VERMONT SUPERIOR COURT
Chittenden Unit
175 Main Street, PO Box 187
Burlington VT 05402
802-863-3467
www.vermontjudiciary.org

CIVIL DIVISION
Case No. 22-CV-01058

WWSAF Special Partners Group, LLC (Series D), et al v. Certain Underwriters At Lloyd's of London Subscribing To Policy No. 10145L14-138, et al

ENTRY REGARDING MOTION

Title: Motion to Dismiss; Motion to Dismiss (Motion: 2; 3)
Filer: Gary L. Franklin; Thomas J. Fay
Filed Date: May 26, 2022; May 27, 2022

This is a claim for unjust enrichment asserted against an insurance company and a law firm. There are currently two motions to dismiss before the court.

Factual and Procedural Background

This is an unusual case that is derivative of a few other cases that were litigated and ultimately settled. It all began when a roofing employee, Donald Fales, fell during a job and got injured. The complaint here alleges that Fales worked for Walker & Co. Roofing ("Walker") and sought damages from Walker for his injuries. Walker filed a claim with its insurance agent, Cornerstone Risk Management, LLC ("Cornerstone"), for workers' compensation benefits. Despite issuing certificates of insurance to Walker, Cornerstone had actually failed to procure the workers' compensation insurance. As a result, Walker did not have insurance to cover Fales' claim(s). Fales sued Walker. Walker alleges that the company did not have the financial ability to pay Fales' damages and that it so stated in the pleadings in Fales' case.

Fales was represented by Attorney James Valente, who is a shareholder of Costello, Valente, & Gentry, P.C. (both Mr. Valente and the firm are named parties and shall be referred to collectively as "Valente"). Walker retained Gravel & Shea ("Gravel") to defend it against Fales' claims and to file an action on its behalf against Cornerstone to recover the monies needed to compensate Fales for his injuries. Complaint ¶ 24. When Walker sued Cornerstone, Cornerstone notified its professional liability insurance carrier, Lloyd's of London ("Lloyd's"), which undertook Cornerstone's defense.

The damages Walker was seeking to recover in its action against Cornerstone included (1) damages resulting from Fales' claims against Walker, including Fales' medical bills, ongoing disability, lost wages, and legal fees; (2) Walker's own losses resulting from Cornerstone's failure to procure insurance for Walker; and (3) money Walker paid to Fales in partial compensation of his injuries that should have been covered by a workers' compensation policy. The complaint here alleges that Walker voluntarily made payments to Fales "with the expectation that it would be repaid in the future" by a recovery against Cornerstone. Id ¶ 33. Gravel defended Cornerstone's motion to dismiss Walker's complaint, amended Walker's complaint against Cornerstone, and defended Cornerstone's motion for summary judgment.

Fales, Walker, and Cornerstone participated in mediation in an effort to settle both lawsuits. The mediation was unsuccessful. The following month, however, Lloyd's, on behalf of Cornerstone, reached an agreement with Fales and his attorney, Valente (the "Settlement"), the terms of which were not disclosed to Walker or its attorneys at Gravel. As a result of the Settlement, Fales dismissed his claims against Walker and signed a release of all claims against Walker.

WWSAF Special Partners Group, LLC (Series D) ("WWSAF") subsequently acquired Walker's interests in any claims, actions, judgments, and settlements in this case. WWSAF and Gravel ("Plaintiffs") assert in this case that Lloyd's and Valente hid from Walker and Gravel the negotiations that led to the Settlement in an effort to cut Walker and Gravel out. They allege that Lloyd's, along with Valente and Fales, agreed to the Settlement to decrease Lloyd's' liability "by undercutting Walker's damages and [Gravel's] attorney's fees and costs." Complaint ¶ 48. According to Plaintiffs, the Settlement compensated Fales and Valente without providing Walker or Gravel any compensation for the benefits they provided or for the payments Walker had already made to Fales. Plaintiffs assert that, but for Walker and Gravel's efforts in filing the complaint against Cornerstone and defeating Cornerstone's motions to dismiss and for summary judgment, Fales and Valente would not have been in a position to receive anything at all from Lloyd's. Plaintiffs further contend that by settling with Fales and Valente, "Lloyd's was able to avoid additional litigation costs or the payment of a higher settlement amount or judgment and the attorneys' fees involved in defending Walker v. Cornerstone." Id. ¶ 52. They assert claims against Lloyd's and Valente for unjust enrichment.

Valente and Lloyd's have each filed a motion to dismiss Plaintiffs' complaint, arguing that Plaintiffs have failed to state a claim for which relief can be granted. As Valente and Lloyd's each stand in a different position vis-à-vis Plaintiffs, each motion will be addressed separately.

Valente's Motion to Dismiss

Grant of a motion to dismiss for failure to state a claim "is proper only when it is beyond doubt that there exist no facts or circumstances consistent with the complaint that would entitle the plaintiff to relief. . . . [T]he threshold a plaintiff must cross in order to meet our notice-pleading standard is exceedingly low." Bock v. Gold, 2008 VT 81, ¶ 4, 184 Vt. 575 (quotation and citations omitted). Such motions "are disfavored and should be rarely granted." Id. In analyzing the motions, the court must "assume as true all factual allegations pleaded by the nonmoving party." Amiot v. Ames, 166 Vt. 288, 291 (1997) (citation omitted). In other words, the question is whether Plaintiff could win at trial if the allegations were proved. Counterintuitively, trial courts are instructed to "be especially reluctant to dismiss on the basis of pleadings when the asserted theory of liability is novel or extreme." Ass'n of Haystack Prop. Owners, Inc. v. Sprague, 145 Vt. 443, 447 (1985).

To prevail on their complaint for unjust enrichment against Valente, Plaintiffs must show that (1) they conferred a benefit on Valente; (2) Valente accepted the benefit; and (3) it would be inequitable for Valente not to compensate Plaintiffs for the value of the benefit conferred. Pettersen v. Monaghan Safar Ducham PLLC, 2021 VT 16, ¶ 16, 214 Vt. 269; *see also* Unifund CCR Partners v. Zimmer, 2016 VT 33, ¶ 21, 201 Vt. 474. The basis for this doctrine is that "'[one should] not be allowed to enrich [oneself] unjustly at the expense of another.'" Pettersen, 2021 VT 16, ¶ 16 (quoting Legault v. Legault, 142 Vt. 525, 531 (1983)).

What Plaintiffs assert in their complaint is that but for their lawsuit against Cornerstone, Valente would have recovered nothing because Walker had no ability to pay

Fales' damages. They point out that Fales did not himself have any legal claim he could have filed against Cornerstone, and therefore was only able to obtain payment from Cornerstone's insurer because of Walker's lawsuit (and Gravel's efforts in that suit).

Although not a standard claim that comes before the court, these allegations could potentially establish the elements of unjust enrichment: that Valente received a benefit from Plaintiffs' filing of the suit against Cornerstone, and that it would be inequitable for Valente not to compensate Gravel and Walker (actually its successor-in-interest) for their efforts in that lawsuit. Based upon the allegations before the court, which must be taken as true for purposes of this motion, Valente would have recovered nothing from the lawsuit against Walker because Walker had no ability to pay. Complaint, ¶ 23.

Valente argues that a finding that it should compensate Plaintiffs "will create a precedent where attorneys will have to use part of their client's settlements or awards to pay their opposing counsel." Valente's Memorandum, p. 5. First, the court is not ruling here whether compensation must be paid, but only that the claim is not totally without merit. Moreover, the roles that are relevant here are not counsel's roles as opposing counsel, but one counsel's role in bringing a deep pocket into the fray that the other side could not have brought in itself. When Walker sued Cornerstone, the interests of the parties shifted and Walker's and Fales' interests became aligned. The primary reason Walker was proceeding against Cornerstone was to satisfy Fales' claims for compensation. Thus, Walker and Fales were on the same side as against Cornerstone. Thus, contrary to Valente's contention, a finding that Valente was unjustly enriched in this case would not create a precedent requiring attorneys to use their client's settlements to pay opposing counsel.

Other courts have recognized the possibility of unjust enrichment claims in related circumstances. For example, the Pennsylvania Supreme Court has held that one law firm can sue another for unjust enrichment when the first firm's efforts led to the later recovery in the case. Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. v. Law Firm of Malone Middleman, P.C., 179 A.3d 1093, 1103—05 (Pa. 2018). Although the firms there were both counsel for the same client, the analysis nonetheless applies here: the work of one assisted in the ultimate recovery of fees by the other. *See also* Aetna Cas. & Sur. Co. v. Starkey, 323 N.W.2d 325, 329 (Mich. Ct. App. 1982) (medical providers obligated to compensate injured party's attorneys under theory of unjust enrichment because providers knew attorneys were spending time pursuing insurance claims and providers were willing to accept attorneys' assistance, knowing it would result in their payment); *cf.* Adler Stilman, PLLC v. Oakwood Healthcare, Inc., 2018 WL 842623, at *4 (Mich. Ct. App. Feb. 13, 2018) (medical provider not required to compensate injured worker's attorneys because provider "expressly disavowed plaintiff's attempts to render legal services on its behalf" and "vigorously protected its own interests").

Valente relies on the case Birchwood Land Co., Inc. v. Kirzan, 2015 VT 37, 198 Vt. 420, to argue that it was not unjustly enriched and received only incidental benefits as a result of Walker's and Gravel's efforts. Our Supreme Court took the opportunity in Kirzan to adopt the Restatement (Third) of Restitution & Unjust Enrichment § 30 (2011) ("Restatement § 30"). Id. ¶¶ 8-9. That section of the Restatement provides, in part, that:

> [A] claimant whose unrequested but justifiable intervention confers a benefit on the recipient may be entitled to restitution as necessary to prevent unjust enrichment. There is unjust enrichment in such cases only to the extent that

(a) liability in restitution replaces a money obligation or spares the recipient a necessary expense;

(b) the recipient obtains a benefit in money; or

(c) relief may be granted to the claimant by specific restitution.

Here, the Complaint alleges that Valente obtained legal fees only because Plaintiffs sued Cornerstone. This satisfies the "benefit in money" prong of the Restatement. Moreover, the work undertaken in the suit against Cornerstone was for the benefit of both Walker and Fales, not solely for Walker. The court cannot say that "it is beyond doubt that there exist no facts or circumstances that would entitle the plaintiff[s] to relief." Skaskiw v. Vt. Agency of Agric., 2014 VT 133, ¶ 6, 198 Vt. 187.

Lloyd's' Motion to Dismiss

Lloyd's was in a very different posture from Valente in the underlying cases. Plaintiffs' claim is that Lloyd's settled Fales' claims against Walker without compensating Walker or Gravel. In their complaint, Plaintiffs allege the following:

> 48. Lloyd's, along with Costello, Valente, and Fales, agreed to the [] Settlement in order to decrease Lloyd's liability through Cornerstone and Wocell in *Walker v. Cornerstone* by undercutting Walker's damages and any possible attorney's fees and costs.
>
> . . . .
>
> 52. In reaching the [] Settlement, Lloyd's was able to avoid additional litigation costs or the payment of a higher settlement amount or judgment and the attorneys' fees involved in defending *Walker v. Cornerstone*.
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> . . . .
>
> 56. Lloyd's, Costello, Valente, and Fales together entered into a scheme to save Lloyd's money that it otherwise would need to have paid on behalf of Cornerstone and Wocell to Walker.
>
> . . . .

> 58. Walker and Gravel & Shea, by bringing the case against Cornerstone and Wocell, conferred a benefit on Lloyd's by allowing Lloyd's to achieve a discount settlement that did not factor in all damages incurred by Walker.

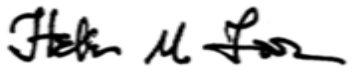
Plaintiffs may be correct that the Settlement would not have occurred if Walker had not filed a complaint against Lloyd's' insured, Cornerstone, but that does not mean that Walker conferred a benefit on Lloyd's by filing the lawsuit. Cornerstone would not have been at risk of any loss had Walker not sued it. Moreover, there was no guarantee that Walker would have succeeded on its claim against Cornerstone. Walker—and thus, Gravel—could well have received nothing even if Fales' case had not settled and all the litigation had gone to trial. In that event, Lloyd's would have paid nothing. Plaintiffs have not explained how it conferred a benefit upon either Cornerstone or Lloyd's by filing a complaint against Cornerstone. *See* Pettersen, 2021 VT 16, ¶ 16 (identifying elements of unjust enrichment).

The court concludes that Plaintiffs have not stated a claim against Lloyd's for which relief can be granted.[1]

Conclusion

Lloyd's' motion to dismiss is granted. Valente's motion to dismiss is denied. Defendants James Valente and Costello, Valente & Gentry, P.C. shall file answers to the complaint within 14 days.

Electronically signed on November 10, 2022 pursuant to V.R.E.F. 9(d).



Helen M. Toor
Superior Court Judge

[1] Because the court concludes that Plaintiffs have failed to state a claim against Lloyd's for unjust enrichment, the court need not address the argument that Plaintiffs lack standing.