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**Korte Constr. Co. v. State, Bd. of Regents, 137 Nev. Adv. Op. 37
(July 29, 2021).**

Katelyn Golder

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CONTRACT LAW: A SURETY BOND & VIABLE CONTRACT PRECLUDED RECOVERY
ON AN UNJUST ENRICHMENT CLAIM

Summary

The Nevada Supreme Court considered whether the district court properly granted the summary judgment that precluded Korte Construction Company from being able to recover damages under its unjust enrichment claim. This Court affirmed the decision of the lower court for two prominent reasons. First, this Court decided that the surety bond bestowed by the lessee, UPA1, LLC, provided Korte with an adequate remedy at law because the bond exceeded the amount owed to Korte for its services. Second, this Court contended that the Board of Regents of the Nevada System of Higher Education, acting on behalf of the University of Nevada, Las Vegas, would be placed in a worse condition than it bargained for under the contract with UPA1 that limited UNLV's liability as a property owner to pay a fixed contract price for the construction to occur on the real property. In addition, UNLV had not directly promised to provide payments to Korte for its services, so any benefits that UNLV received from the services performed by Korte were not unjust. Ultimately, there was not a genuine issue of material fact disputed, so this Court granted summary judgment in favor of the respondent.

Background

UNLV entered into an agreement with UPA to lease a portion of property to UPA for the purpose of constructing student housing. UPA formed a contract with Korte to complete the construction project on the property. A conflict between UPA and Korte resulted in Korte filing a mechanics' lien against the entire property as well as complaints against UPA and UNLV. Korte continued to amend their claim for the mechanics' lien against UPA all while continuing to receive payments from the company. However, Korte maintained the claim against UNLV for unjust enrichment.

The district court decided to grant summary judgment to prevent Korte from recovering restitution damages from UNLV under an unjust enrichment claim for two reasons. First, the lower court determined that Korte had been provided with an adequate remedy at law because the bond from UPA exceeded the amount that was owed for the services performed by Korte. Second, the district court ruled that the contracts between the UNLV and UPA, as well as the UPA and Korte, prohibit this type of claim because UNLV did not unjustly benefit from the performance of Korte. Korte appealed the decision by arguing that the claim for unjust enrichment was appropriate despite the bond and the contracts.

Discussion

The Nevada Supreme Court affirmed the district court's order granting summary judgment in the respondent's favor. For summary judgment to be properly granted there must be

¹ Katelyn Golder.

no evidence that shows a genuine issue of fact.² This Court reviewed the summary judgment of the district court de novo.

The presence of the bond precludes recovery on the unjust enrichment claim

This Court used NRS Chapter 108 to explain that when a principle and a surety form a bond that is equal to 1.5 times the lien, the bond serves as a payment toward the lien.³ Although Korte attempted to argue that the bond should not have impacted its ability to bring forth a civil action claim for unjust enrichment against UNLV,⁴ this Court contended that restitution damages cannot be sought in Nevada when an adequate remedy at law is available.⁵ This Court found that UPA providing a bond that was worth \$5,448,592.81 exceeded 1.5 times the operative lien for \$2,899,988.72 which sufficiently guaranteed the security for the lien. Therefore, the bond allowed for Korte to obtain adequate relief.

The unjust enrichment claim against UNLV cannot succeed under the circumstances

Due to the contracts between the various parties, a claim for unjust enrichment is viewed as improper. Even though Korte argued that the contract should not determine its ability to maintain a claim for unjust enrichment, this Court adopted Restatement (Third) of Restitution and Unjust Enrichment to analyze whether that type of claim could exist if Korte and UNLV did not establish an explicit contract. Unjust enrichment exists when one person is benefited at the expense of another individual which creates a situation where injustice can only be resolved if the benefit is restored.⁶ However, unjust enrichment is not an appropriate claim when the recipient of the benefit would be in a worse position than prior to the exchange of services.⁷ Korte did not claim that the agreement reducing the liability of UNLV was invalid nor did Korte argue that UNLV promised payments. It was not unjust for UNLV to benefit from the services Korte supplied because UNLV already paid a fixed contract price with UPA to limit its future liability. If the court permitted the unjust enrichment claim, UNLV would have been in a worse position than if it never participated in this contractual transaction. Essentially, an unjust enrichment claim would not have succeeded.

Conclusion

Overall, the Nevada Supreme Court affirmed the lower court's decision to grant summary judgment to bar the unjust enrichment claim against UNLV. This Court found that the bond provided a guarantee of security for payment. Additionally, this Court decided that the benefit received by UNLV was not unjust because, if UNLV had been ordered to pay restitution, this would place it in a worse position than if the services had not been performed. There was ultimately not an issue of genuine material of fact, so granting summary judgment in favor of the respondent was appropriate.

² NEV. R. CIV. P. 56(a).

³ NEV. REV. STAT. § 108.2415(1) (2020).

⁴ NEV. REV. STAT. § 108.238 (2020).

⁵ *Benson v. State Eng' r*, 131 Nev. 772, 782, 358 P.3d 221, 228 (2015).

⁶ RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT § 1 (AM. LAW INST. 2011).

⁷ *Id.*