

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2011-008669

03/06/2012

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

CAROLINE BROWN

MARK J DEPASQUALE

v.

PINNACLE RESTORATION L L C, et al.

BRIAN D MYERS

BETH MULCAHY

MINUTE ENTRY

The Court has read and considered Plaintiff's Motion for New Trial Re: Granting of Pinnacle Restoration's Motion for Judgment on the Pleadings filed January 31, 2012, Pinnacle Restoration's Response filed February 8, 2012 and Plaintiff's Response thereto filed February 21, 2012.

The flaw in Ms. Brown's argument is that it depends, not on what the insurance policy under which Pinnacle was contracted said, but on what it should have said. Ms. Brown claims that CVIA breached the CC&Rs by purchasing a policy that made benefits payable to it alone instead of to it and the unit owner jointly. Be that as it may (and that claim against CVIA remains in the case), it has no bearing on Pinnacle. It is not alleged that Pinnacle was in any way complicit in CVIA's alleged breach. Nor is it at all realistic to impute to Pinnacle, a simple contractor, knowledge of CVIA's specific contractual obligation to Ms. Brown. Thus, accepting her position *arguendo*, that the enrichment Pinnacle is alleged to have received ought to have, although in fact it did not, come from Ms. Brown does not change the Court's conclusion that Pinnacle was not unjustly enriched at Ms. Brown's expense. *Murdock-Bryant Const. Co. v. Pearson*, 146 Ariz. 48 (1985), makes unjust enrichment a flexible remedy, but not that flexible: it still requires an enrichment of the defendant resulting from the plaintiff's impoverishment. Such is not the situation in this case.

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For these reasons, as well as the arguments set forth in the Response brief,

IT IS ORDERED denying Plaintiff's Motion for New Trial Re: Granting of Pinnacle Restoration's Motion for Judgment on the Pleadings.

The Court does not find that oral argument would be of assistance in resolving this issue. Therefore,

IT IS FURTHER ORDERED denying Plaintiff's request for oral argument.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.