

**IN THE COURT OF COMMON PLEAS OF
NORTHAMPTON COUNTY, PENNSYLVANIA
CIVIL ACTION**

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| ADVANCED RESIDENTIAL SYSTEMS,) | |
| INC. and THOMAS KUCSAN,) | No. C-48-CV-2015-1125 |
| Plaintiffs) | |
|) | |
| v.) | |
|) | |
| RUSTIC EXTERIORS, INC. and) | |
| EDWARD J. SINKO, JR.,) | |
| Defendants) | |

ORDER OF COURT

AND NOW, this 4th day of August, 2016, "Defendants' Preliminary Objections to Plaintiffs' Amended Complaint," filed on June 24, 2016, are hereby **OVERRULED**. Defendants shall file an answer to Plaintiffs' Amended Complaint within twenty (20) days.

STATEMENT OF REASONS

This matter was submitted to the Court at Argument Court on July 26, 2016, for disposition on the parties' briefs. On June 13, 2016, Plaintiffs filed an Amended Complaint in which they allege the following facts. Plaintiff Advanced Residential Systems, Inc. ("Advanced") is in the business of

installing home automation, security, and audio/visual systems in residential homes and in businesses. (Am. Compl. ¶ 5.) Plaintiff Thomas Kucsan (“Kucsan”) is a corporate officer and employee of Advanced. (*Id.* ¶ 2.) Defendant Rustic Exteriors, Inc. (“Rustic”) is in the business of installing exterior wall coverings and finishes on homes and commercial buildings. (*Id.* ¶ 6.) Defendant Edward J. Sinko, Jr. (“Sinko”) is a corporate officer and employee of Rustic. (*Id.* ¶ 4.)

Between 2004 and 2006, the parties orally agreed that Advanced would install home automation, security, and audio/visual systems in Sinko’s residential home in exchange for Rustic installing exterior wall coverings and finishes at Kucsan’s residential home (the “Agreement”). (*Id.* ¶ 7.) Thereafter, Advanced installed the aforementioned systems in Sinko’s home pursuant to the Agreement. (*Id.* ¶ 8.) The equipment, materials, goods, and labor used in the installation at Sinko’s residence had a total value of approximately \$65,000.00. (*Id.* ¶ 9.)

In 2009, Kucsan showed Defendants the plans for a home renovation project that he was preparing, which included the exterior wall installation that was part of the Agreement. (*Id.* ¶ 10.) Upon reviewing the plans, Defendants confirmed their agreement to perform the exterior wall installation set forth in the Agreement in accordance with the plans. (*Id.* ¶ 11.) In 2013, Rustic began working on the exterior wall installation at Kucsan’s residence. (*Id.* ¶ 12.) In late 2013, Rustic informed Kucsan that

the work had to be suspended due to weather conditions. (*Id.* ¶ 13.) In the spring of 2014, Kucsan asked Defendants when the work would resume, and Defendants responded that no further work would be performed. (*Id.* ¶ 14.) Since suspending the work in late 2013, Defendants have performed no further work at Kucsan's residence. (*Id.* ¶ 15.) Plaintiffs have paid other contractors \$31,558.98 to complete the work that Defendants have failed to perform. (*Id.* ¶ 17.)

Based upon these facts, Plaintiffs bring claims for breach of contract (Count I), unjust enrichment (Count II), and violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 P.S. §§ 201-1-201-9.3 (Count III), in their Amended Complaint. Plaintiffs' UTPCPL claim is derived from the Home Improvement Consumer Protection Act ("HICPA"), 73 P.S. §§ 517.1-517.18, specifically that portion thereof which states that "[a] violation of any of the provisions of this act shall be deemed a violation of the" UTPCPL. 73 P.S. § 517.10. Defendants raise two preliminary objections, which the Court will analyze in turn.

First, Defendants argue that Plaintiffs' unjust enrichment claim should be stricken because "[u]nder Pennsylvania law, the quasi-contractual [d]octrine of [u]njust [e]nrichment is inapplicable when the relationship between the parties is founded on either a written agreement or an express contract." (Defs.' Br. 5.) Although Defendants do not specify the ground upon which this objection is brought, because they argue that the Amended

Complaint is incompatible with applicable law, the Court deems the objection to be brought pursuant to Rule 1028(a)(2), which provides for preliminary objections asserting the “failure of a pleading to conform to law.” Pa.R.C.P. No. 1028(a)(2).

Courts in this Commonwealth have continually recognized that a litigant may advance alternative or conflicting theories of recovery, including causes of action for breach of contract and *quantum meruit*/ unjust enrichment. See *Lugo v. Farmers Pride, Inc.*, 967 A.2d 963, 970 n. 5 (Pa. Super. 2009) (stating, “unjust enrichment may be pleaded in the alternative with breach of contract[]”), *appeal denied*, 602 Pa. 668, 980 A.2d 609 (2009); see also *Halstead v. Motorcycle Safety Foundation, Inc.*, 71 F. Supp. 2d 455, 459 (E.D. Pa. 1999) (stating that while Pennsylvania law precludes recovery on a *quantum meruit* claim when a valid contract exists, plaintiffs are free to pursue alternative theories of recovery); *Atlantic Paper Box Co. v. Whitman’s Chocolates*, 844 F. Supp. 1038, 1043 (E.D. Pa. 1994) (stating that plaintiffs may allege “alternative theories of recovery based on both breach of contract and unjust enrichment even when the existence of a valid contract would preclude recovery under unjust enrichment . . .”). Accordingly, [Plaintiffs are] not foreclosed from pleading alternative causes of action sounding in breach of contract and *quantum meruit*.

Shafer Elec. & Constr. v. Mantia, 67 A.3d 8, 9 n.2 (Pa. Super. 2013).

Therefore, Defendants’ first objection is without merit and must be overruled.

Defendants also assert a demurrer to Plaintiffs’ UTPCPL claim, arguing that because the HICPA became effective on July 1, 2009, several years after the parties entered into the Agreement, Plaintiffs’ UTPCPL claim is legally insufficient. Any party may file preliminary objections alleging “legal insufficiency of a pleading (demurrer).” Pa.R.C.P. No. 1028(a)(4). To

sustain a demurrer, a court must be certain that the law will not permit recovery. *Commw., Pa. Game Comm'n v. Seneca Res. Corp.*, 84 A.3d 1098, 1103 (Pa. Commw. 2014). Any doubt as to whether the demurrer should be sustained must be resolved in favor of overruling it. *McCord v. Pennsylvanians for Union Reform*, 100 A.3d 755, 758 (Pa. Commw. 2014). In ruling on a demurrer, a trial court must accept all material factual averments in a complaint as true, as well as all inferences reasonably deducible therefrom. *Weiley v. Albert Einstein Med. Ctr.*, 51 A.3d 202, 208 (Pa. Super. 2012). "Preliminary objections in the nature of a demurrer require the court to resolve the issues solely on the basis of the pleadings; no testimony or other evidence outside of the complaint may be considered to dispose of the legal issues presented by the demurrer." *Hess v. Fox Rothschild, LLP*, 925 A.2d 798, 805 (Pa. Super. 2007) (quoting *Cardenas v. Schober*, 783 A.2d 317, 321-22 (Pa. Super. 2001)).

Under the HICPA, no person shall "[a]bandon or fail to perform, without justification, any home improvement contract *or project engaged in or undertaken by a contractor.*" 73 P.S. § 517.9(5) (emphasis added). As mentioned above, any violation of the HICPA is also a violation of the UTPCPL. *Id.* § 517.10. Thus, as of July 1, 2009, a new ground for asserting

a UTPCPL claim was created.¹ Defendants' alleged violation of the HICPA, and thus their alleged violation of the UTPCPL, occurred in late 2013, well after this new ground for bringing a UTPCPL claim was created. The principle that "[n]o statute shall be construed to be retroactive unless clearly and manifestly so intended by the General Assembly" is not offended here because the alleged conduct giving rise to Plaintiffs' UTPCPL claim occurred after such conduct was prohibited under the UTPCPL. 1 Pa.C.S.A. § 1926. In addition, the alleged conduct fits within the HICPA prohibition set forth at 73 P.S. § 517.9(5). For these reasons, it is not clear that Plaintiffs will be unable to prevail on their UTPCPL claim, and Defendants' second preliminary objection must therefore be overruled.

BY THE COURT:

Anthony S. Beltrami
ANTHONY S. BELTRAMI, J.

¹ In general, the UTPCPL makes "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce" unlawful. 73 P.S. § 201-3.