

No. 1-25-2650

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

HE ELECTRIC, INC.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 2021 CH 06379
	)	
EDYTA KIRAGA,	)	Honorable
	)	Michael T. Mullen,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE MIKVA delivered the judgment of the court.
Presiding Justice Oden Johnson and Justice Wilson concurred in the judgment.

ORDER

¶ 1 *Held:* Affirming the circuit court's order dismissing plaintiff's unjust enrichment claim.

¶ 2 HE Electric, Inc., (HE) appeals the circuit court's order dismissing its unjust enrichment claim against Edyta Kiraga. HE claimed that Mirosław Szczerbowski, Ms. Kiraga's ex-husband, had an oral agreement with HE by which HE would put Ms. Kiraga on its payroll so that she could receive health insurance through HE. In return, Mr. Szczerbowski would repay HE the amount it spent on Ms. Kiraga's salary and health insurance premiums. Mr. Szczerbowski died without making any payments to HE under this agreement.

¶ 3 We affirm the circuit court’s dismissal of the unjust enrichment claim under section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2020)). HE has not alleged facts on which it could be found that Ms. Kiraga’s retention of the benefits she received was unjust. In addition, an unjust enrichment claim cannot succeed where an express contract, like the one alleged between HE and Mr. Szczerbowski, governs the subject matter of the dispute.

¶ 4 I. BACKGROUND

¶ 5 In December 2021, HE filed a complaint against Ms. Kiraga alleging unjust enrichment and tortious interference with contract. According to the operative complaint, on or around January 1, 2016, Mr. Szczerbowski and HE entered into an agreement under which HE would advance Mr. Szczerbowski money to pay for health insurance benefits for Ms. Kiraga, her stepson, and her daughter. Mr. Szczerbowski advised HE that, for Ms. Kiraga to obtain health insurance under HE’s health plan, HE would have to put her on its payroll and make regular payroll payments to her. Mr. Szczerbowski proposed that HE do so, and promised in return that he would, on or about January 1 of each year, repay HE for the costs it incurred as a result of the agreement.

¶ 6 Although Ms. Kiraga never performed any services for HE, from 2016 to 2019, it paid her \$42,162.96 in payroll payments and advanced approximately \$50,000 to Mr. Szczerbowski for the payment of monthly health insurance premiums for Ms. Kiraga and her children. Mr. Szczerbowski died on January 16, 2019. Neither Mr. Szczerbowski nor his estate ever repaid any money to HE.

¶ 7 HE claimed that, because Mr. Szczerbowski did not repay what he owed it under their oral agreement, Ms. Kiraga had “received money under such circumstances that in equity and good conscience she ought not be allowed to keep and, instead, she should repay HE.” According to the complaint, HE was “on balance, better suited” than Ms. Kiraga to recover those benefits, given

that she did not pay for them.

¶ 8 Ms. Kiraga moved to dismiss the unjust enrichment claim under section 2-615 of the Code. On February 1, 2023, the circuit court granted Ms. Kiraga's motion and dismissed HE's unjust enrichment claim with prejudice. After the unjust enrichment claim was dismissed, HE's tortious interference claim was transferred to the Law Division, where it was consolidated with another case (2021 CH 03083) for trial. Following a bench trial, the court entered a final judgment. HE now appeals the dismissal of its unjust enrichment claim

¶ 9 II. JURISDICTION

¶ 10 We have jurisdiction over this appeal pursuant to article VI, section 6 of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) and Rule 303 (eff. July 1, 2017), which govern appeals from final judgments in civil cases. The February 1, 2023, order dismissing HE's unjust enrichment claim with prejudice was not a final order because it did not dispose of all of the claims in the complaint. The order became final and appealable when the circuit court entered its final judgment after the bench trial, on November 24, 2025. Following that judgment, HE timely filed its notice of appeal on December 23, 2025. Ill. S. Ct. R. 303(a)(1) (eff. July 1, 2017).

¶ 11 III. ANALYSIS

¶ 12 A motion to dismiss filed under section 2-615 of the Code attacks the legal sufficiency of a complaint based on defects apparent on its face. *Solano v. City of Chicago*, 2026 IL App (1st) 242135, ¶ 9. We review a dismissal under this section *de novo*. *Id.* ¶ 10. The question is whether the complaint's allegations, viewed in the light most favorable to the plaintiff, state a cause of action upon which relief can be granted. *Id.* ¶ 9.

¶ 13 We will affirm dismissal if there are no facts that can be proven which would entitle the

plaintiff to the relief it seeks. *Id.* We may affirm on any ground supported by the record, regardless of the circuit court's reasoning. *Id.* ¶ 10. In reviewing the dismissal, we must accept all well-pleaded facts as true and draw all reasonable inferences in the plaintiff's favor. *3 R Health Care Products, Inc. v. Cardinal Health 110, LLC*, 2026 IL App (1st) 241911, ¶ 28.

¶ 14 To succeed on an unjust enrichment claim, "a plaintiff must show 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." (Internal quotation marks omitted.) *Chicago Title Insurance Co. v. Teachers' Retirement System of the State of Illinois*, 2014 IL App (1st) 131452, ¶ 17. Unjust enrichment is based either on unlawful conduct like fraud, duress, or undue influence, or on a contract implied in law. *Gagnon v. Schickel*, 2012 IL App (1st) 120645, ¶ 25. The plaintiff need not prove any fault or illegality on the defendant's part. *National Union Fire Insurance Co v. DiMucci*, 2015 IL App (1st) 122725, ¶ 67. The plaintiff must prove, however, both that the defendant voluntarily accepted a benefit and that it would be inequitable for the defendant to retain the benefit without payment. *Karimi v. 401 North Wabash Venture, LLC*, 2011 IL App (1st) 102670, ¶ 14.

¶ 15 HE's complaint includes no allegations that Ms. Kiraga enticed HE to enter into the agreement or perform its duties under the agreement, agreed to repay HE for the benefits it provided if Mr. Szczerbowski did not, or had any duty that she failed to meet. While HE is correct that it need not plead that Ms. Kiraga committed any wrongdoing, it still needed to plead facts showing that for some reason it was unjust for Ms. Kiraga to retain the benefits she received through HE's agreement with Mr. Szczerbowski. Those allegations are missing from the complaint.

¶ 16 HE argues that, by accepting the benefit, Ms. Kiraga adopted the means by which the

benefits were procured. *Smithberg v. Illinois Municipal Retirement Fund*, 192 Ill. 2d 291, 300 (2000). But the complaint alleges nothing unjust about the means by which the benefits were procured. It simply alleges that they were procured through the agreement with Mr. Szczerbowski, which made him solely responsible for payment. HE has pled no facts supporting a claim that justice, equity, and good conscience should require Ms. Kiraga to take on the obligations that the agreement placed on Mr. Szczerbowski. Its assertion that it is “better suited” or has “a better claim” to the \$92,162.96 that Ms. Kiraga has allegedly been enriched by is completely conclusory and not supported by its allegations. We need not accept HE’s conclusions of law where they are not supported by specific facts. *Ash v. PSP Distribution, LLC*, 2023 IL App (1st) 220151, ¶ 19.

¶ 17 There is a second, related reason that HE’s complaint fails. The theory of unjust enrichment is inapplicable where an express contract, oral or written, governs the subject matter (*C. Szabo Contracting, Inc. v. Lorig Construction Co.*, 2014 IL App (2d) 131328, ¶ 25) or the parties’ relationship (*Gagnon*, 2012 IL App (1st) 120645, ¶ 25). An unjust enrichment claim cannot include allegations of an express contract. *Id.*

¶ 18 The limitation that a claim for unjust enrichment cannot apply where there is an express contract extends to third-party beneficiaries—they cannot be held liable on a claim for unjust enrichment when a contract governs the subject matter at issue. *C. Szabo Contracting*, 2014 IL App (2d) 131328, ¶ 25; *Martis v. Pekin Memorial Hospital, Inc.*, 395 Ill. App. 3d 943, 952-53 (2009).

¶ 19 As we pointed out in *C. Szabo Contracting*, “a party performing pursuant to a contract who is disappointed by its co-party’s failure to pay generally cannot turn to a third party for compensation.” 2014 IL App (2d) 131328, ¶ 25. We also recognized that it would be inequitable to “ ‘require a defendant to pay money, at a price set by someone else, for goods and services he

had no adequate opportunity to select or to refuse.’ ” (quoting Restatement (Third) of Restitution and Unjust Enrichment § 25 cmt. b (2011)). *C. Szabo Contracting*, 2014 IL App (2d) 131328, ¶ 42.

¶ 20 Neither of the parties here cite these cases regarding third-party beneficiaries of express contracts, but we find them clearly applicable. The court in *C. Szabo Contracting* found an exception to the rule that a party cannot recover from a third-party beneficiary because the defendant there had contracted to pay the exact amount sought to a different party. *Id.* ¶ 45. That exception is not applicable here. There is no allegation that Ms. Kiraga made any promise to pay for or repay HE for the health benefits or salary payments. The facts of *Martis* are very different since there the contracting party claiming that it would be unjust enrichment to pay the third-party beneficiary had agreed to pay the third-party beneficiary if the beneficiary provided the defendant certain services, which it did. *Martis*, 395 Ill. App. 3d at 945-46. However, the law as set out in these cases is clear: “Since the relationship of plaintiff and defendants was governed by an express contract, plaintiff has failed to state a claim for unjust enrichment.” *Id.* at 953. The existence of an express oral agreement, that contained no obligation on Ms. Kiraga’s part, is a second reason that HE’s claim for unjust enrichment fails here.

¶ 21 There is a third, alternative reason that this claim fails: HE’s agreement with Mr. Szczerbowski was insurance fraud. “Courts will not enforce an illegal contract or any rights that arise from an illegal contract,” which exists where the contract’s terms violate the law or require one or both parties to perform an illegal act. *McGrath, As Trustee of the Michael J. McGrath Trust No. 1 v. Addy & McGrath Fireworks, Inc.*, 2022 IL App (3d) 210013, ¶ 24.

¶ 22 Section 17-10.5(a)(2) of the Criminal Code of 2012 (720 ILCS 5/17-10.5(a)(2) (West 2016)) provides that “[a] person commits health care benefits fraud against a provider *** when he or she knowingly obtains or attempts to obtain, by deception, health care benefits and that

obtaining or attempt to obtain health care benefits does not involve control over property of the provider.” A person commits common law fraud when they knowingly make a false statement of material fact with the intent to induce another party to act, and the other party acts in reliance on the statement and suffers damages. *Moore v. Pendavinji*, 2024 IL App (1st) 231305, ¶ 30.

¶ 23 Putting Ms. Kiraga on the payroll for the purpose of her receiving health care benefits when she was not a real employee who provided HE any services would likely constitute health care benefits fraud or common law fraud against the insurer. Allowing HE to recover for unjust enrichment because the illegal agreement it entered was not honored would be tantamount to enforcing the illegal agreement. That is an alternative reason that this claim fails.

¶ 24 IV. CONCLUSION

¶ 25 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County dismissing HE’s unjust enrichment claim under section 2-615.

¶ 26 Affirmed.