

## New York Commercial Division Round-Up

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### Employers Cannot Bring Unjust Enrichment Claim For Unearned Pay Where Payments Are Governed By An Employment Contract

By [Lisa Lewis](#)

On December 14, 2010, Justice James A. Yates of the New York Commercial Division issued a decision on a motion to dismiss in *Mount Sinai School of Medicine v. Konstadinos A. Plestis, M.D.*, Index No. 601314/2010 (*Sup. Ct., NY County, December 14, 2010*). The decision addresses the issue of whether an employer can bring an unjust enrichment claim for unearned pay against a former employee where the payments at issue were governed by an employment contract.

#### **Factual Background**

In June 2005, plaintiff Mount Sinai School of Medicine of New York University (“Mount Sinai”) employed defendant Konstadinos A. Plestis, M.D. (“Defendant” or “Dr. Plestis”) pursuant to a three-year employment contract (the “Employment Agreement”) as an Associate Director to one of its surgery programs at Mount Sinai Hospital (the “Hospital”) and as an Assistant Professor of Cardiothoracic Surgery at Mount Sinai. Under the terms of the Employment Agreement, Dr. Plestis received a base salary of \$160,000 per year and an annual supplement of \$590,000 for the first two years. Dr. Plestis was required to meet a Minimum Productivity Target (“MPT”) in order to receive the annual supplement from the third year of his employment onwards. The MPT required him to perform surgical services that grossed a target amount of \$875,000 in receipts to the Hospital.

Mount Sinai alleges that it paid Dr. Plestis his full salary and annual supplement for his third year of employment and the pro-rated salary and annual supplement for his fourth years of employment up until the time of his resignation. Mount Sinai further alleges that Dr. Plestis failed to meet his productivity targets during his third and fourth years and, therefore, was not entitled to the full amount of the annual supplement.

Mount Sinai commenced an action against Dr. Plestis to recover \$336,001.00 in overpaid compensation. The complaint contains two causes of action against Dr. Plestis. First, Mount Sinai claimed that Dr. Plestis breached the Employment Agreement by failing to return money that he did not earn under the Employment Agreement. Second, Mount Sinai claimed that Dr. Plestis was unjustly enriched by his failure to return the unearned funds.

## **Motion to Dismiss**

Dr. Plestis filed a motion to dismiss the complaint on several grounds, including failure to adequately state facts supporting an unjust enrichment claim. Relying on case law setting forth the elements of a cause of action for unjust enrichment, Dr. Plestis argued that Mount Sinai “failed to allege that (1) equity and good conscience entitle plaintiff to the relief sought, (2) that defendant’s conduct was tortious or fraudulent, and (3) a benefit was conferred to defendant under mistakes of law and fact.” *Mount Sinai*, at p. 5. Mount Sinai responded arguing that equity and good conscience required Dr. Plestis to repay the money to Mount Sinai since Mount Sinai abided its contractual obligations and relied on promises made by Dr. Plestis to return portions of the supplemental pay that did not meet the MPT requirements.

In granting the motion to dismiss, Justice Yates noted that “[u]njust enrichment occurs where a defendant enjoys a benefit bestowed by plaintiff, but without adequate compensation to the plaintiff.” *Mount Sinai*, at p. 5 (citing *Sergeants Benevolent Assn. Annuities Fund v. Renck*, 19 A.D.3d 107, 111 (1st Dep’t 2005)). However, relying on *The Limited, Inc. v. McCrory Corp.*, 169 A.D.2d 605, 607 (1st Dep’t 1992), Justice Yates explained that “a claim for unjust enrichment cannot stand when based on a subject matter governed by a contract.” *Mount Sinai*, at p. 5. The Employment Agreement between the parties specifically addressed the supplemental payments at issue. As a result, Justice Yates dismissed the unjust enrichment claim in favor of the claim for breach of contract brought by Mount Sinai.

## **Conclusion**

This case serves as a reminder to employers of the general rule that “an enforceable written contract precludes recovery in quasi contract with respect to events arising from the same subject matter.” See *Curtis Properties Corp. v. Greif Companies*, 236 A.D.2d 237, 239 (1st Dep’t 1997). In particular, an employer cannot bring an unjust enrichment claim for unearned pay against an employee where the payments at issue are governed by an employment contract. Instead, where an employee or former employee improperly retains unearned payments made pursuant to the terms of an employment contract, the proper course of action for the employer is to bring a claim for breach of contract.

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