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IN THE SUPREME COURT OF THE STATE OF UTAH

GENERAL LEASING COMPANY, a Corporation, Plaintiff and Respondent, vs. MANIVEST CORPORATION, A Corporation, Defendant and Appellant.	: : : : : : : : :	CASE NO. 18348

REPLY BRIEF OF THE DEFENDANT AND APPELLANT MANIVEST CORPORATION

Appeal from the Third Judicial District
Court of Salt Lake County, Honorable
Homer F. Wilkinson, District Judge

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FILED

SEP 10 1982

Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE STATE OF UTAH

GENERAL LEASING COMPANY, a Corporation,	:	
Plaintiff and Respondent,	:	CASE NO. 18348
vs.	:	
MANIVEST CORPORATION, A Corporation,	:	
Defendant and Appellant.	:	

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IN THE SUPREME COURT OF THE STATE OF UTAH

GENERAL LEASING COMPANY, :
A Corporation,

Plaintiff and Respondent,

vs. : CASE NO. 17267

MANIVEST CORPORATION,
A Corporation,

Defendant and Appellant. :

REPLY BRIEF OF APPELLANT

STATEMENT OF THE FACTS

The facts and nature of the case have already been outlined in Manivest's initial brief. Manivest presnts this reply brief in response to General Leasing Corporation's appeal on point IV of its brief.

ARGUMENT

The trial court was correct in its determination that there exists no unjust enrichment in this case because the equipment installed by the Plaintiff was not requested nor was permission given to install the equipment by the landlord.

Plaintiff avers that because of equipment which was placed in a leased building at the request of a third party four years before Defendant retook possession, which equipment was neither asked for, nor was notice or permission given to Defendant before its installation, that somehow the Defendant owes for it. Plaintiff uses the often quoted, but in this instance misplaced,

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theory of unjust enrichment. Regarding this unjust enrichment argument, the trial court commented and ruled as follows:

> " The Court does not feel that this is a proper case for unjust enrichment because of the fact that the defendant did not give permission. I don't think that a person, a plaintiff, can go in and install equipment on real property of another and when he says that he will not sign a waiver for it, and then of course it is an alleged case of unjust enrichment and he has got to pay me for it. I just don't think unjust enrichment is applicable. Again, I may be incorrect on that, but that is my analysis as far as the case is concerned." (Record p. 253)

The principle of unjust enrichment is cited by the Utah Courts and in Respondent's brief.

> " Unjust enrichment occurs whenever a person has and retains money or benefits which in justice and equity belong to another." L. & A. Dryway, Inc. vs. Whitmore Construction Co., 608, P.2d 626, 30 (Utah 1980).

The equities in the instant case do not favor the Plaintiff and are significantly dissimilar to the cases cited by Plaintiff/ Respondent.

Both cased cited by the Plaintiff/Respondent concerning the applicability of unjust enrichment are basically two party cases where one party has performed work for and at the behest of the other party. In the case at bar, the Defendant/Appellant had nothing to do with the procuring of the equipment, nor did Peck and Shaw or the Plaintiff/Respondent intend to benefit Manivest Corporation. The fact that Manivest may have been incidentally benefited by the contract between Peck and Shaw and General Leasing does not mean that Manivest is liable for Peck and Shaw's debts.

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" The mere fact that a third person benefits from a contract between two other persons does not make such third person liable in quasi contract, unjust enrichment, or restituiton. Moreover, where a third person benefits from a contract entered into between two other persons, in the absence of some misleading act by the third person, the mere failure of performance by one of the contracting parties does not give rise to a right of restitution against the third person. In other words, a person who has conferred a benefit upon another, by the performance of a contract with a third person, is not entitled to restitution from the other merely because of the failure of performance by the third person." (emphasis ours) 66 Am Jur 2d Restitution and Implied Contracts, §16 p. 960.

This law is consistent with common sense. If defaulting tenants were able to shift debts to the landlord of any physical changes they may have made to the leasehold, landlords would be seriously hindered. Where the landlord makes no request, does not grant permission, nor is under notice of a tenants contract to improve the leasehold, the landlord has no liability. Section 110 of the Restatement of Restitution states:

" A person who has conferred a benefit upon another as the performance of a contract with a third person is not entitled to restitution from the other merely because of the failure of performance by the third person." Restatement of Restitution, §110.

" A promises to pay C, a jeweler, $15 per month for ten months in return for which C promises immediately to deliver a ring to A's fiancee, B, as a gift from A. There is no agreement for C to retain a security interest in the ring. A makes the first payment of $15 and C sends the ring to B. Thereafter A fails to make further payments. C is not entitled to the return of the ring from B. Id.

In the above example, the girlfriend did not ask for the ring and it was apparently given to her after negotiations with the jeweler had ended; therefore, she did not owe for it. This

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example has been used in a case significantly analogous to the one at bar. In Meehan v. Cheltenham Township 189 A.2d 593 (Penn 1963), the Court stated that when a town had approved construction of some roads in a development, they did not owe the contractor once the developer had gone bankrupt.

> " Where one party has been unjustly enriched at the expense of another, he is required to make restitution to the other. In order to recover, there must be both (1) an enrichment, and (2) an injustice resulting if recovery for the enrichment is denied. See Bailis v. Reconstruction Finance Corporation, 128 F.2d 856 (3d Cir., 1942); Restatement, Restitution §1, comment a (1936). Appellant alleges that appellee has been enriched by the acquisition of a sewer and road system which has enlarged its revenues through rnets from the use of the sewers and increased real estate taxes on the improved lands. Appellant concludes that 'the Township cannot in justice refuse to compensate appellant for the fair market value of the same.' This basis for recovery misconceives both the role of appellee in the construction of the improvements, and also the nature of the unjust enrichment doctrine.
>
> The construction of these improvements was not performed at appellee's request. Appellee initially entered the transaction solely because the First Class Township Code requires that a developer obtain township approval of the subdivision plan in order to insure the safe and harmonious development of the township. Later, the improvements were dedicated to the township. Whether this act of dedication resulted in a financial benefit to appellee is not clear since the cost of maintaining and repairing the improvements might offset any revenues obtained therefrom. In any event, appellant cannot merely allege its own loss as the measure of recover--i.e., the value of labor and materials expended--but instead must demonstrate that appellee has in fact been benefitted.
>
> Moreover, even it the enrichment of appellee were established, there would be no recovery in this case. As noted above, the mere fact that one party benefits from the act of another is not of itself sufficient to justify restitution. There must also be an injustice in permitting the benefit to be retained without compensation.
>
> The Restatement of Restitution sets forth various rules for the determination of whether the retention of a particular enrichment is unjust. Section 110 deals

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with the situation where a third party benefits from a contract entered into between two other parties. It provides that, in the absence of some misleading by the third party, the mere failure of performance by one of the contracting parties does not give rise to a right of restitution against the third party. The Restatement gives as an example of this principle the situation where A purchased a ring from C, a jeweler, for his financee B and then defaults in the payments. The Restatement states that C cannot recover the ring or its value from B." Id at 595, 596.

In the instant case, it is clear that General Leasing was relying on the credit of Peck and Shaw and that Manivest did not have anything to do with the installation.

CONCLUSION

Based on the foregoing, Manivest believes it is clear that they are not liable to General Leasing on any unjust enrichment theory.

Respectfully submitted on this 8th day of September, 1982.

MORGAN, SCALLEY & DAVIS

J. BRUCE READING

MAILING CERTIFICATE

I hereby certify that I mailed a true and exact copy of the foregoing, Reply Brief of Appellant, postage prepaid, to Mr. Thomas L. Kay and Mr. Steven A. Gunn, RAY, QUINNEY & NEBEKER, at 400 Deseret Building, Salt Lake City, Utah 84111 on this 10th day of September, 1982.

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