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Court of Appeals No. 53494-1-II

SUPREME COURT OF THE STATE OF
WASHINGTON

KIMBERLY HAN,
Appellants/Plaintiffs

v.

ROBERT E. MARTIN,
Respondent/Defendant

**KIMBERLY HAN'S PETITION FOR
DISCRETIONARY REVIEW TO
SUPREME COURT**

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I. IDENTITY OF THE PETITIONER

Kimberly Han asks this Court to accept review of the Division II Court of Appeals decision terminating review, pursuant to RAP 13.3(a)(1) and RAP 13.4(b).

II. COURT OF APPEALS DECISION

Kimberly Han seeks review of the unpublished Division II Court of Appeals Decision entered on December 1, 2020, appended to this Petition for Discretionary Review as **Appendix A**.

III. ISSUES PRESENTED FOR REVIEW

Whether or not the Appellate Court's affirmation of the trial court's error in granting summary judgment against Han should be reversed, when the evidence presented showed genuine issues of material fact as to the nature of the monies provided to Han from Martin.

IV. STATEMENT OF THE CASE

Kimberly Han (hereinafter "Han") does not dispute that the record below is not necessarily as clear as it could be, which was recognized by Judge Maxa in his dissent. Notwithstanding, when the facts as contained in the record are viewed in the light most favorable to Ms. Han, it is apparent that genuine issues of fact exist.

Han is a native of Korea, and she has obvious difficulty reading and writing in English. This is evident from even a cursory review of

deposition transcripts and the Verbatim Report of Proceedings filed on Appeal. See CP 46-66; Verbatim Report of Proceedings. The trial court in this matter also recognized that English was not Han's first language. VRP 17:24-25. During a crucial portion of the action before the trial court, she was representing herself pro se, following the withdrawal of her attorney. CP 111-112.

The parties in this action, Han and Robert Martin, were close friends, supporting and helping each other. CP 38, 52. At the time of the events leading to this action, Martin was 88 years old. CP 38. In 2008, Han began assisting Martin with his medical and physical needs following cancer treatments. CP 33. Care included helping with self-care, ensuring physical safety, monitoring his medications, assisting with transportation to doctor appointments, housekeeping, yard work, and food preparation. *Id.*, CP 79. This relationship continued for approximately 8 years, during which Han met Martin's needs on a 24 hour on-call basis. CP 33, CP 79. Han was not paid during that time frame for the services she provided Martin, and is candid in her responses to written discovery that Martin did not offer to compensate her for her time. CP 34, 79.

Han's business began doing poorly approximately three to four years prior to the filing of this action. CP 50. Martin subsequently

volunteered to assist in rebuilding Han's credit after her business suffered financial difficulty. Han testified as follows:

He said, since I needed help, so he said he want to help me out due to my credit, and then I can go on my business, and then he's going to help me, and the property I was - - waterfront property close to his house - and later he can—I can take care of him.

(Deposition of Kimberly Han 37:3-7.)

In furtherance of the offer to build Han's credit, Martin decided to co-sign a loan from Kitsap Federal Credit Union to Han in the amount of \$234,357.18 in December, 2015. CP 6. The loan was secured by Martin's Certificates of Deposit ("CDs"). *Id.* In addition, Martin advised Han that if she defaulted on the loan and his CDs were forfeited, the monies would essentially be considered a gift and she would forego any additional inheritance upon his death. CP 79.

In discovery responses that were provided to the trial Court at Summary Judgment, Han described the purpose of the loan as follows:

The purpose of the loan was actually a gift to help me recover and rebuild my credit that was hurt from a timber business foreclosure. He said that he couldn't take his money with him and that he will help me recover my credit by repaying the loan to myself (he was a co-signor). When I could no longer pay on the loan then he said that the money that I received would be the only sum of money that I would get from him.

CP 79. In other words, Martin volunteered to co-sign on the loan and provide the collateral securing the loan due to their long friendship and the care-giving nature of their relationship. In the event that she repaid the loan in full, she would still receive the CDs that secured the loan as her “inheritance.” If she was unable to repay the loan, and the CDs forfeited, she would nonetheless benefit in that she would have received her “inheritance” in advance of Martin’s death.

Han was able to use the monies obtained from the Kitsap Federal Credit Union loan in her business ventures. CP 57-58. She did make several payments on the loan. CP 110. Unfortunately, she was unable to make the final payment on the loan in December, 2016, and the CDs were used to pay off the remaining principal balance of the loan. CP 62-63; CP 66, 110.

Han’s understanding that Martin’s CDs were a gift in lieu of bequeathing the amount upon Martin’s death is clear upon careful examination of her discovery answers and deposition testimony provided by Martin’s counsel to the trial court at Summary Judgment. In response to an Interrogatory as to whether she owed Martin for default on the loan, Han replied as follows:

I do not owe him any money. The ‘loan’ was where I would be paying myself back in order to establish credit. At the end of the term, it was known by the Plaintiff that I would

have received both the original loan and at the same time had re-established my credit. After the CD's were taken by the bank, he stated that I now have received everything that he was going to give me.

CP 79.

Han also testified at deposition as to the character of the loan secured by Martin's CDs by consistently referring to them as a "pre-draw" on her inheritance. She testified as follows:

This is supposed to go to my own account and the Mr. Martin's account that Mr. Martin helped me out to open up account, and then go to account and then build up my credit, build up money. And then once—he say that way, even once he die, I have good credit and I got some money from him, because **I already pre-taken out.**

You already got debts. If you spend them all this, and then there is everything else that go to somewhere else and not for you anymore. So that's what he said. So I have to be ready to make a payment for myself as a savings.

CP 62 (Deposition of Han p. 53:10-20) (Emphasis added). She testified further:

Q. You received the proceeds to the loan. You got the \$234,000?

A. Yes, he said that's for me.

Q. Okay. I'm just asking you the one question. I'm asking you a yes-or-no question. You received the proceeds of that loan?

....

A. **He let me pre-draw out.**

CP 65 (deposition of Han p. 56:2-10) (Emphasis added). She went on as follows:

Q. . . .And the loan was secured by two certificates of deposit that Mr. Martin held at Kitsap Federal Credit Union?

A. Yes. He said he was going to give it to me, that one, when he dies.

Q. Okay. And you defaulted on your obligations because you didn't make the December payment, the balloon payment at the end of the loan?

A. Yeah. **That was I'm pre-draw**, then he said that I have to put the money in, then after he dies I have something.

CP 65 (Deposition of Han p. 56:14-23) (Emphasis Added). Finally, she testified as follows:

Q. . . .And so the two certificates of deposit were forfeited and paid off the loan? Or do you dispute that, that Mr. Martin lost his two certificates of deposit?

A. Well, he – there was already - - he already tell me ahead of time. He said, "If you use up all this so you don't pay back and then you're not going to have anything."

...

Q. But is that true, that the certificate of deposit were used to pay off the loan?

A. Well that's probably that's what he did. **Instead of giving me after he's dead, he probably pay off a pre-payoff.** And then he said if he have to do that and then I'm not to get anything from him. That's what he said.

Q. And so you think that it's just a wash now because you would have gotten that money when he died anyway.

CP 66 (Deposition of Kimberly Han p. 58) (Emphasis added).

The only documents Martin submitted in support of Summary Judgment were Han's responses to written discovery and excerpts from her deposition attached to a Declaration of Counsel, to which Martin's counsel selectively referred to. CP 43-110. Martin himself provided no sworn statements in support of his motion, and thus provided no evidence as to his intention in providing the CDs as collateral, why he co-signed the loan, or what his expectations were in the event of default.

The Court ruled against Ms. Han, which decision was erroneously affirmed by the Court of Appeals, since there are genuine issues of material fact as to whether Martin intended the CDs to constitute a gift, and whether Han's receipt of a benefit from Martin was unjust.

V. ARGUMENT

A. STANDARD OF REVIEW

As specifically stated in *Kruse v. Hemp*, 121 Wn.2d 715, 722, 853 P.2d 1373 (1993), in reviewing a summary judgment order, an appellate court evaluates the matter de novo, performing the same inquiry as the trial court. The appellate court must engage in the same inquiry as the trial court, ". . . construing the facts and reasonable inferences therefrom in the manner most favorable to the non-moving party to ascertain whether there is a genuine issue of material fact." *Dumont v. City of Seattle*, 148 Wn.App. 850, 860-861, 200 P.3d 764 (2009) (citing to *Sellested v. Wash. Mut. Sav.*

Bank, 69 Wn.App. 852, 857, 851 P.2d 716 (1993)). When the court carefully reviews the record, it is evident that neither the trial court nor the appellate court reviewed the facts and inferences in a manner most favorable to Han, as the non-moving party.

This court accepts review of decisions when the Court of Appeals' decision conflicts with other Washington cases. RAP 13.4(b)(1). At a minimum, the Court of Appeals decision is contrary to other Washington cases that disputed issues of material fact should not be resolved on summary judgment. CR 56(c); *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008). The decision is also contrary to other Washington cases that require that Ms. Han's alleged "enrichment" be "unjust" under the circumstances between the two parties.

B. GENUINE ISSUES OF MATERIAL FACT EXIST AS TO THE NATURE OF THE CDs

i. Genuine Issues of Material Fact Exist as to Whether the CDs were Intended as a Gift

The requirements for a completed gift are: (1) an intention of the donor to presently give; (2) a subject matter capable of passing by delivery; (3) an actual delivery; and (4) an acceptance by the donee. *Henderson v. Tagg*, 68 Wash.2d 188, 192, 412 P.2d 112 (1966); *In re Gallinger's Estate*, 31 Wash.2d 823, 832, 199 P.2d 575 (1948); 38 C.J.S. Gifts § 10 (1943); 38 Am.Jur.2d *Gifts* § 18 (1968). The existence or absence of a donor's

intent to give is an evidentiary issue that is resolved by the fact finder. *Buckerfield's Ltd. v. B.C. Goose & Duck Farm Ltd.*, 9 Wn.App. 220, 224, 511 P.2d 1360 (1973).

The trial court and the Court of Appeals found that the undisputed facts, taken in a light most favorable to Han, demonstrated that she received proceeds of a bank loan. She used the money for her benefit, and she intended to pay the bank back. Martin co-signed for the loan with his CDs posted as collateral. Han defaulted on the loan and the bank used the collateral posted by Martin.

What is missing, however, is whether Martin intended that the use of his CDs to pay off the loan would be a gift. Martin did not submit any evidence of his intent. Instead, he submitted deposition testimony and interrogatory answers from Han inferring that Martin provided the CDs in lieu of bequeathing those amounts to her upon his death. The only evidence of Martin's intent was from Han's testimony. That testimony raises a genuine issue of material fact as to intent. This is an issue for the jury to decide.

ii. Genuine Issues of Material Fact Exist as to Unjust Enrichment

Unjust enrichment occurs when one retains money or benefits that, in justice and equity, belong to another. *Wright v. Dave Johnson Ins. Inc.*,

167 Wn.App. 758, 774, 275 P.3d 339 (2012). A person is unjustly enriched when he or she profits or enriches himself or herself at the expense of another, contrary to equity. *Norcon Builders, LLC v. GMP Homes VG, LLC*, 161 Wn.App. 474, 490, 254 P.3d 835 (2011). A claim of unjust enrichment requires proof of three elements—“(1) the defendant receives a benefit, (2) the received benefit is at the plaintiff’s expense, and (3) the circumstances make it unjust for the defendant to retain the benefit without payment.” *Id.* (citing to *Young v. Young*, 164 Wn.2d 477, 191 P.3d 1258 (2008)). All three elements must be present in order to establish a claim for unjust enrichment. *Id.*

Enrichment alone is not sufficient to establish a claim, however, as recognized in Judge Maxa’s well-reasoned dissent. The enrichment must be *unjust*. The mere fact that a person benefits another is not sufficient to require the other to make restitution. *Lynch v. Deaconess Medical Center*, 113 Wn.2d 162, 165, 776 P.2d 681 (1989). It is critical that the enrichment must be unjust both under the circumstances and as between the two parties to the transaction. *Norcon*, at 490. Liability only attaches where the circumstances of the benefit would make it unjust to retain it. *Town Concrete Pipe of Washington, Inc. v. Redford*, 43 Wn.App. 492, 499, 717 P.2d 1384 (1986).

In *Coast Trading Co., Inc. v. Parmac, Inc.*, the court discussed the origin of unjust enrichment, “money had and received.” *Coast Trading Co., Inc. v. Parmac, Inc.*, 21 Wn.App. 896, 902, 587 P.2d 1071 (1978). Under that theory, “the right of recovery arises independently of the express agreement or intent of the parties where the facts are such that the holder of another’s funds would be unjustly enriched if the law did not presume a promise to pay.” *Id.* at 902. However, the court was clear to state that “it does not lie in every instance where one party claims money from another. **The doctrine only applies if plaintiff’s claim is based upon some recognized equitable principal such as mistake, coercion, duress, fraud, illegality of contract, impossibility of performance, or failed to perform a fiduciary duty.**” *Id.* at 902-903 (emphasis added).

In bringing his motion for Summary Judgment, Martin had the initial burden to demonstrate an absence of an issue of material fact on the elements essential to his claim. Martin had the burden of proving that it was unjust for Han to retain the benefit, not just that she was enriched. Although Martin presented evidence that Han understood she was to repay the Kitsap Federal Credit Union Loan, and that he paid it instead when his CDs were forfeited, that evidence is not sufficient to support a claim that Han’s retention of the benefit was unjust under the circumstances and between the

two parties themselves. He presented no evidence of mistake, coercion, fraud, duress or the like.

Instead, the evidence presented demonstrates that Han provided years of care to Martin, without any compensation. In exchange, Martin agreed to help Han get back on her feet by co-signing for the loan and providing the collateral. Her discovery responses suggest an inference that Martin did not expect he would be paid back in the event the CDs were taken to cure any default, since the monies represented a “pre-draw” on any inheritance he planned to give her upon his death. These are genuine issues of material fact that both the trial court and the Court of Appeals failed to consider.

VI. CONCLUSION

For the reasons stated above, Han respectfully requests that the Court accept discretionary review of this matter. The applicable summary judgment standard requires that issues of genuine material fact not be decided on summary judgment. Martin did not present sufficient evidence, and indeed the evidence he did submit, support an inference that he either gave a gift to Han, or he did not intend to be repaid, and therefore her “enrichment” was not unjust. Moreover, this Court should reverse the trial court’s grant of summary judgment in Martin’s favor, and remand for trial before a jury.

RESPECTFULLY SUBMITTED this 31st day of December, 2020.

SMITH ALLING, P.S.

By /s/ Kelly DeLaat-Maher
Kelly DeLaat-Maher, WSBA #26201
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of December, 2020, I served a true and correct copy of the foregoing upon the parties and/or counsel below, via the methods noted below, properly addressed as follows:

David P. Horton	<input type="checkbox"/>	Hand Delivered
Attorneys for Respondent	<input type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
Templeton Horton Weibel & Broughton, PLLC	<input type="checkbox"/>	Overnight Mail
3212 NW Byron Street, Suite 101	<input type="checkbox"/>	Facsimile
Silverdale, WA 98383	<input checked="" type="checkbox"/>	Email
dhorton@kitsaplawgroup.com	<input checked="" type="checkbox"/>	E-Filing/E-Service
	<input type="checkbox"/>	ABC Legal Messengers

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 31st day of December, 2020, at Tacoma, Washington.

/s/ Teri Parr
Teri Parr

Appendix A

December 1, 2020

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

ROBERT E. MARTIN,

Respondent,

v.

KIMBERLY HAN, and KITSAP COUNTY,

Appellants.

No. 53494-1-II

UNPUBLISHED OPINION

MELNICK, J. — Kimberly Han appeals an order granting summary judgment to Robert Martin on a claim of unjust enrichment. Han argues the court erred by granting summary judgment to Martin because a material fact is in dispute. Han also argues Martin cannot bring an unjust enrichment claim because he was a volunteer. Lastly, Han argues that if summary judgment is affirmed, the judgment amount was incorrect. We affirm but remand to correct the judgment amount.

FACTS

Han and Martin met each other after she became his neighbor. They became good friends. Han provided home care for Martin during an illness, and Martin helped Han with home maintenance. At some point, Han acquired a bank loan for business purposes. Martin helped Han acquire the loan by providing his certificates of deposit (CDs) as collateral. At some point after Han and Martin signed the loan document, they became estranged.

Han made payments on the loan until she could not pay a balloon payment that became due. As a result, Han defaulted on the loan and the bank used Martin's CDs to pay the outstanding balance. Martin sued Han for unjust enrichment seeking the value of the CDs.

In a pretrial deposition, Han stated that she believed the purpose of the loan was a gift from Martin. Han also stated that Martin wanted to help her with the loan so she could build her credit.

Q: You say, "The purpose of the loan"—and the loan refers to the Kitsap Credit Union loan that you took out with Mr. Martin as a cosigner; is that right?

A: Yes.

Q: Okay. And you say the purpose of the loan was actually a gift to help you recover or rebuild your credit?

A: Yes

Q: So what do you mean by that?

A: He said, since I needed help, so he said he want to help me out due to my credit.

Clerk's Papers (CP) at 55-56

When asked about the CDs, Han said that Martin had intended to give her the CDs upon his death and that he had probably used them to pay off the loan instead. Han admitted that she received the loan and that she used it for her benefit. Han understood that she was responsible for repaying the loan. Han admitted that she defaulted on the loan. Han also admitted that Martin's CDs were used to pay the balance of the loan.

Martin moved for summary judgment. To support his summary judgment motion, Martin relied on Han's deposition, interrogatory responses, and other discovery she provided. The trial court granted his motion and awarded Martin \$296,779.73. Han appeals.

ANALYSIS

I. STANDARD OF REVIEW

We review orders of summary judgment de novo, and perform the same inquiry as the trial court. *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000). We consider the facts

and the inferences from the facts in the light most favorable to the nonmoving party. *Bremerton Pub. Safety Ass'n v. City of Bremerton*, 104 Wn. App. 226, 230, 15 P.3d 688 (2001). A party is entitled to summary judgment if the pleadings, affidavits, and depositions establish that there is no genuine issue of material fact and that the party is entitled to judgment as a matter of law. CR 56(c); *Lybbert*, 141 Wn.2d at 34.

II. GIFT

Han argues that a dispute of a material fact exists as to whether Martin intended to give her a gift. We disagree.

“The essential elements of a valid gift are: (1) an intention on the part of the donor to presently give; (2) a subject matter capable of passing by delivery; and (3) an actual delivery at the time.” *Henderson v. Tagg*, 68 Wn.2d 188, 192, 412 P.2d 112 (1966). The donor must demonstrate a “clear and unmistakable intention” to make a gift. *In re Gallinger's Estate*, 31 Wn.2d 823, 829, 199 P.2d 575 (1948).

The undisputed facts, taken in a light most favorable to Han, are that she received the proceeds of the bank loan. She used the money for her benefit and she intended to pay the bank back for the loan. Martin co-signed the loan with the expectation that Han would pay it back. Han defaulted on the loan and the bank used the collateral posted by Martin to pay off the default.

Han argues that her deposition testimony, quoted above, shows a material disputed fact exists. However, Han mischaracterizes her testimony, as does the dissent, even when viewing it in the light most favorable to her. The loan is from the bank, not Martin. Her deposition testimony does not demonstrate that Martin intended to pay off the bank loan as a gift. In addition, Han speculates as to Martin “probably” giving the CDs to her now instead of after he dies. CP at 66. Martin did not give Han the CDs. He allowed them to be used as collateral for a loan that Han

knew she had to pay off. Han does not provide any facts showing that Martin gifted the CDs to her.

Because there are no material facts in dispute, the court did not err in granting summary judgment.

III. UNJUST ENRICHMENT

Han argues that Martin cannot bring an unjust enrichment claim because he voluntarily provided his CDs as collateral, which makes him a volunteer. We disagree.

An unjust enrichment claim, has three elements: that “(1) the defendant receives a benefit, (2) the received benefit is at the plaintiff’s expense, and (3) the circumstances make it unjust for the defendant to retain the benefit without payment.” *Young v. Young*, 164 Wn.2d 477, 484-85, 191 P.3d 1258 (2008). Additionally, the plaintiff conferring the benefit must not be a volunteer. *Lynch v. Deaconess Med. Ctr.*, 113 Wn.2d 162, 165, 775 P.2d 681 (1989); *Ellenburg v. Larson Fruit Co., Inc.*, 66 Wn. App. 246, 251-52, 835 P.2d 225 (1992).

Courts look to the surrounding circumstances to determine whether a person is a volunteer, including “(1) whether the benefits were conferred at the request of the party benefited, (2) whether the party benefited knew of the payment, but stood back and let the party make the payment, and (3) whether the benefits were necessary to protect the interests of the party who conferred the benefit or the party who benefited thereby.” *Larson Fruit Co.*, 66 Wn. App. at 251-52 (internal citations omitted). A volunteer is a person who pays someone’s financial obligations without request from the person benefitted. *Newcomer v. Masini*, 45 Wn. App. 284, 288-89, 724 P.2d 1122 (1986). Volunteers act even though they have no legal or moral obligation to do so. *Masini*, 45 Wn. App. at 288-89.

Here, Martin correctly claims that Han conceded the material facts necessary for him to prevail on his unjust enrichment claim. First, Han admitted she received the loan from the bank for her benefit. Second, Han received the loan because Martin co-signed on the loan and used his CDs as collateral; therefore, Han received the benefit of the loan at Martin's expense. Third, Han retained the loan money even when she understood that she had sole responsibility for repaying the loan. Han admitted that she defaulted on the loan and understood that as a result Martin's CDs were forfeited to pay the loan balance. In light of Han's knowledge that she was responsible for repaying the loan, it is unjust for Han to retain the benefits without paying Martin back.

Han argues that Martin cannot recover under unjust enrichment because Martin became a volunteer by signing the loan document. Han bases this argument on her deposition statements, where she said Martin wanted to help her. The summary of these statements is that Martin wanted to help Han rebuild her credit and as such offered his CDs as collateral.

Relying on the language in *Masini*, there is no evidence that Martin was a volunteer. The evidence does not demonstrate that Han did not request Martin to post the CDs as collateral. Martin paid the defaulted balance on Han's loan because he had the legal obligation to do so as a co-signer. While Martin may have offered to help Han, there is no evidence to support he is a volunteer.

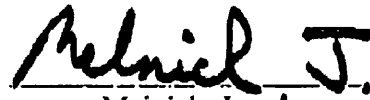
We conclude the trial court properly granted Martin's order for summary judgment

IV. JUDGMENT AMOUNT

Han argues that if we affirm the order for summary judgment, the judgment amount should be recalculated based on loan payments Han made prior to her default. Martin concedes that the judgment should be reduced in the amount of Han's loan payments. We agree with Han and accept Martin's concession.

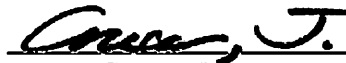
We affirm the court's order granting summary judgment but remand for it to recalculate the judgment amount.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.



Meinick, J.

I concur:



Cruser, J.

Maxa, J. (dissenting) – The evidence in this case certainly could be more clear. However, when the evidence is viewed in the light most favorable to Kimberly Han, there are genuine issues of fact regarding whether (1) Robert Martin intended that the use of his certificates of deposit (CDs) to pay off Han’s defaulted loan would be a gift to Han, and (2) allowing Han to obtain a benefit at Martin’s expense would be “unjust.” Therefore, the majority opinion wrongfully affirms the trial court’s grant of summary judgment in favor of Martin.

Han claims that Martin’s payment of the loan amount from his CDs was a gift in lieu of bequeathing the same amount to her when he died. In an interrogatory answer, Han stated that Martin told her that when she no longer paid on the loan, the money she received would be the only money she would get from him. In another interrogatory answer, Han stated that “[a]fter the CDs were taken by the bank,” Martin stated that Han now had already received everything he was going to give her. Clerk’s Papers at 79 (emphasis added). These statements along with Han’s somewhat confusing deposition testimony creates an inference that using the CDs to pay off the loan was a gift from Martin to Han.

Han also argues that Martin cannot prevail on his unjust enrichment theory because payment of the defaulted loan with the CDs was not unjust. An essential element of an unjust enrichment claim is even though the defendant may have received a benefit at the plaintiff’s expense, *the circumstances must make it unjust* for the defendant to retain the benefit without payment. *Norcon Builders, LLC v. GMP Homes VG, LLC*, 161 Wn. App. 474, 490, 254 P.3d 835 (2011). “The mere fact that a defendant has received a benefit from the plaintiff is insufficient alone to justify recovery.” *Id.* In other words, enrichment alone is not enough; it must be unjust as between the parties under the circumstances. *Id.*

Here, Martin had the burden of presenting evidence that it was unjust for Han to receive the benefit, not just that she was “enriched.” But Martin presented no such evidence. Martin presented evidence that Han had an obligation to repay the loan and that he paid it instead through his CDs. But that evidence shows only enrichment, not *unjust* enrichment. The only other evidence that Martin presented gave rise to an inference that he did not expect to be paid back.

A jury should be allowed to decide whether Martin intended a gift and whether Martin’s payment of Han’s loan with his CDs was unjust. Accordingly, I dissent.



Maxa, P.J.

SMITH ALLING, P.S.

December 31, 2020 - 9:42 AM

Filing Petition for Review

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: Case Initiation
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