

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

BOWER HILL AT MT. LEBANON CO., A  
COOPERATIVE ASSOCIATION,

Appellee

v.

IHP/BOWER HILL, LLC, A LIMITED  
LIABILITY COMPANY,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 792 WDA 2015

Appeal from the Judgment Entered April 22, 2015  
In the Court of Common Pleas of Allegheny County  
Civil Division at No(s): GD-12-003721

BEFORE: GANTMAN, P.J., BENDER, P.J.E., and SHOGAN, J.

MEMORANDUM BY BENDER, P.J.E.:

**FILED JULY 06, 2016**

IHP/Bower Hill, LLC (IHP) appeals from the judgment entered April 22, 2015, following a non-jury trial resulting in declaratory relief to IHP, as well as equitable relief and money damages awarded to Bower Hill at Mt. Lebanon Co. (Bower Hill). We affirm.

Bower Hill and IHP represent two adjoining, multi-family real estate developments in Mt. Lebanon Township, Pennsylvania.<sup>1</sup> Bower Hill is a cooperative association, consisting of 276 residential dwellings, in which its residents own shares. IHP is an apartment building with 136 units. Access

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<sup>1</sup> Following our review of the record, we derive this statement of background from the trial court's memorandum and opinion. **See** Trial Court Memorandum, 02/25/2014; Trial Court Opinion, 09/05/2014.

to the developments is through a common entrance. A gatehouse located at the entrance is monitored by a security guard 24 hours per day. All vehicles entering the developments must stop at the gatehouse.

In 1986, a dispute arose concerning this gatehouse. In order to resolve the dispute, Bower Hill and IHP entered into a Compromise Agreement. Essentially, the parties agreed to split the operating costs for the gatehouse, with Bower Hill required to pay 67.23% of those costs and IHP responsible for the remaining 32.77%. **See** Compromise Agreement at ¶ 3. The agreement also permitted IHP an opportunity to preview annual operating budgets and to seek competitive bids for gatehouse services. **Id.** Finally, the agreement included a termination clause, which permitted either party to terminate the agreement on thirty days' written notice. **Id.** at ¶ 8.

The termination clause further provided in part:

Notwithstanding any termination of this Agreement, [IHP] shall remain liable for the payment of its proportionate share of the real estate taxes attributable to the Gatehouse area (but not the Gatehouse building) and the [IHP] [a]rea and for its obligations pursuant to paragraph 4 of this Agreement [defining obligations for the care and maintenance of exterior sidewalks and adjacent areas].

**Id.**

In May 2011, IHP notified Bower Hill that it was terminating the Compromise Agreement, effective January 1, 2012. Thereafter, it refused to pay gatehouse operating costs for 2012 and 2013.

In February 2012, Bower Hill commenced this action by filing a complaint seeking declaratory judgment, equitable relief, and monetary damages.<sup>2</sup> Specifically, Bower Hill sought a declaration from the trial court that IHP had not properly terminated the agreement and, therefore, remained liable for gatehouse operating costs. In the alternative, Bower Hill sought equitable relief and monetary damages, asserting that IHP was unjustly enriched by its refusal to pay its share of the costs.

A non-jury trial was held in September 2013. Following trial, the court found that IHP had properly terminated the Compromise Agreement and entered a declaratory judgment to that effect. The court also found that IHP was unjustly enriched by its refusal to pay the gatehouse operating costs. Accordingly, the trial court awarded Bower Hill damages in the amount of \$78,103.00, plus interest at 6% and record costs.

IHP filed a post-trial motion, seeking judgment notwithstanding the verdict. **See** IHP's Motion for Post-Trial Relief, 03/07/2014, at 3-13. The trial court denied IHP post-trial relief. Thereafter, judgment was entered, and IHP timely appealed.<sup>3</sup>

IHP raises the following issues for our consideration:

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<sup>2</sup> Bower Hill filed an amended complaint in April 2012.

<sup>3</sup> Judgment was entered on April 22, 2015 in favor of Bower Hill in the amount of \$92,028.14. The trial court did not direct IHP to file a Pa.R.A.P. 1925(b) statement.

1. Where parties have specifically negotiated and agreed to their respective post-termination obligations in a valid, binding, written agreement, may a court nonetheless apply the theory of unjust enrichment to impose additional post-termination obligations to which the parties did not agree?
2. May a claim of unjust enrichment stand without proof that the benefit alleged is unjust or inequitable?
3. Whether the evidence admitted at trial was sufficient to allow the finder of fact to determine the value of any alleged benefit conveyed by the continued presence of the “[g]atehouse” at the parties’ shared entranceway?

IHP’s Brief at 4.

IHP seeks judgment notwithstanding the verdict (JNOV).<sup>4</sup> The scope and standard of our review are as follows:

There are two bases upon which a court may enter a [JNOV]: (1) the movant is entitled to judgment as a matter of law, ... or (2) the evidence was such that no two reasonable minds could disagree that the outcome should have been rendered in favor of the movant .... With the first, a court reviews the record and concludes that even with all factual inferences decided adverse to the movant, the law nonetheless requires a verdict in their favor; whereas with the second, the court reviews the evidentiary record and concludes that the evidence was such that a verdict for the movant was beyond peradventure.

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<sup>4</sup> In the argument supporting its third issue on appeal, IHP suggests it is entitled to a new trial on damages. “[P]ost-trial relief may not be granted unless the grounds for such relief are specified in the post-trial motion.” **Hall v. Owens Corning Fiberglass Corp.**, 779 A.2d 1167, 1169 (Pa. Super. 2001). Here, IHP filed a post-trial motion seeking JNOV. It did not seek a new trial. **See** IHP’s Motion for Post-Trial Relief at 3-13. Accordingly, as this prayer for relief was not specified in its post-trial motion, we deem the issue waived. **Hall**, 779 A.2d at 1169. Nevertheless, we will review IHP’s third issue within the context of its preserved claim for JNOV.

[I]n reviewing a motion for [JNOV], the evidence must be considered in the light most favorable to the verdict winner, and he must be given the benefit of every reasonable inference of fact arising therefrom, and any conflict in the evidence must be resolved in his favor. Moreover, a court should only enter a [JNOV] in a clear case and must resolve any doubts in favor of the verdict winner. A lower court's grant or denial of a [motion for] [JNOV] will be disturbed only for an abuse of discretion or an error of law. In examining this determination, our scope of review is plenary, as it is with any review of questions of law.

**Quinby v. Plumsteadville Family Practice, Inc.**, 907 A.2d 1061, 1074 (Pa. 2006) (citations and some punctuation omitted).

In its first issue, IHP contends it may not be held liable for unjust enrichment because its relationship with Bower Hill is defined by the provisions of a negotiated contract, citing in support **Wilson Area Sch. Dist. v. Skepton**, 895 A.2d 1250, 1254 (Pa. 2006) (“[I]t has long been held in this Commonwealth that the doctrine of unjust enrichment is inapplicable when the relationship between parties is founded upon a written agreement or express contract[.]”). According to IHP, the Compromise Agreement sets forth its post-termination obligations to Bower Hill; these obligations do not require IHP to pay any costs associated with the gatehouse; and therefore, the trial court erred when it awarded Bower Hill damages.

IHP’s argument is not persuasive. Though **Wilson** accurately reflects the law of this Commonwealth, it is inapposite to this case. As noted by the trial court, IHP properly terminated the Compromise Agreement. **See** Trial Court Memorandum at 6; Trial Court Opinion at 4. Thus, we discern no error

in the court's conclusion that the agreement neither defines nor controls the relationship between the parties.

To be clear, we recognize that there remain in effect certain residual obligations defined in the Compromise Agreement. For example, the parties agreed that IHP would remain responsible for its share of real estate taxes, as well as certain costs associated with the care and maintenance of exterior sidewalks and adjacent areas. **See** Compromise Agreement at ¶ 8. Nevertheless, IHP's *contractual* obligation to pay its share of the gatehouse operating costs ceased when it properly terminated the Compromise Agreement. Accordingly, the limitation recognized in **Wilson** does not apply, and Bower Hill could pursue relief under the theory of unjust enrichment. **See, e.g., Sevast v. Kakouras**, 915 A.2d 1147, 1154 (Pa. 2007) (in the context of a statute of limitations question, concluding that "any right to restitution arose when the contract between the parties ceased").

In its second and third issues, IHP challenges factual findings of the trial court and inferences derived therefrom. According to IHP, Bower Hill failed to establish that it would be inequitable for IHP to retain the incidental benefits of the gatehouse without paying for them. **See** IHP's Brief at 20-

26. Moreover, IHP asserts, Bower Hill failed to present sufficient evidence of damages. ***Id.*** at 26-28.<sup>5</sup>

Previously, we have defined unjust enrichment in the following manner:

Unjust enrichment is a quasi-contractual doctrine based in equity; its elements include benefits conferred on defendant by plaintiff, appreciation of such benefits by defendant, and acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value. When considering the validity of a claim for unjust enrichment, we must focus on whether the enrichment of the defendant is unjust. The doctrine does not apply simply because the defendant may have benefited as a result of the actions of the plaintiff.

***Wiernik v. PHH U.S. Mortg. Corp.***, 736 A.2d 616, 622 (Pa. Super. 1999) (citations omitted; punctuation modified).

Here, the trial court noted specifically that although IHP claims it no longer wants gatehouse services, it continues to advertise its apartment building as a community with a gated entrance in order to attract new residents. ***See*** Trial Court Opinion at 2. Based upon these facts, the trial

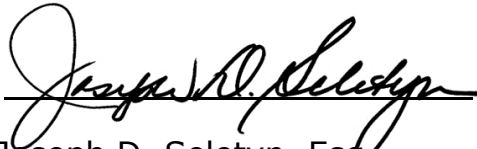
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<sup>5</sup> Although IHP suggests that Bower Hill failed to present any evidence of damages, it does not dispute that Bower Hill submitted actual gatehouse budgets as the basis of its claim for damages. ***See*** IHP's Brief at 26-28. Rather, IHP contends that these budgets are inapplicable because they are a function of the terminated, Compromise Agreement and, further, that they do not accurately reflect the level of services provided IHP by the gatehouse. ***Id.*** Such arguments are more appropriately directed to the weight of the evidence, not its sufficiency. As we view the record in the light most favorable to the verdict winner, we will not re-weigh the evidence adduced at trial. ***Quinby***, 907 A.2d at 1074.

court concluded that IHP's retention of the gatehouse benefits without paying for them was inequitable. **Id.** at 4. Further, the court calculated the measure of damages using the actual, annual budgets for gatehouse services. **Id.** at 5. Mindful of our deferential standard of review, and as the court's findings are supported by the record, we discern no legal error or abuse of the trial court's discretion. **Quinby**, 907 A.2d at 1074. Accordingly, we deem IHP's claims to be without merit.

Judgment affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 7/6/2016