



Unjust Enrichment: A Theory for When it Just Isn't Fair

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"It just isn't fair" -- common words echoed by kids and adults alike -- may have been ringing in the ears of the Pennsylvania Superior Court approximately one month ago. In a decision that affirms the idea that equitable recoveries are still possible, the Court held in *Limbach Company, LLC, et al. v. City of Philadelphia, et al.*, that under the appropriate circumstances an unpaid contractor may have a direct claim against a party with which it does not have a contract.

This case arose out of the project at the Philadelphia International Airport. Limbach, who entered into a contract with U.S. Airways to build a portion of the project, was left unpaid when the already struggling U.S. Airways declared bankruptcy. Although it was still owed over \$5 million on the project, the protection provided by the bankruptcy only allowed Limbach to recover approximately \$1 million of what it was owed directly from U.S. Airways. With such a large receivable remaining, Limbach sought another avenue to recoup what it was owed from the City of Philadelphia and the Philadelphia Authority for Industrial Development, or PAID, neither of whom were contractually obligated to pay Limbach. It settled on a theory of unjust enrichment.

Because unjust enrichment is an equitable doctrine that imposes obligations on parties as a matter of law and for reasons of justice, it is a fact sensitive analysis. This case was no different, and the nature of the relationships between the parties played a significant role in the Court's decision.

The City owns the airport. To complete the two new terminals, it leased the necessary area for the new construction to PAID, who then leased it to U.S. Airways. In each instance, the authority to build the new terminals was included in the lease agreement. Ownership of the new terminals then reverted back to PAID upon completion of the work. PAID then leased the property back to the City, which subleased it to U.S. Airways. These contractual relationships between the three entities contained two important factors. First, both the City and PAID reserved the ability to control portions of the work, a right which it exercised regularly. Second, funding for the project was held in a trust fund in order to allow the City and PAID to pay contractors directly.

The Superior Court overturned the trial Court's decision to grant summary judgment in favor of the City and PAID because it determined that Limbach had sufficiently plead a case for unjust enrichment and should be given the opportunity to prove it. In its opinion, the Superior Court held that the appropriate analysis was whether an enrichment was in fact "unjust", and it considered the Restatement of Restitution as controlling. Accordingly, it determined that the mere failure of performance of one of the contracting parties does not by itself give rise to a right of recovery against a third party. A cause of action against the City and PAID did not automatically arise because U.S. Airways had failed to pay Limbach. Something more was needed.

The Court concluded that the plaintiff had to allege and prove that the owner misled the contractor. Under the Restatement of Restitution, a third party who does not mislead a contractor with whom it does not have a contract cannot be found liable for an unjust enrichment claim by the contractor. Moreover, proof of the misleading statement is not sufficient, as the misleading statement must induce the contractor to act in a manner desired by the third party. In short, contractors have the ability to protect themselves in their contracts by reserving the right to lien or to make claims on payment bonds. If a contractor chooses to carry the risk of waiving these remedies, the Court did not believe that a contractor should be permitted to retroactively "end run" the problem through an unjust enrichment theory absent a showing of a unique circumstance.

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In this case, the Court found several factors compelling and distinctive. Limbach had evidence that the City and PAID had been intimately involved in the project. The City controlled the financing for the project. Both PAID and the City had the right contractually to review and approve things such as designs and schematics, bids, change orders, and payment of Limbach. In addition, Limbach had evidence that the contractually created trusts were specifically designed to hold the money used to pay the contractors, and that when it had been paid on the project it received payment from this trust fund. Limbach also argued that it agreed to waive its right to lien and a requirement of a payment bond because of the promise that it would be paid out of this trust fund.

For these reasons, the Court determined that despite the lack of a contractual relationship between them, Limbach's enrichment of the City and PAID might be "unjust". Because Limbach was induced to enter into its contract with U.S. Airways and to continue its work even after U.S. Airways declared bankruptcy, the City and PAID largely controlled Limbach's scope of work, and payment of Limbach was essentially controlled by the City and PAID, there were sufficient factual disputes to allow the case to go to trial on the issue of whether the City and PAID were unjustly enriched.

The Superior Court's decision was useful in clarifying when an unjust enrichment claim is appropriate against a party with whom there was no direct contractual relationship. The *Limbach* decision confirms that under the right circumstances a contractor may still recover unpaid balances when non-payment just isn't fair.