

3028 CONTRACTS IMPLIED IN LAW (UNJUST ENRICHMENT)

This case involves a claim based upon alleged unjust enrichment.

The elements of unjust enrichment are: (1) a benefit conferred upon the defendant by the plaintiff; (2) knowledge or appreciation of the benefit by the defendant; and (3) acceptance and retention by the defendant of such benefit under such circumstances that it would be unfair for him or her to retain it without paying the value thereof.

It is not necessary to prove that the recipient of the benefit was at fault or guilty of wrongdoing in any way, but it must be established that as between the parties it would be unfair for the recipient to retain the benefit without paying the reasonable value of the benefit.

A benefit to the defendant may be (services rendered for (defendant)) (goods or merchandise received by (defendant)) (improvements to (defendant)'s real estate) (money paid to (defendant) or someone else on (defendant)'s behalf).

A loss to the plaintiff without an actual benefit to the defendant is not recoverable as unjust enrichment.

If a person declines in advance a benefit to be conferred by another, then the person conferring the benefit may not recover for unjust enrichment.

[It is not a defense to the action that (defendant) is a minor or otherwise incompetent to make a contract, but a minor may show that in equity and good conscience, (plaintiff) is

not entitled to recover in whole or in part.]

[In this case, (plaintiff) has alleged fault or wrongdoing on the part of (defendant) (fraud) (duress) (nonperformance or breach of contract) which is elsewhere in these instructions defined for you. The burden of proof is on (plaintiff) to establish wrongdoing by (defendant).]

COMMENT

This instruction was originally approved by the Committee in 1979 and revised in 2015 and 2020. This revision was approved by the Committee in September 2021; it added to the comment.

In cases where an unjust enrichment claim is based on contributions made by one party for the benefit of another, the unjust enrichment claim must demonstrate that, viewed in their entirety, the contributions were made to a “joint enterprise” in which the parties were mutually engaged, and which resulted in an accumulation of wealth that a party had unfairly retained. See Sands v. Menard, 2017 WI 110, ¶43, 379 Wis.2d 1, 904 N.W.2d 789.

“A claim for unjust enrichment may exist when two people work together or when two people combine assets for defendant’s benefit.” See Lawlis v. Thompson, 137 Wis.2d 490, 493, 405 N.W.2d 317 (1987).

Knowledge of Benefit. When the benefit conferred can be easily returned, like money for example, the benefited party need not have knowledge or appreciation of the gain at the precise time it is conferred. Instead, the party asserting an unjust enrichment claim satisfies the knowledge or appreciation element by proving that the benefited party had knowledge of or appreciated the benefit at a time which provided the party a fair opportunity to choose whether to accept or reject that benefit. Buckett v. Jante, 2009 WI App.55, 316 Wis.2d 804, 767 N.W.2d 376.

Subject matter covered in contract. The doctrine of unjust enrichment does not apply where parties have entered into a contract, and the subject matter of that contract covers the aspects of a plaintiff’s equitable claim. Greenlee v. Rainbow Auction/Realty Co., 202 Wis.2d 653, 671-672, 553 N.W.2d 257 (1996). However, “Wisconsin law does not bar a party from seeking equitable relief for a benefit conferred, if that benefit falls outside the scope of the parties’ contractual relationship.” Meyer v. Laser Vision Inst., LLC, 2006 WI App 70, 290 Wis. 2d 764, 781, 714 N.W.2d 223 quoting Northern Crossarm Co., Inc. v. Chemical Specialties, Inc., 318 F.Supp.2d 752. This is known as the “total business relationship exception.”

Issue triable of right by a jury. Recovery based on unjust enrichment is sometimes referred to as an action for “quasi contract,” Watts v. Watts, 137 Wis.2d 506, 530-531, 405 N.W.2d 303 (1987). This doctrine has been a well-recognized and long-accepted as part of Wisconsin law since 1844. See Rogers v.

Bradford, 1 Pinney Wis. 418 (1844). Quasi contracts are legal obligations in the sense that they originated in the courts of law and are enforced by legal remedies. Graf v. Neith Co-op. Dairy Products Association, 216 Wis. 519, 257 N.W. 618, 619 (1934). See also Arjay Investment Co. v. Kohlmetz, 9 Wis.2d 535, 539, 101 N.W.2d 700 (1960), Watts, *supra*, at 530, and Lawlis, *supra*, at 496. Because actions on the theory of quasi contract are actions at law, they are triable as of right to a jury. See State v. Schweda, 2007 WI 100, ¶20, 303 Wis.2d 353, 736 N.W.2d 49 (2007).

