HARTFORD WHALERS HOCKEY v. UNIROYAL GOODRICH TIRE

231 Conn. 276 (1994) | Cited 46 times | Supreme Court of Connecticut | November 8, 1994

The defendants appeal[1] from the judgmentrendered by the trial court in favor of the plaintiffafter a court trial. The plaintiff, Hartford WhalersHockey Club, sued the defendants, The Uniroyal GoodrichTire Company (Uniroyal) and Uniroyal, Inc.,[2] foramounts allegedly owed for advertising during the1987-88 hockey season. The plaintiff asserted twotheories of recovery against the defendants: (1) expresscontract between the plaintiff and the defendants basedupon the apparent authority of the defendants' agent,Brass City Tire Company, Inc. (Brass City); and (2) unjustenrichment. The trial court rejected the theory ofexpress contract, but rendered judgment in favor ofthe plaintiff on the theory of unjust enrichment.

The defendants claim that the trial court improperlyconcluded that: (1) any benefit accorded to the defendantswas unjust; and (2) the plaintiff had established

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the extent of the benefit to the defendants. We affirmthe judgment of the trial court.

The trial court found the following facts, which thedefendants do not challenge in this appeal.[3] The plaintiffis a limited partnership that owns and operates aNational Hockey League franchise in Hartford.Uniroyal is a New York partnership that manufacturesUniroyal brand tires, and Uniroyal, Inc., is a dissolvedcorporation. Before the 1986-87 hockey season, theplaintiff's broadcast marketing consultant, RichardChmura, attempted to obtain advertising business fromUniroyal. A representative of Uniroyal directed himto contact Richard Owen, Uniroyal's account managerfor Connecticut, who maintained an office on the premisesof Brass City, which was Uniroyal's Connecticutdistributor. Thereafter, Chmura made a presentationto Owen and Ralph Giusto, the president of Brass City.Owen told Chmura to submit the presentation in writingto Young and Rubicam, Uniroyal's advertisingagency, and informed him that approval of any advertisingwould be given by Frank Davis of Young andRubicam.

Chmura negotiated a contract for advertising for the1986-87 season with Davis. In accordance with Davis'instructions, Chmura sent the contract to Davis for execution.Furthermore, at Davis' instruction, the contractwas divided into two parts. Both parts listed "UniroyalTires" as the advertiser. One part, in the amount of$26,000, was signed by Davis of Young and Rubicam.The other, in the amount of $34,000, was signed byGiusto of Brass City. Pursuant to Owen's instruction,

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Chmura sent all the invoices for the advertising toYoung and Rubicam, which paid the invoices and wasin turn reimbursed by Uniroyal. The advertising providedby the plaintiff for Uniroyal for the 1986-87 seasonconsisted of radio advertising during the broadcastsof the plaintiff's games and print advertising includingcolor advertisements in the plaintiff's yearbook andin Goal Magazine. It also included merchandising services,which consisted of tickets to hockey games, "VIPNights," at which the plaintiff provided dinner andgame tickets for twenty-five people, and "SkyboxNights," at which the plaintiff provided seats in theplaintiff's skybox for various games.

In May, 1987, Chmura contacted Owen about renewingthe Uniroyal advertising contract for the 1987-88hockey season. Chmura met again with Owen andGiusto, and they agreed that the radio and print advertisingof the 1986-87 season would be duplicated forthe 1987-88 season, and that Uniroyal would also haveadvertisements on one of the boards that surround theice, which are known as dasher boards. At Owen'srequest, Chmura sent the first draft of the contract toDavis at Young and Rubicam and, after discussionamong Chmura, Owen and Davis, also sent the finaldraft for Davis to sign. Davis then told Chmura thathe could not sign the contract because Uniroyal wasconsidering a change of its advertising agency. AtOwen's instruction, Chmura sent the contract to Giustoat Brass City for execution and, on July 30, 1987,Giusto signed the contract in his capacity as presidentof Brass City.

Thereafter, Chmura received from Young and Rubicamthe artwork and wording for the dasher boardadvertising, which contained the name "Uniroyal" andthe words "Royal Care Tire and Service Group." Youngand Rubicam also provided Chmura with the Uniroyaladvertisement to be placed in the plaintiff's yearbook

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and in Goal Magazine. Those advertisements took upfull pages and contained a picture of three tires abovethe words "Star Performers" in large red letters.Underneath those words was the phrase "The OfficialTire of the Hartford Whalers." The advertisements alsodescribed the qualities of Uniroyal tires that make them"star performers" and contained instructions to callthe nearest Uniroyal dealer. The Goal Magazine advertisementalso contained a listing of Uniroyal dealers.

During the 1987-88 hockey season, which began inSeptember, 1987, forty hockey games were broadcaston television in the Hartford area and in other states.The Uniroyal dasher board was visible to the televisionaudiences for approximately two and one-half minutesper game. The plaintiff customarily charged $1500 fortwenty seconds of television advertising time duringits games.

At Owen's direction, Chmura sent the invoices forthe 1987-88 season advertising to Young and Rubicam.In November, 1987, Chmura and Owen met withEdward O'Neill, Uniroyal's sales development manager.Despite Uniroyal's claim at trial that, at thatmeeting, Owen and O'Neill had told Chmura thatUniroyal disavowed any responsibility for the 1987-88contract, the trial court specifically found credibleChmura's contrary testimony, that it was not untilMarch, 1988, when the

season was nearly over, thatUniroyal disavowed responsibility and informedChmura that Brass City was solely liable for payment.

Uniroyal sold its tires through dealers, includingBrass City, which also sold other brands of tires.Uniroyal had a program in Connecticut whereby it gaveits dealers advertising credits tied to tire sales, andthose credits were used by the dealers to pay for advertisingby the plaintiff and others. Owen and O'Neillnever informed Chmura either of the existence of this

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program or of their awareness, prior to the executionof the 1987-88 contract, that Brass City might notreceive sufficient credits to pay for Uniroyal's advertisingwith the plaintiff under the 1987-88 contract.

The trial court rejected the plaintiff's claim thatUniroyal was liable to the plaintiff on a theory ofexpress contract because Brass City had apparentauthority to contract on behalf of Uniroyal. The trialcourt determined that the plaintiff had failed to establishBrass City's apparent authority. In the trial court'sview, the plaintiff's knowledge of the relationshipbetween Uniroyal and Brass City, combined with theunwillingness of Owen to sign the contract onUniroyal's behalf, imposed a duty of further inquiry onChmura regarding Giusto's authority to bind Uniroyal.That conclusion is not before us in this appeal.

The trial court determined, however, that the plaintiffwas entitled to judgment on the basis of unjustenrichment. In this regard, the trial court found thatUniroyal had derived a benefit from the radio, printand dasher board advertisements that reached a largeaudience in Connecticut and in other states where theplaintiff's hockey games had been broadcast. The trialcourt also found that the value of the television advertisingof the Uniroyal dasher board alone far exceededthe contract amount sought by the plaintiff. The trialcourt further found that Uniroyal had derived a benefitfrom the merchandising services provided under thecontract to Uniroyal's employees and tire dealers. Thetrial court, moreover, found that neither Uniroyal norBrass City had paid the plaintiff for the advertising andmerchandising services provided by the plaintiff.

With respect to the measurement of the benefitderived by Uniroyal, the trial court found that the valueof the advertisements to Uniroyal was at least consistentwith the value agreed to by Brass City, namely,

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the contract price. The court also found that Uniroyal,rather than Brass City, had received a benefit from thefact that persons in other states or outside Brass City'sterritory saw or heard the advertisements, and that theadvertising campaign had referred to all Uniroyal tires,not just those

distributed by Brass City as "The OfficialTire of the Hartford Whalers."

Accordingly, the trial court rendered judgment forthe plaintiff on the theory of unjust enrichment in anamount equal to the contract price, namely $75,031.60,plus prejudgment interest. This appeal followed.

The defendants first claim that, "[a]s a matter of law,any purported benefit accorded to the [defendants]cannot be deemed `unjust' in equity, in that the trialcourt already [had] found that the plaintiff had the abilityand, indeed, the obligation to protect itself by inquiringas to the authority and identity of the party to itscontract." Thus, the defendants argue, "[t]o allow theplaintiff in these circumstances to recover in unjustenrichment is a contradiction of the finding that theplaintiff could not recover under express contract." Weare not persuaded.

"Unjust enrichment applies wherever justice requirescompensation to be given for property or services renderedunder a contract, and no remedy is available byan action on the contract. 5 S. Williston, Contracts(Rev. Ed.) § 1479. A right of recovery under the doctrineof unjust enrichment is essentially equitable, itsbasis being that in a given situation it is contrary toequity and good conscience for one to retain a benefitwhich has come to him at the expense of another.Franks v. Lockwood, 146 Conn. 273, 278, 150 A.2d 215[1959]; Schleicher v. Schleicher, 120 Conn. 528, 534,182 A. 162 [1935]. Connecticut National Bank v. Chapman,153 Conn. 393, 399, 216 A.2d 814 [1966]. With no othertest than what, under a given set of circumstances, is

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just or unjust, equitable or inequitable, conscionable orunconscionable, it becomes necessary in any case wherethe benefit of the doctrine is claimed, to examine thecircumstances and the conduct of the parties and applythis standard. Cecio Bros., Inc. v. Greenwich, 156 Conn. 561,564-65, 244 A.2d 404 ." (Internal quotationmarks omitted.) Providence Electric Co. v. Sutton Place,Inc., 161 Conn. 242, 246, 287 A.2d 379 (1971). "Unjustenrichment is, consistent with the principles of equity,a broad and flexible remedy. Cecio Bros., Inc. v. Greenwich,[supra, 564]. Plaintiffs seeking recovery for unjustenrichment must prove (1) that the defendants werebenefited, (2) that the defendants unjustly did not paythe plaintiffs for the benefits, and (3) that the failureof payment was to the plaintiffs' detriment." (internalquotation marks omitted.) Polverari v. Peatt,29 Conn. App. 191, 200-201, 614 A.2d 484 (1992).

Furthermore, the determinations of whether a particularfailure to pay was unjust and whether thedefendant was benefited are essentially factual findingsfor the trial court that are subject only to a limitedscope of review on appeal. Stabenau v. Cairelli,22 Conn. App. 578, 581, 577 A.2d 1130 (1990). Those findingsmust stand, therefore, unless they are clearly erroneousor involve an abuse of discretion. Id. This limitedscope of review is consistent with the general propositionthat equitable determinations that depend on thebalancing of many factors are committed to the sounddiscretion of

the trial court. Reynolds v. Ramos,188 Conn. 316, 321, 449 A.2d 182 (1982); see also Hammv. Taylor, 180 Conn. 491, 495-96, 429 A.2d 946 (1980)(whether interest rate is unconscionable to be determinedfrom all facts and circumstances of transaction).

Applying these standards, we cannot conclude, as amatter of law, that the trial court abused its discretionin determining that the defendants' failure to pay theplaintiff was unjust, or that its determination was

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clearly erroneous. The fact that the plaintiff could notrecover under the contract does not bar its recoveryunder the theory of unjust enrichment; indeed, lack ofa remedy under the contract is a precondition for recoverybased upon unjust enrichment. Providence ElectricCo. v. Sutton Place, Inc., supra, 161 Conn. 246. Moreover,the court's finding that the plaintiff had not satisfiedits obligation of inquiry as to Giusto's authoritysufficiently to recover under the contract did not precludea finding that, nonetheless, it would have beeninequitable and contrary to good conscience for thedefendants to retain the benefit accorded to them bythe plaintiff. There was ample support in the factsfound by the trial court to support its ultimate findingin this regard.[4]

The defendants next claim that the plaintiff did notestablish the extent of the benefit to the defendantsin a manner sufficient to sustain a claim of unjustenrichment. Specifically, the defendants argue that theplaintiff's proof was insufficient because the cost of theadvertising cannot properly measure the benefit to thedefendants. Thus, the defendants contend, the onlyproper proof of the benefit to the defendants wouldhave been for the plaintiff to have established a specificlink between the advertising provided by the plaintiff

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and additional revenues or profits of the defendantsgenerated by the advertising. In this connection,the defendants further argue that, because the advertisingalso benefited individual dealers and distributors,as well as the defendants, the plaintiff's failure to allocatethe benefit among its purported beneficiaries isfatal to the trial court's determination. We are unpersuaded.

The defendants are correct that the measure of damagesin an unjust enrichment case ordinarily is not theloss to the plaintiff but the benefit to the defendant.See Monarch Accounting Supplies, Inc. v. Prezioso,170 Conn. 659, 666-67, 368 A.2d 6 (1976). That does notmean, however, that, in a case such as this, a reasonableapproximation of that benefit could not be derivedfrom the evidence presented.

Where damages are appropriate but difficult to provethe law eschews the necessity of mathematical exactitude.Such "exactitude in the proof of damages is oftenimpossible, and . . . all that can be required is thatthe evidence, with such certainty as the nature of theparticular case may permit, lay a

foundation which willenable the trier to make a fair and reasonable estimate."(Internal quotation marks omitted.) Dooley v.Leo, 184 Conn. 583, 587, 440 A.2d 236 (1981).

In this case, the trial court's finding, based upon thecontract price agreed to by Brass City, was a fair andreasonable estimate of the benefit accorded to thedefendants. See Pleines v. Franklin Construction Co.,30 Conn. App. 612, 618, 621 A.2d 759 (1993) (damagesin unjust enrichment properly measured by reasonablevalue of services provided). That estimate was amplysupported by the trial court's findings that the defendantshad agreed to and had paid for a similar contractfor the previous year, that the value of the advertising

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on the dasher board had far exceeded the total contractamount, that Uniroyal had derived a benefit fromthe merchandising services provided to its employeesand distributors, that Uniroyal but not Brass Cityderived a benefit from the exposure to potential consumersoutside of Connecticut, and that the advertisementshad referred to all Uniroyal tires as the officialtire of the Hartford Whalers. Under these circumstances,it was reasonable for the trial court to haveestimated the benefit to the defendants based upon acontract price on the same order as the price that theyhad paid the previous year for a less extensive advertisingprogram, and based upon the same price thatBrass City, which the defendants had designated to signthe contract for the year in question, had agreed to pay.

The theory of damages posed by the defendants'argument would be extraordinarily difficult, if notimpossible, to put into practice, because the defendants'revenues would necessarily depend on many factorsother than a particular local advertising program.These factors include the state of the local and nationaleconomy, the fortunes of the industry, and the degreeof competition, to state but a few.

Furthermore, we find no support for the defendants'proposition, for which they offer no authority otherthan assertion, that the plaintiff was, in the circumstancesof this case, obligated to establish an allocationof benefits among all potential beneficiaries of theadvertising. The difficulty of establishing such an allocationis similar to that of establishing a specific linkbetween local advertising and national revenues. Moreover,in this case the benefit flowing to others by virtueof the advertising ultimately also benefited thedefendants, who were the sole source of the advertisedproducts. While an allocation of benefits among beneficiariesmay be appropriate in a case in which such an

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allocation is reasonably possible, we see no justificationfor hobbling the plaintiff in this case with such anobligation.

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The judgment is affirmed.

In this opinion the other justices concurred.

1. The defendants appealed from the judgment of the trialcourt to the Appellate Court, and we transferred the appeal tothis court pursuant to Practice Book § 4023 and General Statutes§ 51-199(c).

2. The parties and the trial court have treated the liabilityof these two defendants as one and the same, and we do soaccordingly. A default judgment was rendered against a thirddefendant, Brass City Tire Company, Inc., and that judgment isnot before us in this appeal. References to the defendants areto Uniroyal and Uniroyal, Inc.

3. The defendants do claim that one subordinate factualfinding of the trial court was clearly erroneous. The defendantsconcede, however, that "[t]his correction to the court's factualfinding should not ultimately alter the outcome of the appeal butmust be made in order to maintain an accurate record." In view ofthe concession that any such factual error would not alter theoutcome of the appeal, we decline to consider this claim.

4. The defendants suggest that affirming the trial