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IN THIS ISSUE

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CERTIFICATE OF AUTHORITY

NOTICE IS HEREBY GIVEN that an Application for Certificate of Authority under the provisions of the Business Corporation Law of 1988 has been made to the Pennsylvania Department of State by MARYLAND ONCOLOGY HEMATOLOGY, P.A. This foreign business corporation incorporated under the laws of the State of Maryland, where its principal office is located at 10710 Charter Drive, Columbia, Maryland 21044. The address of this corporation's proposed registered office in the Commonwealth of Pennsylvania is 40 V Twin Drive, Suite 104, Gettysburg, Pennsylvania 17325, in Adams County.

6/17

1. Interpretation of a contract is a question of law and is therefore appropriate for disposition through summary judgment.

2. The operative date for enforcement of an Act 537 Plan must be the date of DEP approval of the Plan and not simply the date a Board of Supervisors adopts the Plan for submission to DEP for its review and approval.

3. The Defendants' ability to insist on the installation of public sewer service does not arise until such time as the Act 537 Plan (or Special Study to Amend the Act 537 Plan) is approved by DEP.

4. To sustain a claim of unjust enrichment, a claimant must show that the party against whom recovery is sought either wrongfully secured or passively received a benefit that would be unconscionable for the recipient to retain.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 09-S-637, JOHN J. GRIM AND V. PAUL PISULA, III, T/D/B/A P & G PARTNERS VS. READING TOWNSHIP AND READING TOWNSHIP MUNICIPAL AUTHORITY

John J. Mooney, III, Esq., for Plaintiffs
Andrew T. Bowser, Esq., for Defendants
Campbell, J., February 1, 2011

OPINION ON CROSS MOTIONS FOR SUMMARY JUDGMENT

Before the Court for decision are Plaintiffs' Motion for Summary Judgment on Plaintiffs' action for breach of contract and Defendants' Cross Motion for Summary Judgment on Defendants' counterclaims for breach of contract and unjust enrichment. For the following reasons, Plaintiffs' Motion for Summary Judgment on its breach of contract action is granted and Defendants' Cross Motions for Summary Judgment are denied.

PROCEDURAL BACKGROUND

Plaintiffs initiated this action by writ of summons issued on April 27, 2009. The sole count of Plaintiffs' Complaint, filed June 22, 2009, is for breach of contract. The essence of Plaintiffs' claim for breach of contract is that the Defendants made an unauthorized withdrawal of $92,600.00 from an Irrevocable Letter of Credit (hereinafter "LOC") which Plaintiffs posted to secure the possible construction of a sewer line. Plaintiffs claim Defendants withdrawal was unauthorized because it was made before the Pennsylvania Department of Environmental Protection (hereinafter "DEP")

approved Defendants' Special Study to Amend the Official Act 537 Plan of Reading Township (hereinafter "Special Study") which required construction of the sewer line. Defendants subsequently filed an Answer with New Matter raising counterclaims for breach of contract and unjust enrichment. Defendants' breach of contract counterclaim asserts that in the event Plaintiffs prevail on their complaint and Defendants are required to refund the $92,600.00 received under the LOC, the Plaintiffs will then be in breach of the contract for having failed to pay for the costs of construction for the sanitary sewer system. Defendants' unjust enrichment counterclaim alleges that in the event Plaintiffs prevail on their complaint and Defendants are required to refund monies drawn on the LOC, then Plaintiffs will have been unjustly enriched by the provision of a public sewer system to Plaintiffs' development without cost to Plaintiffs. The pleadings in this case closed on October 6, 2009 when Plaintiffs filed their reply to new matter and answer to counterclaims. The parties then conducted discovery and the parties agree that discovery was completed by July 20, 2010.

On September 10, 2010 Plaintiffs filed their Motion for Summary Judgment.[1] On October 19, 2010 Defendants filed their Cross Motion for Summary Judgment. The parties filed briefs in support of their respective positions and in opposition to the motion of the opposing party. Argument was held January 11, 2011. The parties agree that there are no genuine issues of material fact and that the case is ripe for summary judgment determination.

FACTUAL BACKGROUND

The material facts of this case are best summarized as follows:

Reading Townships' Official Act 537 Plan (hereinafter "Act 537 Plan") is dated September 1990.[2] That Plan identified a public sewer service area which included land known as the "Rhinehart Tract," with implementation of public sewer service to the area including the

[1] The Plaintiffs seek Summary Judgment only on their Complaint and not on Defendants' Counterclaims.

[2] Interestingly Defendants' Exhibit "B" to their brief contains a one-page document entitled "Attachment to the Sewage Facilities Planning Module" which notes that the Plan was adopted by the Township in 1989, yet the Special Study dated December 2007 (Defendants' Exhibit "C" to their Brief) clearly notes that the Official Act 537 Plan is dated September 1990. Presumably the date of the Plan is the date it was approved by DEP although its adoption by the Township occurred in 1989.

Rhinehart Tract by July of 2002. As of August 18, 2003, when the Sewage Facilities Planning Module for development of the Rhinehart Tract was submitted to DEP, the Township had not yet implemented that portion of its Act 537 Plan. The Adams County Office of Planning and Development, through its review of the Sewage Facilities Planning Module for the Rhinehart Tract, noted that the subdivision proposal was not consistent with the Act 537 Plan and noted that there were needs in the area adjacent to the proposed subdivision that should be considered by Reading Township.

Despite being aware that the Act 537 Plan called for public sewer service in the area of the Rhinehart Tract by July of 2002, despite being aware that the Township had not yet implemented that part of its Act 537 Plan, and despite having received the review by the Adams County Office for Planning and Development, on September 8, 2003 Reading Township adopted Resolution No. 2003-10 calling for a Plan Revision to its existing Act 537 Plan for new land development. By Resolution 2003-10 Reading Township adopted and submitted to DEP for its approval a revision to its Act 537 Plan to allow for the development of the Rhinehart Tract utilizing individual on-lot systems. On January 16, 2004 DEP approved the Act 537 Plan revision for the Rhinehart Tract to allow for the permitting of on-lot systems for that development.

At that time the Developer of the Rhinehart Tract was Triple Crown Corporation whose Chief Executive Officer was Mark X. DiSanto. Mr. DiSanto is identified by the Township in its Resolution No. 2003-10 as the Developer and is copied on correspondence of January 16, 2004 from the DEP to the Township Supervisors. Approximately three (3) months later, on March 8, 2004, Triple Crown Corporation entered into a Development Agreement with the Reading Township Board of Supervisors for the construction of sixteen (16) single family residential dwellings on a parent tract of one hundred thirty-five and ninety-nine hundredths acres (135.99 acres) identified as the Rhinehart Tract.[3]

The entire Development Agreement is only one and a half (1-1/2) pages in length and the material provisions are as follows:

[3] Coincidentally, the Act 537 Plan revision as approved by DEP on January 16, 2004 consisted of the construction of sixteen (16) new single family residential lots on one hundred thirty-six acres (136 acres).

> Whereas, the area proposed to be developed by Triple Crown Corporation is depicted in Township's Act 537 Plan as a sewer service area; and
>
> Whereas, the Township and the Developer have agreed that ***should construction*** of a sanitary sewer system be ***required*** as part of the Act 537 Special Study currently being performed by the Township, which may amend the Townships' approved Act 537 Plan, ***the Developer shall provide an appropriate bond securing the sanitary sewer construction with a time limitation of five (5) years from the date of the recording of an approved plan***; and
>
> Whereas, the Developer has provided to the Township a five (5) year bond in the amount of $92,625.00 for construction of the sanitary sewer main as may remain ***required*** by the Township Act 537 Plan.
>
> Now therefore, it is hereby acknowledged that Developer has met its obligations in regard to the aforesaid required financial contributions for the road improvement and the five (5) year bond for the ***potential*** construction of a sanitary sewer system, ***if required***.

Plaintiffs' Brief Exhibit "E"; Defendants' Brief Exhibit "A." (emphasis added).

The Development Agreement, entered into three (3) months after approval of revisions to the Act 537 Plan allowing for the on-lot septic systems for the subject development, made no reference to the on-lot septic systems or the eventual replacement of those systems by a sanitary sewer. Also, importantly, the Development Agreement requires only that Developer post bond for a limited period of five (5) years, not that the Developer construct the sewer line, or guarantee payment for the construction of the sewer line indefinitely.

Sometime in 2005 Plaintiffs purchased the rights to the development of the Rhinehart Subdivision from Triple Crown Corporation. Plaintiffs then caused the LOC to be issued, with Reading Township as the Beneficiary, in the amount of $92,600.00. The LOC contained an expiration date of March 1, 2009.

Despite being discussed and started as late as August of 2003,[4] the Special Study was not completed by the Township until more than four (4) years later, in December of 2007. The Plan Implementation Schedule contained within the Special Study provided for an adoption of the Act 537 Plan in April 2008, submission of the Act 537 Plan to DEP in May 2008 and DEP approval of the Act 537 Plan by September of 2008.[5]

Then, by letter dated August 6, 2008, Sharon E. Myers, Solicitor for Reading Township Municipal Authority, informed Plaintiffs that the Authority was demanding payment in the amount of $92,600.00 to cover the installation of the sewer line with payment to be made within thirty (30) days from the date of the letter or the Authority indicated it would be drawing on the LOC.

On September 29, 2008 Attorney Myers called the LOC in full and the Defendant Municipal Authority received payment of $92,600.00 from the Bank of Hanover. At the time the LOC was called by the Municipal Authority DEP had still not approved or acted upon the Special Study, which would have called for public sewer to service the Rhinehart Tract. As late as January 20, 2009 the Township was responding to comments by DEP about the Special Study. Defendants acknowledge there was some "back and forth" between the Township and DEP during the months following the call of the LOC.

On March 30, 2009, DEP approved the Special Study. This approval occurred twenty-nine (29) days after the date of expiration of the LOC posted by Plaintiffs. It also occurred more than five (5) years after the date of the Development Agreement which is the contract at issue.

DISCUSSION

Under the Pennsylvania Rules of Civil Procedure a court may enter summary judgment when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. **Pa. R. Civ. P. 1035.2**; *Strine v. Commonwealth*, 894 A.2d 733, 737 (Pa. 2006). Summary judgment is only appropriate where the

[4] See Exhibit "B" to Plaintiffs' Brief and Page i RTMA 19 to Exhibit "C" to Defendants' Brief.

[5] See RTMA 23 of Exhibit "C" to Defendants' Brief.

pleadings, depositions, answers to interrogatories, omissions and affidavits, and other materials demonstrate that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Roche v. Ugly Duckling Car Sales, Inc.*, 879 A.2d 785, 789 (Pa. Super. 2005) (quotations and citations omitted). The burden of demonstrating the lack of any genuine issue of material fact falls upon the moving party, and, in ruling on the motion, the court must consider the record in the light most favorable to the non-moving party. *Id.* However, where a motion for summary judgment has been supported with depositions, answers to interrogatories, or affidavits, the non-moving party may not rest on the mere allegations or denials in its pleadings. *Accu-Weather, Inc. v. Prospect Communications, Inc.*, 644 A.2d 1251, 1254 (Pa. Super. 1994). Rather, the non-moving party must by affidavit or in some other way provided for within the Rules of Civil Procedure, set forth specific facts showing that a genuine issue of material fact exists. *Id.* Summary judgment is only appropriate in those cases which are free and clear from doubt. *McCannaughey v. Building Components, Inc.*, 637 A.2d 1331, 1333 (Pa. 1994).

Instantly, both parties are in agreement that there is no genuine issue of material fact for determination by a jury. Disposition of the motions essentially revolve around the proper interpretation of the Development Agreement of March 8, 2004. Interpretation of a contract is a question of law and is therefore appropriate for disposition through summary judgment. *See Maloney v. Valley Medical Facilities, Inc.*, 946 A.2d 702, 706 (Pa. Super. 2008).

Before Plaintiffs would be entitled to judgment as a matter of law on their breach of contract action, Plaintiffs would have to prove by a preponderance of the evidence that (1) there was a contract; (2) that a breach of duty imposed by that contract occurred and (3) that damages resulted from the breach. *Koken v. Steinberg*, 825 A.2d 723, 730 (Pa. Cmwlth. 2003). The parties are in agreement that the Development Agreement of March 8, 2004 is a contract binding on the parties.

The next question is whether the Defendants' breached a duty imposed by the contract. Plaintiffs assert that Defendants breached a duty owed by prematurely calling the LOC, arguing that installation of a sanitary sewer to the Rhinehart Tract was not "required" when Defendants called the LOC, or at anytime within the five (5)

year bonding period for that matter, because DEP did not approve the Special Study until after the five (5) year bond period expired. Defendants argue that installation of the sewer line was "required" when the Township approved the Special Study and submitted the same to DEP for review and approval. There is no question that the Township approved the Special Study in April 2008, and demanded payment from Plaintiffs on August 6, 2008, both occurring within the five (5) year bond period. There is also no question that DEP did not give approval to the Special Study until March 30, 2009 after the expiration of the LOC.

The Defendants argue that sewer to the Rhinehart Subdivision was "required" by virtue of its adoption, in April of 2008, of the Special Study despite the fact that the Special Study had not yet been approved by DEP. I disagree. The operative date for enforcement of an Act 537 Plan must be the date of DEP approval of the Plan and not simply the date a Board of Supervisors adopts the Plan for submission to DEP for its review and approval. Until final approval is given to the Special Study the most that can be said about that Act 537 Plan is that it will likely require or that it is intended to require installation of public sewer service. But the Defendants' ability to insist on the installation of public sewer service does not arise until such time as the Act 537 Plan (or Special Study to Amend the Act 537 Plan) is approved by DEP.

This point is illustrated by way of example. If one were to assume the Developer sought to construct a sewer line following a Township's adoption of an Act 537 Plan (or Special Study amending that Plan) but prior to the date of DEP's approval of that Special Study or Plan, the Developer would, unquestionably, be denied the right to begin construction until such approval from DEP was obtained. DEP approval of a Township Act 537 Plan is required before any sewer connections or construction can be made. *See generally Delaware River Keep vs. Department of Environmental Protection*, 879 A.2d 351 (Pa. Cmwlth. 2005).

Contrary to Defendants' argument, DEP's role in the approval of revisions to an Act 537 Plan (or a Special Study to Amend the Official Act 537 Plan) involves more than its "rubber-stamping" of the document. DEP's statutorily assigned duties include, among others, the duty to approve or disapprove official plans or revisions

thereto, to review and act upon a revision for new land development or to simply accept a municipality's review and approval thereof without further action; to order the implementation of official plans and revisions thereto; and to order a local agency to undertake actions deemed by the Department necessary to effectively administer this act in conformance with the rules and regulations of the Department. The Department is given statutory discretion in the performance of those duties. Further, if the Department disapproves of a plan, special study or revision it must provide a written explanation of the deficiencies to the municipality. **35 P.S. § 750.10(2)-(3), (7)**.

If DEP's role was to simply rubber stamp whatever had been proposed or adopted by a municipality then it would render the statutory requirement that DEP either approve or disapprove of all official plans, special studies and update revisions to official plans, impotent. If the Legislature did not intend for the DEP to have a role greater than rubber stamping of plans adopted by a municipality it would not have expressly provided DEP with the authority to approve or disapprove all such submissions. **35 P.S. § 750.5(e)(1)**.

Further, nothing can be required of a Developer until the Act 537 Plan, or in this case the Special Study, is approved by DEP. Indeed, no sewage facilities systems can be permitted by the Township or the Municipal Authority unless the proposed sewage facilities are consistent with an ***approved*** official plan. Generally, the erection, construction and location of any treatment works or intercepting sewers by a person or municipality requires approval by written permit from DEP. **35 P.S. § 691.207(a)**. For sewer collection extensions serving less than 250 single family homes such a permit is not required from the Department ***if*** such sewer extension… is consistent with the ***approved official plan***, required by Section 5 of the Act of January 24, 1996 (1965) P.L. 1535, No. 537 known as the "Pennsylvania Sewage Facilities Act." **35 P.S. § 691.207(b)** (emphasis added). Even the installation of on-lot systems may not be permitted unless the system is consistent with the method of sewage disposal contained in the ***approved*** official plan, special study or update revision of the municipality in which the system is located. **25 Pa. Code § 72.23(a)(1)** (emphasis added).

Because installation of a public sewer cannot be permitted until an Act 537 Plan (or Special Study) is approved by DEP, it certainly can-

not be said that installation of a sewer line is "required" prior to the approval of the Act 537 Plan (or Special Study) by DEP. This interpretation is further illustrated by the facts of the instant case. Here the Township's Official Act 537 Plan had been revised as the result of Reading Township Resolution 2003-10 to allow for the development of the Rhinehart Tract utilizing individual on lot systems. This revision to Reading Township's Official Act 537 Plan was approved by DEP by letter dated January 16, 2004. This means that until such time as further revisions or further action is approved by DEP the Township's Act 537 Plan required only individual on lot systems for the Rhinehart Tract.[6]

The Special Study called for sewer service to the Rhinehart Tract. But even the Defendants admit that communication was still being passed back and forth between the Township and DEP concerning provisions of the Special Study during the months after Defendants called the LOC. Until that Special Study was approved by DEP all that was legally required (and the most that would have been permitted) is the installation of on-lot septic systems. Plaintiffs installed what was required.

Defendants argue that because the only real issue being debated between the Township and DEP concerned which treatment plant would service another area being covered by the Plan, as opposed to the Rhinehart Tract, everyone was in general agreement that the requirement for the installation of public sewer to service the Rhinehart Tract was inevitable. Nonetheless, this Court finds that the installation of public sewer service to the Rhinehart Tract was not "required" until DEP approval of the Special Study was granted on March 30, 2009.

Merriam-Webster's Dictionary defines "require" as to "claim or ask for by right or authority." MERRIAM-WEBSTER DICTIONARY (online) http://www.merriam-webster.com/dictionary/require. Until DEP approved the Special Study the Defendants had no right or authority to claim or ask Plaintiffs to construct a sewer main. Construction of such a sewer main was not then required.

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[6] Interestingly had the parties planned or intended that the utilization of individual on-lot systems would be temporary until such time as a determination of whether or not public sewer would be required for that tract, Resolution 2003-10 could have provided for such a contingency by checking the block marked other and providing the requisite specificity in the Resolution. The Township did not do so.

The Development Agreement only required Plaintiffs to provide financial security for the "potential construction" of a sanitary sewer system for a limited period of five (5) years, if required. A fair reading of the Agreement reveals that if the construction of a sanitary sewer system was not "required" within five (5) years from the date of recording of the approved Plan, then the Developer would be released from any obligation to financially secure the construction of such a sewer line. As noted above, construction of the sanitary sewer system was not required, nor would it have been permitted, until March 30, 2009, some twenty-nine (29) days after the expiration date of Plaintiffs' LOC. Defendants have not made any argument or presented any evidence that the March 1, 2009 expiration date was in error or was less than five (5) years after the date of filing of an approved Plan.

Through no apparent fault of the Developer, it took Defendants more than four (4) years to complete the Special Study. From the record it is apparent that the Township realized it was running out of time to get the Special Study approved and that the bond may expire. Defendants made the decision to call the LOC even though at the time Defendants did so they could not have permitted, much less required, the construction of the subject sewer system. By drawing against the LOC when they were not authorized to do so Defendants have breached the Development Agreement.

The final element necessary for Plaintiffs to prevail on their breach of contract action is damages. It is beyond dispute that the sum of $92,600.00 was drawn on Plaintiffs' LOC in favor of Defendants. Defendants' argument that Plaintiffs have not suffered damages is based on an unproven assumption, perhaps even a faulty one, that Plaintiffs built in the costs of construction of the sanitary sewer system in the price they paid when purchasing the Rhinehart Subdivision. The record before the Court provides no support for that assumption. The uncontradicted facts of record are that the Defendants improperly drew the $92,600.00 against Plaintiffs' LOC. The damages suffered by Plaintiffs as a result of the Defendants' breach of contract are established in the amount improperly drawn against that LOC, in the total sum of $92,600.00.

In summary, the undisputed facts of record show that the Development Agreement of March 8, 2004 constitutes a contract

setting forth the rights and duties of the respective parties. Defendants breached that contract by calling the LOC prior to the expiration date of that LOC despite the fact that construction of the sanitary sewer system to the Rhinehart Tract was not required until approval of the Special Study was granted by DEP on March 30, 2009, some twenty-nine (29) days after the expiration date of the LOC. The Plaintiffs have suffered damages in the amount of $92,600.00, the sum improperly drawn by Defendants against the security Plaintiffs posted. Accordingly, Plaintiffs are entitled to summary judgment on their breach of contract action.

DEFENDANTS' CROSS MOTION FOR SUMMARY JUDGMENT

Turning now to Defendants' Cross Motion for Summary Judgment on Defendants' Counterclaims, with regard to Counterclaim Count 1 Breach of Contract, before Defendants would be entitled to Summary Judgment, Defendants would have to show there was a contract, that Plaintiffs breached a duty imposed by that contract and Defendants were damaged as a result.

As noted, there is no dispute about the fact that the Development Agreement of March 8, 2004 constitutes a contract between the parties. That contract imposed a duty on Plaintiffs to provide an appropriate bond securing the sanitary sewer construction, if required, with a time limitation of five (5) years from the date of the recording of an approved Plan. Nothing contained within the contract required the Plaintiffs to actually construct a sanitary sewer system. Further, nothing contained in the contract requires Plaintiffs to pay for or guarantee the construction of a sanitary sewer system beyond five (5) years from the date the approved Plan was recorded. The evidence of record before this Court at this time shows that Plaintiffs satisfied their contractual obligation by posting appropriate bond in the form of an Irrevocable Letter of Credit with an expiration date of March 1, 2009. No evidence has been presented to suggest that the March 1, 2009 expiration date was less than five (5) years after the date the approved Plan was recorded. Defendants would have this Court read into the Development Agreement an obligation on the part of the Developer to actually construct or pay for the construction of the sanitary sewer system whenever the system was required even if the requirement for the construction occurred after the five (5) year

bonding period. The language of the Agreement and the evidence of record simply do not support Defendants' position in this regard.

Further, Defendants' averment that by this Court's determination that the Defendants prematurely called the LOC "Plaintiffs have breached their underlying Agreement to pay for the construction of the sanitary sewer system for the Rhinehart Subdivision" is without merit. The problem with Defendants' argument is that the express language of the Development Agreement does not say that the Plaintiffs will pay for the construction of the sanitary sewer system. While such an obligation may, arguably, be implied by the requirement that the Defendants post bond for a limited period of five (5) years to secure the sanitary sewer construction, the Agreement is silent as to whether the Plaintiffs would be obligated to pay for that construction even if the requirement for construction of the sewer system did not arise until some undetermined time beyond the five (5) year bond period expired. To accept Defendants' argument would impose on the Developer an obligation to pay for the construction of the sanitary sewer system to the Rhinehart Development at some arbitrary and indefinite future time, regardless of how long it took to get necessary plans approved. Accordingly, Defendants have failed to prove Plaintiffs breached the Development Agreement. To the contrary, Plaintiffs satisfied their contractual obligations by posting security for five (5) years. Accordingly, Defendants' request for Summary Judgment on their Breach of Contract action is denied.

Looking next to Defendants' Second Counterclaim, setting forth an action for Unjust Enrichment, this Court is mindful of appellate authority which instructs that Summary Judgment should only be entered in cases which are clear and free from doubt. *McCannaughey*, 637 A.2d at 1333. In order to prevail on a claim for unjust enrichment the Defendants must prove (1) benefits were conferred on P & G Partners by Reading Township and Reading Township Municipal Authority. (2) appreciation of such benefits by P & G Partners and (3) acceptance and retention of such benefits under circumstances that it would be inequitable for P & G Partners to retain the benefit without payment of value. *Mitchell v. Moore*, 729 A.2d 1200, 1203 (Pa. Super. 1999). To sustain a claim of unjust enrichment, a claimant must show that the party against whom recovery is sought either wrongfully secured or passively received a benefit that would be

unconscionable for the recipient to retain. *See Torchia v. Torchia*, 499 A.2d 581, 582 (Pa. Super. 1985); *Roman Mosaic & Tile Company v. Vollrath*, 313 A.2d 305, 307 (Pa. Super. 1973). In order to recover, there must be ***both*** (1) an enrichment, and (2) an injustice resulting if recovery for the enrichment is denied. *Samuels v. Hendricks*, 445 A.2d 1273, 1275 (Pa. Super. 1982) (emphasis in original).

Instantly, the facts show that the Plaintiffs developed a subdivision and installed on-site septic systems for each unit in the development.[7] As required by the Development Agreement, the Developers also secured, for a period of five (5) years, the potential construction of a sanitary sewer system in the event construction of the same would be required within the five (5) year bonding period. Importantly, Plaintiffs did not agree to secure the construction of the sewer system indefinitely. For the reasons set forth hereinabove this Court has determined that construction of the sanitary sewer system to service the Rhinehart Tract was not required within the five (5) year security period. There is nothing in the record to suggest that Plaintiffs developed the Rhinehart Tract in derogation of any requirements imposed upon them by the Approved Final Subdivision Plan or in derogation of the requirements of the Sewage Facilities Planning Module calling for the development of the tract through the use of on-lot septic systems. The fact that the Special Study, which was approved after the five (5) year security period expired, requires installation of a sanitary sewer system to the Rhinehart Tract does not necessarily mean that a benefit was conferred upon Plaintiffs by Defendants or that Plaintiffs were unjustly enriched. To date, now almost seven (7) years after the Development Agreement was signed, the sewer line still has not been constructed. The sixteen (16) lots in the subdivision continue to be serviced by the approved on-site septic systems installed by Plaintiffs.

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[7] The installation of these on-site septic systems was done following Township's approval of the subdivision plan and its submission of a Sewage Facilities Planning Module allowing for utilization of on-lot systems within this development (as evidenced by Township Resolution 2003-10) and following DEP's approval of the revision to the Official Act 537 Plan to allow for installation of on-lot septic systems in the Rhinehart Development. The Resolution and DEP's approval thereof were silent with regard to any possible future requirement that the septic systems would be replaced with sewer.

I also disagree with Defendants' argument that a fair result would be for Plaintiffs to pay the actual cost of installing the sewer lines (even though the Development Agreement does not impose such an obligation on them). It is evident to the Court that the difficult situation in which the Defendants find themselves results primarily from the fact that it took Defendants more than four (4) years of the five (5) year security period to complete a Special Study for submission to DEP. It would be unfair to require a Developer to construct a sanitary sewer system whenever that system became necessary, even if the requirement did not occur for some indefinite period of time after the Developer finished construction of the homes in the development. Had Defendants wished for Plaintiffs to be responsible for the construction of the sanitary sewer system for an indefinite period of time, even beyond the five (5) year security period, they should have negotiated such a provision and written it into the Development Agreement. When it became evident that time was of the essence and perhaps running out, Defendants could have sought an extension to the Development Agreement or a renegotiation thereof. Defendants did not do either. Instead Defendants prematurely called the LOC.

Accordingly, this Court finds, based on the evidence of record before the Court at this time, that Plaintiffs claim for unjust enrichment is not clear and free from doubt. Accordingly, Defendants are not entitled to Summary Judgment on their Count for Unjust Enrichment and their Motion is denied. For the reasons set forth above, the attached Order is entered.

ORDER OF COURT

AN NOW, this 1st day of February, 2011, it is hereby ORDERED that Plaintiffs' Motion for Summary Judgment is granted in favor of Plaintiffs and against Defendants.

Defendants' Cross Motions for Summary Judgment are denied.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION

ESTATE OF MARY IDA BROWN, DEC'D

Late of the Borough of East Berlin, Adams County, Pennsylvania

Executor: Michal E. Brown, c/o Craig A. Hatch, Esq., Gates, Halbruner, Hatch & Guise, P.C., 1013 Mumma Road, Suite 100, Lemoyne, PA 17043

Attorney: Craig A. Hatch, Esq., Gates, Halbruner, Hatch & Guise, P.C., 1013 Mumma Road, Suite 100, Lemoyne, PA 17043

ESTATE OF LAWRENCE D. FOLKEMER, SR., DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Lawrence D. Folkemer, Jr., 1399 Dodgeton Drive, Frisco, TX 75034

Attorney: Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

ESTATE OF FABIAN GENAHL, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Monica Andacht, 1215 S.E. 27th St., Cape Coral, FL 33904

Attorney: John J. Mooney, III, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF EDITH K. SHAFFER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: Richard M. Shaffer, Jr., 230 Hirschmann Road, Biglerville, PA 17307; Carolyn N. Black, 54 Apple Lane, Biglerville, PA 17307; Gayle K. Ingle, 16 Sedgwick Drive, East Berlin, PA 17316

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, 126 Baltimore St., Gettysburg, PA 17325

ESTATE OF JANE T. STAUB, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Sue M. Bream, c/o Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

SECOND PUBLICATION

ESTATE OF LOIS R. BAIR, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executrices: Audrey Neiderer a/k/a Audrey E. DeBruyne, 655 Highland Ave., Gettysburg, PA 17325; Christine J. Mummert, 320 Terrace Ave., Hanover, PA 17331

Attorney: Chester G. Schultz, Esq., 145 Baltimore Street, Gettysburg, PA 17325

ESTATE OF LUTHER A. FREED, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Robert S. Freed, 1143 Turnberry Lane, York, PA 17403; James A. Freed, 6043 Old Hanover Rd., Spring Grove, PA 17362

ESTATE OF CATHERINE LEEDY, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: William S. Leedy, 1860 Bullfrog Road, Fairfield, PA 17320

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, 126 Baltimore St., Gettysburg, PA 17325

ESTATE OF VERA ALICE LENTZ, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Administrator: Michael L. Lentz, c/o Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

Attorney: Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

ESTATE OF THELMA L. ROWLAND, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: James T. Yingst, Esq., Guthrie, Nonemaker, Yingst & Hart LLP, 40 York Street, Hanover, PA 17331

Attorney: James T. Yingst, Esq., Guthrie, Nonemaker, Yingst & Hart LLP, 40 York Street, Hanover, PA 17331

THIRD PUBLICATION

ESTATE OF BARBARA R. BALAKIR, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Laura J. Cruise, 61 Hemlock Drive, Hanover, PA 17331

ESTATE OF THERESA M. GOUKER, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrix: Karen Lee Keener, 104 Forest Hills Rd., Red Lion, PA 17356

Attorney: Ronald J. Hagarman, Esq., 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF THELMA E. GRIFFIE, DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Co-Executors: Harold L. Griffie and James D. Griffie, c/o Law Office of Wm. D. Schrack III, 124 West Harrisburg Street, Dillsburg, PA 17019-1268

Attorney: Law Office of Wm. D. Schrack III, 124 West Harrisburg Street, Dillsburg, PA 17019-1268

ESTATE OF PATRICIA A. KARAS, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Diana L. Karas, 14 Lawrence Place, New Oxford, PA 17350

ESTATE OF KATHLEEN I. MALINOSKY a/k/a KATHLEEN IRENE MALINOSKY, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Executor: William J. Malinosky, 248, Route 194 North, Abbottstown, PA 17301

Attorney: Amy E. W. Ehrhart, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331