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Unjust Enrichment – Are the Services “Incontrovertibly Beneficial”?

A recent decision of the Ontario Court of Appeal outside the field of construction law reminds us of the principles of **Unjust Enrichment** that apply to the payment for services provided to a construction project. Unless the services were requested by the defendant, payment can only be recovered in unjust enrichment if the services were “incontrovertibly beneficial” to the defendant.

In *Grover v. Hodgins*, 2011 ONCA 72 (CanLII), the plaintiffs were owners of condominium units in British Columbia who had retained lawyers to sue the manager of the condominium building. However, the defendants had refused to retain those lawyers. The plaintiffs said that the defendant had benefited from the litigation against the manager because the management contract had been terminated and the condominium units had been sold for a substantially higher value. The plaintiffs sued the defendants in British Columbia for unjust enrichment and were successful. They then sought to enforce the judgment in Ontario.

The Court of Appeal for Ontario held that the defendant was not unjustly enriched. The Court distinguished between the benefit from services from the benefit from money. In the case of alleged benefit from services, the defendant must be shown to have “incontrovertibly benefited” from these services. The Court of Appeal applied the words of the *Supreme Court of Canada* in *Peel (Regional Municipality) v. Canada; Peel (Regional Municipality) v. Ontario*, 1992 CanLII 21 (S.C.C.), [1992] 3 S.C.R. 762. In the *Peel* decision, the Supreme Court said that an incontrovertible benefit means something “that is an unquestionable benefit, a benefit that is demonstrably apparent and not subject to debate or conjecture”.

In *Grover*, the Ontario Court of Appeal held that, since the relationship between the departure of the manager and any consequential benefit to the defendant by the increased value of his condominium unit was not incontrovertible, the plaintiffs were not entitled to require the defendant to contribute to the legal costs.

This decision is a warning to suppliers of services to construction projects: get clear instructions. If you don't, and you later want to make a claim based on the equitable principles of unjust enrichment, you will have a high standard of proof. You will have to show that the defendant received a benefit from those services that is not subject to debate or conjecture. That may not be easy to do.

Unjust Enrichment - *Grover v. Hodgins*, 2011 ONCA 72 (CanLII)