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A claim for unjust enrichment does not require privity of contract

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Overview

The theory of recovery for unjust enrichment is based on a contract implied-in-law, or a quasi-contract. Generally, a claim for unjust enrichment cannot be based on an express contract, and thus, by definition, there is an absence of privity between the parties. There must, however, be a connection between the parties, such as a benefit conferred on the party to be charged.

This issue is governed by Florida law. See [State Aspects](#).

- *Fito v. Attorney's Title Ins. Fund, Inc.*, 83 So. 3d 755, 758 (Fla. 3d DCA 2011)
- *14th & Heinberg, LLC v. Terhaar & Cronley Gen. Contractors, Inc.*, 43 So. 3d 877, 880-81 (Fla. 1st DCA 2010)
- *Baron v. Osman*, 39 So. 3d 449, 451 (Fla. 5th DCA 2010)
- *Extraordinary Title Services, LLC v. Florida Power & Light Co.*, 1 So. 3d 400, 404 (Fla. 3d DCA 2009)

Detailed Explanation

Federal Aspects

This issue is governed by state law. See [State Aspects](#).

State Aspects

Unjust Enrichment Is Based on Quasi-Contract, an Obligation Created by Law

A claim for unjust enrichment is an equitable claim based on a legal fiction that implies a contract as a matter of law even though the parties never indicated by deed or word that an agreement existed between them. *14th & Heinberg, LLC v. Terhaar & Cronley Gen. Contractors, Inc.*, 43 So. 3d 877, 880 (Fla. 1st DCA 2010) In particular, if no express or implied-in-fact contract exists, a party may recover under quasi-contract. *Baron v. Osman*, 39 So. 3d 449, 451 (Fla. 5th DCA 2010).

An implied-in-law quasi-contract is a noncontractual obligation that is treated procedurally as if it were a contract. 14th & Heinberg, LLC v. Terhaar & Cronley Gen. Contractors, Inc., 43 So. 3d 877, 880-81 (Fla. 1st DCA 2010). A contract implied in law is established where it is deemed unjust for one party to have received a benefit without having to pay compensation for it. 14th & Heinberg, LLC v. Terhaar & Cronley Gen. Contractors, Inc., 43 So. 3d 877, 880 (Fla. 1st DCA 2010).

Privity of Contract Is Not Required for Unjust Enrichment Claim

Perhaps the most fundamental basis for permitting a plaintiff to seek a quasi-contract claim is due, at least in part, because that plaintiff lacks an express contract with the defendant. Baron v. Osman, 39 So. 3d 449, 451 (Fla. 5th DCA 2010). Since a lack of an express contract is required for an unjust enrichment claim, it follows that privity of contract is not required.

Where There Is an Express Contract between the Parties, Unjust Enrichment Is Unavailable

Where there is an express contract between the parties, claims arising out of that contractual relationship will not support a claim for unjust enrichment, as the rights of the parties are governed by the contract that they entered into. Moynet v. Courtois, 8 So. 3d 377, 379 (Fla. 3d DCA 2009); Tracfone Wireless, Inc. v. Access Telecom, Inc., 642 F. Supp. 2d 1354, 1366 (S.D. Fla. 2009).

- Complaint for Damages, Injunctive Relief and Demand for Jury Trial. TRACFONE WIRELESS, INC., a Delaware Corporation, Plaintiff, v. ACCESS TELECOM, INC., a Florida Corporation, d/b/a Access Telecom; Albert Benhamu, Individually, Abraham Benhamu, Individually, John Does 150, and XYZ Companies 150, Defendants. 2009 WL 632452.

Unjust Enrichment Claim Requires a Benefit Conferred on the Plaintiff by the Defendant

The elements of an unjust enrichment claim are (1) a benefit conferred upon a defendant by the plaintiff, (2) the defendant's appreciation of the benefit, and (3) the defendant's acceptance and retention of the benefit under circumstances that make it inequitable for the defendant to retain it without paying the value of the benefit. AMP Services Ltd. v. Walanpatrias Found., 73 So. 3d 346, 350 (Fla. 4th DCA 2011). Thus, to establish a claim based on the theory of recovery for unjust enrichment, it must be shown that the plaintiff was the party who conferred the benefit on the defendant. Fito v. Attorney's Title Ins. Fund, Inc., 83 So. 3d 755, 758 (Fla. 3d DCA 2011).

- Initial Brief of Appellants. AMP SERVICES LIMITED, Trustee for the Walter and Anna Bronner Trust, and Thomas Myers, as Personal Representative of the Estates of Walter Bronner Patrias and Anna Gravert Bronner, Plaintiffs/Appellants, v. THE WALANPATRIAS FOUNDATION, Gislhaine Whyte, Mario Simmen, Paul Marie Jacques, Defendants/Appellees., 2010 WL 4403266 (Fla.App. 4 Dist.)

Lack of Any Relationship Between the Parties Precludes a Claim for Unjust Enrichment

If there is absolutely no relationship between the parties and the plaintiff has not conferred a direct benefit on the defendant, a claim for unjust enrichment will be dismissed. Extraordinary Title Services, LLC v. Florida Power & Light Co., 1 So. 3d 400, 404 (Fla. 3d DCA 2009).

Thus, a customer of an electrical utility who challenged the utility's practice of collecting from customers, as part of its approved rates, estimated federal corporate taxes that were not actually paid to the government did not confer a direct benefit on the utility's parent company and, thus, could not assert an unjust enrichment claim against the parent, even if parent's filing of consolidated tax returns that included unprofitable subsidiaries allowed it to retain the taxes collected by utility; the parent had no relationship with the customers, but rather the customers contracted with utility and paid the utility directly. Extraordinary Title Services, LLC v. Florida Power & Light Co., 1 So. 3d 400 (Fla. 3d DCA 2009).

Choosing Whether and When to Bring Quasi-Contract as Opposed to Claim for Breach of Express Contract Requires Several Strategic Considerations

Deciding whether and when to bring a quasi-contract or quantum meruit claim as opposed to a claim for breach of an express contract requires several strategic considerations. For example, a plaintiff may wish to initially plead such an implied-contract claim, as an alternative theory, alongside a claim for breach of an express contract. Exposure to broader discovery and possible necessary motion practice from a defendant may lead the plaintiff to stick with one theory over the other, at least initially. Indeed, a plaintiff may choose to explore the appropriateness of such a claim through the discovery process with respect to a breach of contract claim and seek leave to amend if necessary. The key to the analysis is determining the existence, and ability to establish, that there is an express contract between the parties on the relevant subject matter, which the defendant breached that caused damage to the plaintiff. If not, or if difficult to prove, a plaintiff may need to consider pursuing an implied contract theory.

Plaintiff Should Consider Possible Damages Under Each Claim

A plaintiff should also consider the possible damages available under an implied contract claim versus an express contract claim. Where there is an express contract on a limited subject area with a limited contractual remedy provision, and the plaintiff provided goods and/or services arguably beyond the scope of that agreement, then an implied contract theory may provide the plaintiff with the best (and only) possibility for recovery.

Plaintiff Must Eventually Pick a Theory to Pursue, As Implied Contracts and Express Contracts Become Mutually Exclusive

Eventually, the plaintiff must decide upon which theory plaintiff seeks to recover a judgment upon, as an implied contract theory and an express contract theory become mutually exclusive as the litigation moves toward final resolution. This election of remedies principle should be considered by both the plaintiff and the defendant as the case progresses and may require a judicial determination if the plaintiff fails to clearly decide which theory plaintiff intends to proceed with at trial. Moreover, while often found in an express contract, an implied contract does not have a provision providing for the recovery of attorney's fees and costs.

Defendants Should Take Notice of the Plaintiff's Avenues to Pursue

A defendant must also understand these issues and dynamics in order to properly defend against and assess the value of the plaintiff's case. Doing so may avoid unnecessary motion practice and focus on the real issues requiring judicial attention.

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