

STATE OF MICHIGAN
COURT OF APPEALS

JBD ROCHESTER, LLC,

Plaintiff-Appellant,

v

OAKLAND COUNTY BOARD OF ROAD
COMMISSIONERS,

Defendant-Appellee.

UNPUBLISHED

June 24, 2010

No. 290090

Oakland Circuit Court

LC No. 2006-075062-CZ

Before: METER, P.J., and SERVITTO and BECKERING, JJ.

PER CURIAM.

Plaintiff JBD Rochester, LLC (“JBD”) appeals as of right the trial court’s September 11, 2008, order granting defendant Oakland County Board of Road Commissioners (“the Road Commission”) summary disposition of JBD’s unjust enrichment claim. We affirm.

I

JBD owns property located in the northeast corner of Crooks Road and Auburn Road in Rochester Hills, Michigan. The property is approximately 15.5 acres and, historically, contained several older, commercial buildings on the road frontages. In February 2002, the Road Commission adopted a resolution stating that it was in the process of reconstructing Crooks Road and that the project required the acquisition of title to a portion of JBD’s property. Shortly thereafter, the commission made a good-faith offer to purchase that portion of the property. JBD rejected the offer. Later that year, the Road Commission adopted a declaration of taking stating that the conditions along Crooks Road necessitated the “reconstruction, widening and improvement” of the road for the use and benefit of the public, and that it was necessary to take “an easement for all highway purposes” over a portion of JBD’s property pursuant to the commission’s power of eminent domain, MCL 213.55.

In January 2003, the Road Commission filed a condemnation complaint in the trial court seeking to take approximately 1.5 acres of JBD’s property, specifically a 57-foot strip along Crooks Road and 27-foot strip along Auburn Road, along with adjacent property not owned by JBD. Attached to the complaint was a proposed plan depicting the widening of both roads, including at the intersection. The Road Commission requested a hearing for vesting title and proceedings to determine just compensation if the amount of compensation was contested. JBD and the other property owners alleged that the \$650,000 estimated as just compensation by the

Road Commission was not just compensation and requested a jury trial to determine the proper amount. They did not specifically deny that the taking was necessary.¹ The parties subsequently exchanged appraisals of the value of the property.

JBD alleges that after initially purchasing its property in 1998, it began the process of redeveloping the property, including submitting a site plan depicting the proposed redevelopment to the city. The redevelopment involved demolishing several older buildings and constructing new commercial buildings. After the Road Commission advised JBD and the city that it intended to widen and improve Crooks and Auburn Roads, the city required JBD to incorporate the commission's plans into the site plan. The city subsequently approved JBD's site plan, but made it contingent upon the planned road construction project.

In letters dated February 24, 2004, the Road Commission informed JBD's existing tenants that it would soon remove the building they occupied to make way for road construction, and that the tenants would receive a formal 30-day notice to vacate. The letters further stated that the tenants would have at least 60 days, possibly more, before they received the 30-day notices. As of June 2004, the road construction project, including the removal of buildings, had not yet commenced. In a letter dated June 14, 2004, JBD's appraiser sent JBD an amended appraisal of its property. The appraiser indicated that he had recently learned that the road construction project was "substantially delayed," that the project may start in Spring 2005 and could take two construction seasons, and that due to the delay, JBD "suffered additional losses that were not knowable, and therefore not addressed, in my original appraisal, which estimated damages as of the date of taking." These losses were in the form of reduced rent that JBD expected to collect.

In August 2004, JBD entered into a lease with Walgreens for one of the buildings, or a portion of one of the buildings, to be erected on JBD's property pursuant to its site plan. The lease permitted Walgreens to cancel the agreement and seek damages if it did not have possession by August 1, 2005. In October 2004, the managing director of the Road Commission sent a letter to the mayor of Rochester Hills, among several other individuals, stating that because of recent federal legislation, the commission lacked the federal funding necessary for the road construction project. Consequently, the construction originally scheduled to begin that year would be delayed until at least 2006. Thereafter, JBD sought and obtained approval from the Michigan Department of Transportation (MDOT) to make its own improvements to Auburn Road. In 2005, JBD completed the road construction necessary to comply with the site plan approved by the city, move forward with the redevelopment of its property, and uphold the terms of its lease with Walgreens.

Before trial in the ongoing condemnation case, JBD's appraiser submitted a third appraisal of JBD's property, stating that JBD incurred road construction costs exceeding \$385,000 that should be included in JBD's just compensation. The Road Commission filed a motion in limine to exclude the evidence, which the trial court denied. This Court granted the

¹ JBD's statutory right to challenge necessity for the taking expired 21 days after receiving the complaint. MCL 213.56.

Road Commission's application for leave to appeal and reversed the trial court's order. *Oakland Co Bd of Co Rd Comm'rs v JBD Rochester, LLC*, 271 Mich App 113, 114; 718 NW2d 845 (2006). Noting that "severance damages are damages to the remaining property that are attributable to the taking," *id.* at 116, citing *Dep't of Transp v Sherburn*, 196 Mich App 301, 305; 492 NW2d 517 (1992), this Court reasoned:

In this case, however, the delay in funding, and not the taking itself, caused the alleged severance damages. No market actor could have possibly known that problems in congressional funding would halt the road project. Defendants' [JBD and the other defendants'] development project commenced and continued. Only later did defendants learn of their predicament. The road project would not be completed when expected, and commercial tenants would soon arrive once defendants' buildings were constructed. The strip of land that plaintiff [the Road Commission] now owned sat as a sort of buffer obscuring the presence of the commercial development, which would rely on the business of passing motorists. Buildings slated for demolition continued to stand on the strip. Powerless to obtain federal funding, defendants paid for the demolition and road pavement to secure their investment from wholesale failure. They did not ask for reimbursement for improvements that local authorities would have required in any event, which included entranceways and acceleration/deceleration lanes.

Defendants placed unwarranted reliance on the expectation that the road project would be completed. Delays caused by lack of funding occur with some regularity, as the situation in Congress had national effect and stalled many projects. Had the taking not happened until later, the funding situation would have remained the same and defendants would still have been pressed to decide to pave the road themselves. The only difference would have been that defendants would have owned the strip of land and could have pursued demolition and improvement with greater haste, assuming permits from local authorities were forthcoming.

Defendants may not impose their own construction timetable on plaintiff under the banner of just compensation. Defendants' choice between undertaking the road project themselves or watching their investment fail is not a consequence of the taking, but of their market decision to presume that they could take advantage of an expected public works project. When that project met delay caused by a public funding problem, defendants were not deprived of value inherent in the land or made to suffer noxious effects of the taking. They instead lost a convenient coincidence to which they had no claim in the first place. Allowing evidence of the paving would invite the jury to enrich defendants at the public's expense, which is not just compensation. [*Dep't of Transp v VanElslander*, 460 Mich 127, 129; 594 NW2d 841 (1999).] Nor does excluding the evidence impermissibly enrich the public at defendants' expense. *Id.* Defendants made a business decision to secure their investment as soon as possible. They got what they paid for and cannot now impose the price of their business decision on plaintiff as a matter of just compensation.

The trial court erred in admitting appraisals of defendants' property that took into consideration the posttaking road construction delay because the claimed severance damages were not caused by the taking. [*Id.* at 116-118.]

Shortly after this Court issued its opinion in the condemnation case, JBD initiated this action against the Road Commission. JBD brought claims for unjust enrichment/quantum meruit, fraud/misrepresentation, and implied contractual indemnity. The Road Commission moved for summary disposition of JBD's claims under MCR 2.116(C)(8). The trial court dismissed JBD's fraud and indemnity claims, but refused to dismiss its unjust enrichment claim. The trial court held that, accepting the facts alleged in JBD's complaint as true, the Road Commission was "legally obligated to make the improvements which were eventually made by" JBD, it could not be said that the Road Commission "did not obtain a benefit by the actions of" JBD, and it would be inequitable to permit the Road Commission "to escape paying for the improvements to which it had obligated itself." The Road Commission filed an application for leave to appeal, which this Court denied. *JBD Rochester LLC v Bd of Co Rd Comm'rs of Oakland*, unpublished order of the Court of Appeals, entered February 28, 2008 (Docket No. 279751). Judge Jansen dissented, stating that JBD's "complaint in this case failed to state a legally cognizable claim of unjust enrichment," and therefore, that she would "peremptorily reverse and grant summary disposition in favor of" the Road Commission. *Id.*

The Road Commission subsequently filed a motion for summary disposition of JBD's unjust enrichment claim under MCR 2.116(C)(10). At the hearing on the motion, the trial court quoted a portion of this Court's analysis in *Oakland Co Bd of Co Rd Comm'rs*, 271 Mich App at 113, and then held that JBD's "unjust enrichment claim is barred as defendant did not receive a benefit from plaintiff's action. Or, the benefit—any benefit received is too remote to permit the implication of the unjust enrichment theory." The trial court then entered an order granting the Road Commission's motion for summary disposition and dismissing JBD's claim "for the reasons set forth on the record." JBD moved for reconsideration, and the trial court denied the motion. JBD now appeals as of right.

II

JBD argues that the trial court reversibly erred in granting the Road Commission's motion for summary disposition of JBD's unjust enrichment claim. We disagree.

We review a trial court's decision on a motion for summary disposition de novo on the basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). When reviewing a motion under MCR 2.116(C)(10), which tests the factual sufficiency of the complaint, we must consider all the admissible evidence submitted by the parties in the light most favorable to the nonmoving party. *Maiden*, 461 Mich at 120; MCR 2.116(G)(6). Summary disposition should be granted only where the evidence fails to establish a genuine issue regarding any material fact. *Maiden*, 461 Mich at 120.

The equitable doctrine of unjust enrichment is based on the principle that a party should not be allowed to profit at another's expense. *McCreary v Shields*, 333 Mich 290, 294; 52 NW2d 853 (1952). The law will imply a contract to prevent an inequity arising from a defendant's receipt of a benefit from the plaintiff. *Sweet Air Investment, Inc v Kenney*, 275 Mich

App 492, 504; 739 NW2d 656 (2007). Unjust enrichment occurs where the defendant has received a benefit from the plaintiff, but it would be inequitable to allow the defendant to retain that benefit. *Id.*

According to JBD, in the context of unjust enrichment, a defendant receives a benefit if the plaintiff discharges a duty of the defendant. JBD cites Restatement of Restitution § 103, which provides:

A person who, to prevent the lawful taking or detention of his things or to redeem his things which have been lawfully taken or detained, has discharged the duty of another in whole or in part, is entitled

(a) to indemnity from the other if, as between the two, the other should have performed such duty, or

(b) to contribution if the amount so paid is greater than the proportionate share which, as between the two, should have been borne by the person who paid.

JBD suggests that § 103 may be extended to apply to circumstances in which a person discharges a duty of another to protect his or her business interests, if not to prevent the taking or detention of his or her things. Comment a to § 103 provides, in part: “Under the circumstances dealt with in this Section the coercion which prevents the conferring of the benefit by the discharge of the obligation from being officious lies in the danger of loss to the payor’s interest if the payment is not made.” JBD further cites 66 Am Jur 2d, Restitution and Implied Contracts, § 122, which states:

The payment of money might be, under circumstances of business necessity or compulsion, considered to be involuntary and entitle the party so coerced to recover money paid Thus, when a person is called on to either suffer a serious business loss or to make payment, that person may recover the payment because it was made involuntarily. To constitute “business compulsion” there must be such a threat that, in conjunction with other circumstances and business necessity, the party coerced would fear a business loss unless he or she makes the payment demanded.

Under this doctrine [the doctrine of business compulsion] it is established that where by reason of the peculiar facts a reasonably prudent person finds that *in order to preserve his or her property or protect business interests it is necessary to make a payment of money that he or she does not owe and which in equity and good conscience the receiver should not retain*, the payment may be recovered. . . . However, “business compulsion” is not established by proof that a payment was made merely under the stress of pecuniary need or the pressure of financial circumstances [Emphasis added.]

JBD claims that in this case, the Road Commission was unjustly enriched by JBD’s completion of a portion of the planned road construction project. JBD’s claim rests, in large part, on its assertion that by taking JBD’s property, the Road Commission obligated itself to immediately complete the project and that JBD partially fulfilled that obligation by completing a

portion of the project with its own funds. In making this assertion, JBD relies on MCL 213.55, MCL 213.361, MCL 224.12, and *Grand Rapids Bd of Ed v Baczewski*, 340 Mich 265; 65 NW2d 810 (1954). MCL 213.55(4)(b), which is part of the Uniform Condemnation Procedures Act, MCL 213.51 *et seq.*, provides that a condemnation complaint must contain a “statement of purpose for which the property is being acquired.” MCL 213.361(a) specifically authorizes the taking of property “for the right of way for limited access highways and other highways to be laid out, altered, or widened, or for changing the direction or line of those highways.” Similarly, MCL 224.12 indicates that a board of county road commissioners may “by resolution declare it necessary to condemn private property for the laying out, widening, changing or straightening of any road or for any other purpose for which the board is authorized to acquire private property.” In *Grand Rapids Bd of Ed*, the board of education took the defendant’s property to build a school. *Grand Rapids Bd of Ed*, 340 Mich at 267. There was “no present need” to use the property for a school and the board admitted that it might delay using the property for 30 years or more. *Id.* at 268. The Supreme Court noted that under Michigan’s constitution, “there should not only be just compensation but also proof of a necessity for taking and using the property,” and held that the “words ‘necessity for using such property’ . . . does not mean an indefinite, remote or speculative future necessity, but means a necessity now existing or to exist in the near future.” *Id.* at 269. The Court further held that in “condemnation proceedings in this State petitioner should prove that the property will either be immediately used for the purpose for which it is sought to be condemned or within a period of time that the jury determines to be the ‘near future’ or a ‘reasonably immediate use.’” *Id.* at 272.

Here, the Road Commission filed a condemnation complaint in the trial court seeking to take approximately 1.5 acres of JBD’s property, along with adjacent property not owned by JBD, to widen Crooks and Auburn Roads, including at the intersection. JBD does not dispute that the commission had statutory authority for the taking or that the road improvements were necessary. Rather, according to JBD, the Road Commission had a duty to complete the planned road construction project immediately after taking the property. We agree with JBD that under *Grand Rapids Bd of Ed*, the commission obligated itself to use the property for the purpose given to support the taking, i.e., the widening of Crooks and Auburn Roads, and that such use was required to be made immediately, or in the near or reasonably immediate future, after the taking. See *id.* However, this case presents a unique set of facts in that the Road Commission’s road construction project was contingent upon adequate federal funding. The record supports the conclusion that when the commission took JBD’s property, it believed that adequate funding would be available for the intended project, as evidenced by the February 2004, letters the commission sent to JBD’s existing tenants informing them that building demolition and road construction would soon be underway. It became apparent over the next several months, however, that federal funding would not be immediately available. In October 2004, the Road Commission announced that as a result of federal legislation, the road construction project would be delayed until at least 2006. Under the circumstances, the delay was not unreasonable. See *id.* The commission should not have been forced to move forward with a major road construction project—one that would likely take two construction seasons—without adequate funding. A two-year delay is not unreasonable given the type of project at issue and the constant uncertainty of government funding.

Considering the Road Commission’s duty to complete the road construction project within a reasonable period of time, JBD claims that the commission benefited from JBD’s partial

completion of the project. It is certainly arguable that by completing a portion of the road construction project, JBD relieved the Road Commission of its duty to oversee that portion of the project, and, in that way, the commission benefited from JBD's expenditure. But JBD has not established that it would be inequitable for the Road Commission to retain such a benefit. See *Sweet Air Investment, Inc*, 275 Mich App at 504; 66 Am Jur 2d § 122. JBD freely admits that it acted to protect its own business interests when it sought and obtained approval from the MDOT to make improvements to Auburn Road. JBD paid for the road construction in order to comply with the site plan approved by the city, move forward with the redevelopment of its property, and uphold the terms of its lease with Walgreens. JBD was not forced by the Road Commission or even the city to move forward with the redevelopment. Moreover, contrary to JBD's assertions, JBD was fully aware that the Road Commission's planned road construction project would be delayed when it signed the lease with Walgreens. JBD suggests that the Road Commission wrongfully withheld information regarding the delay, but the June 2004, letter from JBD's appraiser to JBD clearly states that the road construction project was "substantially delayed," may not start until Spring 2005, and could take two construction seasons. JBD then attempted to use that letter to obtain additional compensation from the Road Commission. It was not until August 2004 that JBD entered into the lease with Walgreens. Thus, it was due to JBD's own business decisions, not any failure or coercion on the part of the Road Commission, that JBD felt compelled to pay for the road construction. Given these facts, JBD cannot establish that it would be inequitable for the Road Commission to retain any benefit it may have received as a result of JBD's expenditure. Accordingly, JBD's unjust enrichment claim fails.

Affirmed.

/s/ Patrick M. Meter
/s/ Deborah A. Servitto
/s/ Jane M. Beckering