

Parsons v. Gilbane Building et al. CV-05-01-PB 11/07/05

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Parsons Infrastructure
& Technology Group, Inc.

v.

Case No. 05-cv-01-PB
Opinion No. 2005 DNH 151

Gilbane Building Co., et al.

O R D E R

Parsons Infrastructure & Technology Group, Inc. sued Gilbane Building Company for breach of contract. Gilbane responded with a third-party complaint for unjust enrichment against Lonza Biologics, Inc. Lonza now moves to dismiss Gilbane's complaint on the ground that it fails to state a claim for relief.

FACTS

Lonza contracted with Parsons to serve as its general contractor on a construction project and Parsons retained Gilbane as a subcontractor. Parsons later breached the subcontract by failing to pay Gilbane \$327,846 for services it provided under

the subcontract. Lonza has yet to pay Parsons for Gilbane's services.

ANALYSIS

Gilbane argues that it is entitled to recover from Lonza on an unjust enrichment theory because Lonza has failed to pay either Parsons or Gilbane for Gilbane's services. I disagree.

Unjust enrichment is an equitable remedy that ordinarily is unavailable if legal remedies are adequate under the circumstances. See Kowalski v. Cedars of Portsmouth Condo. Ass'n, 146 N.H. 130, 131 (2001) (unjust enrichment is an equitable remedy); Morales v. Trans World Airlines, Inc., 504 U.S. 374, 381 (1992) (plaintiff not entitled to equitable relief if legal remedies are adequate). Here, Gilbane has a counterclaim for breach of contract against Parsons that it has so far failed to pursue. Gilbane also could have preserved its right to recover against Lonza under New Hampshire's mechanic's lien statute by complying with that provision's notice requirements. See N.H. Rev. Stat. Ann. §§ 447:5, 6. Because Gilbane has failed to explain why these legal remedies are inadequate to redress its claimed injury, Lonza is entitled to

the dismissal of the unjust enrichment claim.

CONCLUSION

Lonza's motion to dismiss (Doc. No. 19) is granted.

SO ORDERED.

/s/Paul Barbadoro
Paul Barbadoro
United States District Judge

November 7, 2005

cc: John E. Friberg, Esq.
Timothy J. O'Brien, Esq.
William A. Pribis, Esq.
A. Robert Ruesch, Esq.