

[J-40-2005]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

GERTRUDE R. SEVAST	:	No. 180 MAP 2004
	:	
	:	Appeal from the Order of the Superior
v.	:	Court entered December 26, 2003, at No.
	:	393 EDA 2003, reversing the Order of the
	:	Court of Common Pleas of Lehigh County
JAMES KAKOURAS	:	entered on December 31, 2002, at No.
	:	2001-N-111.
	:	
APPEAL OF: GAIL SUNDAY, JAMES	:	841 A.2d 1062 (Pa. Super. Ct. 2004)
SUNDAY AND GLENN GUBICH,	:	
GARNISHEES	:	ARGUED: April 13, 2005

CONCURRING OPINION

MR. JUSTICE EAKIN

DECIDED: February 20, 2007

I agree with the majority's decision to vacate the Superior Court's order, as any claim for unjust enrichment under § 374 of the Restatement (Second) of Contracts would be barred by the applicable statute of limitations. While the parties have not contested whether such a claim is viable, current law provides a defaulting vendee is not entitled to recover partial payments where it failed to fulfill its contractual obligations, even if the non-defaulting vendor makes a profit by reason of the default. Kaufman Hotel & Restaurant Company v. Thomas, 190 A.2d 434 (Pa. 1963). Thus, the defaulting vendee cannot bring an unjust enrichment claim here; our court cannot enforce a claim which current law prohibits, simply because the parties believe it should exist. For an unjust enrichment claim to be viable here, this Court would have to overturn Kaufman Hotel.

Thus I write separately, and would vacate the Superior Court's order based on Kaufman Hotel without reaching the statute of limitations question.