

TENTH APPELLATE DISTRICT

Great West Casualty Company,	:	
	:	
Plaintiff-Appellant,	:	No. 14AP-524
v.	:	(Ct. of Cl. No. 2013-00205)
Ohio Bureau of Workers' Compensation	:	(ACCELERATED CALENDAR)
et al.,	:	
	:	
Defendants-Appellees.	:	
	:	

D E C I S I O N

Rendered on April 23, 2015

*Crabbe Brown & James, LLP, and John C. Albert, for
appellant.*

*Michael DeWine, Attorney General, Peter E. DeMarco and
Lindsey M. Grant, for appellees.*

APPEAL from Court of Claims of Ohio

KLATT, J.

{¶ 1} Plaintiff-appellant, Great West Casualty Company ("Great West"), appeals a judgment of the Court of Claims of Ohio that dismissed its action against defendants-appellants, the Ohio Bureau of Workers' Compensation ("BWC") and the Industrial Commission of Ohio ("Commission"). For the following reasons, we reverse and remand.

{¶ 2} On March 31, 2011, Great West issued a workers' compensation and employer's liability insurance policy to Roeder Cartage Company, Inc. ("Roeder"), a trucking and delivery company. The Great West policy insured Roeder for workers' compensation claims filed in Alabama.

{¶ 3} On June 22, 2011, James McElroy, a truck driver employed by Roeder, fell from his truck and injured himself. McElroy's accident occurred in Alabama, but McElroy

is an Ohio resident. McElroy elected to apply for workers' compensation benefits in Ohio, rather than Alabama. On June 24, 2011, McElroy submitted a completed first-report-of-injury form to the BWC. The BWC allowed claims for lumbosacral sprain/strain and sprain of the lumbar region, and it granted payment of temporary total disability compensation and benefits.

{¶ 4} Roeder appealed the allowance of McElroy's claims, arguing that McElroy was not eligible for Ohio workers' compensation benefits because his injury had occurred in Alabama. In response, the BWC vacated its prior orders and halted payment on McElroy's claims pending an investigation of the interstate jurisdictional issue.

{¶ 5} About the same time Roeder appealed the BWC's allowance of McElroy's claims, Roeder reported McElroy's injury to Great West pursuant to the terms of its insurance policy. Upon review of the situation, Great West learned that McElroy had not yet received any workers' compensation benefits, even though his accident had occurred a month prior. Great West began paying benefits to McElroy.

{¶ 6} On January 24, 2012, the Commission issued an order finding that McElroy was entitled to Ohio workers' compensation benefits. The Commission ordered the BWC to pay McElroy temporary total disability compensation and benefits, and required those payments to be offset against the payments received by McElroy from Great West.

{¶ 7} Upon receiving notification that Ohio would pay McElroy workers' compensation benefits, Great West discontinued its payments. Great West then sent the BWC a written demand for reimbursement of the \$22,758.80 that it had paid McElroy. The BWC did not respond to the demand.

{¶ 8} On April 1, 2013, Great West filed suit against defendants, alleging claims for unjust enrichment, quasi-contract, indemnity, and statutory credit/reimbursement. Both Great West and defendants moved for summary judgment. In relevant part, defendants argued that the trial court lacked subject-matter jurisdiction over the action. Defendants maintained that the trial court did not have jurisdiction because Great West's action did not include a claim for money damages and, instead, sought only equitable relief. The trial court agreed with defendants. In a judgment dated June 4, 2014, the trial court dismissed the action.

{¶ 9} Great West now appeals the June 4, 2014 judgment. As its assignment of error, it states:

The Court of Claims erred in rejecting jurisdiction.

{¶ 10} In considering whether to dismiss an action for lack of subject-matter jurisdiction, a trial court must determine whether the action is cognizable in that court. *Columbus Green Bldg. Forum v. State*, 10th Dist. No. 12AP-66, 2012-Ohio-4244, ¶ 14. Appellate courts review de novo a dismissal for lack of subject-matter jurisdiction. *Id.*

{¶ 11} The Court of Claims has exclusive, original jurisdiction over civil actions against the state for money damages. *Mecon, Inc. v. Univ. of Akron*, 126 Ohio St.3d 231, 2010-Ohio-3297, ¶ 19. This jurisdiction extends over actions that also include a claim for a declaratory judgment, injunctive relief, or other equitable relief, as long as the ancillary claim or claims arise out of the same circumstances that gave rise to the claim for money damages. R.C. 2743.03(A)(2); *Mecon* at ¶ 19; *State ex rel. Blackwell v. Crawford*, 106 Ohio St.3d 447, 2005-Ohio-5124, ¶ 20. In order to determine whether the Court of Claims has jurisdiction to hear the instant action, we must analyze whether Great West's action includes a claim for money damages. If it does, then jurisdiction over the action rests with the Court of Claims.

{¶ 12} Recently, the Supreme Court of Ohio has decided a series of cases distinguishing between legal remedies (i.e., money damages) and equitable remedies. Our analysis, however, begins with an older case, *State ex rel. Liberty Mut. Ins. Co. v. Indus. Comm.*, 18 Ohio St.3d 290 (1985). In *Liberty Mutual*, an Ohio resident injured himself while working in Mississippi. Liberty Mutual Insurance Company ("Liberty Mutual"), who insured the injured worker's employer, began paying workers' compensation benefits to the injured worker pursuant to Mississippi law. Eventually, the injured worker recovered sufficiently to travel back to Ohio, where he filed a claim for workers' compensation benefits. The Commission determined that the injured worker was entitled to Ohio benefits. Liberty Mutual then requested reimbursement for the amounts that it had paid to the injured worker under Mississippi law. When the Commission denied Liberty Mutual's request, Liberty Mutual sought a writ of mandamus ordering the Commission to reimburse it.

{¶ 13} The question before the Supreme Court was "whether mandamus w[ould] issue to force [the Commission] to reimburse [Liberty Mutual] for money [Liberty Mutual] paid to an Ohio employee injured on a job outside Ohio, when [the Commission] ha[d] awarded the Ohio employee workers' compensation for that injury." *Id.* at 291. The

court identified two prior cases in which insurers in similar situations had used mandamus to compel reimbursement. Nevertheless, the court found that mandamus was not the proper remedy in the case before the court. Unlike the other two cases, the case before the court developed after the establishment of the Court of Claims. The court, therefore, concluded that the insurer had "an adequate remedy at law by way of an action for unjust enrichment in the Court of Claims." *Id.* at 292. The court affirmed the dismissal of the action in mandamus, finding "the appropriate forum for determination on this matter is the Court of Claims." *Id.*

{¶ 14} As even defendants concede, the circumstances underlying the action in *Liberty Mutual* closely approximate the circumstances here. Given this correlation, *Liberty Mutual* would seem to permit Great West to sue for unjust enrichment in the Court of Claims. Defendants, however, argue that more recent Supreme Court precedent has impliedly overruled *Liberty Mutual* and divested the Court of Claims of jurisdiction over Great West's claim for unjust enrichment. We thus turn to examining that precedent.

{¶ 15} Beginning with *Santos v. Ohio Bur. of Workers' Comp.*, 101 Ohio St.3d 74, 2004-Ohio-28, the Supreme Court of Ohio has issued a series of decisions regarding whether claims seeking restitution against the state belong in the Court of Claims or the courts of common pleas.¹ As the Supreme Court has recognized, "[h]istorically, restitution has been available both in equity and in law as the remedy for an unjust enrichment of one party at the expense of another." *Id.* at ¶ 11. If a plaintiff seeks restitution as an equitable remedy, it may pursue its action in a court of common pleas. On the other hand, if a plaintiff seeks restitution as a legal remedy, it must sue the state in the Court of Claims. *Measles v. Indus. Comm.*, 128 Ohio St.3d 458, 2011-Ohio-1523, ¶ 2.

{¶ 16} "[W]hether restitution is 'legal or equitable depends on the basis for the plaintiff's claim and the nature of the underlying remedies sought.'" *Santos* at ¶ 13, quoting *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 213 (2002). Restitution constitutes a legal remedy where a plaintiff cannot " 'assert title or right to possession of a particular property, but in which nevertheless he might be able to show just grounds for recovering money to pay for some benefit the defendant ha[s] received

¹ The other cases in this series are: *Measles v. Indus. Comm.*, 128 Ohio St.3d 458, 2011-Ohio-1523; *Cristino v. Ohio Bur. of Workers' Comp.*, 118 Ohio St.3d 151, 2008-Ohio-2013; and *Ohio Academy of Nursing Homes v. Ohio Dept. of Job & Family Servs.*, 114 Ohio St.3d 14, 2007-Ohio-2620.

from him." ' " *Santos* at ¶ 13, quoting *Great-West* at 213, quoting Dobbs, *Law of Remedies*, Section 4.2(1), at 571 (2d Ed.1993). In the days of a divided bar, such claims were "considered legal because [the plaintiff] sought 'to obtain a judgment imposing merely personal liability upon the defendant to pay a sum of money.' " *Great-West* at 213, quoting Restatement of the Law, Restitution, Section 160, Comment a (1936). "Such claims were viewed essentially as actions at law for breach of contract (whether the contract was actual or implied)." *Great-West* at 213.

{¶ 17} Restitution is an equitable remedy " 'where money or property identified as belonging in good conscience to the plaintiff [can] clearly be traced to particular funds or property in the defendant's possession.' " *Santos* at ¶ 13, quoting *Great-West* at 213. In such cases, "[a] court of equity could then order a defendant to transfer title (in the case of the constructive trust) or to give a security interest (in the case of the equitable lien) to a plaintiff who was, in the eyes of equity, the true owner." *Great-West* at 213. " 'Thus, for restitution to lie in equity, the action generally must seek not to impose personal liability on the defendant, but to restore to the plaintiff particular funds or property in the defendant's possession.' " *Santos* at ¶ 13, quoting *Great-West* at 214.

{¶ 18} Applying the distinction between legal and equitable restitution, the Supreme Court of Ohio has determined that a plaintiff seeks an equitable remedy if its suit demands the return of (1) specific funds that the state has wrongfully collected from the plaintiff or (2) specific funds due to the plaintiff that the state wrongfully withholds. *Santos* at syllabus; *accord Measles* at ¶ 9 (holding that an action is equitable when the "claim relates to a statutory right" to money from the state). With regard to the second instance, the court has stated, "If the essence of a claim is * * * restitution for the state's unjust enrichment by withholding funds to which a [plaintiff] ha[s] a statutory right, then the ultimate relief sought is equitable restitution." *Measles* at ¶ 9.

{¶ 19} Here, Great West's claim for unjust enrichment is not premised on a right to funds in the state's possession. Great West paid funds to McElroy (not the state), and no one disputes McElroy's legal entitlement to those funds. Great West, instead, wants compensation for the benefit that it conferred on defendants when it provided McElroy with workers' compensation benefits. Great West contends that defendants were unjustly enriched when Great West paid benefits that defendants, ultimately, had the responsibility to pay. Great West, therefore, does not seek particular funds in defendants'

possession. Rather, Great West seeks to impose liability on defendants to pay a sum of money in compensation for the benefit that they received. Given the basis and nature of Great West's claim for unjust enrichment, the remedy that Great West seeks is legal, not equitable. Consequently, jurisdiction over Great West's action lies in the Court of Claims.

{¶ 20} Defendants resist this conclusion through one further argument. According to defendants, the goal of Great West's suit is to overturn the Commission's order that the BWC must offset its payment of benefits and compensation to McElroy against amounts paid by Great West. Defendants argue that the Court of Claims cannot render this relief because the Court of Claims lacks appellate jurisdiction over administrative orders.

{¶ 21} We do not interpret Great West's intent as defendants do. An offset is necessary to preclude a double recovery to McElroy, and nothing in the record suggests that Great West seeks to undo that offset. Great West did not sue to force the state to pay again the amounts Great West has already paid; rather, Great West wants defendants to compensate it for the benefit that accrued to the state as a result of the payments Great West made. Consequently, we reject defendants' argument.

{¶ 22} Finally, defendants argue that Great West cannot prove its claim for unjust enrichment. The trial court found this argument moot when it dismissed the action for lack of jurisdiction. As the trial court has yet to rule on the merits of this argument, we decline to consider it.

{¶ 23} For the foregoing reasons, we sustain Great West's assignment of error. We reverse the judgment of the Court of Claims, and we remand this cause to that court for further proceedings consistent with law and this decision.

Judgment reversed; cause remanded.

SADLER and DORRIAN, JJ., concur.
