THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0935, Cuisi Design A.B., Inc. v. June C. Pastman, the court on February 8, 2007, issued the following order:

The defendant, June C. Pastman, appeals an order of the trial court entering a judgment of $33,470.89 for the plaintiff, Cuisi Design A.B., Inc., under the doctrine of unjust enrichment. She argues that the trial court erred in: (1) awarding relief under the doctrine of unjust enrichment as the plaintiff did not plead that theory and the evidence did not support it; (2) finding that collateral estoppel did not bar the action; (3) failing to apply other statutory and case law protections; and (4) finding that laches did not bar the action. We reverse.

We will assume without deciding that the theory of unjust enrichment was timely pled. See Thompson v. C&C Research & Dev., 153 N.H. 446, 451-52 (2006). The doctrine of unjust enrichment is that one shall not be allowed to profit or enrich himself at the expense of another contrary to equity. Cohen v. Frank Developers, Inc., 118 N.H. 512, 518 (1978). To entitle one to restitution, there must be unjust enrichment either through wrongful acts or passive acceptance of a benefit that would be unconscionable to retain. Id. Unless unsupported by the record, we generally defer to the trial court's determination as to whether the facts and equities in a particular case warrant such a remedy. Pella Windows and Doors v. Faraci, 133 N.H. 585, 586 (1990).

The trial court found that the plaintiff failed to produce any evidence that it had a contractual relationship with Pastman. The court also found that the contractor working on Pastman's home renovations ordered the cabinets for which the plaintiff in this lawsuit seeks repayment; the contractor subsequently sued Pastman for his work (Lawsuit I). Among the findings made by the trial court in Lawsuit I was that the contractor still owed bills for the cabinets and other work done in Pastman's house. It is unclear whether, in assessing the liability of the parties, the trial court in Lawsuit I considered the cabinet debt as a liability of the contractor and factored it into his calculation; however, the damages awarded to the contractor exceeded the cost of the cabinets.

As the party seeking restitution, the burden was on the plaintiff to prove there was unjust enrichment. See Nute v. Blaisdell, 117 N.H. 228, 232 (1977). While the plaintiff may have met its burden of establishing that Pastman enjoyed the benefit of its work, it failed to establish that any enrichment was unjust. The record before us indicates that it was more likely than not that the cost of the

cabinets was factored into the calculation of liabilities in Lawsuit I; the plaintiff did not prove that it was not.

We note that the trial court also found that counsel for the plaintiff was advised of the contractor's recovery in Lawsuit I and offered the opportunity to seek an attachment. See RSA ch. 447; Westinghouse Elec. Supply Co. v. Electromech, Inc., 119 N.H. 833, 837 (1979) (noting that RSA chapter 447 provides protection to person against possibility of having to pay more than once for same work or materials).

Based upon the record before us, we conclude that the plaintiff failed to establish that Pastman was unjustly enriched.

Reversed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

Eileen Fox,
Clerk