5-24-2017

Lincoln Land Co., LLC v. LP Broadband, Inc. Respondent's Brief Dckt. 44612

In the Supreme Court of the State of Idaho

LINCOLN LAND COMPANY, LLC,

Plaintiff-Appellant-Cross Respondent,

vs.

LP BROADBAND, INC., a Colorado corporation, successor by merger to MicroServ, Inc., an Idaho corporation,

Defendant-Respondent-Cross Appellant.

LP BROADBAND, INC.,

Third-Party Plaintiff-Respondent,

vs.

GENERAL MILLS, INC. and GENERAL MILLS OPERATIONS, LLC,

Third-Party Defendants-Respondents.

Supreme Court Docket No. 44612-2016
Bonneville County No. CV-2015-3927

BRIEF OF RESPONDENT

Appeal from the District Court of the Seventh Judicial District of The State of Idaho, in and for the County of Bonneville, Honorable Dane H. Watkins, Jr., District Judge, Presiding

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I. STATEMENT OF THE CASE

This is Third-Party Defendants-Respondents General Mills, Inc.'s and General Mills Operations, LLC's (collectively "General Mills") Response Brief responding to the Appellant's Brief filed by Plaintiff-Appellant-Cross Respondent Lincoln Land Company, LLC ("Lincoln Land") on April 20, 2017.

A. NATURE OF THE CASE

This case arises out of a Judgment entered by the Honorable Dane H. Watkins dismissing Lincoln Land's unjust enrichment count with prejudice. To recover for unjust enrichment, a litigant must prove three (3) elements: "(1) there was a benefit conferred upon the defendant by the plaintiff; (2) appreciation by the defendant of such benefit; and (3) acceptance of the benefit under circumstances that would be inequitable for the defendant to retain the benefit without payment to the plaintiff for the value thereof." *Stevenson v. Windermere Real Estate/Capital Grp., Inc.*, 152 Idaho 824, 827, 275 P.3d 839, 842 (2012). This appeal focuses on the first of the foregoing elements.

Judge Watkins dismissed Lincoln Land's unjust enrichment count because Lincoln Land failed to set forth a genuine issue of material fact that Lincoln Land actually conferred the benefit in question to Defendant LP Broadband, Inc. ("LP Broadband"). The alleged benefit at issue is LP Broadband's use, permitted by General Mills, of the rooftops ("Rooftops") located on certain grain elevators that Lincoln Land leased to General Mills.

The disposition of Lincoln Land's appeal focuses on a narrow question of law regarding the "conferral" element of unjust enrichment: can a plaintiff cut out the middleman and recover

for unjust enrichment against a defendant if the benefit conferred upon the defendant was conferred by a third-party and, in any event, not the plaintiff seeking recovery?

This issue has been decided by this Court. The answer is no, a plaintiff cannot recover in such circumstances. *See Stevenson v. Windermere Real Estate/Capital Grp., Inc.*, 152 Idaho 824, 275 P.3d 839 (2012) (affirming decision to dismiss unjust enrichment count on the grounds that the benefit obtained by the defendant was conferred by a third-party—not the plaintiff—and by suing defendant, plaintiff sought to "cut out the middleman"), *Med. Recovery Servs., LLC v. Bonneville Billing*, 157 Idaho 395, 336 P.3d 802 (2014) (stating that recovery for unjust enrichment was improper because plaintiff did not confer a direct benefit to defendant), and *Brewer v. Wash. RSA No. 8 Ltd. P'ship*, 145 Idaho 735, 184 P.3d 860 (2008) (affirming dismissal of unjust enrichment by the district court that rejected contention that mere unauthorized use of land constituted conferral of a benefit by plaintiff). By dismissing Lincoln Land's unjust enrichment count on the grounds that Lincoln Land failed to prove and/or demonstrate an issue of fact that Lincoln Land conferred a benefit upon LP Broadband, Judge Watkins made the right call, consistent with established Idaho case law. Judge Watkins' decision and judgment should be AFFIRMED.

B. STATEMENT OF FACTS

1. GENERAL MILLS AND LP BROADBAND ENTER INTO AN AGREEMENT IN 2000 FOR USE OF THE ROOFTOPS AND LP BROADBAND CONTINUED SUCH USE FOR THE NEXT FOURTEEN (14) YEARS.

In March of 2000, General Mills entered into a Roof-top Rental Agreement ("Roof Top Agreement") with LP Broadband's predecessor, Microserv, for the use of "roof-top space on the

'Evans Grainery.'" R. p. 27 (Complaint, Ex. C); *see also* R. p. 72 (Affidavit of Adam Gillings in Support of Objection to Motion for Partial Summary Judgment ("Gillings Affidavit I") at ¶¶ 7-8). Under the Roof Top Agreement, LP Broadband agreed to pay $50.00 per month to General Mills for LP Broadband to locate its antennae equipment on the grain elevator roof-tops. *Id.* LP Broadband paid its monthly use fees to General Mills through April of 2014. R. p. 72 (Gillings Affidavit I at ¶¶ 10–12).

2. LINCOLN LAND PURCHASES THE ELEVATOR AND ROOFTOPS IN 2006 AND LEASES THE SAME TO GENERAL MILLS IN 2010.

On or about March 15, 2006, Lincoln Land purchased the Evans Grainery from then seller, Evans Grain Elevator. R. p. 268 (Affidavit of Counsel [Larren K. Covert] in Support of Motion for Summary Judgment, ¶ 3, Ex. A, at 9). In June of 2010, Lincoln Land leased the Evans Grainery to General Mills ("Lease"). R. p. 44 (Affidavit of Doyle H. Beck ("Beck Affidavit"), ¶ 3); *see also* R. pp. 370-377 (Declaration of Alexander P. McLaughlin in Opposition to Plaintiff's Motion for Partial Summary Judgment ("McLaughlin Declaration"), Ex. B (attaching the Lease disclosed by Lincoln Land in discovery)).

The Lease, among other things, allows General Mills to use the Evans Grainery "without restriction" for the duration of the Lease. R. p. 370 (McLaughlin Declaration, Ex. B at ¶ 4). The rental amount under the Lease for the Evans Grainery was $120,000.00 per year for the five (5) year term of the Lease. R. p. 370 (McLaughlin Declaration, Ex. B at ¶ 3).

3. GENERAL MILLS PAYS LINCOLN LAND IN FULL FOR USE OF THE ELEVATORS AND ROOFTOPS AND LP BROADBAND CONTINUES TO USE THE ROOFTOPS.

General Mills has paid Lincoln Land roughly $500,000.00 in payments under the Lease.

R. p. 394 (Declaration of Colleen Benson at 2). The Lease restricted subleasing, stating: "Tenant will not sublet the Property, or any part thereof, and will not assign this lease or any interest therein...." R. p. 371 (McLaughlin Declaration, Ex. B at ¶ 11). Notwithstanding the Lease's restrictions on subleasing, Microserv and/or LP Broadband continued to pay General Mills to use the Rooftops for LP Broadband's antennae equipment, as they had done so since 2000. R. p. 72 (Gillings Affidavit I at ¶ 10). Accordingly, there is no issue of fact that General Mills permitted LP Broadband use of the Rooftops and LP Broadband paid General Mills for such use, which occurred both prior to and after execution of the Lease.

4. FACTS AND ALLEGATIONS LINCOLN LAND NEVER MADE CONCERNING LP BROADBAND'S USE OF THE ROOFTOPS.

There is no evidence in the record that LP Broadband caused damage to the Rooftops. There is no evidence in the record that Lincoln Land planned to use the Rooftops for some purpose, but was prevented from doing so by General Mills or LP Broadband. There is no record that Lincoln Land wanted to lease the space out to a third-party. General Mills could have used the Rooftops in the exact same manner as LP Broadband and General Mills would not have had to pay Lincoln Land anything extra.

C. COURSE OF PROCEEDINGS

Lincoln Land alleges that LP Broadband was unjustly enriched because LP Broadband used the Rooftops owned by Lincoln Land and previously leased to General Mills, without Lincoln Land's permission.

Lincoln Land does not dispute that it received rental payments from General Mills pursuant to the Lease for the entirety of the property, including the Rooftops. Lincoln Land also

does not dispute that LP Broadband paid General Mills for its use of the Rooftops. Rather, Lincoln Land's unjust enrichment claim is based on the allegation that "LP has not paid any amount to Lincoln Land for the use of Lincoln Land's property." R. pp. 17-18 (Complaint at ¶ 8).

On or about December 16, 2015, LP Broadband brought its third-party complaint against General Mills, seeking implied indemnity. Lincoln Land and LP Broadband both moved for summary judgment soon after. General Mills opposed both motions and asked that the trial court dismiss both Lincoln Land's unjust enrichment count and LP Broadband's indemnity suit.

The trial court entered its Memorandum Decision and Order Re: Motions for Summary Judgment ("Memorandum Decision") on or about May 18, 2016. The Memorandum Decision is thoughtful and well-reasoned. In its decision, the Court granted LP Broadband's summary judgment motion and dismissed Lincoln Land's suit on the grounds that it was undisputed that Lincoln Land did not confer the benefit in question to LP Broadband. In reaching that conclusion, the Court properly found that the facts at bar are similar to those in *Med. Recovery Servs., LLC v. Bonneville Billing*, 157 Idaho 395, 336 P.3d 802 (2014), stating:

> In this case, just as in *MRS*, it was not the plaintiff's conduct that conferred a benefit on the defendant. General Mills, not Lincoln Land, conferred the benefit by granting LP Broadband permission to use the property's rooftop area.

R. p. 500 (Memorandum Decision at 8). The Court also relied on *Brewer v. Wash. RSA No. 8 Ltd. P'ship*, 145 Idaho 735, 184 P.3d 860 (2008), noting that:

> The Supreme Court's statement that the Brewers "merely asserted that Inland Cellular's use of the land was a benefit" appears to

> indicate that *the Idaho Supreme Court did not consider Inland Cellular's use of the property without the Brewers' authorization to be sufficient, by itself, to establish that the Brewers conferred a benefit on Inland Cellular.*

R. p. 502 (Memorandum Decision at 10 (emphasis added)).

Judge Watkins entered a judgment ("Judgment") consistent with its Memorandum Decision in August 2016.[1] Lincoln Land appealed from the Judgment and submitted its opening brief. General Mills now submits its response.

II. STANDARD OF REVIEW

"When reviewing an order for summary judgment, this Court applies the same standard of review that was used by the trial court in ruling on the motion for summary judgment." *Quemada v. Arizmendez*, 153 Idaho 609, 612, 288 P.3d 826, 829 (2012) (quoting *Vreeken v. Lockwood Eng'g, B.V.*, 148 Idaho 89, 101, 218 P.3d 1150, 1162 (2009)). "The court must grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." I.R.C.P. 56(a). "When an action will be tried before the court without a jury, the judge is not constrained to draw inferences in favor of the party opposing a motion for summary judgment but rather the trial judge is free to arrive at the most probable inferences to be drawn from uncontroverted evidentiary facts." *Loomis v. City of Hailey*, 119 Idaho 434, 437, 807 P.2d 1272, 1275 (1991).

III. SUMMARY OF ARGUMENT

The argument section of this brief is divided into three (3) sections. Section A discusses

[1] The Judgment is dated July 17, 2016. However, the Judgment was actually signed by the Court in August.

the point that Judge Watkins properly determined that Lincoln Land failed to set forth evidence that it conferred a benefit, under Idaho law, to LP Broadband. Section B addresses how Judge Watkins' ruling is bolstered by several controlling Idaho cases. Section C refutes the primary arguments Lincoln Land raises in its opening brief.

IV. ARGUMENT

The law regarding unjust enrichment is straightforward. A prima facie case for unjust enrichment exists where: "(1) there was a benefit conferred upon the defendant by the plaintiff; (2) appreciation by the defendant of such benefit; and (3) acceptance of the benefit under circumstances that would be inequitable for the defendant to retain the benefit without payment to the plaintiff for the value thereof." *Stevenson*, 152 Idaho at 827, 275 P.3d 839 at 842. Judge Watkins correctly dismissed Lincoln Land's unjust enrichment count because it is undisputed that Lincoln Land did not confer a benefit to LP Broadband under Idaho case authority.

A. JUDGE WATKINS CORRECTLY DETERMINED THAT THERE WAS NO GENUINE ISSUE OF MATERIAL FACT THAT LINCOLN LAND DID NOT CONFER THE BENEFIT IN QUESTION TO LP BROADBAND AND THAT LP BROADBAND WAS ENTITLED TO JUDGMENT AS A MATTER OF LAW.

"To confer a benefit in the context of unjust enrichment, the plaintiff must give the defendant an interest in money, land, or possessions, or perform services beneficial to, or at the request of, the other." *MRS v. Bonneville Billing*, 157 Idaho 395, 399, 336 P.3d 802, 806 (2008) (citing 42 C.J.S. IMPLIED CONTRACTS § 9 (2013)). Thus, it is essential that the plaintiff be the one conferring the benefit in question. *Id.* ("Here, like the plaintiffs in both *Stevenson* and *Beco Constr. Co. v. Bannock Paving Co.*, 118 Idaho 463, 797 P.2d 863 (1990), *MRS has not conferred any direct benefit on BBC*") (emphasis added). Use and/or mere receipt of a benefit is not

sufficient to establish the first element of unjust enrichment. *Compare* Appellant's Brief at 25 ("The central issue is **receipt of** a benefit by defendant, not intentional conferral by the plaintiff") (emphasis in original); *with MRS*, 157 Idaho at 399, 336 P.3d at 806 ("The *Beco* Court noted that recovery under an unjust enrichment theory requires one party, the plaintiff, to give some benefit to the other party, the defendant").

Stevenson illustrates the foregoing points in factually similar circumstances. In *Stevenson*, the Stevensons sought to purchase a condominium from seller, Jefferson. 152 Idaho at 825, 275 P.3d at 840. The Stevensons and Jefferson executed a purchase agreement and the Stevensons deposited $38,000 in earnest money with Jefferson's broker, Windermere. *Id.* Windermere released the earnest money to Jefferson. *Id.* Jefferson then paid Windermere a $9,500 commission based on a separate agreement that obligated Jefferson to pay Windermere whenever it procured a purchaser. *Id.*

The deal went bad. Jefferson decided not to sell and did not return the earnest money. *Id.* The Stevensons filed suit against Windermere and Jefferson claiming unjust enrichment, but settled with Jefferson when Jefferson agreed to refund the earnest money, less the $9,500 paid to Windermere. *Id.* at 826, 275 P.3d at 841. The trial court dismissed the Stevensons' unjust enrichment claim and the Idaho Supreme Court affirmed. In doing so, the Court summarized the Stevensons' unjust enrichment claim against Windermere as follows:

> It is true that Jefferson conferred a benefit on Windermere. The Stevensons' argument, reduced to its essence, is that because they conferred a benefit upon Jefferson, and Jefferson conferred a benefit upon Windermere, they can cut out the middleman and directly recover from Windermere for unjust enrichment.

Id. at 827, 275 P.3d at 842.

This Court rejected the Stevensons' argument and concluded that their unjust enrichment claim against Windermere could not be maintained because the Stevensons did not confer the benefit in question. Rather, Jefferson conferred the $9,500 benefit on Windermere and thus, it was "not a benefit that the Stevensons conferred on Windermere." *Id.* at 829, 275 P.3d at 844.

Under *Stevenson*, this Court should affirm the Judgment. As in that case, use of the Rooftops was "not a benefit that [Lincoln Land] conferred on [LP Broadband]." *Id.* General Mills, not Lincoln Land, allowed LP Broadband to use a portion of the Evans Grainery. *See* R. p. 72 (Gillings Affidavit I at 2, ¶¶ 8-14). There was—and is—no genuine dispute of fact on this point. Thus, similar to *Stevenson*, Lincoln Land's "argument, reduced to its essence, is that because they conferred a benefit upon [General Mills], and [General Mills] conferred a benefit upon [LP Broadband], [Lincoln Land] can cut out the middleman and directly recover from [LP Broadband] for unjust enrichment." *Id.* at 827, 275 P.3d at 842.

Based on *Stevenson* and the above authorities, Lincoln Land did not confer a benefit upon LP Broadband—there is no genuine issue of fact on this point—and LP Broadband is entitled to judgment as a matter of law. Therefore, the District Court properly entered judgment against Lincoln Land. It is also important to note that *Stevenson* was not a close call. This Court not only rejected the appellant's argument, but awarded fees against appellant on the grounds that the argument presented was frivolous, unreasonable, and without a basis in fact or law. *Id.* at 830,

275 P.3d at 845 (stating that the district court "found that the Stevensons presented no evidence that they, rather than Jefferson, conferred a benefit upon Windermere.").

B. THE DISTRICT COURT'S DECISION IS IN LINE WITH MRS v. BONNEVILLE BILLING, 157 IDAHO 395, 336 P.3D 802 (2014) AND BREWER v. WASHINGTON, 145 IDAHO 735, 184 P.3D 860 (2008).

As the District Court correctly concluded, the facts at bar are also similar to those in *MRS v. Bonneville Billing*, 157 Idaho 395, 336 P.3d 802 (2014) and *Brewer v. Washington*, 145 Idaho 735, 184 P.3d 860 (2008). *MRS* involved a dispute between two collection agencies over a common debtor. The Court awarded MRS a judgment against the debtor for $1,868. MRS obtained a writ of garnishment and served it on the debtor's employer. When it came time for garnishment, the employer sent the funds to a different creditor, BBC. BBC was notified of the error and refused to turn over the monies. MRS demanded a return of the funds. BBC declined.

MRS filed suit against BBC for unjust enrichment. The district court granted summary judgment, but on appeal this Court reversed on the basis that there was no direct benefit conferred from MRS to BBC. In doing so, the Court relied heavily on *Stevenson* and *Beco Constr.* According to the Court:

> *Here, like the plaintiffs in both Stevenson and Beco, MRS has not conferred any direct benefit on BBC.* To confer a benefit in the context of unjust enrichment, the plaintiff must give the defendant an interest in money, land, or possessions, or perform services beneficial to, or at the request of, the other. *See* 42 C.J.S. Implied Contracts § 9. MRS has done none of these things for the benefit of BBC. *The benefit enjoyed by BBC in this case, funds from three checks totaling $1,083.21, was conferred on BBC by WSEC because WSEC sent the checks. In this respect, MRS' argument is very similar to the plaintiff's argument in Beco, who argued it could recover on an unjust enrichment theory for a benefit it did*

> *not directly confer. It is also similar to the plaintiffs' argument in Stevenson that Windermere's benefit resulted from a benefit they conferred on Jefferson. We rejected both those arguments. Likewise, we reject MRS' argument in this case.*

157 Idaho at 399, 336 P.3d at 806 (emphasis added).

MRS is factually and legally on point. Just as the benefit conferred to BBC was by the employer and not MRS, here there is no genuine dispute that the "benefit was conferred on [LP Broadband] by [General Mills]." *Id.* In other words, "like the plaintiffs in both *Stevenson* and *Beco*, [Lincoln Land] has not conferred any direct benefit on [LP Broadband]." As a matter of law, that is fatal to Lincoln Land's unjust enrichment count[2] and *Stevenson* and *MRS* demonstrate that the trial court reached the right conclusion under Idaho law.[3]

Consistent with *Stevenson* and *MRS*, *Brewer* stands for the rule that mere use of property by a defendant—even unauthorized use—is not a substitute under unjust enrichment for the requirement that plaintiff actually confer the benefit in question to the defendant. In *Brewer*, the Brewers were tenants in common with other family members regarding certain property. Kinzer

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[2] *See McColm v. Baker*, 139 Idaho 948, 950–51, 88 P.3d 767, 769–70 (2004) ("Judgment shall be granted to the moving party if the nonmoving party fails to make a showing sufficient to establish an essential element to the party's case").

[3] Lincoln Land argues that *MRS* was predicated on a mistake not at issue here. This argument fails for at least two (2) reasons. First, the District Court correctly determined that "[i]f, as Lincoln Land argues, General Mills' decision to permit LP Broadband to use the rooftop was in violation of the Lease Agreement, that decision is analogous to WSEC's mistake in *MRS*" and that "[s]uch mistake or alleged breach of contract does not alter the fact that it was General Mills, not Lincoln Land, which conferred the benefit." R. p. 500 (Memorandum Decision at 8). Second, the portion of the *MRS* decision discussing mistake was not necessary to the Court's ruling. The *MRS* Court stated: "It is also worth noting that this case includes an additional fact rendering MRS' conduct and the benefit received by BBC even less direct than the situation we considered

managed the property and leased the towers on the property to Inland Cellular ("Inland"). According to the Brewers, they "never authorized Kinzer to enter into any of the leases, and prior to the signing of the leases, Kinzer never spoke with her nephews regarding the leases." This should sound familiar.

The Brewers sued Inland for unjust enrichment based on nearly identical factual allegations as those in this case: because Inland retained a benefit from using the Brewers' property without the Brewers' authority, the Brewers conferred a benefit to Inland. The district court granted summary judgment to Inland. This Court affirmed, noting first that the trial court found that the Brewers:

> *provided no evidence that they had conferred a benefit on Inland Cellular* or that it had received a benefit. *Instead, they merely asserted that Inland Cellular's use of the land was a benefit.*

145 Idaho at 739 184 P.3d at 864 (emphasis added).

This Court then noted that the Brewers "failed to point to a single fact in the record either below or on appeal that creates a genuine issue of material fact." *Id.* The Court's comments were in response, at least in part, to the same type of "use/authority to use" based arguments Lincoln Land presents on this appeal. As stated in the Brewers' opening brief to this Court:

> *Inland Cellular entered into the lease without the consent of the Brewers and without the Brewers' ratification. This use of the Brewers' land is clearly for the benefit of Inland Cellular and the circumstances surrounding Inland Cellular's use of the land is inequitable to the Brewers. Madlynn Kinzer did not have any authority to enter into the leases with Inland Cellular on behalf of*

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in *Stevenson* and *Beco*: mistake." The import of that statement is clear. Mistake was icing on the cake of an argument that was already flawed.

> *the Brewer*s and the Brewers never received any benefits from this lease.

2007 WL 833521 (Idaho) (Appellate Brief) at *14 (emphasis added).

As is the case with *Stevenson* and *MRS, Brewer* is on point. Similar to *Brewer*, Lincoln Land argues that LP Broadband's alleged unauthorized use of land[4] was a benefit conferred from plaintiff to defendant. The *Brewer* Court rejected that argument as conclusory, despite evidence in the appellate record that Inland—like LP Broadband—actually used the facilities in question, although such use may have been unauthorized. *Id.* at 740, 184 P.3d at 865 (J. Jones, concurring).

The trial court correctly recognized this fact. *See* R. p. 502 (Memorandum Decision at 10) ("In his concurrence, Justice Jones indicates that Inland Cellular's predecessor in interest had constructed a facility on the property and that Inland Cellular continued to operate the facility. In light of this, the Supreme Court's statement that the Brewers 'merely asserted that Inland Cellular's use of the land was a benefit' appears to indicate that the Idaho Supreme Court did not consider Inland Cellular's use of the property sufficient, by itself, to establish that the Brewers conferred a benefit on Inland Cellular.").

The import of *Brewer* appears clear: mere unauthorized use of land does not equate with plaintiff conferring a benefit to a defendant. Therefore, Lincoln Land's focus on LP Broadband's

[4] General Mills disputes that the Roof Top Agreement breached the anti-sublease provision of the Lease.

unauthorized[5] use does not alleviate Lincoln Land from its burden of setting forth evidence demonstrating that *Lincoln Land, in particular, actually conveyed a direct benefit to LP Broadband.* Lincoln Land failed to show an issue of fact on this point. Instead, like the appellant in *Brewer*, Lincoln Land only asserted that LP Broadband's unauthorized use of the Rooftops equates with Lincoln Land conferring a benefit on LP Broadband. This is counter to *Stevenson*, *MRS*, and *Brewer*. Judge Watkins correctly rejected Lincoln Land's arguments and entered judgment as a matter of law against Lincoln Land.

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[5] Judge Watkins' decision does a nice job of dealing with Lincoln Land's attempt to distinguish *Brewer* on the grounds that while the appellant in *Brewer* failed to show a below market lease, Lincoln Land submitted such evidence. As Judge Watkins noted, whether LP Broadband enjoyed a below market lease from General Mills goes to whether it would be inequitable to allow LP Broadband to retain the benefit. That, however, is not proof that Lincoln Land conferred a benefit to LP Broadband. In fact, it is the opposite—proof that General Mills conferred the benefit in question. As Judge Watkins stated:

> This Court acknowledges that, unlike the plaintiff in *Brewer*, Lincoln Land has clearly supported its allegation of a below-market value lease, sufficient to create a question of fact on that issue. The value of the lease, however, relates more directly to the third element in a cause of action for unjust enrichment. Because the benefit was conferred by General Mills and not Lincoln Land, this Court need not consider whether the lease payment was below market value. The fact remains that Lincoln Land did not, as a matter of law, confer a benefit on LP Broadband, as defined by the Court in *MRS* and *Brewer*.

R. p. 502 (Memorandum Decision at 10).

C. LINCOLN LAND'S ARGUMENTS ARE NOT PERSUASIVE AND ARE DIRECTLY CONTRADICTED BY CASE AUTHORITY.

Lincoln Land presents a host of arguments attempting to explain why its unjust enrichment count should survive summary judgment. However, *Stevenson*, *MRS*, and *Brewer* control this appeal. Accordingly, it is unclear how necessary it is to wade into Lincoln Land's arguments. Nonetheless, these arguments lack merit and should be rejected.

1. ANY MINOR DIFFERENCES BETWEEN THE FACTS AT BAR AND THOSE IN STEVENSON, MRS, AND BREWER ARE FAR OUTWEIGHED BY THEIR OVERWHELMING SIMILARITIES.

Lincoln Land's briefing is, at its heart, an attempt to distinguish *MRS* and *Brewer* (There is little to no discussion of *Stevenson*, which is also on point.) Perhaps there are differences—minor ones, at best—between the facts in this case and the facts of *Stevenson*, *MRS*, and *Brewer*. However, the similarities are immense and the facts of this case fall in line and are consistent with *Stevenson*, *MRS*, and *Brewer*. Those authorities control and this Court should follow them and affirm Judge Watkins' Judgment.

2. LINCOLN LAND'S RELIANCE ON IDAHO LUMBER, INC. V. BUCK, 109 IDAHO 737, 710 P.2D 647 (CT.APP.1985) IS UNAVAILING.

Lincoln Land cites *Idaho Lumber*—a 1985 Court of Appeals case—to support the proposition that a plaintiff does not need to confer a benefit to a defendant to sustain an unjust enrichment claim. Appellant's Brief at 22. It is enough, according to Lincoln Land, that the benefit in question simply be appropriated by a defendant. Appellant's Brief at 22 (stating that a defendant "should be required to make restitution of or for property or benefits received, retained, or **appropriated** ...") (citing *Idaho Lumber*, 109 Idaho at 746). This is not correct.

In addition to *Idaho Lumber* being factually distinguishable, the quote Lincoln Land utilizes from that case does not address the conferral element. Appellant's Brief at 22. Rather, the quote references whether it would be inequitable to retain the claimed benefit.[6] Judge Watkins did not dismiss Lincoln Land's suit on that basis and, therefore, the quote is not relevant. In contrast, *Stevenson*, *MRS*, and *Brewer*, directly address the factual and legal issues in this case and represent the governing case authority regarding what constitutes a conferral of a benefit.

3. LINCOLN LAND'S RELIANCE ON IDAHO CODE § 55-607 IS MISPLACED.

Lincoln Land's briefing focuses heavily on Idaho Code § 55-607 and whether General Mills could or could not have conveyed a lawful estate to LP Broadband. This discussion is not relevant and should be rejected for at least the following reasons.

First, the critical inquiry on appeal is not whether, under Idaho law, LP Broadband received a lawful estate in land from General Mills, but whether Lincoln Land, the plaintiff, met its burden and showed that it conferred a benefit to LP Broadband, the defendant. *MRS*, 157

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[6] The opinion states, in relevant part: The next question is whether it was *unjust for Buck to retain any of the enrichment.*

> The phrase "unjust enrichment" is used in law to characterize the result or effect of a failure to make restitution of, or for, property or benefits received under such circumstances as to give rise to a legal or equitable obligation to account therefor. It is a general principle, underlying various legal doctrines and remedies, that one person should not be permitted unjustly to enrich himself at the expense of another, *but should be required to make restitution of or for property or benefits received, retained, or appropriated,* where it is just and equitable that such restitution be made, and where such action involves no violation or frustration of law or opposition to public policy, either directly or indirectly. [Footnotes omitted.]

109 Idaho at 746, 710 P.2d at 656 (emphasis added).

Idaho at 399, 336 P.3d at 806 ("The *Beco* Court noted that recovery under an unjust enrichment theory requires one party, the plaintiff, to give some benefit to the other party, the defendant"). By focusing on the legal estate that General Mills could or could not have conveyed to LP Broadband, Lincoln Land gets afield of unjust enrichment analysis and Lincoln Land's burden of proving that it—not someone else—conferred the benefit in question on LP Broadband.

Second, Lincoln Land cites no Idaho case authority supporting Lincoln Land's position that conferral of a benefit focuses on the party that had the authority to convey the benefit and not whether that party actually conferred a direct benefit to the defendant. The latter was the critical inquiry set forth in *Stevenson*, *MRS*, and *Brewer*. To survive summary judgment, a plaintiff must set forth evidence that plaintiff conferred to the defendant the benefit in question. Lincoln Land provided no such evidence to the District Court.

4. LINCOLN LAND'S BRIEF CONTAINS SEVERAL STATEMENTS OF LAW THAT ARE INCORRECT.

Lincoln Land's opening brief contains statements that are not consistent with Idaho law. For example, Lincoln Land writes that "[t]he District Court requirement of a direct link between plaintiff and defendant is not supported by Idaho case law regarding unjust enrichment." Appellant's Brief at 22. Not so. That is exactly what the law is and failure to adhere to that requirement is what this Court was alluding to in *Stevenson* when it referred to plaintiff's unsuccessful attempt to "cut out the middleman." Same as in *MRS*. *MRS*, 157 Idaho at 399, 336 P.3d at 806 ("Here, like the plaintiffs in both *Stevenson* and *Beco*, MRS [the plaintiff] has not

conferred any direct benefit on BBC [the defendant]").

Lincoln Land also writes that the Court in *Idaho Lumber* stated that an unjust enrichment claim may be sustained without an intentional act by the plaintiff. Appellant's Brief at 22. According to Lincoln Land:

> By inclusion of the term "appropriated", the Idaho Supreme Court held that a claim for unjust enrichment may be established without any intentional act on the part of the plaintiff when the defendant has **taken** a benefit to serve the defendant's own use or pleasure.

Appellant's Brief at 22 (emphasis in original).

This statement is problematic. First, as noted, *Idaho Lumber* is not a Supreme Court case and Lincoln Land's statements otherwise are not correct. Second, even if it were, as noted, *supra*, the Court of Appeals' discussion of "appropriation" was within the context of whether it would be inequitable to retain a benefit—not in the context at issue in this case of whether plaintiff conferred a benefit to defendant. Thus, while perhaps an "*intentional* act on the part of the plaintiff" is not required, actually conferring a benefit on the defendant *is*.[7] That is precisely what this Court stated in *Stevenson*, *MRS*, and *Brewer*. Actually conferring a benefit on LP Broadband

[7] Lincoln Land repeats its reference to the fact that the District Court imposed a requirement that to constitute conferral of a benefit, it must emanate from an intentional act of the plaintiff. *See e.g.* Appellant's Brief at 25. However, the District Court never read an intent requirement into the benefit conferral element. Rather, Judge Watkins simply analyzed whether Lincoln Land was the party that actually conferred the benefit to LP Broadband. *See* R. p. 502 (Memorandum Decision at 10) ("The fact remains that Lincoln Land did not, as a matter of law, confer a benefit on LP Broadband, as defined by the Court in *MRS* and *Brewer*."); R. p. 500 (*id.* at 8) ("In this case, just as in *MRS*, it was not the plaintiff's conduct that conferred a benefit on defendant. General Mills, not Lincoln Land, conferred the benefit by granting LP Broadband permission to use the property's rooftop area").

is precisely what Lincoln Land did not do in this case. Therefore, LP Broadband was entitled to judgment as a matter of law.

V. CONCLUSION

The District Court's reasoning and decision were spot-on regarding the legal and factual issues it addressed. The Court went through the controlling authorities on the material issues and properly applied those authorities to the facts. General Mills asks that this Court follow the precedent set forth in *Stevenson*, *MRS*, and *Brewer*. Doing so leads to one result: affirming the Judgment entered by the Honorable Dane H. Watkins.

Respectfully submitted this 24th day of May, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of May, 2017, I caused to be served a true and correct copy of the foregoing document to the persons listed below the method indicated:

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