DISTRICT OF COLUMBIA COURT OF APPEALS

No. 07-CV-1003

PEARLINE PEART,
Appellant,

v.

DISTRICT OF COLUMBIA HOUSING AUTHORITY,
Appellee.

On Appeal from the Superior Court of the District of Columbia
(Morin, J.) 2007 LTB 1033

REPLY BRIEF FOR APPELLANT

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THE TRIAL COURT ERRED IN REFUSING TO CONSIDER MS. PEART'S UNJUST ENRICHMENT CLAIM.

A. Whether The Trial Court Had Legal Authority To Award Ms. Peart Fees Is A Question Of Law Subject To De Novo Review.

DCHA misstates the standard of review. *See* Appellee's Br. 7. DCHA argued below that the trial court lacked authority to award Ms. Peart attorney's fees out of the moneys she recovered from her landlord. *See* District of Columbia Housing Authority's Brief In Support Of Its Claim To Abatement Funds 3 (App. A074) ("Ms. Peart's attempt * * * to be awarded legal fees is an attempt to circumvent the language and the intent of the HAP contract, applicable federal law and a recent appellate decision in *Anderson v. Abidoye II* that specifically prohibits an award of a HUD government subsidy to a counterclaiming tenant."); *id.* 16. The trial court agreed that it lacked authority to award Ms. Peart fees, albeit on somewhat different grounds. Final Order 3 (App. A003) ("[T]here is no way to ensure whether any participant in the DCHA/HUD program will receive any clearly recognizable and traceable personal benefit."). Whether the trial court had legal authority to award Ms. Peart fees is a question of law subject to *de novo* review, and not, as DCHA now argues, to review for an abuse of discretion. *See* Appellee's Br. 7 (citing *Owen v. Bd. of Directors*, 888 A.2d 255 (D.C. 2005)).

Even if the holding below is conceived of as an exercise of discretion, the legal analysis underlying that holding – including the purported requirement that Ms. Peart trace the benefits of her litigation to individual voucher tenants, rather than to DCHA itself – is subject to *de novo* review, because "a discretionary decision based on an erroneous premise cannot stand." *Williams v. Richey*, 2008 D.C. App. LEXIS 248, *16 (D.C. May 29, 2008); *In re Jumper*, 909 A.2d 173, 175 (D.C. 2006); *Johnson v. United States*, 398 A.2d 354, 363-364 (D.C. 1979).

B. *Anderson v. D.C. Housing Authority* Does Not Address The Unjust Enrichment Claim Raised In This Appeal.

DCHA's argument that the trial court lacked authority to consider Ms. Peart's unjust enrichment claim relies principally on the supposed precedential force of *Anderson v. D.C. Housing Authority*, 923 A.2d 853 (D.C. 2007). But issues about the unjust enrichment of DCHA when it uses the services of a tenant's attorney to recover back rent were neither considered nor decided in that case. In *Anderson*, the tenant asserted that she was entitled to 100% of the abatement recovered from her landlord because she did not receive the benefit of her bargain and because she was a third party beneficiary of the HAP contract between DCHA and the landlord. This Court rejected those claims. *See Anderson*, 923 A.2d at 858 (HCVP tenant cannot recover money paid under a HAP contract between DCHA and a landlord as a benefit of her bargain with her landlord); *id.* at 862-863 (HCVP tenant is not a third party beneficiary of the HAP contract).

DCHA sought and obtained a recovery of abated rent in this case on the basis of Ms. Peart's successful prosecution of her own contractual claim based on her lease. *See* District of Columbia Housing Authority's Complaint For Declaratory Judgment ¶ 9 (App. A070) ("DCHA seeks to recover these sums *only in the event this court determines Ms. Peart is entitled to the relief sought in her counterclaim.* DCHA seeks to recover 100% of the amount this court determines is to be abated due to the Plaintiff/Counter-Defendant Nicole Jackson's breach of warranty of habitability.") (emphasis added). Ms. Peart has argued that DCHA was unjustly enriched to the extent it captured the benefit of her claim against her landlord without providing her reasonable compensation for her efforts. DCHA points to nothing in *Anderson* addressing such an argument. *See Umana v. Swidler & Berlin, Chartered*, 669 A.2d 717, 720 (D.C. 1995) ("Questions which merely lurk in the record, neither brought to the attention of the court nor

ruled upon, are not to be considered as having been so decided as to constitute precedents.") (quoting *Webster v. Fall*, 266 U.S. 507, 511 (1925)).

DCHA's reliance on the discussion of "public funds" in *Anderson* as implicitly precluding Ms. Peart's unjust enrichment claim is unavailing. DCHA does not dispute that the principles of unjust enrichment apply with equal force to public and private entities. *See* Appellee's Br. 18 (citing *Trans-Bay Engineers and Builders, Inc. v. Hills*, 551 F.2d 370 (D.C. Cir. 1976) and *Niagara Mohawk Power Corp. v. Bankers Trust Co. of Albany*, 791 F.2d 242 (2d Cir. 1979)). Because the tenant in *Anderson* did not argue that DCHA was unjustly enriched at her expense, this Court had no occasion to examine DCHA's contention about "public funds" in light of the undisputed proposition that government agencies may be liable for unjust enrichment by paying "public funds." *See Murphy v. McCloud*, 650 A.2d 202, 205 (D.C. 1994) ("The rule of *stare decisis* is never properly invoked unless in the decision put forward as precedent the judicial mind has been applied to and passed upon the precise question.").

The broad public funds argument pressed by DCHA would mean that public agencies would never be liable for unjust enrichment. *See* Appellee's Br. 10; *id.* 11. But that is not so. *See, e.g., Trans-Bay*, 551 F.2d 370; *Niagara Mohawk*, 791 F.2d 242. Agencies are routinely held liable in equity for the value of services they have received because there is no general exception to the principles of unjust enrichment for public entities. DCHA's argument would also mean that HCVP tenants could never recover from their landlord any of the rent paid by the government. That argument is inconsistent with this Court's repeated recognition that tenants can recover funds paid by the government. *See Anderson v. Abidoye*, 824 A.2d 42, 44 (D.C. 2003) ("[I]f HUD * * * chose not to intervene the tenant should receive the full abatement.");

Multi-Family Management v. Hancock, 664 A.2d 1210, 1221 (D.C. 1995) (Ferren, J., concurring in part).

The Court's discussion of public funds in *Anderson* was also unnecessary to resolve the tenant's claims in that case. The *Anderson* court had already rejected each of the tenant's claims before discussing the public character of the funds at issue. *See Anderson*, 923 A.2d at 857-863 (rejecting tenant's "benefit of the bargain" and third-party beneficiary theories). Simply establishing that the funds at issue in that case were not "public" would not have entitled the tenant to relief. The discussion of "public funds" in *Anderson* is therefore dictum, and does not control this case. *See, e.g., Albertie v. Louis & Alexander Corp.*, 646 A.2d 1001, 1005 (D.C. 1994) ("Language in an opinion which constitutes obiter dictum, entirely unnecessary for the decision of the case * * * [has] no effect as indicating the law of the District.").

C. Ms. Peart Has A Valid Unjust Enrichment Claim Against DCHA Because Her Attorneys Alone Proved Damages Against The Landlord, A Valuable Service That Counsel For DCHA Explicitly Chose Not To Perform.

A party is unjustly enriched if it knowingly accepts valuable services or goods to which it has no right without providing compensation. *See* Appellant's Br. 9-15. DCHA concedes these principles, and does not dispute that they apply with equal force to public and private entities. *See* Appellee's Br. 10. Instead, it offers three justifications for the trial court's failure to apply those principles in this case. First, DCHA asserts that Ms. Peart did not provide it with a valuable service, ignoring the fact that it relied on Ms. Peart to recover from the landlord. Second, DCHA contends that it could not have been enriched because its interests in this matter were "adverse" to those of Ms. Peart, mistakenly focusing on the present adversity concerning unjust enrichment rather than on the alignment of interests with respect to the rent abatement claim. Finally, DCHA argues that its retention of its own counsel to intervene and file a

complaint for declaratory judgment relieves DCHA of the obligation to compensate Ms. Peart, ignoring the fact that DCHA's counsel did not participate in recovering the rent abatement from the landlord.

1. DCHA's submission that Ms. Peart "did not provide a service to DCHA" is incorrect. Appellee's Br. 19. DCHA explicitly conditioned its recovery on Ms. Peart's successfully proving damages on her claim against her landlord. *See* District of Columbia Housing Authority's Complaint For Declaratory Judgment ¶ 9 (App. A070). If Ms. Peart had not labored to DCHA's benefit (if, for example, she had abandoned her counterclaim after DCHA intervened), DCHA would have recovered nothing from the landlord, because it did not state a cause of action or prove any facts that would have entitled it to relief independent of Ms. Peart's claim.

DCHA could have sued Ms. Jackson itself, because the same conditions that breached the implied warranty of habitability in Ms. Peart's lease presumably breached the HAP contract between DCHA and Ms. Jackson, but DCHA did not bring such a claim. DCHA also could have chosen not to pursue its share of the abatement. Instead, DCHA chose to rely on Ms. Peart to prove damages on her claim, and then intervened to capture the benefit of her labor. That is precisely the sort of knowing acceptance of valuable services for which equity requires compensation. *See* Appellant's Br. 9-15.

2. DCHA also argues that the principles of unjust enrichment are inapplicable to this case because DCHA and Ms. Peart are "adversely situated." Appellee's Br. 14-16 (citing *Hobbs v. McLean*, 117 U.S. 567 (1886)). But the relevant question is not whether DCHA and Ms. Peart now have adverse interests with respect to the unjust enrichment claim itself (which will always be true when a party presents an unjust enrichment claim against another). The question of

adverse interests instead asks how the parties' interests were aligned with respect to Ms. Peart's underlying claim against her landlord. It is precisely because DCHA and Ms. Peart had a common interest against the landlord that DCHA conditioned its recovery on Ms. Peart's success. Both of the cases on which DCHA relies – *Hobbs* and *United States v. Tobias*, 935 F.2d 666 (4th Cir. 1991) – involved determinations that the party claiming restitution did not actually provide any service to the other parties in light of the adversity between them.

DCHA misstates the facts and the holding of *Hobbs*. That case involved three partners in business, one of whom, Peck, sued the United States in the Court of Claims for breach of contract. 117 U.S. at 573. Peck declared bankruptcy during the subsequent litigation, and Hobbs was appointed as his assignee. Peck, who alone brought the claim against the government, prevailed in the Court of Claims, but died shortly after the United States appealed to the Supreme Court. Over Hobbs' objection, Peck's widow was substituted as appellee. The Supreme Court affirmed the judgment in favor of Peck's widow and remanded the case for further proceedings. 117 U.S. at 581.

On remand, Hobbs successfully moved the Court of Claims to substitute himself as plaintiff, and the judgment that Peck had recovered was then paid over to Hobbs. Peck's former business partners, McLean and Harmon, sued Hobbs to recover the judgment. McLean and Harmon prevailed, and Hobbs appealed, arguing in part that he was entitled to attorney's fees because his actions had secured a common fund in which McLean and Harmon were to share. The Supreme Court rejected that argument because "[j]udgment had been rendered in the Court of Claims in favor of [Peck's widow] * * * before [Hobbs] was admitted as plaintiff in the suit for the recovery of the fund." 117 U.S. at 581. Hobbs was not entitled to compensation from

McLean and Harmon because he "rendered no services whatever in the recovery of the fund" and had obtained the judgment only through the mistake of the lower court. *Id.*

Hobbs illuminates the error in DCHA's submission that the adversity between itself and Ms. Peart with respect to the unjust enrichment claim – but not with respect to the underlying claim against the landlord – should preclude an award of attorney's fees. Appellee's Br. 14-16. Hobbs was denied fees because he never had a legitimate claim to the judgment and had not performed any work to McLean and Harmon's benefit. 115 U.S. at 582; *see also Tobias*, 935 F.2d 666 (cited in Appellee's Br. 16) (refusing to award attorney's fees to one of two competing claimants to a tract of condemned land). By contrast, Ms. Peart did labor to DCHA's benefit, because her efforts produced the judgment that DCHA recovered. Ms. Peart's claim against the landlord was also legitimate, because, contrary to DCHA's assertions (*see* Appellee's Br. 8, 10, 12, 14), this Court has recognized that HCVP tenants are entitled to sue their landlord for breach of the implied warranty of habitability in their lease. *Anderson*, 824 A.2d at 44; *Multi-Family*, 664 A.2d at 1221 (Ferren, J., concurring). *Hobbs* therefore does not preclude an award of fees in this case.

3. DCHA's retention of its own attorney to file a motion to intervene and a complaint for declaratory judgment did not bar an unjust enrichment claim based on DCHA's acceptance of Ms. Peart's attorneys' services for the purposes of proving damages against the landlord. Pragmatic considerations that might preclude an award of fees where the contributions of multiple attorneys are too intertwined for the trial court to measure do not apply where one party's counsel explicitly does not plead or prove any damages. In this case, DCHA concedes that it did nothing to prove damages against the landlord, but, instead, simply asked the trial court to transfer Ms. Peart's recovery to itself. That DCHA retained its own counsel for other

purposes (such as to request that the judgment recovered by Ms. Peart be paid over to itself) did not bar the trial court from ordering it to pay for the work of Ms. Peart's counsel in proving damages. Ms. Peart's efforts to prove damages were the only reason that the landlord had to pay either party anything for her failure to maintain Ms. Peart's apartment in decent condition.

The cases cited by DCHA confirm that a party that has retained counsel may still be compelled to pay another party's attorney's fees. The relevant question is not whether the party from whom fees are sought has hired its own attorney, as DCHA contends, but instead whether that party's attorney has actually contributed to the recovery. For example, one of the cases cited by DCHA involved the distribution of a decedent's estate among a number of the decedent's family members, each of whom was represented by counsel. Because the final settlement was reached "through the combined efforts of all parties," equity did not require an award of fees. *DuPont v. Shackleford*, 369 S.E.2d 673, 677 (Va. 1988). The essential question in *DuPont* was whether counsel for the parties from whom fees were sought had contributed to a successful settlement of the parties' claims. *Id.*

The Fourth Circuit has similarly recognized that the act of retaining counsel does not shield a party from liability in equity if its counsel did not contribute towards the recovery of a judgment in which it shares. *See Tobias*, 935 F.2d at 668-669. While a party who has retained counsel to work on a particular case may be "deemed not to have taken a 'free ride' on the efforts of another's counsel," *id.*, that rule applies only on the assumption that all parties' counsel work towards the recovery of a judgment. It does not preclude an award of fees in cases such as this one, in which Ms. Peart's counsel performed all of the work to recover the judgment, and counsel for DCHA explicitly did not plead or prove any damages. The contrary rule proposed by

DCHA would exalt form over substance, allowing a party to obtain an effectively free ride by retaining counsel to perform work unrelated to the successful recovery of a judgment.

D. Awarding Ms. Peart Fees Would Enhance Enforcement Of The Housing Code To The Benefit Of Low Income Tenants In The District.

The recognition that attorney's fees are available to HCVP tenants who recover abatements from their landlord due to housing code violations, only to see DCHA intervene to claim its share of the judgment (but not to prove damages), will strengthen enforcement of the housing code in the District. Tenant counterclaims can be a significant means of combating substandard housing conditions, because public agencies often lack the resources to provide robust enforcement of the housing code. *See, e.g.*, Debbie Cenziper and Sarah Cohen, *A Failure In Enforcement; Agency's Ineffectiveness Has Helped Landlords Profit From Neglect*, Wash. Post, Mar. 11, 2008, at A01 (chronicling "serious breakdowns" in public enforcement of the housing code); Brendan Smith, *D.C.'s 'Pathetic Record' In Housing Enforcement*, Legal Times, Oct. 2, 2006, available online at http://www.law.com/jsp/dc/PubArticleDC.jsp?id=1159347927230 (same).

Contrary to DCHA's submission, such a recognition would not create a "windfall" for tenants. (Appellee's Br. 8, 10, 21). Rather, the availability of attorney's fees would ensure that tenants would not bear the risk that their efforts to prove damages on a meritorious counterclaim for DCHA's benefit would go wholly uncompensated if the government chooses at the last minute to intervene. That reassurance will provide a significant incentive for HCVP tenants to pursue counterclaims against their landlords. Otherwise, tenants may have little reason to litigate such rent abatement claims for the sole benefit of DCHA.

CONCLUSION

For these reasons, this case should be remanded with instructions for the lower court to award Ms. Peart attorney's fees for the work she performed to secure the abatement from her landlord.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Reply Brief for Appellant to be delivered by first-class mail, postage prepaid, this 18th day of June 2008, to:

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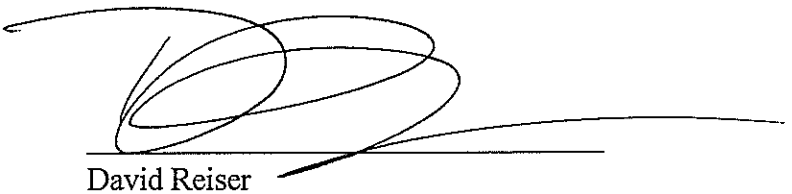

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