

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2011-008669

11/30/2011

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
ERIN E MCMANIS
PATRICK J VAN ZANEN

UNDER ADVISEMENT RULING

The Court took this matter under advisement following oral argument on November 23, 2011. Upon further consideration of Defendant Pinnacle Restoration, LLC's Motion for Judgment on the Pleadings Pursuant to Rule 12(c) Ariz. R. Civ. P. and Defendant Camelback Village Improvement Association, Inc.'s Motion for Judgment on the Pleadings, the Court finds as follows.

Pinnacle Restoration

Ms. Brown has no claim in equity for unjust enrichment because, even if Pinnacle was enriched by its failure to perform, she did not enrich it. It is not enough that the defendant is unjustly enriched; it must be unjustly enriched at the expense of the claimant. *Western Corrections Group, Inc. v. Tierney*, 208 Ariz. 583, 590 ¶ 27 (App. 2004). Here, if there was an enrichment, it was by the CVIA and/or its insurer, not by Ms. Brown. Complaint ¶ 18-19. She may have been impoverished by the work she had to contract for as a result of Pinnacle's nonperformance, but her impoverishment did not enrich Pinnacle. Neither was Pinnacle enriched by Ms. Brown's payment of insurance premiums to CVIA; Pinnacle was not part, directly or

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indirectly, of that transaction merely by virtue of later being contracted to perform covered repairs, so as far as it was concerned, Ms. Brown was receiving its services gratuitously.

The Court cannot consider an alternative claim that Ms. Brown was an intended third-party beneficiary of the contract between Pinnacle and CVIA and/or its insurer because no such claim is pled in the complaint. Accordingly,

IT IS ORDERED granting Pinnacle Restoration, L.L.C.'s Motion for Judgment on the Pleadings Pursuant to Rule 12 (c) Ariz. R. Civ. P.

CVIA

According to paragraph 9 of the complaint, CVIA had the right, which it exercised, to "procure a blanket insurance policy [which] shall insure each of the Units within the Properties." A "blanket" insurance policy is a single policy covering the entirety, not a conglomeration of policies each covering one unit. It is therefore clear from the language of the CC&Rs that Ms. Brown and the other owners cannot each be named insureds on the single policy, as they had no insurable interest in each others' units. This of course does not mean that CVIA was not obligated as part of its blanket policy to insure the individual owners and to make proceeds payable to them and it "jointly," both of which the CC&Rs require. To the extent that these breaches are alleged, the complaint states a claim.

The claim for breach of the duty of good faith and fair dealing appears to be duplicative of the breach of contract claim. There is thus no harm in leaving it in, subject to later removal if necessary.

The Court is not certain whether a fiduciary duty existed between CVIA and Ms. Brown, but a motion for judgment on the pleadings is not the proper vehicle for resolving such legal questions. Accordingly,

IT IS ORDERED denying Defendant Camelback Village (sic) Motion for Judgment on the Pleadings.

ALERT: Effective September 1, 2011, the Arizona Supreme Court Administrative Order 2011-87 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.