



Unjust Enrichment – Two Different Claims for Relief

BY TABETHA J. STEINBERG, ESQ. AND PHIL S. AURBACH, ESQ.

Often, many attorneys follow someone else’s form, wherein they only plead unjust enrichment right after a breach of contract claim for relief. However, most attorneys do not realize that their client can recover on an unjust enrichment claim in two ways. On one hand, a plaintiff can recover through the traditional quantum meruit claim. This claim for relief typically arises when there is no valid, enforceable contract, and the plaintiff had rendered some type of service.

As a result, the defendant is unjustly enriched by plaintiff’s services. Thus, as an equitable measure, the court creates an implied contract for the reasonable value of services rendered. On the other hand, a plaintiff can assert a more unconventional unjust enrichment claim, which can be raised as an equitable claim. Under these circumstances, services were not necessarily rendered by the plaintiff; however, the defendant unjustly retained a benefit at the expense of the plaintiff and therefore would be required to make restitution not to exceed the value of the benefit or property that has been unjustly retained.

The Traditional Unjust Enrichment Claim

The Nevada Supreme Court has held that an unjust enrichment claim is basically a claim for quantum meruit, which occurs “when the plaintiff confers a benefit on the defendant, the defendant appreciates such benefit, and there is acceptance and retention by the defendant of such benefit under circumstances such that it would be inequitable for him to retain the benefit without payment of the value thereof.”¹ Under this quantum meruit theory, the plaintiff must (1) demonstrate that the plaintiff provided services; and (2) introduce evidence as to the reasonable value of these services.² A plaintiff who pleads quantum meruit often seeks to recover the reasonable value for services, or “as much as he has deserved.”³ But how does one calculate how much one deserves? The Nevada Supreme Court has opined that in general, the reasonable value of services can be equated to the market price for the plaintiff’s services.⁴ The court has also recognized applying “established customs” within certain industries when determining the

reasonable value of services.⁵ Established customs can be determined by analyzing the nature of the work, as well as the customary rate of pay for such work in the community where the work is performed.⁶

The More Unconventional Unjust Enrichment Claim for Relief

Instead of being limited to a quantum meruit claim, unjust enrichment claims can also be raised as an equitable claim when there is an “unjust retention ... of money or property of another against the fundamental principles of justice or equity and good conscience.”⁷ Based on this theory, the plaintiff does not need to confer a benefit on the defendant and would only need to show that (1) the defendant is unjustly retaining a benefit wrongfully obtained, and (2) the defendant should be liable to the plaintiff for restitution. While the Nevada Supreme Court has not commented on how to measure damages in these situations, the California Supreme Court has. The California Supreme Court has acknowledged that a defendant that is unjustly enriched at the expense of another may be required to pay restitution; however, that restitution cannot exceed the value of plaintiff’s property.⁸

In *Nevada State Educ. Ass’n v. Clark Cnty. Educ. Ass’n*, the Clark County Education Association (CCEA) received dues from Clark County teachers, some of which were owed to the CCEA, some to the Nevada State Education Association

(NSEA), and some to the National Education Association (NEA).⁹ The CCEA was supposed to transmit all of NSEA's and NEA's dues to NSEA, and NSA would then transmit NEA's dues to NEA.¹⁰ A dispute arose between the CCEA, NSEA, and NSA regarding these dues, and so the CCEA kept the disputed dues in escrow, pending a judicial determination as to how much was owed to each entity.¹¹ The NEA and NSEA argued that CCEA unjustly enriched itself by retaining the members' dues.¹² The district court granted summary judgment in favor of CCEA, concluding that NSEA and NEA did not have a property interest in the escrowed funds that could give rise to a claim for unjust enrichment.¹³ The Nevada Supreme Court affirmed the district court's ruling, reasoning that "to the extent that the dues constitute a 'benefit,' CCEA would have only retained those dues pending the outcome of the litigation."¹⁴ Furthermore, the court noted that because the CCEA properly placed the dues in escrow awaiting judicial determination, it did not commit unjust enrichment.¹⁵

In this instance, there were no services rendered by CCEA. As the court noted in footnote 10, the unjust enrichment claim was not based on rendered services, but rather on CCEA's retention of the dues themselves. While the court still determined that CCEA did not commit unjust enrichment, it was still recognized as a cognizable claim, despite the fact that the unjust enrichment claim was being brought by a plaintiff who did not render services to the defendant. Instead, the court's analysis was based on CCEA's "unjust retention ... of money or property of another against the fundamental principles of justice or equity and good conscience."¹⁶ The court concluded that there was no unjust retention that went against the principles of equity and good conscience because CCEA placed the disputed funds in escrow.

Furthermore, in *Nevada Industrial Dev. v. Benedetti*, Benedetti sold land to Nevada Industrial Development Inc. (NID), which conveyed a Deed of Trust to the seller.¹⁷ However, Benedetti refused to reconvey the property to NID, unless she was allowed to retain water rights on the property.¹⁸ Ultimately, the parties settled.¹⁹

As part of the settlement, NID agreed to pay \$83,875 for the balance allegedly owed to Benedetti.²⁰ Several years later, it was discovered that only \$51,105.70 of the \$83,876 was owed to Benedetti.²¹ However, Benedetti refused to agree to modify the judgment.²² Thereafter, the district court dismissed the action to modify the judgment pursuant to NRCP 41(b), but did not rule on the issue of restitution for unjust enrichment.²³ The Nevada Supreme Court held that the district court erred by failing to address NID's claim to recover restitution for unjust enrichment.²⁴ The court reasoned that NID presented evidence of a prima facie case upon which equitable relief could be granted.²⁵

Thus, an unjust enrichment remedy can be raised under two separate theories: (1) quantum meruit, or implied contracts; or (2) as an equitable claim for restitution. Under a quantum meruit implied contract claim, the court imposes the promise to pay to prevent unjust enrichment. However, under an equitable unjust enrichment claim, services do not necessarily need to be rendered in order for a plaintiff to recover restitution.

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ENDNOTES:

1. *Certified Fire Prot. Inc. v. Precision Constr.*, 283 P.3d 250, 257 (Nev. 2012).
2. *Id.* (citing Restatement (Third) of Restitution and Unjust Enrichment § 31 cmt. e (2011); 1 Dan B. Dobbs, *Dobbs Law of Remedies* § 4.2(3) (2d ed. 1993); 26 Richard A. Lord, *Williston on Contracts* § 68:1, at 24 (4th ed. 2003) (quantum meruit to avoid unjust enrichment applies “when a party confers a benefit with a reasonable expectation of payment”); *EPIC v. Salt Lake County*, 167 P.3d 1080, 1086 (Utah 2007) (first element of quantum meruit is showing a benefit has been conferred)).
3. *Certified Fire*, 283 P.3d at 256 (citing Black’s Law Dictionary 1361 (9th ed. 2009) (defining quantum meruit)).
4. *Id.*
5. *Flamingo Realty, Inc. v. Midwest Dev., Inc.*, 110 Nev. 984, 988, 879 P.2d 69, 71 (1994) (applying “established customs” when determining the reasonable value of a real estate agent’s services).
6. *Id.* (citing *Needs v. Hebener*, 118 Idaho 438, 797 P.2d 146, 151–52 (Idaho Ct.App.1990)).
7. *Topaz Mutual Co. v. Marsh*, 108 Nev. 845, 856, 839 P.2d 606, 613 (1992) (quoting *Nevada Industrial Dev. v. Benedetti*, 103 Nev. 360, 363 n. 2, 741 P.2d 802, 804 n. 2 (1987)).
8. *Ghirardo v. Antonoli*, 14 Cal. 4th 39, 51, 924 P.2d 996, 1003 (1996).
9. 137 Nev. 76, 77, 482 P.3d 665, 668 (2021).
10. *Id.*
11. *Id.* at 669-670.
12. *Id.* at 670.
13. *Id.*
14. *Id.* at 675.
15. *Id.*
16. *Topaz Mutual Co.*, 108 Nev. at 856, 839 P.2d at 613 (quoting *Benedetti*, 103 Nev. at 363 n. 2, 741 P.2d at 804 n. 2).
17. 103 Nev. at 361, 741 P.2d at 803.
18. *Id.*
19. *Id.*
20. *Id.* at 362.
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.* at 363.
25. *Id.*

TABETHA J. STEINBERG joined Marquis Aurbach as a law clerk in June 2022 and continued working as a law clerk up until she passed the bar, where she transitioned into becoming an attorney. Steinberg is a born and bred Las Vegas native who earned her bachelor’s degree in public relations and a minor in consumer behavior from the University of Southern California, where she graduated as cum laude. She then made her way back home, where she obtained her J.D. from the William S. Boyd School of Law at the University of Nevada, Las Vegas in 2023, where she also graduated as cum laude.



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