

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

<b>PNC BANK, N.A.</b>	)	<b>CASE NO: CV 09 709722</b>
	)	
<b>Plaintiff</b>	)	<b>JUDGE JOHN P. O'DONNELL</b>
	)	
<b>vs.</b>	)	<b><u>JOURNAL ENTRY</u></b>
	)	
<b>MICHAEL A. FARINACCI, et al.</b>	)	
	)	
<b>Defendants</b>	)	

*John P. O'Donnell, J.:*

Plaintiff PNC Bank, N.A. filed this lawsuit against defendants Michael Farinacci and Claire Gruttadauria alleging breach of contract and unjust enrichment.<sup>1</sup> The complaint was tried to the court on October 26, 2010. The evidence included the testimony of PNC's estate claims supervisor Thomas W. Morris and defendant Michael Farinacci. Two exhibits were admitted: Exhibit 1, a business credit line and security agreement; and Exhibit 2, account summary statements from August 12, 2002 through June 12, 2009. Based upon that evidence, the court finds the following:

Washington Square Enterprises is an Ohio general partnership formed in 1978 among eight general partners. Among those partners were Michael Farinacci, Sam Strano and Dominic Gruttadauria. Gruttadauria died in the 1990s and defendant Claire Gruttadauria succeeded to his partnership interest.

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<sup>1</sup> The complaint itself does not identify a specific cause of action, but contains references to the defendants being the time of trial, the plaintiff amended the complaint in accordance with Civil Rule 15(B) to include a cause of action for breach of contract.

The partnership was formed to own and operate a strip shopping center at 28080 Chardon Road, Willoughby Hills. Strano, Farinacci and Claire Gruttadauria were general partners continuously from before March, 2000 through the present.

On March 30, 2000, Sam Strano, or someone purporting to be him, obtained a \$35,000 credit line from PNC's predecessor, National City Bank. The credit line was issued to a borrower identified as "Sam J. Strano, dba Washington Square Enterprises." The \$35,000 was disbursed to Washington Square Enterprises and used for maintenance and repairs on the property at 28080 Chardon Road.

Farinacci was the managing general partner of Washington Square Enterprises. All business mail was sent to his home address including the monthly statements for the line of credit. Farinacci acknowledges that he treated the line of credit as a contract obligation of the partnership despite the borrower being identified in the loan agreement and account statements as "Sam J. Strano, dba Washington Square Enterprises."

Farinacci, for Washington Square Enterprises, made many payments on the line of credit. However, many payments were also missed. Fa  
January 31, 2009. After that payment, the balance owed was \$33,522.65 with interest at 3.25 % per year.

The defendants argued at trial that the claim against them for unjust enrichment fails because the plaintiff did not confer a benefit personally upon them. They also argued that all general partners must be named as defendants for the plaintiff to obtain a judgment against any of them individually for the debts of the partnership. As to a breach of contract theory of recovery, the defendants argued that the evidence shows that no contract existed between

Washington Square Enterprises and the bank, but instead the other party to the contract was Sam Strano individually.

The court will address the breach of contract claim first. In order for a party to be bound to a contract, the party must consent to its terms, the contract must be certain and definite, and there must be a meeting of the minds of both parties.<sup>2</sup> The contract here meets those requirements.

First, the contract is certain and definite. The contract sets forth the maximum amount of the line of credit and the terms of repayment, including interest. The identity of the parties to the contract is also definite. Although the defendants claim that the identity of the party to the loan is indefinite, the conduct of Washington Square Enterprises in accepting the loan, using the money, and making payments in accordance with the terms of the written contract shows that the general partnership ratified the contract and agreed to be bound by its terms.

Second, the partnership's conduct and the testimony by its managing partner, Farinacci, support a conclusion by a preponderance of the evidence that there was a meeting of the minds. As a result, Washington Square Enterprises is bound by the terms of the contract.

But Washington Square Enterprises is not a defendant here, so although the evidence supports a finding that the debt is an obligation of the partnership, a judgment cannot be entered against the individual defendants unless the plaintiff proved their liability for the debts of Washington Square Enterprises. In that regard, Ohio Revised Code Section 1775.14 provides, in pertinent part:

**1775.14 Liability of partners.**

(A) . . . , all partners are liable as follows:

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<sup>2</sup> *Episcopal Retirement Homes, Inc. v. Ohio Dept. of Indus. Relations* (1991), 61 Ohio St.3d 366, 369.

(1) Jointly and severally for everything chargeable to the partnership under sections 1775.12 and 1775.13 of the Revised Code . . .

(2) Jointly for all other debts and obligations of the partnership, . . .

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This section codifies common law by which the partners of a general partnership are liable for the contractual debts of the partnership. However, the common law also requires that before a partner's individual assets can be attached to satisfy a partnership debt there must be a showing that the partnership assets are insufficient to satisfy the debt.<sup>3</sup>

In this case, Farinacci agreed during his testimony that the partnership is insolvent. A partnership is insolvent if the debts of the partnership exceed the partnership assets plus the non-partnership assets of each partner.<sup>4</sup> Because Washington Square Enterprises is insolvent, its assets are insufficient to satisfy the debt to PNC and the partners are personally liable.

The final inquiry in this case, which includes as defendants only two of eight partners, is whether they are jointly or severally liable. The Ohio Supreme Court has described the difference thusly:

Joint liability apportions responsibility for a contractual debt equally, in the absence of a partnership agreement to the contrary, among the partners and thereby limits the creditor's execution on one individual partner's personal property to a *pro rata* share of the debt. Joint and several liability, on the other hand, allows for disproportionate satisfaction of the partnership obligation by rendering each general partner responsible for the entire amount of the partnership debt.<sup>5</sup>

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<sup>3</sup> *Wayne Smith Constr. Co., Inc. v. Wolman, Duberstein & Thompson* (1992), 65 Ohio St.3d 383, 390-391.

<sup>4</sup> See Ohio Revised Code Section 1336.02(B).

<sup>5</sup> *Wayne Smith Constr. Co., Inc., supra* at 388.

Section 1775.14 of the Ohio Revised Code, shown above, provides that general partners are only jointly and severally liable where a d wrongful act or breach of trust. That is not the situation here. Therefore, the eight general partners of Washington Square Enterprises are only jointly liable, not jointly and severally, for the contract debt to PNC and separate judgments on the breach of contract claims against Farinacci and Gruttadauria in the amount of one-eighth each of the entire debt are appropriate.

This leaves the claim for unjust enrichment. There is no doubt from the evidence that PNC, to its detriment, conferred a benefit upon the partnership. There is also no doubt that it would be unfair for the partnership to obtain that benefit without paying for it. Nevertheless, judgments against Farinacci and Gruttadauria on an unjust enrichment claim are not appropriate for two reasons.

First, there is no evidence showing the particular benefit conferred upon each of the defendants here. While the partnership itself benefited in the entire amount of the loan, the separate benefit to each partner is not calculable from the evidence offered at trial. Second, and more fundamentally, is that a plaintiff may not pursue an equitable cause of action for unjust enrichment where a contract covers the same subject. The managing general partner, Farinacci, acknowledges that the debt to PNC is a contractual obligation of the partnership. That finding alone prevents the bank from recovering on a cause of action for unjust enrichment.

Consistent with these findings, the court hereby enters judgment in favor of the plaintiff PNC Bank, N.A. and against the defendants separately as follows:

- 1) Against defendant Michael Farinacci in the total amount of \$4,190.33, with interest at the rate of 3.25 % per year beginning January 31, 2009, and court costs;  
and
- 2) Against defendant Claire Gruttadauria in the total amount of \$4,190.33, with interest at the rate of 3.25 % per year beginning January 31, 2009, and court costs.

**IT IS SO ORDERED:**

\_\_\_\_\_  
DONNELL

Date: \_\_\_\_\_

**SERVICE**

A copy of this Journal Entry was sent by regular U.S. mail, this \_\_\_\_\_ day of November, 2010, to the following:

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