

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL

NATIONAL RESTORATION & FACILITY : August Term 2012
SERVICES, INC., :
Plaintiffs, : No. 1965
v. :
CHURCH MUTUAL INSURANCE CO., : COMMERCE PROGRAM
Defendants. :
Control Number 13031198

ORDER

AND NOW, this 9th day of May 2013, upon consideration of Defendant Church Mutual Insurance Company's Motion for Judgment on the Pleadings and Plaintiff's response in opposition, it hereby is **ORDERED** that the Motion for Judgment on the Pleading is **Granted** and Plaintiff's complaint is dismissed.

BY THE COURT,


PATRICIA A. McINERNEY, J.

National Restoration & -ORDOP



12080196500052

DOCKETED

MAY 9 2013

C. HART
CIVIL ADMINISTRATION

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL**

NATIONAL RESTORATION & FACILITY SERVICES, INC.,	:	August Term 2012
	:	
Plaintiffs,	:	No. 1965
	:	
v.	:	
CHURCH MUTUAL INSURANCE CO.,	:	COMMERCE PROGRAM
Defendants.	:	
	:	Control Number 13031198

OPINION

The instant action was filed by Plaintiff National Restoration & Facility Services, Inc. (hereinafter “National Restoration”) against Church Mutual Insurance Co. (hereinafter “Church Mutual”) seeking payment for services provided to Church Mutual’s insured, St. Phillips’ Baptist Church (hereinafter “St. Phillips”). Church Mutual issued a policy of insurance to St. Phillips covering the church and property operated by St. Phillips. On December 31, 2010, while the Church Mutual policy was in effect, St. Phillips suffered a loss and damage to the insured premises as a result of smoke and fire. On December 31, 2010, St. Phillips retained National Restoration to provide emergency board up, mitigation and or restorative services for the building and contents and executed an Emergency Work Authorization memorializing the retention.

The Church Mutual policy in effect required St. Phillips to take reasonable steps to save and preserve the property from further loss and damage. National Restoration performed the services required under the Emergency Work Authorization and submitted the invoices to Church Mutual for reimbursement. Church Mutual failed to compensate National Restoration.

In August 2012, National Restoration filed the instant action against Church Mutual alleging a claim for unjust enrichment. National Restoration alleges Church Mutual will be

unjustly enriched should it be permitted to retain the value of the services performed by it without Church Mutual compensating or paying it for services. Church Mutual filed preliminary objections which were overruled. Church Mutual filed an answer with new matter to the complaint. In the answer with new matter, Church Mutual alleged it paid St. Phillip's \$25,000 for all loss arising from the fire in exchange for a complete release of all claims arising out of the fire. Presently before the court is Church Mutual's Motion for Judgment on the Pleadings.¹

DISCUSSION

The elements of unjust enrichment are benefits conferred on defendant by plaintiff, appreciation of such benefits by defendant, and acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value. The most significant element of the doctrine is whether the enrichment of the defendant is unjust; the doctrine does not apply simply because the defendant may have benefited as a result of the actions of the plaintiff. Where unjust enrichment is found, the law implies a quasi-contract which requires the defendant to pay to plaintiff the value of the benefit conferred.²

National Restoration alleges it conferred a benefit on Church Mutual by providing emergency board up work, mitigation and other restorative services following the loss suffered by St. Phillips. National Restoration further alleges that Church Mutual appreciated the benefit of those services by mitigating the damages to St. Phillips and reducing the amount Church Mutual

¹ A Motion for Judgment on the Pleadings will be granted only when the facts averred indicate that the law says with certainty that no recovery is possible. *Piehl v. City of Philadelphia*, 987 A.2d 146, 154 (Pa. 2009). A Motion for Judgment on the Pleadings should not be granted where there are unknown or disputed issues of fact. *Id.*

² *Lackner v. Glosser*, 892 A.2d 21, 34 (Pa.Super.2006).

had to pay under the claim.³ National Restoration argues Church Mutual's alleged retention of said services without payment constitutes unjust enrichment.

National Restoration's services clearly conferred a benefit upon St. Phillips and may have conferred an incidental benefit upon Church Mutual. The mere fact Church Mutual may have received an incidental benefit does not justify restitution.⁴ In order to justify restitution, there must also be an injustice in permitting the benefit to be retained without compensation.

Here, absent from the complaint are any allegations that Church Mutual retained the benefit unjustly. Specifically, the complaint fails to allege any facts that Church Mutual requested anything from National Restoration, induced National Restoration to enter into a relationship with St. Phillips or misled National Restoration in providing the services rendered.⁵ National Restoration cannot shift the loss to Church Mutual solely because it may have received an incidental benefit. The Church Mutual policy places the duty upon its insured, St. Phillips, to take reasonable steps to save and preserve the property from further loss and damage. This provision does not create an agency relationship between Church Mutual and St. Phillips guaranteeing payment for those who provide services at St. Phillips request.

National Restoration claims the Emergency Work Authorization creates a valid assignment of St. Phillips rights under the Church Mutual policy to National Restoration.⁶ "An assignment is a transfer of property or some other right from one person to another, and unless in

³ National Restoration response in opposition section B.

⁴ See, *Styer v. Hugo*, 422 Pa.Super. 262, 619 A.2d 347, 350 (1993) (citing *D.A. Hill Co. v. Clevertrust Reality Investors*, 524 Pa. 425, 573 A.2d 1005 (Pa. 1990), *aff'd* 535 Pa. 610, 637 A.2d 276 (1994).

⁵ *Ira G. Steffy & Son, Inc. v. Citizens Bank of Pennsylvania*, 7 A.3d 278, 284 (Pa. Super. 2010); *Meehan v. Cheltenham Twp.*, 410 Pa. 446, 449-51, 189 A.2d 593, 595-96 (1963).

⁶ National Restoration relies upon the following language, "I authorize and direct my insurance company to make payments for these services directly to the company" to prove the existence of an assignment.

some way qualified, it extinguishes the assignor's right to performance by the obligor and transfers that right to the assignee.”⁷ Although the complaint is devoid of any allegations regarding the existence of an assignment, the issue of whether a valid assignment exists is not relevant since any purported assignment has been revoked. St. Phillips revoked said assignment when it entered into a Full Policy Holder Release with Church Mutual. The release reads in pertinent part as follows:

“...the undersigned do hereby release, discharge, and for themselves and their ... assigns, does forever release and discharge Church Mutual Insurance Company and their agents and representatives from any and all rights, claims, demands, and damages of any kind, known or unknown resulting from damage to their property located at 1220 N. 6th Street, Philadelphia, Pa. 19122...”

Since the foregoing language specifically releases and discharges Church Mutual from any and all claims resulting from the damage to the insured property on behalf of St. Phillips and it assigns, the limited assignment of rights given to National Restoration by St. Phillips was revoked. As such, National Restoration may not seek restitution.

⁷ *Horbal v. Moxham National Bank*, 548 Pa. 394, 406, 697 A.2d 577, 583 (1997).

CONCLUSION

Based on the foregoing, Defendant Church Mutual's Motion for Judgment on the Pleadings is granted and the complaint is dismissed.

BY THE COURT,



PATRICIA A. McINERNEY, J.