

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KASCO CONSTRUCTION CO., INC. : CIVIL ACTION
: :
v. : :
: :
FC QUARtermaster ASSOCIATES III, :
L.P. and BJ'S WHOLESALE CLUB : NO. 05-00837-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

June 9, 2005

The defendant FC Quartermaster Associates III, L.P. is the owner and developer of a shopping center complex. Plaintiff Kasco Construction Co., Inc. was the general contractor for the construction of a store to be occupied by the defendant BJ's Wholesale Club.

According to plaintiff's complaint, plaintiff fully performed its contract, but has not yet been paid the full amount due. In this action, plaintiff is suing FC Quartermaster for breach of contract. But plaintiff has also added a claim against BJ's Wholesale Club - with whom plaintiff had no contract - asserting that BJ's Wholesale Club ordered certain changes and additions to the plans, which increased the contract price of the contract between plaintiff and FC Quartermaster. The complaint alleges, Count III, that BJ's Wholesale Club has been unjustly enriched to the extent of the value of these change orders. BJ's Wholesale Club has filed a motion to dismiss Count III. The motion will be granted.

As a general proposition, there can be no claim for unjust enrichment when there is a written contract. See Roberts v. Fleet Bank, 432 F.3d 269, 270-71 (3d Cir. 2003); Roman Mosaic & Tile Co., Inc. v. Vollrath, 226 Pa. Super. 215 (1973). In this case, there is no written contract between plaintiff and BJ's Wholesale Club, to be sure, but that fact merely emphasizes the lack of merit in plaintiff's claim that BJ's Wholesale Club has been the beneficiary of unjust enrichment. Under the terms of its contract with FC Quartermaster, BJ's Wholesale Club is obliged to pay FC Quartermaster for the change orders (if, indeed, it has not already done so). That obligation demonstrates that BJ's Wholesale Club is not being unjustly enriched, but has merely received what it is entitled to and will be required to pay for. By the same token, since plaintiff has a legal right to require FC Quartermaster to pay the entire contract price, including the price of the change orders, plaintiff has no right to require BJ's Wholesale to pay plaintiff directly.

For the foregoing reasons, the motion to dismiss Count III will be granted.

An Order follows.

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ORDER

AND NOW, this 9th day of June 2005, upon consideration of the motion of defendant BJ's Wholesale Club to dismiss, and plaintiff's response, IT IS ORDERED:

1. The motion is GRANTED.
2. All claims against the defendant BJ's Wholesale Club are DISMISSED with prejudice.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.