
UNJUST ENRICHMENT IN ILLINOIS: UNCOMMON CONFUSION OVER A COMMON CLAIM

Mason W. Kienzle*
Samuel M. Zuidema**

Unjust enrichment is a common claim in civil litigation, but there is a surprising degree of disagreement among Illinois courts over whether the claim can “stand alone” or whether it must be “tethered” to another cause of action. This article analyzes the extent of, and possible explanations for, this split, and concludes that allowing unjust enrichment as an independent claim better comports with both the Illinois Supreme Court’s unjust enrichment precedent and the fundamental purpose of unjust enrichment.

I. INTRODUCTION

Unjust enrichment is an amorphous thing. It can arise in a virtually infinite number of situations, as long as “one person has received money under such circumstances that in equity and good conscience he ought not be allowed to keep it.”¹ That’s legalese for what a child cries when a friend takes his toy—“But that’s not fair!”—and it leaves little (or perhaps way too much) for lawyers to work with. Illinois practitioners, therefore, must rely on clear and consistent case law for guidance.

The courts, however, have failed to provide it. In fact, they have muddied the waters by disagreeing with each other—sometimes even within the same appellate districts—about whether an unjust enrichment claim must be “tethered” to another cause of action or whether it can be brought on its own. And although a 2011 Seventh Circuit case highlighting the conflict brought hope that state courts would wake up and resolve it, the split has only deepened since then. It is not without consequence: It has puzzled Illinois attorneys on both sides of the “v.” and confused their pleadings and arguments. It may even discourage plaintiffs from bringing certain lawsuits altogether and complicate the defense against those that *are* brought. Counsel and litigants are due some clarity.

* Mason W. Kienzle is an associate attorney at Donohue Brown Mathewson & Smyth LLC in Chicago and graduated from the University of Illinois College of Law in 2018.

** Samuel M. Zuidema is an associate attorney at Winston & Strawn LLP in Chicago and graduated from the University of Illinois College of Law in 2018.

1. A.T. Kearney, Inc. v. INCA Int’l, Inc., 132 Ill. App. 3d 655, 660 (1st Dist. 1985).

Ultimately, only the Illinois Supreme Court can give it to them. But we can at least draw attention to the nature of the disagreement so that Illinois lawyers can account for it in their pleadings and litigations. We can dig at the root of the conflict in search of some explanation. And we can recommend to those readers who might don a robe what ought to be done to rectify the confusion and provide lawyers with much-needed guidance on a very common claim.

II. ILLINOIS LAW ON UNJUST ENRICHMENT

To state a claim for unjust enrichment, the Illinois Supreme Court has held that “a plaintiff must allege that the defendant has unjustly retained a benefit to the plaintiff’s detriment, and that defendant’s retention of the benefit violates the fundamental principles of justice, equity, and good conscience.”² Absent from these requirements is any reference to the existence or success of *other* claims. As one might expect, then, some courts pay no mind to whether a claim for unjust enrichment is brought alone or with other causes of action.³ In *Raintree Homes, Inc. v. Village of Long Grove*, for example, the Illinois Supreme Court noted that the “plaintiffs have no substantive claim grounded in tort, contract, or statute; therefore, the only substantive basis for the claim is restitution to prevent unjust enrichment.”⁴ Yet this fact did not doom the plaintiffs’ complaint. Unfortunately, though, the supreme court did not analyze the issue.

This position—that unjust enrichment can be brought by itself—makes some intuitive sense. It seems odd to make the availability of one cause of action contingent on the existence of some other cause of action. And if unjust enrichment simply requires that the defendant retain some benefit to the plaintiff’s detriment that he ought not be allowed to keep, then what does a second or third claim have to do with it?

A lot, say other courts. These courts refuse to entertain unjust enrichment claims that stand alone, either because they were initially brought that way initially or because the other claims had failed. For example, the Third District held in *Martis v. Grinnell Mutual Reinsurance Co.* that “[u]njust enrichment is not a separate cause of action that, standing alone, will justify an action for recovery.”⁵ The First District held the same in *Mulligan v. QVC, Inc.*⁶

The question of whether an unjust enrichment claim can stand alone is inevitably bound up in other disagreements courts have over the nature of unjust enrichment, further highlighting the law’s state of disarray. Specifically, courts disagree over whether unjust enrichment requires the defendant to have engaged in *actual wrongdoing* such as fraud or breach of fiduciary duty—and those courts

2. HPI Health Care Servs., Inc. v. Mt. Vernon Hosp., Inc., 131 Ill. 2d 145, 160 (1989).

3. See *Peddinghaus v. Peddinghaus*, 295 Ill. App. 3d 943, 949 (1st Dist. 1998) (disagreeing with the contention that “Illinois does not recognize an independent cause of action for unjust enrichment”).

4. 209 Ill. 2d 248, 258 (2004).

5. 388 Ill. App. 3d 1017, 1025 (3d Dist. 2009).

6. 382 Ill. App. 3d 620, 631 (1st Dist. 2008). Note that both *Martis* and *Mulligan* came after the Illinois Supreme Court’s opinion in *Raintree Homes*, proving that it had little impact on the present question.

that do require actual wrongdoing also tend to be those that tether unjust enrichment to other claims arising out of that wrongdoing. In *Martis* and *Mulligan*, for example, the courts required proof of wrongdoing for the plaintiffs to succeed on their unjust enrichment claims.⁷ The allegations of wrongful conduct in those cases were quite weak, however, which led those courts to dismiss the other asserted claims. And because the remaining unjust enrichment claims were based on that same alleged conduct, the courts dismissed them too.

Conversely, courts that allow an unjust enrichment claim even without any underlying wrongdoing are more likely to permit the claim to stand on its own. *Tummelson v. White*, from the Fourth District, is one such example that allowed a standalone unjust enrichment claim to succeed, despite the absence of wrongdoing by the defendant.⁸

III. THE SEVENTH CIRCUIT WEIGHS IN

In the 2011 case *Cleary v. Phillip Morris, Inc.*, the Seventh Circuit Court of Appeals squarely confronted the question of “whether Illinois law recognizes an independent cause of action for unjust enrichment, or whether unjust enrichment must always be tied to another underlying claim found in tort, contract, or statute.”⁹ The court reviewed three Illinois Supreme Court decisions and noted that “the Illinois Supreme Court has articulated the elements of unjust enrichment without reference to a separate underlying claim in tort, contract, or statute.”¹⁰ From these authorities, the court concluded “[t]he Illinois Supreme Court appears to recognize unjust enrichment as an independent cause of action.”¹¹ The court, however, could not avoid mentioning the *Martis* decision “that suggests the opposite, namely, that an unjust enrichment claim cannot stand untethered from an underlying claim.”¹² “[S]uggest[ing] one way to make sense of” these apparently conflicting cases, the court focused on the disagreement over whether unjust enrichment requires wrongful conduct (previewed above):

Unjust enrichment is a common-law theory of recovery or restitution that arises when the defendant is retaining a benefit to the plaintiff’s detriment, and this retention is unjust. What makes the retention of the benefit unjust is often due to some improper conduct by the defendant. And usually this improper conduct will form the basis of another claim against the defendant in tort, contract, or statute. So, if an unjust enrichment claim rests on the same improper conduct alleged in another claim, then the unjust enrichment claim will be tied to this related

7. See *Martis*, 388 Ill. App. 3d at 1025; *Mulligan*, 382 Ill. App. 3d at 631.

8. 2015 IL App (4th) 150151, ¶ 27.

9. 656 F.3d 511, 516 (7th Cir. 2011).

10. *Id.*

11. *Id.*

12. *Id.* (citing *Martis*, 388 Ill. App. 3d 1017).

claim—and, of course, unjust enrichment will stand or fall with the related claim.¹³

Despite its well-reasoned analysis of how the Illinois Supreme Court *would* rule if it were to answer this question outright, the court found it unnecessary to certify the question to the state court for it to resolve the issue “definitively” because the plaintiff insufficiently alleged unjust enrichment.¹⁴ The question then became whether *Cleary* would catalyze state courts to harmonize the law once and for all, or whether it would become just another case in the mix.

IV. POST-CLEARY DEVELOPMENTS (OR LACK THEREOF)

As it turns out, *Cleary* has fallen on deaf ears and has had no noticeable effect on Illinois law. Incredibly, almost ten years later, not a single Illinois court has cited it, and one court flatly reaffirmed as recently as last year: “Unjust enrichment is not an independent cause of action.”¹⁵ Clearly, *Cleary* cleared up nothing; the confusion persists among Illinois courts—even within certain districts.

The First District, as one example, has contradicted itself multiple times since *Cleary*. In *Gagnon v. Schickel*, the court bluntly stated that “[u]njust enrichment is not an independent cause of action. Rather, it is condition that may be brought about by unlawful or improper conduct as defined by law, such as fraud, duress, or undue influence[.]”¹⁶ Further elaboration was apparently unnecessary—the unjust enrichment claim failed along with the plaintiff’s deficient quasi-contractual claims.¹⁷ Several other courts have since reiterated *Gagnon*’s pronouncement of the doctrine with no further elaboration because, like in *Gagnon*, none of these cases turned on the issue.¹⁸

Conversely, in *National Union Fire Insurance v. DiMucci*, the First District explained that “unjust enrichment does not require fault or illegality” by the defendant; rather, “the essence of the cause of action is that one party is enriched and it would be unjust for that party to retain the enrichment.”¹⁹ The court affirmed the imposition of a constructive trust over the property at issue because a constructive trust may be imposed as a remedy for unjust enrichment even absent wrongdoing, and even if the unjust enrichment claim stands alone.²⁰ The First District’s case law is thus internally inconsistent.

13. *Id.* at 517.

14. *Id.* at 518–20.

15. High Concept Holdings, Inc. v. Carmedix, Inc., 2019 IL App (1st) 18-0075-U, ¶ 51 (citation omitted).

16. 2012 IL App (1st) 120645, ¶ 25 (quotations and citations omitted).

17. *Id.* at ¶ 26.

18. See, e.g., Saletech, LLC v. East Balt, Inc., 2014 IL App (1st) 132639, ¶ 36.

19. 2015 IL App (1st) 122725, ¶ 67.

20. *Id.*

Contradictions can be found within other appellate districts and can even be seen within opinions where a single court states both that “unjust enrichment does not require fault or illegality” and that “[u]njust enrichment is not an independent cause of action[.]”²¹ This is nonsensical. How is it that a claim must be tethered to another cause of action yet, at the same time, not require the underlying wrongful conduct that would give rise to another cause of action? If that were the case, then an unjust enrichment claim would be anchored to another claim without being anchored to the conduct that gives rise to it. At the very least, this runs contrary to *Cleary*’s logical explanation of why some courts have held unjust enrichment cannot stand alone.

Even the Seventh Circuit is not free from contradictions after *Cleary*. Six years after that case, the court was again presented with the issue of unjust enrichment under Illinois law and ignored *Cleary* entirely while stating that unjust enrichment cannot provide an independent cause of action.²² It is no surprise that the confusion has trickled down to the Seventh Circuit’s constituent district courts: The Northern District of Illinois followed the rule pronounced in *Cleary* in one case²³ and the opposite rule in another²⁴—*a mere four days apart*.

V. RESOLVING THE DISPUTE

Such a pervasive split of opinion regarding such a common claim spells doom for stability and predictability in the law. As things now stand, it is no exaggeration to say that parties litigating in certain Illinois and federal courts have *no idea* whether a claim for unjust enrichment can stand independently—and neither, apparently, do the judges. Resolution of this issue should therefore be a top priority for the Illinois Supreme Court once the opportunity presents itself. The confusion among Illinois courts—and practitioners—will only persist as long as courts continue to contradict each other and themselves.

When the right case arrives, the Illinois Supreme Court should decide that unjust enrichment can indeed stand independently of other claims. Courts that hold that unjust enrichment can *only* arise where the defendant has acted wrongfully, and can *only* succeed if tethered to other claims premised on that wrongful conduct, have been led astray—and have dragged practitioners with them. This cramped view of unjust enrichment can be traced, in part, to an outdated conception of constructive trusts. Constructive trusts, a common remedy for unjust enrichment, were formerly only available in cases of fraud or abuse of fiduciary relationship.²⁵ Courts that rejected stand-alone unjust enrichment claims, such as

21. Zahran v. Republic Bank of Chi., 2019 IL App (2d) 170648-U, ¶ 59.

22. 877 F.3d 725, 741 (7th Cir. 2017).

23. Am. Inter-Fidelity Corp. v. M.L. Sullivan Ins. Agency, Inc., No. 15 C 4545, 2017 WL 2506393, at *3 (N.D. Ill. June 9, 2017) (“[T]he case law in Illinois is somewhat uncertain, but the Seventh Circuit concludes that ‘[t]he Illinois Supreme Court appears to recognize unjust enrichment as an independent cause of action.’” (quoting *Cleary*, 656 F.3d at 516)).

24. Sheridan v. iHeartMedia, Inc., 255 F.Supp.3d 767, 781 (N.D. Ill. 2017) (“Having found no substantive cause of action, the unjust enrichment count must also be dismissed.” (citing *Gagnon*, 2012 IL App (1st) 120645 at ¶ 25)).

25. Charles Hester Enters., Inc. v. Ill. Founders Ins. Co., 137 Ill. App. 3d 84, 90–91 (5th Dist. 1985).

Martis and *Mulligan*, ultimately relied on *Charles Hester Enterprises, Inc. v. Illinois Founders Insurance Co.*, which propounded this cramped and outdated view of constructive trusts.²⁶ But since then, the Illinois Supreme Court has broadened the applicability of constructive trusts to cases *not* involving wrongful conduct.²⁷ Cases like *DiMucci* and *Tummelson* relied on this new precedent in concluding that unjust enrichment does not require wrongful conduct.²⁸

Courts therefore need to abandon their perfunctory reliance on outdated cases and return instead to current Illinois Supreme Court precedent on the elements of unjust enrichment, which include neither wrongful conduct nor the existence of other claims. The supreme court has set forth the necessary elements for unjust enrichment without any reference to these “requirements,” instead requiring only (a) “that the defendant has unjustly retained a benefit,” (b) “to the plaintiff’s detriment,” and (c) “defendant’s retention of the benefit violates the fundamental principles of justice, equity, and good conscience.”²⁹ The court has also summarized three situations giving rise to unjust enrichment: where (1) the benefit should have gone to the plaintiff, but through mistake went to the defendant instead; (2) the defendant procured the benefit through some type of wrongful conduct; or (3) the plaintiff has a better claim to the benefit than the defendant.³⁰ The common element of these three situations is that they are focused not on the defendant’s *conduct*, but on his *benefit*: It would be unjust to allow the defendant to *retain it*. This is the central feature of unjust enrichment, not a defendant’s wrongful conduct. Underlying wrongful conduct *may* give rise to unjust enrichment, but it is certainly not necessary under supreme court precedent.

Emphasizing the benefit retained by the defendant, rather than his conduct, would square the doctrine with its roots in equity—that is, balancing equitable considerations: It would be unjust for the defendant to retain a benefit to which he is not entitled in the face of a detriment posed to the plaintiff, which cannot be remedied at law. As *DiMucci* noted, the purpose of equitable relief, like constructive trusts, is to avoid an unjust result, not simply to condemn wrongful conduct.³¹ Restitution aims to achieve a similar effect by restoring to the plaintiff that to which he is entitled.³² Legal remedies, on the other hand, more appropriately compensate for an injury that has occurred due to someone’s unlawful conduct. This understanding is consistent with the Illinois Supreme Court’s view of unjust enrichment. The “plaintiff need not show loss or damages,” but “must show a detriment—and, significantly, a connection between the detriment and *the defendant’s retention of the benefit*,” rather than a connection between the detriment and defendant’s *wrongdoing*.³³

26. *Id.*

27. *Smithberg v. Ill. Mun. Retirement Fund*, 192 Ill. 2d 291, 299 (2000) (“a constructive trust can be imposed to avoid unjust enrichment. Although some form of wrongdoing is generally required for the imposition of a constructive trust, wrongdoing is not always a necessary element” (citations omitted)).

28. *Tummelson*, 2015 IL App (4th) 150151 at ¶27; *DiMucci*, 2015 IL App (1st) 122725 at ¶75.

29. *HPI Healthcare Services, Inc.*, 131 Ill. 2d at 160.

30. *Id.* at 161–62.

31. 2015 IL App (1st) 122725 at ¶75.

32. See Restatement (3d) of Restitution and Unjust Enrichment § 49.

33. *Clary*, 656 F.3d at 518–19 (emphasis added).

Allowing unjust enrichment to stand alone, without requiring underlying wrongful conduct, would harmonize the doctrine with its equitable underpinnings and result in settlement, not upheaval, of the law. As the *Cleary* court noted, the supreme court seems to have implicitly endorsed this understanding of unjust enrichment—or at least has discussed unjust enrichment in ways that lend no credence to the idea that it cannot be brought independently.³⁴ The dicta in *Gagnon* is also consistent with this understanding; unjust enrichment “may be brought about by unlawful or improper conduct.”³⁵ This may *often* be the case, and in such instances where unjust enrichment rests on the same facts supporting a separate claim, the unjust enrichment claim “will stand or fall with the related claim” as a practical matter, as noted by *Cleary*.³⁶ As *Cleary* recognized, this explains the result in *Martis*.³⁷ And another practical limitation on the doctrine would also remain intact: The existence of an express contractual relationship would still require dismissal of an unjust enrichment claim, as noted in *Gagnon*.³⁸

Adopting this understanding of unjust enrichment is consistent with Illinois Supreme Court precedent and with the modern understanding of unjust enrichment as a remedy available in a variety of situations in which it would be *unjust* for the defendant to retain a benefit rightfully belonging to the plaintiff. It would also prevent defendants from somehow obtaining an undeserved windfall and then hiding behind procedural technicalities to avoid having to return it to the rightful owner.

VI. RECOMMENDATION TO ATTORNEYS

What are lawyers to do when the law is effectively in shambles? Short of becoming judges and piecing it back together ourselves, we have few options but to advocate for clarity. Until the Illinois Supreme Court actually resolves the issue, there will be an uncomfortable degree of uncertainty. In the interim, though, practitioners can keep apprised of the most recent developments in their court, which could have practical effects on what claims to bring (and how to argue against them). But as the post-*Cleary* case law demonstrates, attorneys better move fast—wait just a few days in asserting the court’s precedent, and the court might change its mind.

34. *Id.* at 516.

35. 2012 IL App (1st) 120645, ¶ 25 (emphasis added, citation omitted).

36. *Cleary*, 656 F.3d at 517.

37. *Id.*

38. 2012 IL App (1st) 120645, ¶ 28.