2018 IL App (1st) 162531-U

No. 1-16-2531

Order filed June 8, 2018

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

SANDY TSAI,	)	Appeal from the
	)	Circuit Court of
Plaintiff and Counterdefendant-Appellant,	)	Cook County.
	)	
v.	)	No. 13 L 3141
	)	
SPIROS PICOULAS and PETER HOUSAKOS,	)	
	)	
Defendants (SPIROS PICOULAS, Cross-respondent; PETER HOUSAKOS, Counterplaintiff and Cross-claimant; and ANGELIKI STAMELOS and SPIROS STAMELOS, Intervenors and Counterplaintiffs-Appellees).	)	Honorable Margaret A. Brennan Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Reyes and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *HELD*: Where the intervenors' money was deposited into the plaintiff's bank account by her business partner, the trial court's judgment in favor of the intervenors on their unjust enrichment claim against the plaintiff was not against the manifest weight

> of the evidence because there was a relation between the plaintiff's enrichment and the intervenors' impoverishment, the plaintiff's diversion of the intervenors' money was not justified, and the intervenors did not have an adequate remedy at law.

¶ 2 Plaintiff Sandy Tsai filed a declaratory judgment action against her business partner and one of his investors, seeking, *inter alia*, a declaration regarding the ownership of $400,000 the business partner had deposited into Tsai's bank account. While that action was pending, Spiros and Angeliki Stamelos intervened, alleged that they were additional investors and the rightful owners of the $400,000, and filed a counterclaim against Tsai for, *inter alia*, unjust enrichment.

¶ 3 After a bench trial, the court ruled, *inter alia*, in favor of Mr. and Mrs. Stamelos on their unjust enrichment claim and awarded them a $400,000 judgment plus costs.

¶ 4 On appeal, Tsai argues that the trial court erred in granting judgment against her and in favor of the Stameloses for unjust enrichment because (1) they had a contract with her business partner and thus an adequate remedy at law, (2) they failed to show that Tsai had engaged in any improper conduct toward them, and (3) the trial court's findings were against the manifest weight of the evidence and legally inconsistent with its earlier default judgment against Tsai's business partner. Furthermore, Tsai argues that the trial court should have dismissed the Stameloses' insufficiently pled unjust enrichment claim because they had a contract and thus an adequate remedy at law, no cause of action supported their derivative claim of unjust enrichment, and Tsai did not owe them a duty to act. Finally, Tsai argues that the trial court should have dismissed the Stameloses' counterclaim for failure to sue her business partner as a counterdefendant because he was a necessary party to this action.

¶ 5 For the reasons that follow, we affirm the judgment of the trial court.

¶ 6 I. BACKGROUND

¶ 7 The dispute on appeal between Tsai and the Stameloses about the ownership of $400,000 arose from an earlier dispute between Tsai and her business partner, Spiros Picoulas, about his default on a business loan. Specifically, Tsai and Picoulas each owned 50% of Construction Import Solutions, LLC (CIS), which they had formed in 2007. In the late spring or early summer of 2008, Picoulas informed Tsai about an auction to bid on an option to purchase approximately 4.82 acres in Chicago (the Bridgeport property) for $1 million. The purchaser of the option would be allowed to purchase the Bridgeport property for an additional $3.75 million. Tsai and Picoulas agreed to make equal capital contributions to purchase the option for CIS. CIS was successful at the auction and the option it had purchased was its sole asset. Picoulas, however, claimed that he was not able to make his $500,000 capital contribution, and Tsai ultimately loaned him $500,000 to cover his capital contribution.

¶ 8 CIS's operating agreement provided that no ownership interest in CIS could be sold without Tsai's express written approval. However, on October 2, 2009, Picoulas and Peter Housakos signed an agreement that memorialized Picoulas's sale of a 10% equity interest to Housakos of Picoulas's 50% equity interest in CIS. The agreement stated that CIS controlled an option agreement for the Bridgeport property and Housakos's total amount of equity investment for this project was $500,000. He paid Picoulas the $500,000 in a series of payments or credits made from October 2008 to July 2009.

¶ 9 At some point, Picoulas apparently paid Tsai $100,000, which were funds he had received from two other investors who each had paid him $50,000 for 1% of his ownership interest in CIS. This 2% ownership sale was later ratified by Tsai, and she received the $100,000

to retire a portion of Picoulas's debt for the CIS Bridgeport property purchase option. Although the record indicates that Picoulas may have sold those 2% ownership interests sometime in 2009, the record is not clear on when he gave the $100,000 to Tsai or when she ratified that sale.

¶ 10 On July 20, 2011, Tsai and Picoulas reduced their loan agreement concerning the Bridgeport property purchase option to writing in the form of a promissory note. The note stated that Picoulas pledged 80% of his 50% ownership interest in CIS as collateral for the principal amount of $428,493.15 with interest and a maturity date of July 20, 2012. Section 2.1 of the note provided that if Picoulas defaulted on the terms and conditions of the note, he would fully release and transfer to Tsai his collateral CIS stock, which included, but was not limited to, his interest, if any, in the Bridgeport property or the option to purchase it. The promissory note also provided that Tsai was entitled to collect the costs and expenses, including attorney fees, associated with enforcing her rights under the note and defending against any related litigation.

¶ 11 On July 25, 2012, Tsai's counsel sent Picoulas a letter declaring an event of default under the promissory note and stating that Tsai was exercising her right under the note to take ownership of the pledged collateral. The letter stated that "no further payment was requested under the Note" and if Picoulas contested the manner in which Tsai executed her rights under the note, then Tsai would vigorously defend and prosecute her rights under the note and seek the maximum relief available, including attorney fees, costs and expenses, and additional damages suffered as a result of Picoulas's default and Tsai's enforcement of her rights. The letter stated that, as a result of Picoulas's default, Tsai's ownership interest in CIS increased to 90% whereas Picoulas's ownership interest was reduced to 8%.

¶ 12 Due to Picoulas's failure to cease communications with Tsai and her chief financial officer (CFO) Steve Cameron, Tsai's counsel sent Picoulas a July 30, 2012 email, which stated that Tsai elected to take ownership of the collateral pledged in Section 2.1 of the note as her choice of remedy for the damages caused by Picoulas's default. The letter stated that no further payment was required from Picoulas under the terms of the promissory note, but if he continued to insist on attempting to make a payment and dispute Tsai's ownership percentage in CIS, then Tsai would file a declaratory relief action against him and seek attorney fees and costs.

¶ 13 Meanwhile, on August 7, 2012, Picoulas signed a notarized letter to Mrs. Stamelos, which stated that it served as an "official confirmation" that he had borrowed $550,000 from her and pledged as collateral 30% of his total 50% ownership interest in CIS, which controlled the purchase option of the Bridgeport property. The letter also stated that Mrs. Stamelos reserved the right to invest up to a 50% ownership stake in a restaurant on South Halsted Street in Chicago upon the closing of the real estate transaction. She would purchase the "membership interest" at face value and without any profit margin. On August 7, 2012, Mrs. Stamelos wired $550,000 from her bank accounts to Picoulas's bank account.

¶ 14 On August 9, 2012, Housakos and his sister-in-law attended a meeting in St. Louis, Missouri, with Tsai's counsel, CFO Cameron, and Tsai's son, Max Tsai, to discuss Housakos's dealings with Picoulas. Specifically, Housakos stated that he had given Picoulas about $500,000 to invest in CIS. However, Tsai's representatives told Housakos that Picoulas did not own 50% of CIS, had no right to sell any interest in CIS, and did not pay any money to Tsai, who had paid the $1 million for the Bridgeport property purchase option.

¶ 15 On August 10, 2012, Picoulas deposited a $400,000 check into Tsai's bank account. The memo line of the check listed the address of the Bridgeport property. Ultimately, bank records admitted into evidence established that the source of this $400,000 was the money that Mrs. Stamelos had wired from her bank accounts to Picoulas's bank account on August 7, 2012.

¶ 16 On August 21, 2012, Picoulas sent Tsai an email stating that he had deposited $400,000 into her bank account a couple of weeks earlier. CFO Cameron forwarded this email to Housakos.

¶ 17 On August 27, 2012, Tsai's counsel sent Picoulas a letter, which stated that the $400,000 payment neither satisfied the debt he owed Tsai nor changed the fact that he was and remained in default of the promissory note. The letter also stated that Tsai executed her immediate right under the note to seize the collateral—80% of Picoulas's interest in CIS—as partial satisfaction of the amount he owed under the note. The letter added that Picoulas should contact Tsai's counsel, who wished to return Picoulas's attempted payment, less any amounts for the deficiency and attorney fees and costs incurred by enforcing Tsai's rights under the note.

¶ 18 On August 29, 2012, Housakos's counsel sent a letter to Tsai's counsel demanding that the $400,000 deposit be retained pending imposition of a constructive trust upon those funds for the benefit of Housakos and the turnover of those funds to Housakos.

¶ 19 On August 31, 2012, Tsai filed a lawsuit in St. Clair County, Illinois, against Picoulas and Housakos. The case, however, was later transferred to Cook County based on the doctrine of *forum non conveniens*.

¶ 20 Evidence presented at the bench trial ultimately held in this matter established that Tsai, between November 2012 and February 2013, either withdrew or moved to her other private accounts $378,796.38 of the $400,000 deposit.

¶ 21 Meanwhile, in January 2013, Tsai filed an amended complaint for declaratory judgment and breach of contracts. She alleged that (count I) Picoulas breached the promissory note by failing to pay her the debt plus interest by July 20, 2012, (count II) Picoulas breached the CIS operating agreement by attempting to improperly sell shares in CIS to third parties, (count III) the court should declare that Picoulas must sell his remaining CIS shares—*i.e.*, 8% of CIS—to Tsai and that Housakos has no ownership interest in CIS, and (count IV) the court should declare that Housakos was not entitled to any of the $400,000 deposited into Tsai's bank account and that Tsai was the lawful owner of the funds and could apply them to settle any deficiency if Picoulas's collateral failed to satisfy the amount owed under the note. Tsai alleged that Picoulas had deposited the $400,000 into her bank account in an unsuccessful attempt to redeem the shares of CIS he had transferred to her when he defaulted on the promissory note.

¶ 22 After several months of unsuccessful service attempts on Picoulas, the court ruled in January 2013 that Tsai could perfect service of her amended complaint on him by leaving a copy of it and the court's order at Picoulas's café on South Michigan Avenue in Chicago.

¶ 23 Housakos later filed an answer and a counterclaim seeking a declaratory judgment and the imposition of a constructive trust over the $400,000 deposit.

¶ 24 On July 9, 2013, the trial court entered a default judgment against Picoulas on counts I, II, and III of Tsai's amended complaint based on Picoulas's failure to appear and answer. The court found that the value of CIS as of Picoulas's default in July 2012 was $80,112 and Picoulas

owed Tsai, after all offsets, $401,183.20 plus attorney fees and costs in the amount of $68,737.90. No judgment was entered on count IV—Tsai's request for declaratory relief on the ownership rights to the $400,000 deposit.

¶ 25 Housakos then filed a cross-claim against Picoulas. Housakos alleged that Picoulas knowingly made false statements to him concerning the sale of an interest in CIS, Housakos reasonably believed and relied on those statements, and the fraudulent nature of Picoulas's conduct resulted in $500,000 in damages to Housakos.

¶ 26 In August 2013, the trial court ruled that the July 2013 default judgment against Picoulas was final and appealable but did not preclude Housakos from asserting his claims against Tsai.

¶ 27 In July 2014, Housakos filed an amended counterclaim against Tsai, alleging a claim of unjust enrichment and requesting the imposition of a constructive trust on the $400,000 held in Tsai's bank account.

¶ 28 On January 23, 2015, Mrs. Stamelos filed a petition to intervene and file a counterclaim. She alleged that she was the rightful owner of the $400,000 at issue in this litigation. She was granted leave to intervene and filed in February 2015 a counterclaim against Tsai and her bank that (count I) alleged an unjust enrichment claim against Tsai, and (count II) sought the imposition of a constructive trust on the $400,000 and the return of those funds. Specifically, Mrs. Stamelos alleged that in August 2012 Picoulas represented to her that he owned 50% of CIS, informed her that CIS owned an option to buy the Bridgeport property, and offered to sell her 30% of his 50% ownership interest in CIS for $550,000. Mrs. Stamelos believed on August 7, 2012, that she was buying 30% of his 50% ownership interest in CIS and wired $550,000 from two of her bank accounts to Picoulas's bank account. Furthermore, she was informed and

believed that Picoulas had fled the United States and was in Greece but his whereabouts were otherwise unknown. Although Mr. Stamelos was not joined as an intervening petitioner to this counterclaim until October 2015, this court hereinafter refers to both Mr. and Mrs. Stamelos as intervening litigants for ease of reading.

¶ 29 In March 2015, the trial court granted Housakos's request to voluntarily dismiss count II of his amended counterclaim, which had sought the imposition of a constructive trust.

¶ 30 Also in March, Tsai moved to dismiss the Stameloses' counterclaim pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2014)) for failure to state a sufficient claim upon which relief could be granted. Tsai argued that the Stameloses had an adequate remedy at law, lacked an underlying cause of action to form the basis for an unjust enrichment claim, and failed to allege a fiduciary relationship. In April 2015, Tsai moved for summary judgment against Housakos's unjust enrichment counterclaim.

¶ 31 In July 2015, the court denied Tsai's section 2-615 motion to dismiss the Stameloses' counterclaim and her motion for summary judgment against Housakos. Thereafter, Tsai filed an answer and affirmative defenses, and discovery was ordered for the unjust enrichment claims only. In February 2016, Tsai moved to compel the Stameloses to join Picoulas as a necessary party or, alternatively, to dismiss their claims against her. The circuit court denied that motion.

¶ 32 In June 2016, a bench trial was held on the unjust enrichment claims of Housakos and the Stameloses. Picoulas did not participate in the trial, and testimony indicated that he had fled to Greece.

¶ 33 Housakos testified that he did not finish high school and was a truck driver. He met Picoulas in May 2008 through family members and close friends. In addition to the $500,000

Housakos gave Picoulas to invest in CIS, Housakos also participated in three other investments with Picoulas, including a restaurant deal. That restaurant, however, failed because Picoulas was selling the restaurant's stock to other people. In 2012, Housakos became suspicious of Picoulas, worried that he (Housakos) would lose his investment in CIS, and made some inquiries about CIS. Housakos learned that Tsai was Picoulas's partner in CIS.

¶ 34 Housakos testified that when he met Tsai's representatives on August 9, 2012, he learned that he had been defrauded by Picoulas. Housakos was very upset and asked for help. Both Tsai's attorney and CFO Cameron responded that if CIS received any money from Picoulas, the money would not belong to CIS and CIS would give it back to Housakos. Late that evening, Housakos spoke by telephone with Picoulas, who told Housakos that his $500,000 was invested in CIS and Tsai's representatives were lying. On August 11, 2012, Max Tsai informed Housakos by telephone that Picoulas had deposited $400,000 in Sandy Tsai's account. Shortly thereafter, Sandy Tsai sued Housakos for declaratory relief concerning the ownership of the $400,000. Housakos was emotionally and financially devastated by this matter, had lost his automotive repair business, and lost his home to foreclosure. Housakos testified that after this litigation commenced, he and the Stameloses agreed that they would split in half any recovery they obtained from Tsai.

¶ 35 Max Tsai testified that he had undergraduate degrees in accounting and finance and an MBA degree. After graduate school, he worked for his parents' food manufacturing business, which had gross annual revenues of about $30 million when it was sold in March 2016. Max testified that his mother Sandy Tsai knew Picoulas was trying to sell some of his interest in CIS to other investors to satisfy the note he owed her. Max Tsai typically was involved in all of his

mother's transactions that involved the English language. He asserted that his mother controlled her funds and he did not ask her what she did with her money. Concerning the 2011 promissory note, Max stated that Sandy Tsai's 2008 $500,000 loan to Picoulas was a verbal promise but Picoulas was so elusive about repaying it that they finally reduced it to writing three years after the loan was made. After Picoulas defaulted on the note in 2012, he kept trying to meet with Max and Sandy Tsai to "talk things over to try to explain what's going on."

¶ 36 Mrs. Stamelos was a non-practicing dentist and Mr. Stamelos was an orthopedic surgeon. Mrs. Stamelos testified that she managed their real estate business, which consisted of buying and selling property and managing the tenants. In early 2012, they were looking to buy a condominium in the city and met Picoulas through mutual friends while they were dining at a restaurant. Using Picoulas, they initially bought a condominium on South Michigan Avenue and then in April 2012 another property in Highland Park. The Stameloses were pleased with those transactions. Thereafter, Picoulas pursued them persistently and urged them to invest in the Bridgeport property he owned with Tsai, whom he described as a very wealthy woman. Picoulas took the Stameloses to the property, showed them photographs and maps, and drove them around the area.

¶ 37 Mrs. Stamelos testified that when they agreed to invest, Picoulas met her at her bank on August 7, 2012. He produced a letter addressed to her that described their deal as a loan. Mrs. Stamelos read the letter, questioned why it described their investment deal as a loan, and was assured by Picoulas that it did not matter. Then a bank employee notarized the letter and Mrs. Stamelos wired $550,000 to Picoulas's account to purchase 30% of his 50% ownership interest of CIS. Later, in December 2012, Mrs. Stamelos loaned Picoulas $345,000 to "save his

children's house." Picoulas promised to repay the $345,000 when he returned from Greece in one week. However, after a month had passed, that loan was not repaid and Picoulas's telephone number was disconnected. Then, in April 2013, Picoulas's attorney contacted Mrs. Stamelos and arranged for Picoulas to repay the $345,000 loan by giving her his Lake Geneva condominium and three city lots in Chicago. Eventually, the Stameloses were contacted by investigators regarding Picoulas's investment schemes. Mrs. Stamelos confirmed the existence of an agreement with Housakos to split in half any award entered in their favor against Tsai.

¶ 38 Numerous documents concerning the parties' contracts, transactions, and correspondence were admitted into evidence, including evidence that established Tsai withdrew $378,796.38 of the $400,000 deposit between November 2012 and February 2013 while her declaratory judgment claim was pending. Tsai either withdrew that money as cash or checks payable to herself or moved it to her other private accounts.

¶ 39 On June 21, 2016, the trial court ruled against Housakos on his unjust enrichment claim against Tsai. However, the court ruled in favor of the Stameloses on their unjust enrichment claim against Tsai and awarded them a judgment in the amount of $400,000.

¶ 40 Concerning Housakos's claim, the court acknowledged his great hardship suffered at the hands of Picoulas, who had defrauded him. Nevertheless, the court found that Housakos was not entitled to collect against Tsai in this action because he did not show a direct connection between his impoverishment and Tsai's gain. Specifically, the court found that the funds Housakos had given Picoulas in 2008 and 2009 had been spent by Picoulas long before he deposited the $400,000 into Tsai's account in 2012.

¶ 41 Concerning the Stameloses' claim, the trial court found that their $550,000 in funds from their August 7, 2012 deal with Picoulas were directly traceable to the $400,000 Picoulas deposited into Tsai's account on August 10, 2012. Although some evidence indicated that Picoulas had repaid an unrelated $345,000 loan from December 2012, the court found that the overwhelming evidence established that the Stameloses' August 7, 2012 transaction with Picoulas, whether it was an investment in CIS or a loan, was never repaid or satisfied. The evidence also established a direct enrichment of Tsai from the Stameloses' impoverishment. Furthermore, the court inferred from the evidence that Tsai had diverted funds from the $400,000 deposit even though she should have expected the rightful owner would come forward to claim that money. Specifically, Sandy and Max Tsai were very smart business people, and Tsai initially had notified Picoulas that she chose to take his pledged collateral and he did not owe any more money under the note. She also expressly rejected his attempts to buy back some portion of his ownership share in CIS. After balancing the equities in this unjust enrichment claim, the court found in favor of the Stameloses in the amount of $400,000 plus court costs.

¶ 42 Thereafter, the trial court adjudicated several remaining motions. Specifically, the court granted summary judgment in favor of Tsai and declared that Housakos was not entitled to the $400,000 deposit in Tsai's bank account. The court granted summary judgment in favor of Tsai on the Stameloses' counterclaim for a constructive trust. The court also granted Housakos's motion to voluntarily dismiss his cross-claim against Picoulas.

¶ 43 Tsai timely appealed the court's judgment in favor of the Stameloses on their unjust enrichment claim.

¶ 44 II. ANALYSIS

¶ 45 A. Unjust Enrichment

¶ 46 Tsai argues that the trial court erred in granting judgment against her and in favor of the Stameloses for unjust enrichment because (1) they had a contract with Picoulas and thus an adequate remedy at law, (2) they failed to show that Tsai had engaged in any improper conduct toward them, and (3) the trial court's findings were against the manifest weight of the evidence and legally inconsistent with its earlier default judgment against Picoulas.

¶ 47 Generally, a circuit court's judgment following a trial will be affirmed unless it is against the manifest weight of the evidence. *Battaglia v. 736 N. Clark Corp.*, 2015 IL App (1st) 142437, ¶ 23. A judgment is considered against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence. *Id*. Under this standard, this court gives deference to the trial court as the finder of fact because the trial court is in the best position to observe the conduct and demeanor of the parties and witnesses. *Best v. Best*, 223 Ill. 2d 342, 350 (2006).

¶ 48 "The doctrine of unjust enrichment underlies a number of legal and equitable actions and remedies, including the equitable remedy of constructive trust and the legal actions of *assumpsit* and restitution or quasi-contract." *HPI Health Care Services, Inc. v. Mt. Vernon Hospital, Inc.*, 131 Ill. 2d 145, 160 (1989). To prevail on their unjust enrichment claim, the Stameloses had to prove that Tsai retained a benefit to their detriment, and that Tsai's retention of the benefit violates fundamental principles of justice, equity, and good conscience. See *id*. Because the Stameloses seek to recover a benefit that Tsai received from a third party, *i.e.*, Picoulas, the Stameloses must also show that either (1) the benefit should have been given to them but

Picoulas mistakenly gave it to Tsai instead, (2) Tsai procured the benefit from Picoulas through some type of wrongful conduct, or (3) the Stameloses for some other reason have a better claim to the benefit than Tsai. See *id*. at 161-62. A cause of action based upon unjust enrichment does not require fault or illegality on the part of the enriched party who retains the benefit; 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. *National Union Fire Insurance Co. of Pittsburgh v. DiMucci*, 2015 IL App (1st) 122725, ¶ 67.

¶ 49 First, Tsai argues that the manifest weight of the evidence demonstrated that the Stameloses had an adequate remedy at law for breach of contract against Picoulas because they did not present any evidence at trial of their efforts to locate him or obtain repayment of their $550,000 from him. Tsai acknowledges that the Stameloses' contract was only with Picoulas and not with her. She does not dispute the evidence that demonstrates that the source of the $400,000 Picoulas deposited into her account was the funds the Stameloses sent to Picoulas as part of their contract with him. Nevertheless, she argues that the Stameloses should not be allowed to seek compensation under an unjust enrichment theory from her and thereby hold her responsible for Picoulas's breach of contract.

¶ 50 Tsai fails to cite any relevant authority to support her assertion that the Stameloses' potential legal remedy against Picoulas for breach of contract precludes the Stameloses from pursuing an equitable remedy against her. The dispositive fact is that the Stameloses did not have a legal remedy against Tsai, who was holding the money the Stameloses had given Picoulas when he defrauded them by convincing them to enter into a contract concerning CIS shares that

he no longer owned. The record established that there was no contract between the Stameloses and Tsai and no statute provided them with a legal remedy against her.

¶ 51 Second, Tsai argues that the manifest weight of the evidence established that she properly used the funds she "lawfully" received on August 10, 2012, because the $400,000 deposit in her account was from Picoulas in repayment of the promissory note for the $428,493.14 loan, which Picoulas had defaulted on as of July 25, 2012. Tsai argues that she had no knowledge of the source of the $400,000 other than as a repayment from Picoulas of his note with her. Tsai asserts that no evidence indicated that she committed an "improper act" upon the Stameloses, such as fraud, duress, or undue influence.

¶ 52 Tsai's argument lacks merit. The record establishes that after she informed Picoulas that he had defaulted on their note, she informed him twice that she was claiming the collateral—his pledged CIS shares—and he did not owe any additional payment. However, after Picoulas deposited the Stameloses' money into Tsai's account, Tsai modified her position by stating that the seized collateral was only a partial satisfaction of the amount he owed her under the note and indicating that she would use the $400,000 to satisfy any deficiency and attorney fees and costs. Contrary to Tsai's assertion on appeal, the trial court did not find that she had waived any right to seek additional compensation under the terms of the promissory note. Rather, the trial court drew the inference that Tsai's modified position about Picoulas's obligations under the note belied Tsai's contention at the time of the trial that she thought the $400,000 deposit was hers because Picoulas was simply repaying his loan.

¶ 53 Although the trial court's July 2013 default judgment in favor of Tsai and against Picoulas on three of the four counts of her amended complaint awarded her $401,183.20 plus

attorney fees and costs, count IV of her complaint—her request for declaratory relief on the ownership rights of the $400,000 deposited into her account—remained pending. Moreover, Tsai had diverted $378,796.38 of the $400,000 deposit between November 2012 and February 2013, which was long before the July 2013 default judgment was rendered. In addition, she diverted those funds despite the fact that she knew in August 2012 that Housakos's counsel had demanded that those funds be maintained pending the imposition of a constructive trust for the benefit of Housakos and for the turnover of those funds. Tsai's opportunistic diversion of those funds while her complaint and Housakos's counterclaim seeking declaratory relief about the ownership of those funds were still pending can hardly be characterized as proper under the circumstances of this case.

¶ 54 The record supports the trial court's finding that Tsai and her son were smart business people. The record also supports the inference that Tsai knew the rightful owner of the $400,000 would come forward eventually to claim that money. Specifically, Tsai's prior dealings with Picoulas established that she knew he had raised money in the past by selling his CIS shares to other investors because she had ratified two such sales from 2009 and took the $100,000 to reduce Picoulas's liability under their promissory note.

¶ 55 Furthermore, the Stameloses were not required to prove that Tsai directly committed an improper act upon them. An unjust enrichment claim does not require fault or illegality on the part of the enriched party who retains the benefit; 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. *DiMucci*, 2015 IL App (1st) 122725, ¶ 67. Because the Stameloses sought to recover their $400,000 that Tsai had received from a third party, the Stameloses did not have to show that Tsai procured those funds

from Picoulas through some type of wrongful conduct; instead the Stameloses could show that they, for some other reason, had a better claim to the $400,000 than Tsai. See *HPI Health Care Services, Inc.*, 131 Ill. 2d 145 at 161-62. The manifest weight of the evidence supports the trial court's finding that the Stameloses were the rightful owners of the $400,000 and were entitled to recover that money under their unjust enrichment claim against Tsai.

¶ 56 Third, Tsai contends that the trial court's June 2016 unjust enrichment judgment against her and in favor of the Stameloses must be reversed because it is inconsistent with the trial court's July 2013 default judgment against Picoulas and in favor of Tsai. The July 2013 default judgment found that the value of CIS as of Picoulas's July 2012 default was $80,122 and he owed Tsai, after all offsets, $401,183.20 plus attorney fees and costs in the amount of $68,737.90. According to Tsai, after the trial court awarded her this deficiency judgment against Picoulas in July 2013, the trial court inconsistently found in June 2016 that she somehow had waived her rights under the note to obtain any deficiency judgment against Picoulas by electing in July 2012 to take ownership of his pledged collateral only. Tsai argues that her use of the funds Picoulas deposited into her account was lawful and in accordance with her July 2013 deficiency judgment, and it was irrelevant to the Stameloses' unjust enrichment claim and should not have been used by the trial court to rule in their favor.

¶ 57 Tsai's argument mischaracterizes the trial court's July 2013 default judgment and June 2016 unjust enrichment judgment to construe them as inconsistent. The trial court awarded Tsai a deficiency judgment against Picoulas and did not find thereafter that her initial election under her promissory note to claim Picoulas's collateral waived her right to seek additional compensation from him. However, the deficiency judgment in favor of Tsai did not mean that

she was free to take the $400,000 Picoulas had deposited into her account. As discussed above, count IV of Tsai's amended complaint seeking declaratory relief about the ownership of the $400,000 remained pending after the July 2013 default judgment. The trial court never ruled that Tsai was the rightful owner of those funds and could use them to satisfy her default judgment against Picoulas. The trial court's June 2016 judgment is not inconsistent with its July 2013 default judgment.

¶ 58 Based on our review, we conclude that the evidence supports the trial court's findings and judgment in favor of the Stameloses on their counterclaim for unjust enrichment. It is clear that the Stameloses did not have an adequate remedy at law *vis-a-vis* Tsai; the Stameloses were impoverished by the loss of their $550,000 in their transaction with Picoulas (which transaction was either a loan Picoulas never repaid and for which he had pledged as collateral CIS shares he did not own, or a purported sale by Picoulas of CIS shares he did not own); the $550,000 the Stameloses had wired to Picoulas were directly traceable to the $400,000 Picoulas deposited into Tsai's bank account; Tsai was enriched by that deposit; and Tsai improperly diverted those funds even though she knew there was at least one other claim of ownership to those funds and while the issue of ownership was pending before the court.

¶ 59 B. Section 2-615 Motion to Dismiss

¶ 60 Tsai contends that the trial erred by denying her section 2-615 motion to dismiss the Stameloses' counterclaim for unjust enrichment. Tsai argues that their claim was insufficiently pled because they had a contract and thus an adequate remedy at law, no cause of action supported their derivative claim of unjust enrichment, and Tsai did not owe them a duty to act.

¶ 61 A section 2-615 motion to dismiss attacks the legal sufficiency of a complaint. *Turner v. Memorial Medical Center*, 233 Ill. 2d 494, 499 (2009). This court reviews *de novo* a trial court's ruling on a section 2-615 motion to dismiss. *Gonzalzles v. American Express Credit Corp.*, 315 Ill. App. 3d 199, 206 (2000). The critical inquiry is whether the allegations of the complaint, when considered in the light most favorable to the nonmovant, are sufficient to state a cause of action upon which relief can be granted. *Id*. A cause of action will not be dismissed on the pleadings unless it clearly appears that the pleader cannot prove any set of facts that will entitle him to relief. *Id.*

¶ 62 When the movant's motion to dismiss is denied and the movant files an answer, as Tsai did in this case, the movant generally is deemed to have waived any pleading defects. *Labate v. Data Forms, Inc.*, 288 Ill. App. 3d 738, 740 (1997). The principle of "aider by verdict" provides that when a party allows an action to proceed to verdict, "the verdict will cure all formal and purely technical defects or clerical error, as well as 'any defect in failing to allege or alleging defectively or imperfectly any substantial facts which are essential to the right of action.' " *Id*. (quoting *Adcock v. Brakegate, Ltd.*, 164 Ill. 2d 54, 60-61 (1994)).

¶ 63 However, an exception to the aider by verdict doctrine exists where a complaint totally fails to state a recognized cause of action. *Id*. Under those circumstances, the sufficiency of the complaint can be questioned at any time. *Id*. It does not apply when the complaint contains only an incomplete or otherwise insufficient statement of a recognized cause of action. *Adcock*, 164 Ill. 2d at 61-62. To determine whether the exception to the doctrine of aider by verdict applies, we must determine whether the complaint either totally failed to state a recognized cause of action or merely defectively or imperfectly alleged a cause of action. *Labate*, 288 Ill. App. 3d at

741 (citing *Adcock*, 164 Ill. 2d at 61-62). A complaint that "sets out or infers the elements of the action" is immune from post-verdict attack. *Id.*

¶ 64 Here, Tsai first argues that the pleadings established that the Stameloses had a contract with Picoulas and thus an adequate remedy at law that precluded them from suing her for unjust enrichment. As discussed above, this argument lacks merit because Tsai was holding the Stameloses' $400,000 and they had no contract with her.

¶ 65 Second, Tsai argues that the Stameloses failed to allege an underlying claim of fraud or improper conduct against her, which Tsai claims is necessary to support their derivative claim of unjust enrichment. We disagree. As discussed above, the Stameloses were not required to plead or prove that Tsai committed an improper act, engaged in fraud, exerted undue influence, or procured the funds from Picoulas through some type of wrongful conduct. See *DiMucci*, 2015 IL App (1st) 122725, ¶ 67. Because the Stameloses sought to recover their $400,000 that Tsai had received from a third party, the Stameloses sufficiently pled that they had a better claim to the $400,000 than Tsai, who had a contract with Picoulas that entitled her to seize his collateral and force him to sell his remaining shares in CIS to her. See *HPI Health Care Services, Inc.*, 131 Ill. 2d 145 at 161-62.

¶ 66 Finally, Tsai argues that the counterclaim failed to allege the existence of a duty owed by Tsai to the Stameloses. This court, however, has rejected the assertion that the relevant law on unjust enrichment includes a duty requirement as an element of the claim. *DiMucci*, 2015 IL App (1st) 122725, ¶ 66. Specifically, this court traced this inaccurate statement of the law to *Martis v. Grinnell Mutual Reinsurance Co.*, 388 Ill. App. 3d 1017, 1024-25 (2009), which stated that, for a claim of unjust enrichment to be recognized, "there must be an independent basis that establishes

a duty on the part of the defendant to act and the defendant must have failed to abide by that duty." *Martis*, 388 Ill. App. 3d at 1025 (citing *Lewis v. Lead Industries Ass'n*, 342 Ill. App. 3d 95, 105 (2003)).

¶ 67 *Martis* cited *Lewis* for that statement, which in turn cited *Board of Education of City of Chicago v. A, C & S, Inc.*, 131 Ill. 2d 428, 466 (1989), where school districts had sued various asbestos-containing material suppliers for strict products liability, fraudulent and negligent misrepresentation, breach of warranty, and restitution. The school districts' restitution claim sought reimbursement for future expenditures to inspect, maintain, repair or remove asbestos-containing material in their buildings under section 115 of the Restatement of Restitution for "Performance of Another's Duty to the Public" (Restatement of Restitution § 115 (1937)). The Illinois Supreme Court held that to establish a cause of action for restitution under section 115 of the Restatement for performance of another's duty to the public, "[t]here must be an independent basis which establishes a duty upon the defendant to act and the defendant must have failed to abide by that duty." *A, C & S, Inc.*, 131 Ill. 2d at 466.

¶ 68 Although that holding by the supreme court in *A, C & S, Inc.* applied to causes of action based on section 115 of the Restatement of Restitution in the context of a duty to the public, that holding was erroneously co-opted by the court in *Lewis* and then repeated in *Martis* in the context of unjust enrichment claims. Like the court in *DiMucci*, we conclude that the assertion that the equitable claim for unjust enrichment includes a duty requirement as an element of the claim is not an accurate statement of the law.

¶ 69 Our review of the counterclaim establishes that it sets out or infers the elements of an unjust enrichment action and thus is immune from post-verdict attack. The Stameloses alleged

that Picoulas defrauded them by convincing them to invest in CIS shares that he did not own, Tsai refused to return the Stameloses' $400,000 to them, there was no justification for Tsai to keep their $400,000, she was acting in bad faith and taking advantage of the unsolicited and fortuitous deposit of $400,000 into her bank account by Picoulas, she was not entitled in equity and good conscience to retain those funds, and her continued retention of those funds constituted unjust enrichment. We conclude that the trial court did not err when it denied Tsai's 2-615 motion to dismiss.

¶ 70 C. Joinder of a Necessary Party

¶ 71 Finally, Tsai argues that the trial court erred when it denied her 2-615 motion to dismiss the Stameloses' intervening counterclaim for failure to sue Picoulas as a counterdefendant because he was a necessary party. Tsai argues that Picoulas had an interest in the subject matter in controversy, his absence caused Tsai to face the possibility of multiple or inconsistent obligations towards Picoulas and the Stameloses, and his absence prohibited a complete resolution of the controversy. Tsai claims that Picoulas was not given an opportunity to tell his side of the story and rebut the Stameloses' allegations of fraud. Tsai complains that the failure to join Picoulas resulted in a judgment that required her to pay for his misconduct even though she had a final default judgment against him.

¶ 72 Tsai's argument lacks merit. The judgment did not require Tsai to pay for Picoulas's misconduct because the $400,000 deposit was not Tsai's money. Furthermore, Picoulas was already a party to the case before Tsai filed her motion to dismiss the Stameloses' counterclaim for lack of joinder. Specifically, Tsai had named Picoulas as a defendant and Housakos had named him as a cross-respondent. In addition, despite substitute service of Tsai's amended

complaint being accomplished on Picoulas, he chose not to appear in this matter or file an answer, and no one was able to compel his appearance at the bench trial. Nevertheless, despite Picoulas's failure to appear, Tsai's case proceeded against him and she received a deficiency judgment and attorney fees and costs that she may enforce against him. Moreover, Illinois law does not require a party already named in an action to be joined in the action again in another position. *City of Chicago v. Beythel Outcast Church*, 375 Ill. App. 3d 317, 319-20 (2007).

¶ 73 III. CONCLUSION

¶ 74 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 75 Affirmed.