

## DESTINATION COURT OF ARBITRATION

NORTH MINE )

v. )

Case No. 3276-5

HERE NOW COMPANY )

## DECISION

The parties in this matter have appeared and presented their evidence in open court. The court now enters these findings of fact and conclusions of law and awards judgment as follows.

### FINDINGS OF FACT

*The following facts are established by the record:*

A written contract with North Mine obligated Here Now Company (Here Now) to warehouse smelted copper and then deliver it to the refinery for processing when scheduled.

Instead of warehousing its molybdenum (moly) ore with Here Now, North Mine itself stored and delivered its moly ore to the refinery for processing when scheduled.

Jointly processing copper and moly is possible on different equipment. The refinery scheduled the processing of both North Mine's copper ore and North Mine's moly ore to begin on the same day.

Outages at the refinery are rare, but an outage prevented the refinery from processing ore or storing the ore on the scheduled day or for the following week. The storage facilities and ore feeding system had been contaminated by a chemical leak that required remediation.

Before the outage was announced, the North Mine driver had dropped off the trailer load of moly ore at the refinery. When Here Now autonomous trailers arrived with the North Mine copper ore, the refinery refused delivery due to the outage. The refinery arranged for Here Now to accept the return of the copper ore and to accommodate the North Mine trailer load of moly as well. The automated Here Now rigs had the needed towing capacity and Here Now agreed to take possession of the trailer load of moly.

Simultaneously, the refinery informed the transportation manager for North Mine that, due to the outage, Here Now had retained possession of the trailers of copper ore and had taken possession of the trailer load of moly. Later, the North Mine transportation manager confirmed that Here Now had possession of the trailer loaded with moly.

No ore is stored in Here Now trailers because the trailers are needed to make automated deliveries. The Here Now autonomous system returned the North Mine copper ore to the usual North Mine copper ore storage facility.

Operating without instructions for handling the moly ore, the Here Now autonomous system weighed the load of moly ore, and, because Here Now did not have a separate storage facility for North Mine moly ore, the autonomous system stored the North Mine

moly ore with moly ore from another mine. The moly ore from the other mine was of an inferior quality. Due to the nature of the storage system, the moly ores of different quality were comingled. This diminished the value of the North Mine moly ore.

When North Mine discovered the loss in value, it sued for negligence and refused to pay any storage or transportation fees for the copper ore or the moly ore. Here Now countersued for breach of implied contract and unjust enrichment.

## **JURISDICTION**

This court has subject matter jurisdiction over the tort and contract claims asserted and personal jurisdiction over the parties. Here Now Company operates its business enterprise on Destination and is subject to general jurisdiction. See ***Out Transport v. Al Hunter, et al.***, Destination Case No. 3276-2.

## **CONCLUSIONS OF LAW**

### **Analysis**

A contract can be oral or even implied from conduct. Here Now agreed to store copper ore for North Mine under a bailment contract. Here Now is entitled to the customary compensation for transporting and storing the copper ore in circumstances not addressed in the written bailment contract. When performance of the written contract was interrupted, an implied bailment contract arose.

Moly ore was not covered by the written bailment contract. Here Now provided required transportation for the moly ore and is entitled to receive the transportation costs incurred to prevent unjust enrichment.

Here Now removed the moly ore from the North Mine trailer for storage. Storing the moly ore by comingling with moly ore of lower quality was negligent. As a bailee, Here Now had “a duty to exercise reasonable care to prevent damage to or loss of the bailed property.” Here Now is liable for any damages caused by the loss of value due to commingling the moly ore.

### **I. There Was an Implied Bailment Contract for Copper Ore**

Contracts are agreements. The agreement can be in writing or oral. Or the agreement can be implied from conduct. A contract implied in fact is a true contract, an undertaking of contractual duty imposed "by reason of a promissory expression." 1 A. Corbin, Contracts § 18, at 39 (1963); see *Pyeatte v. Pyeatte*, 135 Ariz. 346, 353, 661 P.2d 196, 203 (App. 1982).

The distinction between an express contract (an undertaking made by words, either written or spoken) and one implied in fact is that, in the latter, rather than words conduct conveys the necessary assent and undertakings. Corbin, Contracts § 18, at 43; *Pyeatte*, 135 Ariz. at 353. *Accord Barmat v. John and Jane Doe Partners AD*, 155 Ariz. 519, 521, 747 P.2d 1218, 1220 (1987).

“Basically, contract law consists of enforcing the intention of the parties manifested through promises expressly made or implied from conduct.” *Barmat*, 155 Ariz. at 523, 747 P.2d at 1220.

“Duties that are essentially contractual in nature . . . are generally owed only to the contracting parties.” *Id.*

A bailment contract arises “where personal property is delivered to one party by another in trust for a specific purpose, with the express or implied agreement that the property will be returned or accounted for when the purpose is accomplished.” *Nava v. Truly Nolen Exterminating of Houston, Inc.*, 140 Ariz. 497, 500, 683 P.2d 296 (App. 1984).

The parties had previously entered into an express bailment contract for the copper ore. An implied bailment contract arose when the bailed goods had to be returned from the refinery. The storage company employees agreed to return the items to storage when delivery was refused, and North Mine acquiesced in the continued storage.

“The actions of the parties . . . evinced a purpose to enter into another, similar contract. [North Mine and Here Now’s] agents who reloaded the items for redelivery to storage certainly intended to have the items stored by appellee in consideration for a storage fee.”

*Wenk v. Horizon Moving & Storage Co.*, 131 Ariz. 131, 132, 639 P.2d 321, 322 (1982). There was an implied bailment contract for the copper ore.

Here Now performed the express bailment contract and the bailment contract implied from the conduct of the parties applicable to the copper ore.

It is hereby ordered, adjudged and decreed, awarding judgment for Here Now for the full storage fees and transportation costs, at the contract rates, for the copper ore.

## **II. A Quasi Contract Prevents Unjust Enrichment**

“A quasi contract is not a contract at all, but a duty to repay another to prevent his own unjust enrichment.” *Pyeatte*, 135 Ariz. at 353, 661 P.2d at 203, *citing* 1 Williston, Contracts § 3A at 12-15 (3d ed. 1957).

To make a claim for unjust enrichment, a plaintiff must show (1) an enrichment, (2) an impoverishment, (3) a connection between the enrichment and impoverishment, (4) the absence of justification for the enrichment and impoverishment, and (5) the absence of a remedy at law. *Wang Elec., Inc. v. Smoke Tree Resort, LLC*, 230 Ariz. 314, 318, ¶ 10, 238 P.3d 45, 49 (App. 2012); *Trustmark Ins. Co. v. Bank One, Ariz., N.A.*, 202 Ariz. 535, 541, ¶ 31, 48 P.3d 485, 491 (App. 2002). See Restatement (Third) of Restitution and Unjust Enrichment § 1, comment b (2011)

“[W]here there is a specific contract which governs the relationship of the parties, the doctrine of unjust enrichment has no application.” *Brooks v. Valley National Bank*, 113 Ariz. 169, 174, 548 P.2d 1166, 1171 (1976); *see also USLife Title Co. of Ariz. v. Gutkin*, 152 Ariz. 349, 354, 732 P.2d 579, 584 (App.1987); *Johnson v. Am. National Ins. Co.*, 126 Ariz. 219, 223, 613 P.2d 1275, 1279 (App.1980).

There was no contract implied in fact that Here Now could remove the moly ore from the North Mine trailer for storage or use the trailer for transporting other goods. However Here Now is entitled to the transportation costs for the moly ore to prevent unjust enrichment.

Quasi contracts often justify restitution for unjust enrichment. North Mine saved transportation costs and Here Now incurred those transportation costs moving the moly ore from the refinery. There was no contract or history of contracts for transportation of moly ore. North Mine was not entitled to have Here Now transport the moly ore and Here Now was not volunteering free transportation services.

It is hereby ordered, adjudged, and decreed, awarding judgment for Here Now on the unjust enrichment claim for the cost of transporting the moly ore.

### **III. A Quasi Contract Imposes a Duty of Reasonable Care**

Tort law imposes duties "owed to all those within the range of harm or at least to some considerable class of people that can include parties to a contract." *Barmat*, 155 Ariz. at 523, 747 P.2d at 1220.

These tort duties can arise from contracts implied in law. Contracts implied in law are not true contracts. They are obligations "created by the law without regard to expressions of assent by either words or acts." 1 A. Corbin, *Contracts* § 19, at 44. Historically, courts implied contracts to achieve a just result in a case, even if there was no expression of assent "and sometimes even against a clear expression of dissent." *Id.* at 46. Corbin comments it might be "better not to use the word 'contract' at all," *id.*, and the term "quasi contract" is often used in its place. *Barmat*, 155 Ariz. at 521-22, 747 P.2d at 1218-19.

Quasi contracts are implied in many professional relationships and include a covenant that the professional is liable if he or she does not act in accordance with the standard of reasonable care. See W.L. Prosser & W.P. Keeton, *The Law of Torts* § 92, at 657-58 (5th ed. 1984).

[W]ith regard to the contracts arising from relationships between professionals and their clients and from other special relationships long recognized at common law, such as those between innkeeper and guest, common carrier and passenger, *bailor and bailee*[,] . . . the law imposes special duties to all within the foreseeable range of harm as a matter of public policy, regardless of whether there is a contract, express or implied, and generally regardless of what its covenants may be. Prosser & Keeton, *supra*, at 660-62."

*Barmat*, 155 Ariz. at 522, 747 P.2d at 1219 (emphasis added). "The cause of action for malpractice would exist even if the client or patient had expressly declined the professional's services." *Barmat*, 155 Ariz. at 523, 747 P.2d at 1220.

An early case involved a physician and an injured, unconscious patient. Although there could be "no contract or promise in fact no meeting of the minds," the court imposed an implied [quasi] contract:

"It has no actual existence; it is simply a mythical creation of the law. The law says it shall be taken that there was a promise when, in point of fact, there was none. Of course, this is not good logic, for the obvious and sufficient reason that it is not true. It is a legal fiction, resting wholly for its support on a plain legal obligation and a plain legal right.... "

*Cotnam v. Wisdom*, 83 Ark. 601, 605-06, 104 S.W. 164, 165-66 (1907), *quoting Sceva v. True*, 53 N.H. 627 (1873).

A bailee has “a duty to exercise reasonable care to prevent damage to or loss of the bailed property.” *Kim v. Wong*, \_\_\_ Ariz. \_\_\_, 512 P.3d 689, 690 (App. 2022) (*citing* 8A Am. Jur. 2d Bailments §78).

To establish a defendant’s liability for a negligence claim, a plaintiff must prove: (1) a duty requiring the defendant to conform to a certain standard of care; (2) breach of that standard; (3) a causal connection between the breach and the resulting injury; and (4) actual damages.” *Quiroz v. Alcoa Inc.*, 243 Ariz. 560, 563-64, 416 P.3d 824, 827-28 (2018). See ***EX Corporation v. Travelers, et al.***, Destination Case No. 3276-1.

[D]uty is based on either special relationships recognized by the common law or relationships created by public policy. ... In the absence of such legislative guidance, duty may be based on the common law—specifically, case law or Restatement sections consistent with Arizona law.

*Quiroz*, 243 Ariz. at 563 ¶ 2. Whether a duty exists is a question of law. *Id.*, at 564 ¶ 7

Causation requires the plaintiff to show “a natural and continuous sequence of events stemming from the defendant’s act or omission, unbroken by any efficient intervening cause, that produce[d] an injury, in whole or in part, and without which the injury would not have occurred.”

*Sampson v. Surgery Center of Peoria, LLC*, 251 Ariz. 308, 311 ¶ 15, 491 P.3d 1116 (2021) (*quoting* *Barrett v. Harris*, 207 Ariz. 374, 378 ¶ 11 (App. 2004)).

Under the quasi contract implied by law, Here Now, as bailee, owed a tort duty of reasonable care to anyone whose property was in Here Now’s custody. Here Now did not exercise reasonable care to preserve the value of the North Mine moly ore.

Unreasonably comingling the North Mine moly ore with ore of lesser quality breached the duty of reasonable care. Commingling the ore caused foreseeable damages by preventing North Mine from realizing the full value if its higher quality moly ore.

The economic loss doctrine (see ***Mayor of Eastcity v. Thissucks Co.***, Destination Case No. 3276-3) does not apply because there was no contract applicable to storage of the North Mine moly ore. The quasi contract allowing recovery of transportation costs for unjust enrichment (see Decision on unjust enrichment above) could not exist if there was “a specific contract which governs the relationship of the parties.” Here Now is not insulated from tort liability for negligent damage to the moly ore in the absence of a specific contract.

It is hereby ordered, adjudged, and decreed awarding judgment for North Mine on the negligence claim.

The parties shall have 10 days to agree to the:

full storage fees and transportation costs for the copper ore at the contract rates;

transportation costs for the moly ore (at least at the contract rates for the copper ore – less loading fees); and

damages in the form of reduced value for the moly ore.

In the event there is no agreement on the above fees costs and damages each party shall instead submit within the same 10-day period their calculation of the disputed amount and damages will be determined by the Destination Court Rules of Arbitration for disputed facts.

The Clerk is ordered to enter judgment in accordance with the foregoing.

**/s/ AI Judge**

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