No. 101050-8

IN THE SUPREME COURT

OF THE STATE OF WASHINGTON

LISA LAVINGTON,

Respondent/Appellant

v.

JAMES T. HILLIER and WANDA L. HILLIER.
Petitioners/Appellees.

Appeal from the Court of Appeals, Division II of the
State of Washington
Court of Appeals Case No. 54541-1-II

HILLIERS' REPLY TO LAVINGTON'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Petitioners are James T. Hillier and Wanda L. Hillier, and the marital community thereof.

II. ISSUES PRESENTED FOR REVIEW

Did the trial court properly grant summary judgment in favor of the Hilliers on Lavington's unjust enrichment claim?

III. STATEMENT OF THE CASE

The Hilliers rely on the statement of the case in their petition for review.

IV. ARGUMENT

The Court of Appeals correctly affirmed the trial court's grant of summary judgment in favor of the Hilliers on Lavington's unjust enrichment claim. Far from a technical distinction without a difference, the requirement that an unjust enrichment plaintiff *give* something to the defendant is essential to the cause of action. The plaintiff must *confer* a benefit in order for the defendants' retention of the benefit to be unjust. There is

no conflict between the dismissal of Lavington's unjust enrichment claim and Supreme Court precedent.

Young v. Young, 164 Wn.2d 477, 191 P.3d 1258 (2008), together with the body of unjust enrichment law in this state, confirm the trial and appellate courts' construction of the elements of an unjust enrichment claim. Unjust enrichment remedies unjust retention of benefits *conferred* to defendants by plaintiffs. *Young*, 164 Wn.2d at 484-85. Here, the trial court correctly concluded that there was no dispute concerning whether Lavington *gave* the Hilliers anything. Rather, Lavington denied that she had conferred any benefit to the Hilliers. CP 291. Consequently, there was no error by either of the lower courts.

In *Young*, an aunt operated an otter sanctuary in Georgia and wanted to move. *Young*, 164 Wn.2d at 480-81. Her nephew and the nephew's wife—both Washington residents—identified a Thurston County property which the parties believed could provide a new home for the otter sanctuary. *Id*. at 481. The aunt

purchased the property and allowed the nephew's family to live there. *Id*. Over three years, the nephew and his wife did "a large amount of work on the property." *Id*. However, the aunt changed her plans and elected to eject the nephew's family and quiet title to the property in her name. *Id*. at 482. The nephew and his wife brought unjust enrichment claims. *Id*. The trial court determined that it would be unjust for the aunt to retain the value of work performed by the nephew. *Id*. The appellate litigation concerned the measure of recovery for the nephew. *Id*. at 483.

Plaintiff argues the appellate court's opinion confuses unjust enrichment and quantum meruit, but this argument is not supported in the *Young* opinion. Notwithstanding the limited question under review concerning the *measure* of recovery in an unjust enrichment claim, the *Young* Court "[took the] opportunity to clarify the conceptual distinction between 'unjust enrichment' and 'quantum meruit.'" *Id*. at 483-86. The Court pronounced a distinction between a "contract implied in law" and a "contract implied in fact." *Id*. at 483-84.

The *Young* court held that unjust enrichment concerned a contract implied in law. An unjust enrichment claim invokes the courts' *equitable* power in the absence of an actual contract to remedy a defendant's unjust retention of a benefit given by a plaintiff. If successful, courts retroactively impose contractual obligations upon the parties even though there was no contract or conduct implying the existence of a contract. *Id*. at 484-85. *Young* established three elements of an unjust enrichment claim: "(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.* at 484-85 (emphases added). A plaintiff's giving of the benefit is a necessary predicate to the inequity that the cause of action is supposed to remedy.

The contract implied in fact, properly classified in Washington as quantum meruit, concerns a type of *actual contract* implied by the *conduct* of the parties remedied not in equity, but within the law of contracts. *Id*. at 485-86. "[T]he

elements of a contract implied in fact are: (1) the defendant requests work, (2) the plaintiff expects payment for the work, and (3) the defendant knows or should know the plaintiff expects payment for the work." *Young*, 164 Wn.2d at 486.

Lavington's assertion that the appellate opinion below applies the quantum meruit analysis instead of the unjust enrichment analysis is simply nonsensical. *See* Ans. to Pet. at 32. Lavington's statement of the case describes no request for work or expectation for payment for work, let alone facts from which an actual contract could be implied. Neither the trial court nor the appellate opinion contain any analysis shoehorning the facts of this matter, or even the tenor of the facts of this matter, into the quantum meruit test pronounced in *Young*. This ostensible error is a figment of Lavington's imagination.

Moreover, Lavington's second criticism of the unjust enrichment analysis below is accomplished by simply refusing to accept the clear requirement that an unjust enrichment plaintiff *confer* a benefit to a defendant. The putative error which forms

the basis for her petition is created by misreading the clear three-part unjust enrichment test in *Young* as a two-part test. For example, Lavington argues that *Young* "explains that 'unjust enrichment' is the method of recovery for the value of a benefit retained by a defendant 'because notions of fairness and justice require it.'" Ans. to Pet. at 32. *But see Young*, 164 Wn.2d at 484-85 (setting out three elements of unjust enrichment). Almost brazenly, Lavington immediately acknowledges that *Young* used the word "confer," but asks the Court to read an entire element out of its own opinion: "nothing in *Young* requires that the conferral of a benefit must be voluntary." Ans. to Pet. at 32. Nothing, of course, except the use of the word confer and the requirement that a defendant *receive* a benefit at a plaintiff's expense. Lavington's protestations aside, the potential for liability in unjust enrichment is not necessary to deter theft or compensate the victims thereof. There simply is no error in the treatment of Lavington's unjust enrichment claim under *Young*.

V. CONCLUSION

For the foregoing reasons, this Court should decline to review the lower courts' decision regarding unjust enrichment.

The undersigned certifies that the above brief complies with RAP 18.17 and that the document contains 1,033 words.

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CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that on September 22, 2022, I caused the foregoing document to be filed with the Court and served on counsel listed below by way of the Washington State Appellate Court's Portal.

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