2011 IL App (2d) 101075-U
No. 2-10-1075
Order filed October 7, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

PFC GEOFFREY MORRIS MEMORIAL FOUNDATION and KIRK MORRIS,	)	Appeal from the Circuit Court of Lake County.
Plaintiffs-Appellants,	)	
v.	)	No. 10-MR-264
THE VILLAGE OF GURNEE,	)	
Defendant-Appellee.	)	Honorable Margaret J. Mullen, Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

Held: Equitable estoppel and *mandamus* counts of complaint properly dismissed where relief sought would order defendant to permit plaintiff to construct a memorial on defendant's property. Unjust enrichment claim improperly dismissed where plaintiff could state a claim if defendant did not construct a memorial in keeping with the scope and development to which donors contributed and for which plaintiff performed extensive work. Replevin claim properly dismissed where strict statutory requirements of replevin statute were not followed.

¶ 1 Plaintiffs, PFC Geoffrey Morris Memorial Foundation (Foundation) and Kirk Morris, appeal the trial court's dismissal pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2008)) of their four-count amended complaint against defendant, the Village

of Gurnee. In counts I and II, plaintiffs sought, based upon equitable estoppel principles, declaratory relief and *mandamus* that would permit them to construct, on Village-owned property, a public memorial. In count III, plaintiffs pleaded an unjust enrichment claim. In count IV, plaintiffs sought a declaration that they own various items that they installed on Village property (a claim, on appeal, that they characterize as one for replevin). For the following reasons, we affirm the judgment as to counts I, II, and IV, reverse as to count III, and remand the cause.

¶ 2 I. BACKGROUND

¶ 3 In an amended complaint filed July 12, 2010, plaintiffs pleaded that, on April 4, 2004, Morris's son, PFC Geoffrey Morris, was killed in Operation Iraqi Freedom. Geoffrey was a Village resident in 2003 when he joined the United States Marine Corps.

¶ 4 After his son died, Morris was approached by Village representatives about developing and constructing, on Village property, a public memorial in honor of Geoffrey and others killed in the Iraq and Afghanistan wars. The property identified was formerly the site of a Village police station, and the site had remained unused since 2003, when the station closed.

¶ 5 On February 16, 2005, the Foundation, a not-for-profit charitable corporation, was established to raise awareness of the project and funds for the memorial's construction. Morris sought professionals and contractors willing to dedicate their services to the project, which became known as the "Heroes of Freedom Memorial." In early 2005, Daniel Robison, a principal of Daniel Robison Architects, P.C., agreed to contribute architectural drawings and plans. In addition, Cindy Seng, a local sculptor, agreed to donate time and materials toward the creation of three life-sized statues for the memorial.

¶ 6 On March 7, 2005, Morris and Robison appeared before the Village Board and presented architectural plans and drawings for the memorial. According to the meeting minutes attached to

the complaint as exhibit C, Robison was introduced as the "architect for the Heroes of Freedom Project," and he "thanked the Mayor for inviting him to participate in this project." After discussion, the Village Board voted to adopt Resolution 2005-1, wherein "the Village of Gurnee hereby dedicates, maintains and preserves the site of the former Gurnee police station on Old Grand Avenue in perpetuity as a public memorial site to be hereafter called the 'Heroes of Freedom Memorial.' " Attached to the complaint as exhibits A and B were the architectural drawings and Resolution 2005-1, respectively.

¶ 7 In April 2005, a ceremony was held to dedicate the site for the memorial. The complaint alleges that throughout the 2005 calendar year, and in reliance on Resolution 2005-1, plaintiffs continued to promote the memorial and, with the Village's full knowledge and consent and consistent with the plans submitted to the Village, made significant physical improvements to the site. For example, the complaint alleges that:

(1) on July 12, 2005, the Foundation applied to the Village for a building permit to perform excavation, concrete, masonry and electrical work on the site; the Village issued permit number 4862 and gave the Foundation permission to proceed with the improvements;

(2) on July 14, 2005, the Village, as owner of the property, and the Foundation, as developer, submitted as *joint applicants* a request to the Storm Water Management Commission (SMC) for a watershed development permit. The Foundation's consulting engineers, Pearson, Brown & Associates, Inc., donated time and labor to prepare the paperwork necessary to complete the joint permit application;

(3) in August 2005, the Foundation retained a structural engineer to advise on the installation of concrete retaining walls and nine flag poles at the memorial site;

(4) in September 2005, in accord with and in reliance on the building permit issued by the Village, site excavation commenced. At that time, the Foundation discovered that the contractor previously retained by the Village to demolish and remove the old police station left unsuitable sub-surface debris on the site, including concrete, construction debris, desks, light fixtures, and ceiling tiles. Accordingly, at its own expense and without Village assistance, the Foundation removed the construction waste; and

(5) in late-September 2005, the memorial's nine flag poles were secured in "permanent" concrete bases at the site.

¶ 8 In June 2006, and again in accord with an in reliance upon the permit issued by the Village, the Foundation installed the electrical service panel and temporary lighting for the memorial flag poles.

¶ 9 On July 10, 2006, at a Village board meeting, the new mayor, Kristy Kovarik, remarked that the memorial was "turning out to be beautiful." The Board noted that the memorial project was to be funded by private donations, but it voted to incur responsibility for the site's electrical usage.

¶ 10 In May 2007, after receiving an additional four-page letter submitted by Pearson (the consulting engineer) on behalf of the foundation, the SMC issued a watershed development permit for the memorial. The Foundation thereafter continued to solicit commitments from contractors and contributions from groups and individuals for the memorial.

¶ 11 In March 2008, the structural engineer retained by the Foundation identified additional work that needed to be performed as a consequence of the debris left by the contractor that originally demolished the old police station. By May 2009, the Foundation had acquired more contributors willing to donate their time to work on the memorial.

¶ 12 In September 2009, the Foundation applied for a permit to perform additional electrical work on the site. On September 25, 2009, Kovarik left a recorded message for Morris stating that she personally instructed the Village's department of buildings not to review or issue any additional permits to the Foundation for work on the memorial. Thereafter, in October 2009, the Foundation and Village, including Kovarik, engaged in extended negotiations regarding the Foundation's right to proceed with the memorial, a timetable for completing the memorial, the respective obligations of the Village and Foundation, and the Foundation's use of funds.

¶ 13 According to the complaint, on December 21, 2009, the Village Board voted 5-0 to approve an agreement that resulted from the foregoing negotiations and recognized the Foundation as the approved developer of the memorial. The (unsigned) agreement is attached to the complaint as exhibit F.

¶ 14 On January 4, 2010, Kovarik vetoed the ordinance that approved the agreement. In her veto message, Kovarik stated that the Village intends to take control of the memorial and exclude the Foundation from any input or involvement in its construction. The Village Board failed to override the veto.

¶ 15 Subsequent to her veto, Kovarik announced that the Village would take the name "Heroes of Freedom Memorial" from the Foundation and adopt it as the name of the project that the Village would complete on the site.

¶ 16 Count I: "Request for Declaration Regarding the Foundation's Right to Complete the Memorial"

¶ 17 In count I, the Foundation asserted that it had a legal right to the name "Heroes of Freedom Memorial" and to complete the memorial in accordance with the plans the Village approved. The Village, however, took the position that the Foundation had no right to continue working on the

memorial and that any attempt to do so would be treated as a trespass and/or construction activity without a permit.

¶ 18 The Foundation alleged that the following affirmative acts taken by the Village precluded and equitably estopped it from preventing the Foundation from completing the memorial:

(1) Village resolution 2005-1;

(2) the Village's issuance of permit no. 4862;

(3) the Village's 2006 commitment to pay for the memorial's electrical usage;

(4) the Village's participation as a joint applicant with the Foundation to the SMC, and the SMC's issuance of a permit to the Village and Foundation;

(5) the acceptance and review by the Village of an electrical permit application in September 2009; and

(6) that, for four years, the Village allowed the Foundation and its contributors to make physical improvements to the site.

¶ 19 Plaintiffs alleged that the foregoing affirmative conduct on behalf of the Village induced the Foundation to solicit contributors and make improvements to the site and memorial and substantially change its position in reliance on the promise that it would be able to complete the memorial according to the plans and specifications submitted to and approved by the Village.

¶ 20 Accordingly, plaintiffs sought a declaration that: (1) they have a right to exclusive use of the name "Heroes of Freedom Memorial;" (2) they have a right to complete the memorial in accord with the plans previously submitted to and approved by the Village; and (3) the Village is equitably estopped from denying the Foundation's right to complete the work and is enjoined from using the name "Heroes of Freedom Memorial" or taking any action that impedes the Foundation from completing the memorial.

¶ 21 Count II: "Mandamus"

¶ 22 In count II, plaintiffs noted that the August 2009 application it submitted to the Village for a permit to perform electrical work was complete, correct, and that the Village had not identified any substantive problems or errors with the application. Prior to submitting the application, the Foundation made substantial expenditures in furtherance of the memorial's development in reasonable reliance on the six acts taken by the Village as described in count I. Accordingly, as a consequence of the Village's conduct, the Foundation's reliance on that conduct, and the Foundation's substantial expenditures, plaintiffs alleged that the Foundation acquired a vested right to complete the memorial in accordance with the plans submitted to and approved by the Village.

¶ 23 Accordingly, plaintiffs sought a declaration that they have the exclusive right to use the name "Heroes of Freedom Memorial;" that they have a vested right to complete the memorial in accord with the plans submitted to and approved by the Village; and a *mandamus* order directing the Village to issue the requested electrical permit and to fairly and promptly process any additional permit applications that the Foundation submits for work on the memorial.

¶ 24 Count III: "Unjust Enrichment"

¶ 25 In count III, plaintiffs alleged "in the alternative, and only in the event that the court does not enter judgment for plaintiffs on counts I or II," the Foundation sought a money judgment against the Village for unjust enrichment. Specifically, plaintiffs alleged that, after the Village enacted Resolution 2005-1, Morris, as president of the Foundation and in an effort to complete the memorial as depicted in the plans presented to the Village, sought donations of time, money, and labor from individuals and corporations, explained to potential donors the purpose of the memorial and his personal connection to the memorial, and presented potential donors with the presentation materials given to the Board at the March 2005 meeting. Morris' efforts were successful in convincing

various persons and entities to make contributions for the specific purpose of constructing the memorial as depicted in the presentation materials, and those donors contributed to the Foundation with the intent that their donations would be used to construct the memorial as depicted in the presentation materials and with the intent that Morris be involved in the project.

¶ 26 Further, plaintiffs alleged that the Foundation improved the property by: obtaining a plat of survey and the SMC permit; performing excavation; removing substantial construction debris left by the Village's prior contractor; providing landscaping at the site; and installing permanent improvements consistent with the presentation materials.

¶ 27 "So long as the memorial was built in a manner consistent with the presentation materials, the Foundation did not expect to be reimbursed for its efforts or the improvements it made to the site. However, based upon the acts of the Village, the Foundation expected that it would be involved in the development of the memorial and expected that the memorial would be built as depicted in the presentation materials. The Foundation would not have engaged in its solicitation of donors or made efforts to improve the property otherwise."

¶ 28 Plaintiffs alleged that the value of the time, labor, materials, and services the Foundation provided to the Village exceeds $200,000. The Village had not paid the Foundation, had expressed its intent to remove the Foundation from its "*de facto* role" as developer, a role it had occupied since March 2005, and upended the legitimate expectations the Foundation had when it provided the services and improvements.

¶ 29 Further, plaintiffs alleged that, since its September 2009 denial of the Foundation's application for a building permit, the Village had not engaged in any activity to complete the memorial. Rather, the Village had made no commitment to complete the memorial and Kovarik had indicated that the Village intended to move "in a different direction."

¶ 30 Plaintiffs alleged that the Village's decision defeated the Foundation's legitimate expectations at the time it made contributions to the site, and it was entitled to the value of its donations so that it could use those funds to complete the memorial as originally planned, but at a different location. They asserted that they had begun searching for an alternative site, but that construction at a new site would require new contributions and, "[e]ssentially, the Foundation will need to start from scratch in soliciting donations and contributions. Because the donors have already contributed to the Foundation, a second contribution is less likely."

¶ 31 Plaintiffs claimed that it was unjust to allow the Village to reap without compensation the benefit of the Foundation's improvements to the property and its work on the memorial, and they sought a damages award against the Village in an amount to be determined by a jury.

¶ 32 Count IV: "Declaratory Judgment Regarding Ownership of Flag Poles"

¶ 33 In count IV, plaintiffs alleged that the Foundation added nine flag poles, flag pole lights, electrical service wiring, and an electrical service box to the memorial site. They classify these items as Foundation property and as chattel that may be physically removed from the site.

¶ 34 The Foundation asserted that it did not via legal instrument nor verbal statement sell, assign, transfer or give ownership of the property to the Village. The Foundation asserted that there nevertheless existed a controversy and dispute as to the ownership of the property and whether the Foundation may enter the site and remove it.

¶ 35 Plaintiffs sought a "court ruling" regarding the Foundation's ownership interest in the property. Specifically, they requested a declaration that the Foundation is the owner of the flag poles, flag pole lights, electrical service wiring, and an electrical service box, and that it has the right to come onto the site to remove the property.

¶ 36 On September 23, 2010, the trial court granted with prejudice the Village's section 2-615 motion to dismiss the amended complaint. Plaintiffs appeal.

¶ 37 II. ANALYSIS

¶ 38 A. Standard of Review

¶ 39 We review *de novo* a trial court's ruling on a section 2-615 motion to dismiss. *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009). A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based on defects apparent on its face. *Id.* A complaint should not be dismissed pursuant to a section 2-615 motion unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief. *Id.* Exhibits attached to the complaint are considered part of the complaint. *Id.*; 735 ILCS 5/2-606 (West 2008). We accept as true all well-pleaded facts and reasonable inferences that may be drawn from those facts. *Pooh-Bah Enterprises*, 232 Ill. 2d at 473.

¶ 40 B. Counts I and II

¶ 41 Count I seeks declaratory relief based upon equitable estoppel, namely, a declaration that plaintiffs have the right to use the name "Heroes of Freedom Memorial" and to complete the memorial, and that the Village is estopped from using the name or refusing to allow plaintiffs to construct the memorial. According to plaintiffs, the Village took affirmative acts that led plaintiffs to rely and act to their detriment and, therefore, the Foundation has acquired a right to the applied-for permit and to complete the memorial. Count II is related to count I in that it seeks *mandamus* based upon vested rights that plaintiffs acquired due to the Village's actions. Specifically, plaintiffs allege that, based on equitable estoppel principles, they have rights to complete the memorial in accordance with the approved plans and to the name "Heroes of Freedom Memorial." Therefore,

they request that those rights be declared and a writ of *mandamus* issued ordering the Village to approve any necessary permits to allow plaintiffs to construct the memorial.

¶ 42 A properly pleded action for declaratory relief requires that the plaintiff have a legal tangible interest, the defendant have an opposing interest, and an actual controversy exists between the parties regarding those interests. *Kovilic v. City of Chicago*, 351 Ill. App. 3d 139, 143 (2004). The Village argues that, at its foundation, plaintiffs' claim for declaratory relief necessarily fails because plaintiffs have no legal "right" to the name or to complete the memorial on Village-owned property. Further, the Village alleges that no such rights arose based on equitable estoppel principles because plaintiffs' allegations cannot satisfy the elements of equitable estoppel. Finally, the Village notes that the cases plaintiffs cite to support their estoppel and *mandamus* claims involve, unlike here, property *owners* challenging municipal actions that interfered with construction on the owners' properties, *not* on municipality property.

¶ 43 For reasons that are ultimately irrelevant to our disposition, we disagree with several of the Village's arguments regarding the sufficiency of plaintiffs' pleadings on the underlying equitable estoppel claim. However, we nevertheless conclude that plaintiffs cannot obtain the equitable relief they seek. First, equitable or declaratory relief is typically barred where an adequate legal remedy exists. See *First National Bank & Trust Co. v. Rosewell*, 93 Ill. 2d 388, 392 (1982) (equity assumes jurisdiction only where there is no adequate legal remedy). As discussed more fully below, to the extent that plaintiffs are damaged from the Village's decision to complete the memorial without Foundation involvement, the damages can be recovered via plaintiffs' unjust enrichment claim. Second, we conclude that, even if the elements of equitable estoppel are adequately pleaded, plaintiffs cannot obtain the declaratory and *mandamus* relief they seek. Specifically, the question is whether plaintiffs may obtain a court order declaring their "rights" to complete the project and use

the name and requiring the Village to issue permits and to allow the Foundation to control construction and build on the *Village's* own property. We conclude that such relief is unavailable.

¶ 44 As the Village notes and as plaintiffs concede, the cases plaintiffs present to this court as authority for issuing *mandamus* or declaratory relief against a municipality involved plaintiffs who sought to estop the municipalities from interfering with construction on the *plaintiffs'* properties. See *e.g.*, *Monat v. County of Cook*, 322 Ill. App. 3d 499 (2001) (arguing city should be estopped from issuing stop work order after previously approving variation for horse stable); *Drury Displays, Inc. v. Brown*, 306 Ill. App. 3d 1160 (1999) (*mandamus* order issued where government agency revoked a previously-granted permit to sign owner); *County of DuPage v. K-Five Construction Corp.*, 267 Ill. App. 3d 266 (1994) (county estopped from enforcing zoning ordinance against asphalt plant owner); *Heerey v. City of Des Plaines*, 225 Ill. App. 3d 203 (1992) (*mandamus* and injunctive relief granted to require city to issue permit to building owner for remodeling project). None of the foregoing cases involve a municipality being ordered to permit construction projects on its *own* property.[1]

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[1]To illustrate why the distinction is critical, we provide the following hypothetical scenario. A homeowner asks a sculptor to create a piece of art for his or her backyard. The sculptor agrees, toils through the creative process of developing a concept, and presents the homeowner with a sketch that the homeowner approves (but no formal contract is entered into). The sculptor purchases materials, clears debris from the yard, and has completed part of the sculpture when the homeowner changes his or her mind and stops the project. Despite the sculptor's efforts, expenses, and the homeowner's earlier request for the piece and approval of the plan, the sculptor has no "right" to finish the project on the homeowner's property. There is no question that the homeowner will not

¶ 45 Here, the Village approached the Foundation concerning a memorial and it accepted the Foundation's suggested name, designs, ideas, and donations, before deciding to move "in a different direction." We do not suggest that there are never legal consequences for that decision (as described more fully below), but, under the circumstances here, the consequences do not include compelling the Village to allow plaintiffs to complete their plans for the Village's property. In *Pleasant Grove City v. Summum*, 555 U.S. 460, 467, 477-78 (2009), the United States Supreme Court rejected an argument that a private group is entitled to insist that a municipality permit it to place a permanent monument in a public park in which other donated monuments are erected because, regardless of how they are funded, monuments and memorials that are displayed on government property reflect government speech and, therefore, the government has the freedom to choose what message it wishes to convey on its property. We presume that the government's freedom to choose to permit a private group to donate a memorial includes the freedom to change its mind. Again, plaintiffs admit there is no binding written contract granting plaintiffs rights to perform and complete work on admittedly Village-owned property, and we remain mindful that both remedies plaintiffs seek are extraordinary. *Monat*, 322 Ill. App. 3d at 509 (estoppel against a municipality will lie only in extraordinary or compelling circumstances); *League of Women Voters v. County of Peoria*, 121 Ill. 2d 236, 242 (1987) (*mandamus* is an extraordinary remedy). Thus, we conclude the trial court did not err in dismissing counts I and II of the amended complaint.

¶ 46 C. Count III

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be ordered to allow the sculptor to complete the work. The sculptor's remedy might include compensation for materials and/or time spent, but the homeowner would not be told that he or she must allow on her property the completion of an unwanted project.

¶ 47 Count III claims unjust enrichment. The theory of unjust enrichment is based on a contract implied by law. *People ex rel. Hartigan v. E & E Hauling, Inc.*, 153 Ill. 2d 473, 497 (1992). To recover, the plaintiff must show that the defendant voluntarily accepted a benefit that would be inequitable for him to retain without payment. *Id.*; see also *HPI Health Care Services, Inc. v. Mt. Vernon Hospital, Inc.*, 131 Ill. 2d 145, 160 (1989) ("To state a cause of action based on a theory of unjust enrichment, 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"). Where there is a specific contract that governs the parties' relationship, unjust enrichment does not apply. *Hartigan*, 153 Ill. 2d at 497.

¶ 48 Here, plaintiffs allege that the Village has unjustly retained the benefit of plaintiffs' efforts to plan the memorial, solicit and obtain financial and other donations, apply for and obtain permits from SMC, and physically improve the Village's land by performing excavation, removing construction debris, providing landscaping, and installing permanent improvements consistent with the building plan. Further, plaintiffs allege that the value of its efforts exceeds $200,000, and, therefore, that if plaintiffs are no longer involved in the project, it would be unjust for the Village to simply retain the benefits of the improvements without compensation. We conclude that plaintiffs have adequately pleaded an unjust enrichment claim.

¶ 49 First, however, we reject the Village's argument that the unjust enrichment claim fails because there was no understanding or agreement between the parties that the Village had a "legal duty" to compensate plaintiffs for services rendered. The Village contends that, in the absence of an ordinance or other document obligating the Village to compensate plaintiffs for donated services, plaintiffs fail to allege sufficient fact to show that the Village had a duty to compensate plaintiffs. Preliminarily, that there was no contractual "legal duty" is not fatal to the claim; again, as unjust

enrichment claims require the absence of a formal contract (*Hartigan*, 153 Ill. 2d at 497), the legal duty arises from the unjust enrichment itself.

¶ 50 Further, we acknowledge that, to support its argument, the Village references various cases where unjust enrichment claims succeeded under circumstances reflecting the existence of oral contracts, ordinances, or other agreements that contemplated that one party would compensate another for services performed. For example, in *Woodfield Lanes, Inc. v. Village of Schaumburg*, 168 Ill. App. 3d 763 (1988), the defendant-village had enacted an ordinance to allow the plaintiff to recover part of its costs for constructing a sewer and water main that benefitted four properties within the village. The defendant had enforced the ordinance to permit compensation to the plaintiff for three of the properties, but concluded that it was not required to enforce the ordinance as to the fourth property (therefore, the plaintiff was not compensated for benefitting the fourth property). The court disagreed and noted that the defendant "accepted the sewer and water main as improvements and assumed ownership of the sewer when it enacted the ordinance," that, accordingly, the defendant received a benefit from the plaintiff's construction efforts, and that the defendant would be unjustly enriched if it failed to enforce the ordinance to ensure payment to the plaintiff. *Id.* at 766-78. The court did state that the ordinance established the defendant's legal duty to collect sums from the owners of the benefitted properties; however, our reading of the case does not suggest that, in the absence of the ordinance, the unjust enrichment claim would have failed. The court in *Woodfield Lanes* focused on the benefit to the defendant, the fact that the sewer line facilitated development and increased the tax base, and it specifically *rejected* the defendant's argument that, because it did not *request* the benefit, it could not be liable for accepting the benefit the plaintiff had bestowed upon it. *Id.* at 768.

¶ 51 We are not convinced that *only* circumstances that rise to the level of an ordinance, clear oral contract, or other agreement can sustain an unjust enrichment claim. A contract implied by law "arises by implication of law wholly apart from the usual rules relating to contracts and *does not depend on an agreement or consent* of the parties. A contract implied in law is equitable in nature, predicated on the fundamental principle that no one should unjustly enrich himself at another's expense." (Emphasis added.) *In re Estate of Milborn*, 122 Ill. App. 3d 688, 690 (1984). Further, reading the complaint allegations in plaintiffs' favor, we are not convinced that they cannot under any circumstances establish the type of agreement or understanding that the Village urges is required. Again, in the approximately five-year period that spans the complaint allegations, plaintiffs and Village administrators apparently worked together in various capacities; discovery might further shed light on any understandings that may have existed between them.

¶ 52 In a similar vein, the Village contends that the unjust enrichment claim fails because plaintiffs' allegations do not reflect that *they* expected compensation.[2] The Village asserts that, while it voluntarily accepted plaintiffs' services in connection with the memorial, plaintiffs' conduct clearly demonstrated a gratuitous intent. The Village analogizes this case to a situation where a neighbor voluntarily mows an adjacent park; there, it alleges, there is no expectation of compensation and the municipality could, at any time, take over mowing its own park. We disagree that this analogy is appropriate. In our view, the analogy simply fails to recognize not only the scope and significance of the benefits plaintiffs bestowed upon the Village's property, but also the

[2]We find inapplicable here the Village's reliance on *Klekamp v. City of Burbank*, 266 Ill. App. 3d 81 (1994) and *Zadrozny v. City Colleges of Chicago*, 220 Ill. App. 3d 290 (1991), where unjust enrichment claims assessed expectations of compensation in an employment context.

complaint allegations that the Village actively induced and encouraged plaintiffs to make the improvements. The neighbor in the city's lawnmowing analogy performed a temporary improvement and was not, apparently, approached by the city and *asked* to perform the service. Here, the complaint alleges that Village representatives approached Morris about creating a memorial and that, accordingly, Morris created the Foundation and plaintiffs proceeded to seek donations, contributions, and professional architectural plans. The Village discussed, voted, and approved those plans, allowed the Foundation to prepare the application for a SMC permit, joined with the Foundation as the permit's applicants, issued plaintiffs a permit to begin construction, and, in accordance with that permit, allowed plaintiffs to perform extensive work on the site, including excavation, removal of construction debris, and installation of landscaping and lighting. Unjust enrichment principles concern whether, in the absence of formal contractual duties, a defendant's actions violate justice, equity, and good conscience. *HPI Health Care Services*, 131 Ill. 2d at160. Accordingly, where the question is whether it is unjust and unconscionable to allow the Village to retain the benefits it received without offering any form of compensation, we cannot conclude that plaintiffs failed to state a cause of action. As such, we cannot conclude that the complaint fails to state an unjust enrichment claim.

¶ 53 Finally, we also reject the Village's argument that it cannot be unjustly enriched by retaining the benefit because plaintiffs have no legal tangible interest in the memorial. A "legal" tangible interest suggests contractual rights and, again, unjust enrichment claims presume that there is no contract. *Haartigan*, 153 Ill. 2d at 497. The Village's reliance on *Kovilic* does not alter our conclusion. In *Kovilic*, the defendant city entered into a lease with the Federal Aviation Administration (FAA), giving the FAA rights to occupy land owned by the city and to construct a building thereon. The FAA, in turn, contracted with the plaintiffs to construct the building. The city

was not party to the contract between the plaintiffs and the FAA. As the lease between the city and the FAA provided that, after the lease expired, the FAA was to surrender possession and retained no rights in the leased property, and as the FAA could not convey to the plaintiffs any rights to real estate greater than those that it had, the plaintiffs' claims that they owned the property or that the city was unjustly enriched by its construction of the building, failed. *Id.* at 145-47. As to ownership, the plaintiffs' acts of furnishing labor and materials to construct the building did not alter the general rule that fixtures built upon property by a lessee become part of the property when the lease expires and, again, that the FAA as lessee could not grant the plaintiffs ownership rights it did not have. *Id.* at 147. As to unjust enrichment, accordingly, the court found that, because the city had lawfully contracted to retain its ownership, it could not be unjustly enriched by retaining a benefit it contractually had the right to retain. *Id.* at 147. Simply put, *Kovilic* is inapplicable to the factual circumstances alleged here. Although the plaintiffs' unjust enrichment claim in *Kovilic* failed, it failed because there were specific contracts governing the parties' relationships. There is no contract here, let alone a specific contract governing the parties' relationship.

¶ 54 In our view, and as conceded by plaintiffs at oral argument, the success of plaintiffs' unjust enrichment claim ultimately will hinge on the actions the Village takes to complete the memorial because that will determine the extent, if any, to which the Village is unjustly enriched and plaintiffs are damaged. The complaint clearly alleges that plaintiffs' services were not without qualification. Plaintiffs allege that donors gave the Foundation money and contributed time for a specific purpose: the construction of a memorial "as depicted in the presentation materials." Moreover, plaintiffs allege their expectations as follows:

> "So long as the memorial was built in a manner consistent with the presentation materials, the Foundation did not expect to be reimbursed for its efforts or the improvements

> it made to the site. However, based upon the acts of the Village, the Foundation expected that it would be involved in the development of the memorial and expected that the memorial would be built as depicted in the presentation materials. The Foundation would not have engaged in its solicitation of donors or made efforts to improve the property otherwise."

The Village, however, suggests that plaintiffs did not act to their detriment because they "simply used contributed time and money to start the construction of *a memorial that the Village now plans to complete*." This remains to be seen. The Village, through Resolution 2005-1, reserved the site in perpetuity for the "Heroes of Freedom Memorial." Thus, it will, presumably, proceed with a memorial of some sort. If the Village does so in a reasonable time frame[3] and in substantial or, as plaintiffs at oral argument indicated would be acceptable, reasonable compliance with the plans that were approved at the March 7, 2005, Village Board meeting, then the efforts, donations, and physical improvements the Foundation and its donors bestowed upon the Village's property will be utilized exactly as intended and the Village will not have been unjustly enriched. In other words, the expectations of the Foundation and its donors will have been met. However, plaintiffs allege that the Village has not committed to complete the memorial, nor has it performed any work on the site, and that the mayor stated that the Village intends to go in a "different direction." Accordingly, plaintiffs have stated an unjust enrichment claim.

¶ 55 E. Count IV

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[3]Implicit here is the obligation of the Village to complete the monument as noted within a reasonable time period. At some point, the Village's *inaction* will, too, result in a presumption that it has accepted plaintiffs' bestowed benefits without providing in return and in a timely manner, a memorial.

¶ 56 The Village argues that the trial court properly dismissed count IV of the complaint. First, it argues, count IV of the complaint alleged declaratory relief, not replevin, as plaintiffs argue on appeal. For this reason, the Village argues we should find plaintiffs' replevin arguments forfeited.

¶ 57 We agree that, on appeal, plaintiffs improperly frame count IV as one for replevin. Count IV of the amended complaint is entitled "Declaratory Judgment Regarding Ownership of Flag Poles." The amended complaint does mention in a footnote on the first page of the complaint "Count IV (replevin)," but the actual allegations of that count fail to satisfy the requirements for a replevin claim. Replevin is a "strict statutory proceeding, and the statute must be followed precisely." *Carroll v. Curry*, 392 Ill. App. 3d 511, 513 (2009). A plaintiff must commence an action in replevin via a verified complaint. 735 ILCS 5/19-104 (West 2008). Here, neither plaintiffs' original nor amended complaints are verified. Further, the complaint in replevin must describe the property to be replevied and state that: (1) the plaintiff is the owner of the property and is lawfully entitled to possession thereof; (2) the property is wrongfully detained by the defendant; and (3) the property "has not been taken for any tax, assessment, or fine levied by virtue of any law of this State, against the property of such plaintiff, or against him or her individually, nor seized under any lawful process against the goods and chattels of such plaintiff subject of such lawful process, nor held by virtue of any order for replevin against such plaintiff." *Id.* Of the foregoing requirements, the complaint here alleges only that plaintiffs own the property. In addition, unless it is alleged that such efforts would be futile, the complaint must generally allege that the plaintiff made a demand for surrender of the property and that the defendant refused because, until a demand has been refused, the defendant's possession is not considered wrongful. *First Illini Bank v. Wittek Industries*, 261 Ill. App. 3d 969, 970 (1994). The complaint here does not allege that a demand was made and refused, that a demand would be futile, or that the Village's possession is wrongful. Thus, even if count IV had been

characterized and argued below as one for replevin, dismissal was proper because, as pleaded, count IV does not satisfy the statutory requirements for a replevin action. See *Blum v. City of Chicago*, 126 Ill. App. 2d 228, 230-31 (1970) (where replevin claim did not plead strict statutory requirements, it could not be cured by liberal construction and was dismissed).

¶ 58 As to the claim that was pleaded, wherein plaintiffs seek a declaration that the Foundation owns the light poles, electrical equipment, etc., we conclude that the claim was properly dismissed. A proper action for declaratory relief requires that the plaintiff have a legal tangible interest, the defendant have an opposing interest, and an actual controversy exists between the parties regarding those interests. *Kovilic*, 351 Ill. App. 3d at 143. Here, although the complaint alleges that the Foundation purchased the materials at issue, the items were, in fact, donated to the Village for purposes of erecting the memorial. Certainly, the donation was conditioned on a memorial being constructed as depicted in the plans—in other words, nine light poles would not have been donated if the Village ultimately constructs a memorial that does not use them. However, declaratory relief was properly denied because, if the Village constructs the memorial in accordance with the approved plans, then there is no actual conflict between the parties' interests. Further, in the event that the Village does not construct the memorial in accordance with the approved plans, the value of those donations may be considered in the course of assessing the extent to which the Village was unjustly enriched, as opposed to declaring that the Foundation owns and may remove the fixtures which, in fact, the complaint concedes are permanent.

For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed in party and reversed in part. The cause is remanded.

Affirmed in part, reversed in part. Cause remanded.