

STATE OF MAINE  
CUMBERLAND, ss.

SUPERIOR COURT  
BUSINESS AND CONSUMER COURT  
LOCATION: PORTLAND  
DOCKET NO. BCD-CV-2017-44

PNM CONSTRUCTION, INC.	)	
	)	
Plaintiff,	)	COMBINED ORDER ON
	)	DEFENDANTS FARM CREDIT EAST,
v.	)	ACA'S; COASTAL ENTERPRISES,
	)	INC.'S, & EASTERN MAINE
LMJ ENTERPRISES, LLC, et al.,	)	DEVELOPMENT CORP.'S MOTIONS
	)	TO DISMISS COUNTS II AND V OF
Defendants,	)	AMENDED COMPLAINT
	)	

This matter is before the Court on Defendants Farm Credit East, ACA's ("FCE"); Coastal Enterprises, Inc.'s ("CEI"); and Eastern Maine Development Corporation's ("EMDC") (collectively, the "Defendants") motions to dismiss Count II and Count V of Plaintiff PNM Construction, Inc.'s ("PNM") Amended Complaint (the "Complaint"). PNM opposed each motion and the Defendants replied.<sup>1</sup> Plaintiffs thereafter filed a surreply with no objection from the Defendants. The Court heard oral argument on the motions on February 20, 2018, where all parties appeared through counsel and were heard.

**BACKGROUND**

This case arises out of a dispute over payment for demolition and renovations performed by PNM to a fire-damaged property (the "Property") owned by LMJ Enterprises, LLC, ("LMJ"). (Pl's Compl. ¶¶ 9, 11, 22.) The Defendants all hold mortgages on the Property. (Pl's Compl. ¶ 13.) At oral argument, FCE claimed to hold a first-priority mortgage, while CEI and EMDC asserted that they hold a junior mortgage. As mortgagees, the Defendants are listed as additional payees

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<sup>1</sup> When these motions were being briefed and argued, EMDC's motions to set aside default and for leave to file a late answer were pending before the Court. That motion was granted by the Court by an order entered March 5, 2018.

under an insurance policy issued by Defendant Pennsylvania Lumberman’s Mutual Insurance Company (“PLMIC”). (Pl’s Compl. ¶¶ 18, 25.) The Defendants must sign off on any checks issued by PLMIC before the checks can be cashed. (Pl’s Compl. ¶¶ 18-19.) The Defendants did sign one check for \$100,000 over to PNM as a “progress payment.” (Pl’s Compl. ¶ 19.) The Defendants refused to sign over a second check that PNM claims represents the balance it is owed for its work on the Property. (Pl’s Compl. ¶ 27.) At oral argument, counsel for CEI and EMDC informed the Court that they signed both checks and would consent to the proceeds of the second check being signed over to PNM. FCE, the first-priority lender, asserted that it would not consent to signing over the proceeds of the second check to PNM.

PNM has sued LMJ along with its principal Lee Haskell for breach of contract. (Pl’s Compl. ¶¶ 9, 34.) In Count II of the Complaint, PNM seeks to recover from the Defendants under a theory of unjust enrichment. (Pl’s Compl. ¶¶ 41-47.) Count V requests that the Court impose a constructive trust on the proceeds of a check issued by PLMIC. (Pl’s Compl. ¶¶ 60-64.) PLMIC has not yet responded to this lawsuit.

### **STANDARD OF REVIEW**

In reviewing a motion to dismiss under Rule 12(b)(6), courts “consider the facts in the complaint as if they were admitted.” *Bonney v. Stephens Mem. Hosp.*, 2011 ME 46, ¶ 16, 17 A.3d 123. The complaint is viewed “in the light most favorable to the plaintiff to determine whether it sets forth elements of a cause of action or alleges facts that would entitle the plaintiff to relief pursuant to some legal theory.” *Id.* (quoting *Saunders v. Tisher*, 2006 ME 94, ¶ 8, 902 A.2d 830). “Dismissal is warranted when it appears beyond a doubt that the plaintiff is not entitled to relief under any set of facts that he might prove in support of his claim.” *Id.* “The legal sufficiency of a

complaint challenged pursuant to M.R. Civ. P. 12(b)(6) is a question of law” and thus subject to *de novo* appellate review. *Marshall v. Town of Dexter*, 2015 ME 135, ¶ 2, 125 A.3d 1141.

## DISCUSSION

### I. FAILURE TO PERFECT A MECHANIC’S LIEN DOES NOT PRECLUDE RECOVERY FOR UNJUST ENRICHMENT

FCE’s first argument is that PNM cannot pursue unjust enrichment in equity because it failed to avail itself of its adequate remedy at law: a mechanic’s lien. *See* 10 M.R.S.A. §§ 3251-3269) (FCE Mot. Dismiss 4-6.) In support of this proposition, FCE cites dicta from *Wahlocmetroflex, Inc. v. Baldwin*, 2010 ME 26, ¶ 22, 991 A.2d 44, where our Law Court was applying Delaware law.

Under Maine law, the failure by a party to perfect a mechanic’s lien does not bar that party from bringing suit for unjust enrichment. *Aladdin Elec. Assocs. v. Town of Old Orchard Beach*, 645 A.2d 1142, 1144 (Me. 1994); *A.F.A.B., Inc. v. Old Orchard Beach*, 610 A.2d 747, 749 (Me. 1992) (“failure to perfect a lien do[es] not bar an action for unjust enrichment”).

The Defendants urge this Court to factually distinguish *A.F.A.B.* and *Aladdin Elec.* because in those cases the title owner of the improved property (the Town of Old Orchard Beach) was the defendant. But the holding of *A.F.A.B.* and *Aladdin Elec.* is as clear as it is broad: failure to perfect a mechanic’s lien does not bar an action for unjust enrichment. *Id.* The distinction suggested by the Defendants is all the less important because Maine follows the title theory of mortgages. *Johnson v. McNeil*, 2002 ME 99, ¶ 10, 800 A.2d 702. “A mortgage is a conditional conveyance vesting the legal title in the mortgagee, with only the equity of redemption remaining in the mortgagor.” *Id.* (quotations omitted).

This Court is bound to follow the controlling authority of *A.F.A.B.* and *Aladdin Elec.* PNM’s failure to perfect a mechanic’s lien on the property for which it provided services does not

prevent it from seeking equitable relief.

## II. PNM HAS ALLEGED THAT A BENEFIT WAS CONFERRED ON THE DEFENDANTS

The Defendants' second argument is that PNM has not pleaded all the necessary elements of an unjust enrichment claim. Unjust enrichment requires that a benefit is conferred on the defendant, the defendant has knowledge or appreciation of the benefit, and it would be inequitable under the circumstances for the defendant to accept or retain the benefit without paying for it. *Estate of White*, 521 A.2d 1180, 1183 (Me. 1987).

The Defendants argue PNM cannot allege that it conferred any benefit on them because the benefit was conferred on LMJ, and any benefit received by the Defendants was indirect. (FCE Mot. Dismiss 6.) To illustrate its point, FCE uses an analogy: Contractor contracts with Landlord to perform repairs to Apartment. Landlord fails to pay for the repairs. Contractor sues Tenant for the cost of the repairs on an unjust enrichment theory because the repairs benefitted Tenant. (*Id.*)

The analogy understates the Defendants' interest in the Property. Under Maine law, a mortgage is a conditional conveyance and legal title vests in the mortgagees. *Johnson*, 2002 ME 99, ¶ 10, 800 A.2d 702. The Tenant in the analogy by definition lacks title to Apartment. The benefit conferred on the Defendants, as alleged, may indeed be indirect, but it does not necessarily follow that PNM has failed to adequately plead unjust enrichment against the Defendants as a matter of law.

The Complaint alleges that the Defendants received a benefit when PNM repaired collateral that secured their loans to LMJ. (PI's Compl. ¶¶ 44-46.) The Complaint further alleges that the insurance payments were compensation for the work completed by PNM, and that the creditors acknowledged the benefit PNM was conferring on them when they authorized payment to PNM from the first insurance check. (PI's Compl. ¶¶ 19, 23.) The benefit to the Defendants, as

alleged, is not a mere legal fiction: any enhancement to the value of the Property would benefit FCE in the event of a foreclosure sale.<sup>2</sup> In sum, taken as true, and viewed in the light most favorable to PNM, the Complaint sufficiently alleges that a benefit was conferred on the Defendants.

PNM has thus stated a claim for unjust enrichment against the Defendants. The Defendants' motions to dismiss is therefore DENIED as to Count II.

III. MOTION TO DISMISS COUNT V: CONSTRUCTIVE TRUST

FCE's motion to dismiss Count V (constructive trust) is predicated on the Court granting the motion to dismiss Count II. (FCE Mot. Dismiss 7.) Because the Court denies the Defendants' motions to dismiss as to Count II, the Court also DENIES the motions to dismiss Count V.

**CONCLUSION**

Based on the foregoing, it is hereby ORDERED:

That Defendants FCE's, CEI's, and EMDC's motions to dismiss Count II and Count V are DENIED.

The Clerk is instructed to enter this Order on the docket by incorporating it by reference. M.R. Civ. P. 79(a).

Dated: April 3, 2018

/s  
Richard Mulhern  
Judge, Business and Consumer Court

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<sup>2</sup> At oral argument, it was suggested that the foreclosure sale already took place in December 2017 and that the proceeds fell far short of LMJ's outstanding debt to FCE, with counsel for FCE asserting that his client lost approximately two million dollars. The Court cannot consider this information on a motion to dismiss, which is generally limited to the facts alleged in the plaintiff's complaint. *Moody v. State Liquor & Lottery Comm'n*, 2004 ME 20, ¶ 8, 843 A.2d 43.