simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

ABC does not explain its theory that WCRC should be held responsible for job delays allegedly caused by YCUA's failure to timely shut down the water main, nor does it cite any supporting contract language or legal authority. Because ABC did not develop this argument or cite any legal authority, we deem this issue abandoned. *DeGeorge v Warheit*, 276 Mich App 587, 595; 741 NW2d 384 (2007).

We hold that ABC has also failed to properly develop or support its argument that WCRC owes damages for alleged labor inefficiencies because ABC encountered storm sewer conflicts during construction. ABC has not explained or presented evidence to establish that WCRC caused these delays or otherwise breached the contract.[2] In any case, the trial court correctly rejected ABC's argument because the contract does not permit ABC to recover for "labor inefficiencies." WCRC asserts that it paid ABC for labor, equipment, and material costs because of the delays and ABC does not dispute this. WCRC also maintains that increased costs to the contractor do not include "labor inefficiencies" under the contract. Section 109.03 of the MDOT Standard Specifications provides that the WCRC will pay for a documented increase in labor, material or equipment costs if a contractor is unreasonably delayed during the construction

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[2] ABC asserts that it took it 50 percent longer to complete the entire project because it was not staged in two parts and this resulted in "extended overhead" or "office overhead" costs. Again, for the reasons set forth above, ABC's claim has no factual or legal support and the trial court correctly granted summary disposition to WCRC on this claim.

project. The specifications further state under § 109.02 and § 109.03(B)(1) that the department will not pay for any other cost increases. Thus, if there is an unreasonable delay in construction and the price of labor, materials, or equipment increases during the delay, WCRC agreed under the contract to pay the difference. However, the specifications limit ABC's recovery to those increased costs.

ABC does not suggest that WCRC owes it more money for labor, material, or equipment costs that increased during construction delays. And ABC does not indicate which section of the contract states that "labor inefficiencies" are compensable. Instead, ABC relies on *Holloway Const Co v Michigan*, 44 Mich App 508; 205 NW2d 575 (1973) and *Bagwell Coatings, Inc v Middle South Energy*, 797 F2d 1298 (CA 5, 1986) for the proposition that "labor inefficiencies" are compensable if the party managing the job causes an unreasonable delay in construction through a breach of contract. In *Holloway*, the agreement stated that the contractor would have access to a "borrow pit" (a designated section of soil) close to the work site. When the contractor began construction, the borrow pit was not available and the contractor had to find and secure another pit, farther away from the work site. The Court concluded that the state breached the contract by failing to disclose that the borrow pit was unavailable and that this "created an entirely new contract nowhere within the concept of the parties at the time that the written instrument between them was executed." *Holloway, supra* at 526-527. In *Bagwell Coatings*, the contractor relied on the company's assurance that it would have no obstructions when it fireproofed steel beams at a nuclear station. *Bagwell Coatings, supra* at 1300. The circumstances changed substantially, however, and the contractor had to work around numerous fixtures and ducts. The Court noted that the promise to keep the area free from barriers "was a specific contract provision, unique to the contractual relationship between these parties." *Id*. at 1304. The Court also found that "[b]reach of this contractual provision to provide Bagwell unobstructed access to the structural steel is fully supported by convincing, undisputed evidence in the record." *Id*.

ABC points to no evidence that WCRC caused an unreasonable or significant delay on par with the facts of *Holloway* or *Bagwell Coatings* or even a delay that could amount to a breach of contract. Further, none of the cases cited by ABC contain a specific contract term that limits damages to increases in labor and material costs. Accordingly, and because the contract specifically precludes further compensation for costs other than increased prices, ABC's claims for damages is without merit.[3]

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[3] As noted, ABC complains that it sustained damages because WCRC decided to keep the roads open for traffic. ABC contends that it sustained "labor inefficiencies" and costs because the roads remained open. For the reasons set forth in Section III, ABC's claim is without merit. The contract does not state that the project would be completed in two sections and, instead, it explicitly states that traffic would remain open unless specific closures were set forth in the contract or as directed by a WCRC engineer. Further, "labor inefficiencies" are not recoverable under the contract for the reasons set forth above. Accordingly, we decline to grant relief to ABC on this issue.

F. Unjust Enrichment Claim

ABC complains that the trial court incorrectly granted summary disposition to YCUA. The trial court dismissed ABC's unjust enrichment claim against YCUA because there was an express contract between WCRC and ABC that covered the project and addressed the issue of exploratory excavations. The judge further observed that the contract provides that WCRC would administer the project and approval by a WCRC engineer was required for changes or additional work. As this Court explained in *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 193; 729 NW2d 898, 903 (2006):

> Whether a specific party has been unjustly enriched is generally a question of fact. See *Dumas v Auto Club Ins Ass'n*, 168 Mich App 619, 637; 425 NW2d 480 (1988), rev'd on other grounds 437 Mich 521; 473 NW2d 652 (1991); see also *Hayes-Albion Corp v Kuberski*, 421 Mich 170, 186; 364 NW2d 609 (1984). However, 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). Finally, we 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).

Unjust enrichment is the "(1) 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." *Barber v SMH (US), Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993).

> "If this is established, 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).] However, "a contract will be implied only if there is no express contract covering the same subject matter." *Id*. [*Fodale v Waste Management of Michigan, Inc*, 271 Mich App 11, 36; 718 NW2d 827, 841 (2006).]

YCUA and the trial court are correct that the contract between ABC and WCRC covers not only the issue of sewer replacement, but it also covers what exploratory excavations would be approved and reimbursed by WCRC. We also agree with YCUA that ABC failed to present evidence that ABC's dozens of exploratory excavations inured to the benefit of YCUA when the contract clearly states that ABC assumed responsibility to prevent damage to utility lines. As set forth above, ABC agreed to protect utility lines and §107.12 of the MDOT Standard Specifications provides that "[ABC] shall not begin work until arrangements are made for the protection of adjacent utilities, or other property where damage might result in considerable expenses, loss, or inconvenience." Had it failed to locate the tie-ins, ABC, not YCUA, would have been liable for its own damage to the utility lines, and ABC fails to articulate how YCUA actually benefited from ABC's additional exploratory excavations. For the same reason, ABC has failed to show how inequity would result if it is not reimbursed by YCUA; again, ABC assumed the responsibility to protect utilities and any steps it took to do so were for its own protection and benefit.

Thus, while ABC is correct that the contract between ABC and WCRC might not preclude a claim of unjust enrichment against YCUA under *Morris Pumps*, *supra* at 194-195,

ABC has nonetheless failed to establish its claim. ABC has not presented any evidence that YCUA unjustly received a benefit from the services provided under ABC's contract with WCRC and, therefore, the trial court correctly granted summary disposition to YCUA on this issue.

Affirmed.

/s/ Henry William Saad
/s/ Karen M. Fort Hood
/s/ Stephen L. Borrello