

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC.

SUPERIOR COURT

(FILED: May 4, 2015)

ROADEPOT, LLC and
KEYSERTON, LLC,
Plaintiffs

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v.

C.A. No. KC-2010-0540

HOME DEPOT U.S.A., INC.,
Defendant

DECISION

GALLO, J. This matter came on for trial, Justice Bennett R. Gallo presiding, on March 30, 2015. Previously, this Court granted summary judgment in favor of the Defendant, Home Depot U.S.A., Inc. (Home Depot) as to the claims of the Plaintiffs, Roadepot, LLC and Keyserton, LLC (collectively, Roadepot), leaving only Home Depot’s counterclaim for reimbursement and Roadepot’s affirmative defenses for trial on March 30, 2015. Specifically, Home Depot seeks reimbursement from Roadepot for all payments it made toward the sewer Fast Track Assessment, so called, from 2005 through 2014. After consideration of the evidence presented at trial, this Court makes the following findings.

I

Facts

Home Depot entered into a lease agreement with Commerce Park Associates 3, LLC (Commerce Park) to lease some twelve acres of improved property in the Town of Coventry, Rhode Island (the Town). The lease between Home Depot and Commerce Park was executed in 2004; Commerce Park served as the landlord, and Home Depot was its tenant. In 2005,

Commerce Park sold the property to Roadepot.¹ Accordingly, Roadepot became Home Depot's landlord in 2005.

From October 29, 2005 through 2009, Home Depot paid to the Town all Fast Track Assessments owed on the property. In 2010, the parties filed mutual declaratory judgment actions, each seeking a declaration that the other is obligated to pay the Fast Track Assessment under the lease agreement. During the pendency of this litigation, Home Depot has continued to pay all Fast Track Assessments imposed in an amount totaling \$388,657.21. (Stipulation 1.) Additionally, penalties for late payments have been incurred from 2006 through 2013 in an amount of \$16,847.27. Id.

John Tascione, Home Depot's Director of Real Estate (Tascione), was the only witness to testify at trial. He testified that in October of 2005, Nicholas Cambio—principal of Commerce Park—wrote a letter to Home Depot explaining that he believed the Fast Track Assessment to be an excessive charge and that he intended to challenge its legality. (Ex. 2.) In the meantime, he instructed Home Depot not to pay the Fast Track Assessment as charged. Id. at 1-2. His letter attached a copy of the 2005 Fast Track Assessment bill from the Town, labeled "2005 Sewer Assessment Bill." Id. at 3. Consequently, Home Depot did make payments toward the Fast Track Assessment, but indicated to the Town that its payments were being made "under protest and as a measure of good faith," specifically because "the property owner . . . notified [Home Depot] that the assessment is being challenged due to [its] excessiveness." (Ex. 4.)

Home Depot continued to pay the Fast Track Assessment without objection and without contacting Roadepot in 2005, 2006, 2007, and 2008. Tascione testified that a third party vendor made the payments to the Town on Home Depot's behalf and that the vendor mistakenly

¹ Roadepot took a 96% interest in the property, leaving a 4% interest for Keyserton, LLC. Keyserton, LLC has no role in the management of the property at issue.

believed the Fast Track Assessment bills were bills for sewer usage, an expense Home Depot is obligated to pay under the lease. On September 17, 2009, shortly before the 2009 Fast Track Assessment payment became due, Home Depot's property tax accountant, Janet Murray (Murray), faxed a copy of the 2009 Sewer Assessment Bill to Roadepot. (Ex. 6.) The fax cover sheet stated that based on Murray's understanding of the lease, "this bill is [Roadepot's] responsibility to pay." Id. at 1. Tascione verified that Murray's September 17, 2009 fax was the first time that Home Depot gave written notice to Roadepot of its objection to paying the Fast Track Assessment. In response to Murray's fax, counsel for Roadepot² wrote a letter to Home Depot on October 20, 2009, in essence asserting that Home Depot, as the tenant, is liable for the Fast Track Assessment. (Ex. 7.) The parties failed to come to an agreement regarding liability, and ultimately, this suit was commenced.

Nevertheless, Home Depot proceeded to make Fast Track Assessment payments in 2009 and in each subsequent year through 2014. (Stipulation 1.) When asked why Home Depot continued to pay the Fast Track Assessment, despite believing it was Roadepot's responsibility and after having communicated that belief to Roadepot directly, Tascione explained that nonpayment could result in liens being placed on the property, could be considered a breach of the lease agreement with Roadepot, or both. Given the adverse potential consequences of nonpayment, Home Depot chose to pay the Fast Track Assessment and to seek reimbursement by way of litigation (as opposed to simply refusing to pay).

² At the time, Roadepot was represented by different counsel.

II

Standard of Review

In a nonjury case, it is the duty of this Court to “find the facts specially and state separately its conclusions of law thereon[.]” Super. R. Civ. P. 52(a). Accordingly, the trial justice “sits as a trier of fact as well as of law” and therefore “weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences.” Parella v. Montalbano, 899 A.2d 1226, 1239 (R.I. 2006) (citing Hood v. Hawkins, 478 A.2d 181, 184 (R.I. 1984)). A “trial justice’s analysis of the evidence and findings in the bench trial context need not be exhaustive[.]” so long as “the decision reasonably indicates that the trial justice exercised his or her independent judgment in passing on the weight of the testimony and the credibility of the witnesses[.]” JPL Livery Servs., Inc. v. R.I. Dep’t of Admin., 88 A.3d 1134, 1141 (R.I. 2014) (quoting Notarantonio v. Notarantonio, 941 A.2d 138, 144-45 (R.I. 2008)) (internal bracketing omitted).

III

Analysis

A

Payments Made Between 2005 and September 17, 2009

The voluntary payment doctrine “bars recovery of payments voluntarily made with full knowledge of the facts.” Cappalli v. BJ’s Wholesale Club, Inc., 904 F. Supp. 2d 184, 194-95 (D.R.I. 2012) (quoting Solomon v. Bell Atl. Corp. 9 A.D.3d 49, 55 (N.Y. App. Div. 2004)); see Whipple v. Wales, 47 R.I. 487, 134 A. 22, 24 (1926). From a policy standpoint, the purpose of the voluntary payment doctrine is to promote stability in transactions and to “allow[] entities that receive payment . . . to rely upon these funds and to use them unfettered in future activities”

without fear of a claim for reimbursement by the payor. Putnam v. Time Warner Cable of Se. Wisconsin, Ltd. P'ship, 649 N.W.2d 626, 633 (Wis. 2002).

Rhode Island law has only scarcely addressed the voluntary payment doctrine, but when it has, the applicability of the doctrine depends on whether the voluntary payment at issue was made under a mistake of law or fact. Nelson v. Swenson, 46 R.I. 26, 28, 124 A. 468, 468-69 (1924) (“a voluntary payment made under a mistake or in ignorance of the law, but with full knowledge of all the facts . . . cannot be recovered back”); Cappalli, 904 F. Supp. 2d at 194-95 (stating that the voluntary payment doctrine does not bar recovery of payments made under a mistake of fact, unless the payor has “negligently fail[ed] to learn the facts” underlying a payment).

However, more courts and contemporary authorities have called for and employed a different analysis and practical application of the voluntary payment doctrine. Specifically, the doctrine has been increasingly analyzed in tandem with the doctrine of unjust enrichment.³ Restatement (Third) Restitution and Unjust Enrichment permits a party who has mistakenly performed the obligation of another to recover from the true obligor “to the extent of the benefit mistakenly conferred[.]” *regardless of the nature of the mistake*. Restatement (Third) Restitution and Unjust Enrichment § 7 (2011). The Restatement specifically rejects the distinction between mistakes of fact and mistakes of law, explaining that the difference is “frequently impossible to distinguish” and “has no relevance” in analyzing an unjust enrichment claim. Restatement (Third) Restitution and Unjust Enrichment § 5 cmt. g. Rather, the focus is simply whether a benefit has been unjustly conferred: where there is a contract that “itself defines the rights of the parties,” a mistaken payment by one of the parties “involves the unjust enrichment of the payee

³ For a more extensive discussion, see Colin E. Flora, Practitioner’s Guide to the Voluntary Payment Doctrine, 37 S. Ill. U.L.J. 91 (2012).

and unjust impoverishment of the payor[,]” and the nature of the mistake—as a general rule—is irrelevant. 7 Corbin on Contracts § 28.28 at 332; accord Restatement (Third) Restitution and Unjust Enrichment § 5 cmt. f (“[a]s a general rule, neither the claimant’s level of care [nor] the reasonableness of the claimant’s conduct is relevant to the viability of a claim in restitution” because “the primary function of restitution for benefits conferred by mistake is to rectify the consequences of error and inadvertence”).

In order to give rise to a claim of unjust enrichment under the Restatement, the claimant’s performance must have been induced by “invalidating mistake.” Restatement (Third) Restitution and Unjust Enrichment § 5. An invalidating mistake—whether of law or fact—exists when “the transaction in question would not have taken place” but for the invalidating mistake and when the “claimant does not bear the risk of mistake.”⁴ Id. at § 5(2). “A claimant does not bear the risk of a mistake merely because the mistake results from the claimant’s negligence.” Id. at § 5(4).

This Court does not find the voluntary payment doctrine to be applicable to the case at bar. Here, Home Depot made a payment to a third party, the Town, in satisfaction of Roadepot’s obligation to the Town; importantly, Home Depot does not seek reimbursement from the Town, but from Roadepot. To allow Home Depot to recover the amount of the Fast Track Assessment payments from Roadepot would not upset the transactions made with the Town, and as such,

⁴ A claimant bears the risk of mistake if any of the following circumstances are met: “(a) the risk is allocated to the claimant by agreement of the parties; (b) the claimant has consciously assumed the risk by deciding to act in the face of a recognized uncertainty; or (c) allocation to the claimant of the risk in question accords with the common understanding of the transaction concerned.” Restatement (Third) Restitution and Unjust Enrichment § 5(3). Here, there is no evidence before this Court that supports a finding that Home Depot bears the risk of mistake in this case: there is no agreement to that effect, there is no evidence that Home Depot recognized any uncertainty with respect to the Fast Track Assessment payments prior to September 17, 2009, and this Court finds no basis to assign the risk of mistake to Home Depot, the tenant, under these circumstances. See id.

would not undermine the voluntary payment doctrine's policy of promoting stability and reliability in transactions. See Putnam, 649 N.W.2d at 633. Furthermore, the cases that Roadepot cites in support of its argument that the voluntary payment doctrine is applicable here are readily distinguishable from the instant circumstances. See Whipple, 47 R.I. 487, 134 A. at 24 (plaintiff who paid court costs of her co-defendants in a partition action, voluntarily and without being asked, could not recover); see also Nelson, 46 R.I. at 28, 124 A. at 468-69 (plaintiff could not recover payment made to defendant under a mistake of law because plaintiff's payment had already been distributed to a third party and because recovery would impose an undue hardship on defendant).

Instead, based upon the evidence presented at trial, the Restatement view best addresses the issues here. This Court is persuaded that from 2005 up until September 17, 2009, Home Depot paid the Fast Track Assessment, without protest, under the mistaken belief that it was responsible for the payments under the lease agreement. Home Depot's mistake clearly induced its payments to the Town, and there is no evidence that Home Depot bears the risk of mistake in this context. See Restatement (Third) Restitution and Unjust Enrichment §§ 5(3), 5(4); see also supra n.2. It was previously determined that the clear language of the lease agreement holds Roadepot, as the landlord, responsible for payment of the Fast Track Assessment. (Ground Lease, Art. XXII, § 22.1(b).) In light of the clear contractual language "defin[ing] the rights of the parties," Home Depot has available to it a claim in restitution for the benefit it mistakenly conferred to Home Depot. 7 Corbin on Contracts § 28.28 at 332. To find otherwise would allow Roadepot to be unjustly enriched as a result of Home Depot's "error and inadvertence," which is precisely what the doctrine of restitution seeks to avoid. See, e.g., Restatement (Third) Restitution and Unjust Enrichment § 5 cmt. f. Consequently, Home Depot is entitled to

reimbursement with respect to Fast Track Assessment payments from 2005 to September 17, 2009. See id. at § 7.

B

Payments Made After September 17, 2009

Roadepot also contends that Home Depot acted as a volunteer when it protested payment to Roadepot via fax on September 17, 2009, but yet proceeded to make all Fast Track Assessment payments from 2009 to 2014. Home Depot responds by claiming that its payment of the Fast Track Assessment from 2009 and going forward was reasonable under the circumstances because it was justified in its attempt to avoid the adverse consequences of nonpayment.

In the event that one party to a contract “demands from the other a performance that is not in fact due by the terms of their agreement,” and if the party of whom the demand is made “reasonabl[y] “accede[s] to the demand rather than . . . insist[s] on an immediate test of the disputed obligation,” he or she may perform under protest and thus preserve a claim in restitution “to recover the value of the benefit conferred.” Restatement (Third) Restitution and Unjust Enrichment § 35. The comments to this section explain that the payment need not be made under duress or mistake, but rather that “a contracting party may be compelled by [the] circumstances to render a performance to which the other is not entitled.” Id. at cmt. a. That is, the Restatement recognizes that costs in resisting performance of a disputed obligation may be outweighed by “the risk of liability for nonperformance” and the inability to resolve the disputed claim before performance becomes due. Id.

The Supreme Court of Nevada has recognized a similar principle when faced with facts particularly analogous to those at bar. In carving out an exception to the voluntary payment

doctrine, the Court held that “one is not a volunteer . . . when he [or she] pays to save his [or her] interest in his [or her] property.” Nevada Ass’n Servs., Inc. v. Eighth Judicial Dist. Ct., 338 P.3d 1250, 1256 (Nev. 2014) (quoting Cobb v. Osman, 433 P.2d 259, 263 (Nev. 1967)). In Cobb, the plaintiff sold property to the defendant, and the defendant assumed the loan on the property. 433 P.2d at 260-62. However, the defendant defaulted on the loan, and consequently, the plaintiff paid the defendant’s obligation because the loan was secured by two other properties that the plaintiff owned. Id. at 263. In other words, a default of the defendant’s loan obligations could result in foreclosure of the plaintiff’s properties, and the plaintiff made payments in order to avoid such a default and foreclosure. Id. The Cobb court recognized that the plaintiff’s payment of the loan was made only to save his interest in his other properties, and as such, the payment formed the basis for a restitution claim. Id.; cf. Nevada Ass’n Servs., Inc., 338 P.3d at 1256-57 (payment to release a lien was not made pursuant to the defense of property exception to the voluntary payment doctrine because reimbursement was sought from the payee—as opposed to a third party—and because there was no showing that foreclosure proceedings were imminent).

Here, Tascione testified at trial that Home Depot continued to make payments to the Town because nonpayment of the Fast Track Assessment could have resulted in a lien (and subsequent tax sale pursuant to that lien) on the property. Moreover, in response to Home Depot’s contention that Roadpot, as the landlord, was liable for the Fast Track Assessment, Roadpot disagreed and asserted that Home Depot’s failure to pay constituted a default of the

parties' lease agreement.⁵ (Ex. 7.) Under these circumstances, it was reasonable for Home Depot to pay the Fast Track Assessment, specifically to avoid the imposition of a lien and dispossession by Roadepot, and later to pursue a restitution claim. See Restatement (Third) Restitution and Unjust Enrichment § 35. Had Home Depot refused to pay, it could have incurred losses in being evicted from the premises—either by Roadepot or by the Town via a tax sale—that exceeded the costs of paying the Fast Track Assessment and seeking later reimbursement. See id. at cmt. a.

C

Late Fees

Home Depot also seeks to be reimbursed in the amount of \$16,847.27 for late fees incurred in paying the Fast Track Assessments. Home Depot relies on its reasons for paying the Fast Track Assessments to begin with—namely, that Home Depot paid in defense of its property interest and to avoid adverse consequences with the Town—and asserts that but for Roadepot's failure to pay, these late fees would not have been incurred.

In discussing equitable principles central to the unjust enrichment doctrine, the Restatement makes clear that “liability in restitution may not exceed the benefit realized by” the recipient. Restatement (Third) Restitution and Unjust Enrichment § 7, cmt. d. Therefore, recovery under a theory of unjust enrichment is measured by the extent of the obligation “to which the defendant was already subject.” Id. In applying these principles to the present case, it is clear that the only obligation that Roadepot was subject to was the Fast Track Assessment. Because the basis for Roadepot's liability to Home Depot is equitable in nature, Home Depot is

⁵ Article XIII, § 13.1 of the lease outlines Roadepot's remedies in the event of a breach of the lease by Home Depot, including but not limited to re-entering the premises and taking possession, dispossessing Home Depot without terminating the lease, or bringing suit to collect the amounts owed by Home Depot.

only entitled to recover the benefit conferred upon Roadepot, that is, \$388,657.21, representing the value of the Fast Track Assessment payments made by Home Depot from 2005 through 2014.

IV

Conclusion

For the foregoing reasons, this Court finds that Roadepot is liable to Home Depot in the amount of \$388,657.21. Counsel shall prepare the appropriate order and judgment for entry.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: **Roadepot, LLC and Keyserton, LLC v. Home Depot U.S.A., Inc.**

CASE NO: **KC-2010-0540**

COURT: **Kent County Superior Court**

DATE DECISION FILED: **May 4, 2015**

JUSTICE/MAGISTRATE: **Gallo, J.**

ATTORNEYS:

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