IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Linda Ruddy, t/a Penn View Park, L.P., t/a Penn View Mobile Home Park	:	
v.	:	
Mt. Penn Borough Municipal Authority and Antietam Valley Municipal Authority	:	
v.	:	No. 1120 C.D. 2013
Landis Plumbing and Heating, Ltd.	:	
Appeal of: Antietam Valley Municipal Authority	:	
Linda Ruddy, Trading as Penn View Park, L.P., t/a Penn View Mobile Home Park, Appellants	:	
v.	:	
Mt. Penn Borough Municipal Authority and Antietam Valley Municipal Authority	:	
v.	:	No. 1200 C.D. 2013
	:	Argued: March 10, 2014
Landis Plumbing & Heating, LTD	:	

BEFORE: **HONORABLE BONNIE BRIGANCE LEADBETTER,** Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE LEADBETTER **FILED: May 6, 2014**

Antietam Valley Municipal Authority (AVMA) appeals from a judgment entered by the Court of Common Pleas of Berks County on a non-jury verdict in favor of Penn View Mobile Home Park (Penn View) on its claim of unjust enrichment against AVMA. Penn View cross-appeals from the court's denial of pre-judgment interest on the unjust enrichment award. For the reasons that follow, we affirm.

The background of this matter is as follows. Linda Ruddy owns Penn View, a 128-unit mobile home park in Exeter Township, Berks County.[1] Penn View's water and wastewater service is provided by Mt. Penn Borough Municipal Authority (Mt. Penn) and AVMA, respectively. The authorities' joint bills are based on the volume of water recorded by Penn View's master meter, which the parties stipulated Mt. Penn owns and requires a "property owner such as Penn View Park to have … tested for purposes of billing so if there was an issue with bills it would be the Borough … that would require its agent or itself to do the testing … [a]t the request of the customer." May 14-15, 2012 Bench Trial, Notes of Testimony (N.T.) at 275-76; Reproduced Record (R.R.), Volume 2 at 640.

In 1988, Landis Plumbing & Heating (Landis) installed a new water system in the park, including the master meter at issue. After Landis installed

[1] Ruddy's mother, Elaine Riggs, owned the park from 1984 to 1996 and then transferred it to a partnership that included herself and Ruddy. The court noted that, according to Ruddy, all rights and obligations of the park as a business passed to the partnership. Riggs died and Ruddy was the executrix of her estate. To that end, Ruddy filed a June 2009 notice of Riggs's death and a statement of facts supporting Ruddy's substitution as her mother's successor.

individual meters in 2001, Penn View began receiving individual invoices in July of that year and realized that the total usage was far below the usage recorded by the master meter. Initially, Penn View hired consultants to investigate the disparity. In October 2002, Mt. Penn's consultant tested the master meter and discovered that it was inaccurate because Landis had incorrectly installed it, thereby causing it to record almost twice the correct volume of water. This resulted in substantial and systematic overcharges for water and sewer services from 1989 until 2002, when Landis corrected the master meter installation. The undisputed testimony from Penn View's expert indicates that the authorities overbilled the park anywhere from $287,312 to $351,209, which is about 45 to 55%.

In November 2005, Penn View filed a writ of summons. In April 2007, it filed a complaint, at which time Mt. Penn brought in additional defendant Landis. Following a bench trial in May 2012 and January 2013, the court entered a $287,312 verdict against Mt. Penn and AVMA on counts of unjust enrichment and a verdict in favor of Landis. In response to various post-trial motions, the court in June 2013 ordered the verdict molded to apportion liability between the authorities: AVMA 60.67% responsible and, therefore, liable for $174,314, Mt. Penn 39.33% responsible and, therefore, liable for $112,998. It also denied Penn View's motion for pre-judgment interest. The court concluded that Penn View's claims were timely under the discovery rule, that unjust enrichment was a viable cause of action under the circumstances and that pre-judgment interest was inappropriate given the uncertainties of the case. Before us for determination are AVMA's appeal and

Penn View's cross-appeal from the court's June 2013 judgment.[2] There are three issues before us: 1) whether the court erred in applying the discovery rule; 2) whether the court erred in holding AVMA liable to Penn View under a theory of unjust enrichment; and 3) whether the court erred in determining that Penn View was not entitled to pre-judgment interest.

Discovery Rule

A judicially created device, the equitable discovery rule provides that the statute of limitations will not begin to run until a plaintiff knows or reasonably should know that he has been injured and that the injury has been caused by another's conduct. *Coleman v. Wyeth Pharm., Inc.*, 6 A.3d 502, 510 (Pa. Super. 2010). In other words, it begins to run when a plaintiff has discovered his injury or, in the exercise of reasonable diligence, should have discovered his injury. *Cathcart v. Keene Indus. Insulation*, 471 A.2d 493, 500 (Pa. Super. 1984). Ascertaining whether a plaintiff was reasonably diligent in discovering his injury and its cause is a fact-intensive inquiry, to be resolved by the fact finder. *Coleman*, 6 A.3d at 510.

Here, the court determined that the four-year statute of limitations applicable to unjust enrichment claims, found in Section 5525(4) of the Judicial Code,[3] commenced in October 2002, when Mt. Penn's consultant finally tested the master meter and Penn View realized why it had paid more for services than it had actually used. In arriving at that date, the court noted that, when Penn View first

[2] The court's verdict in favor of Landis has not been challenged. In addition, the court indicated that Mt. Penn settled its obligation with Penn View.

[3] 42 Pa. C.S. § 5525(4).

became aware of a discrepancy between the readings for its master meter and its new individual meters in July 2001, it hired its own consultants to investigate the discrepancy. They initially focused on line-loss within the park due to Mt. Penn's advice that the master meter probably was not responsible in that faulty meters usually read low rather than high. Accordingly, the court reasoned that it was not until October 2002, when Mt. Penn's consultant discerned the problem that Penn View possessed facts demonstrating that a wrong had occurred.

Moreover, the court rejected AVMA's argument that claims for overcharges occurring prior to November 2001 were barred by the statute of limitations because each allegedly improperly computed overpayment gave rise to a separate and distinct cause of action, with its own four-year statute of limitations. In so ruling, the court distinguished the case AVMA primarily cited in support of its argument: *Pennsylvania Turnpike Commission v. Atlantic Richfield Co.*, 375 A.2d 890, 892 (Pa. Cmwlth. 1977), *aff'd*, 482 Pa. 615, 394 A.2d 491 (1978). In that case, the Commission and Atlantic Richfield had entered into two service station leases for the Pennsylvania Turnpike in 1953 and 1956, respectively. In 1974, the Commission filed a complaint in assumpsit against Atlantic Richfield for underpayment of a series of monthly rent payments going back to the beginning of the leases. In its motion for summary judgment, Atlantic Richfield raised the defense of laches and the running of the applicable statute of limitations. Ultimately, the Commission was permitted to recover for losses incurred within the statute of limitations but not for any alleged injury beyond it.

In the present case, the court distinguished *Atlantic Richfield*, concluding that the holding signifies "only that successive transactions cannot tack together of their own accord and survive as timely until the final transaction."

Common Pleas Court's August 26, 2013 Opinion at 13. The court opined that, although each of the inflated bills in the present case could constitute individual causes of action, the statute did not start to run on each cause of action until the injury *and* its cause were discovered in October 2002. Upon review, we conclude that the court did not err in determining that Penn View's action was timely.

In analyzing the court's reasoning, we note its finding that, although Penn View knew of the discrepancy in July 2001, it did not discover the specific cause of *any* of the overpayments until October 2002. As the court also recognized, Penn View's action in hiring its own consultants to investigate the problem demonstrated reasonable diligence. In addition, as the court emphasized, Mt. Penn supplied the master meter and advised Penn View of the improbability of it being faulty, thereby delaying discovery of the true reason for the collective overbillings. *See Krevitz v. City of Phila.*, 648 A.2d 353, 357 (Pa. Cmwlth. 1994) (holding that even an unintentional concealment of an injury or its cause may be sufficient to toll the statute of limitations). Finally, this was not a situation where the damages were based on an actual contract, but instead, on the quasi-contractual and equitable doctrine of unjust enrichment. Accordingly, given the fact that the determination of whether a plaintiff exercised reasonable diligence is one for the fact-finder, *Coleman*, we conclude that the court did not err in finding that the statute of limitations was tolled in October 2002, rendering Penn View's action timely.

Unjust Enrichment

Unjust enrichment is a quasi-contractual doctrine based in equity. Its elements include: 1) benefits conferred on defendant by plaintiff; 2) appreciation of such benefits by defendant; and 3) acceptance and retention of such benefits under

such circumstances that it would be inequitable for defendant to retain the benefit without payment of value. *Limbach Co., LLC v. City of Phila.*, 905 A.2d 567, 575 (Pa. Cmwlth. 2006). Merely because the defendant may have benefitted from the plaintiff's action is insufficient, in and of itself, to grant relief under the doctrine. *Wilson Area Sch. Dist. v. Skepton*, 860 A.2d 625, 631 (Pa. Cmwlth. 2004), *aff'd*, 586 Pa. 513, 895 A.2d 1250 (2006). In order to sustain an unjust enrichment claim, "a claimant must show that the party against whom recovery is sought either 'wrongfully secured *or* passively received a benefit that it would be unconscionable for [it] to retain.'" *Limbach*, 905 A.2d at 575 (emphasis added). In addition, application of the doctrine depends on the particular facts of each case and the focus is on whether the defendant has been unjustly enriched, not on the intention of the parties. *Id*. Finally, a public entity can be unjustly enriched. *Meehan v. Cheltenham Twp.*, 410 Pa. 446, 450, 189 A.2d 593, 595 (1963); *Limbach*, 905 A.2d at 577.

AVMA argues that the first element for unjust enrichment was not met in that any alleged benefit conferred on it by Penn View was not sufficiently quantified. We disagree. There was undisputed evidence from Penn View's expert that quantified the overpayment. In that regard, the court noted as follows:

> Based on several methods of extrapolation from the individual meter readings, the test of the master meter, and the difference between the master meter before and after it was fixed, [Penn View's] expert at trial asserted that Defendants overbilled [Penn View] in the range of 45% to 55% from the meter installation in 1989 through its correction in 2002, for a total overbilling of $112,998 to $138,130 for water and $174,314 to $213,079 for

> sewer, or $287,312 to $351,209 altogether. Defendants did not offer a contrary report.[4]

Common Pleas Court's August 26, 2013 Decision at 3 (footnote added). Given the competent and undisputed evidence supporting those figures, *e.g.* how the expert arrived at the overpayment amount, there is no indication that the court erred in quantifying the benefit and in doing so with the requisite specificity.

AVMA next argues that the second element necessary for unjust enrichment, that it appreciated a benefit, was not met given its status as a regulated utility whose rates are adjusted to provide a consistent and limited budget surplus. In addition, AVMA suggests that the fact that no particular object of the overpayments can be identified is indicative of the fact that it did not appreciate a benefit. We reject AVMA's position.

AVMA's own expert, AVMA Board Chairman Benjamin Overley, testified that AVMA used the revenue from ratepayers, such as Penn View, to cover expenses such as increases to salaries and benefits, maintenance issues, equipment repair and mandatory upgrades. May 14-15, 2012 Bench Trial, N.T. at 288-89; R.R. at 643-44. It is simply irrelevant that the funds derived from the overpayments could not be tied to any particular item or project. What is relevant is evidence indicating that AVMA appreciated those overpayments by passing on the benefit to its ratepayers either to defray rate increases or to pay for expenditures. As the court observed, even if the benefit was enjoyed by other customers, "AVMA as an entity may indeed have benefitted simply from not

[4] Penn View's expert was Mr. Kalbarczyk from Utility Rate Resources. The court qualified him as an expert in the fields of utility usage data, utility rate analysis, economic consulting and regulatory review of public and private utility companies. May 14-15, 2012 Bench Trial, N.T. at 174-75; R.R. at 616-17. In addition, the authorities neither objected to the admission of his report nor rebutted it through competent expert testimony. *Id*. at 277; R.R. at 641.

having to raise rates, which could negatively affect usage and good will, putting pressure on AVMA to cut back in various ways." Common Pleas Court's August 26, 2013 Decision at 9. Moreover, to the extent that the benefit was passed on to ratepayers, it will be they who now see a belated rate increase to cover the cost of this judgment. Accordingly, AVMA's assertion that it did not "appreciate" any benefit from the overpayments seems incongruous in light of testimony from its own board member as to how revenue was generated and what expenses it was used to cover.

With regard to the third element necessary for unjust enrichment, we conclude that the court did not err in determining that it would be inequitable for AVMA to retain the funds without payment of restitution. The court's reasoning is instructive:

> So an award of restitution under unjust enrichment makes sense in this case as a way of redressing the obvious injustice of [Penn View] paying hundreds of thousands of dollars for water and sewer service the park never actually received. AVMA's own point that any benefit was passed on to the public suggests AVMA may serve as a sensible proxy for returning that benefit. That approach is reasonable and permissible … because while AVMA may have passed on the benefits to others, what it ultimately did with the clear monetary benefit that [Penn View] conferred on it is irrelevant. Furthermore, even if the benefit was enjoyed by other customers, AVMA is in the best position to redress the wrong by paying restitution to [Penn View] and then passing that cost along as well when billing those other customers.

Id. at 8-9.

Next, AVMA maintains that the evidence adduced at the hearing overwhelmingly established that Penn View was at fault for the inflated payments in that they were caused by a valve that it caused to be placed on the master meter.

In addition, AVMA asserts that the record is devoid of evidence that it was at fault or somehow misled Penn View. The law requires only that it passively received a benefit which, under the circumstances, would be unconscionable for it to retain. *Limbach*, 905 A.2d at 575. Accordingly, in light of the evidence adduced demonstrating that Penn View conferred a benefit on AVMA in the form of inflated overpayments and that retention of the benefit under the circumstances would be inequitable, we conclude that the court did not err in holding AVMA liable under the equitable theory of unjust enrichment.

Pre-judgment Interest

Pre-judgment interest is awardable as an equitable remedy for the trial court to award at its discretion. *Kaiser v. Old Republic Ins. Co.*, 741 A.2d 748, 755 (Pa. Super. 1999) (citations omitted). A review of the court's denial of pre-judgment interest in the present case, therefore, is for an abuse of discretion. *Id.* In that regard, Penn View's cross appeal concerns the court's denial of a post-trial motion for pre-judgment interest from either the date the overbilling was discovered or the date Penn View filed suit. The court determined that this was not an appropriate case to award pre-judgment interest, noting that pre-judgment interest generally compensates a successful contract plaintiff for the time value of money wrongfully withheld by a defendant, and as such may even be necessary to avoid injustice. *Dasher v. Dasher*, 542 A.2d 164, 165 (Pa. Super. 1988). In declining to make the award, the court reasoned that this was not a case involving a failure to pay a definite sum of money or to render a performance with a fixed or ascertainable monetary value. In light of the court's equitable approach in determining whether to award pre-judgment interest and AVMA's passivity and

apparent lack of direct culpability, we cannot conclude that the court abused its discretion in declining to make the award.

Conclusion

Accordingly, for the above reasons, we affirm.

BONNIE BRIGANCE LEADBETTER,
Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Linda Ruddy, t/a Penn View Park, L.P., t/a Penn View Mobile Home Park	:	
v.	:	
Mt. Penn Borough Municipal Authority and Antietam Valley Municipal Authority	:	
v.	:	No. 1120 C.D. 2013
Landis Plumbing and Heating, Ltd.	:	
Appeal of: Antietam Valley Municipal Authority	:	
Linda Ruddy, Trading as Penn View Park, L.P., t/a Penn View Mobile Home Park, Appellants	:	
v.	:	
Mt. Penn Borough Municipal Authority and Antietam Valley Municipal Authority	:	
v.	:	No. 1200 C.D. 2013
Landis Plumbing & Heating, LTD	:	

O R D E R

AND NOW, this 6th day of May, 2014, the

judgment of the Court of Common Pleas of Berks County is hereby AFFIRMED.

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BONNIE BRIGANCE LEADBETTER,
Judge