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CASE NOTE

Property Law—MINNESOTA APPLIES THE UNJUST ENRICHMENT DOCTRINE TO CONTRACT FOR DEED CANCELLATIONS—*Anderson v. DeLisle*, 352 N.W.2d 794 (Minn. Ct. App. 1984).

The contract for deed is a widely recognized alternative method of financing real estate purchases. The popularity of this device has been enhanced largely by the relative certainty and ease with which a contract for deed can be cancelled if its terms are not satisfied. A recent Minnesota Court of Appeals case significantly changes contract for deed law in Minnesota. In *Anderson v. DeLisle*,¹ the Minnesota Court of Appeals allowed a defaulting vendee to recover the costs he incurred in adding improvements to land purchased under a contract for deed.² The improvements were made prior to execution of the earnest money agreement.³ The vendor knew at the time of execution that the vendee was having financial difficulties.⁴ *Anderson* is the first Minnesota case allowing a defaulting vendee to recover under the theory of unjust enrichment when there was no fraud or mistake inducing the vendee to enter into the contract.⁵ The case expands Minnesota law concerning when defaulting vendees may recover from vendors.

A subsequent court of appeals case, *Brakke v. Hilgers*,⁶ discussed the application of the unjust enrichment doctrine in dicta.⁷ Even though the *Bakke* court attempted to restrict the parameters of a cause of action for unjust enrichment, the court's discussion will not significantly reduce the future use of the doctrine in contract for deed litigation. Thus, the *Anderson* holding will continue to have a major impact on the real estate bar in Minnesota.

1. 352 N.W.2d 794 (Minn. Ct. App. 1984), *pet. for reh. denied* (Minn. Nov. 8, 1984). The case is officially reported as *Anderson v. DeLisle* although the parties' briefs are captioned *Andersen v. DeLisle*. The vendee will be referred to as "Andersen" throughout the Case Note.

2. *Id.* at 796.

3. *Id.*

4. *Id.*

5. The possibility of such recovery has been mentioned in dicta, but no decision has actually allowed recovery. *See, e.g., Zirinsky v. Sheehan*, 413 F.2d 481, 486-90 (8th Cir. 1969); *Cady v. Bush*, 283 Minn. 105, 110, 166 N.W.2d 358, 361-62 (1969).

6. 374 N.W.2d 553 (Minn. Ct. App. 1985).

7. For a discussion of *Brakke*, see *infra* notes 110-12 and accompanying text.

Use of the contract for deed benefits both vendee and vendor.⁸ Under a contract for deed, the vendor retains title to the property while relinquishing possession to the vendee.⁹ The vendee makes periodic payments to the vendor until the purchase price and accrued interest are paid.¹⁰ Title remains with the vendor until the debt is retired.¹¹

The contract for deed provides many buyers with an opportunity to purchase land which may not otherwise be available.¹² For example, contracts for deed are most commonly used when interest rates on conventional mortgages are high, when the buyer does not qualify for institutional financing, or when the buyer prefers to use capital for operating costs rather than for a down payment.¹³ This form of conveyance is also advantageous to the vendor.¹⁴

8. Amundson & Rotman, *Depression Jurisprudence Revisited: Minnesota's Moratorium on Mortgage Foreclosure*, 10 WM. MITCHELL L. REV. 805, 810 n.12 (1984).

The contract for deed is the most commonly used substitute for the conventional mortgage. G. OSBORNE, G. NELSON & D. WHITMAN, REAL ESTATE FINANCE LAW § 3.25, at 79 (1979); Nelson & Whitman, *The Installment Land Contract—A National Viewpoint*, 1977 B.Y.U.L. REV. 541; see Note, *Installment Land Sale Contract—Forfeiture Clause Held Invalid—Seller's Remedy for Breach of the Contract is to Obtain a Judicial Sale of the Property—Sebastian v. Floyd*, 585 S.W.2d 381 (Ky. 1979), 7 N. KY. L. REV. 303, 304 (1980).

Contracts for deed have been criticized as excessively pro-seller. See generally, Corbin, *The Right of a Vendee to the Restitution of Installments Paid*, 40 YALE L.J. 1013, 1029-30 (1931) (criticism of contracts for deed is largely based on the concept of forfeiture because allowing the vendor to keep payments made as well as the land oversecures the seller and provides a windfall upon default); Note, *Forfeiture and the Iowa Installment Land Contract*, 46 IOWA L. REV. 786, 787 (1961) (contract for deed vendee not afforded the protections of a mortgagor); Comment, *Forfeiture: The Anomaly of the Land Sale Contract*, 41 ALB. L. REV. 71, 72 (1977) (vendors are usually unrepresented by counsel and ignorant of land contract hazards).

Despite these criticisms, contracts for deed remain popular among both buyers and sellers. For a discussion of the advantages of contracts for deed, see R. KRATOVL & R. WERNER, REAL ESTATE LAW 368-78 (8th ed. 1983); Amundson & Rotman, *supra*, at 810 n.12.

9. Nelson & Whitman, *supra* note 8, at 541.

10. *Id.*

11. *Id.*

12. HALL & BRUESS, REAL PROPERTY AND SECURITY FINANCING IN MINNESOTA REAL ESTATE 1975, 220-26 (Minn. Continuing Legal Education 1983). See R. KRATOVL & R. WERNER, *supra* note 8, at 368; Power, *Land Contracts as Security Devices*, 12 WAYNE L. REV. 391, 395-99 (1966).

13. See *supra* note 12.

14. The contract for deed is regarded as pro-vendor because of the ease of termination as opposed to a traditional mortgage which requires a foreclosure sale. See Nelson & Whitman, *supra* note 8, at 542-43.

The procedures for foreclosure of mortgages vary from state to state. The two most common methods are judicial foreclosure and foreclosure by power of sale. Under a judicial foreclosure, a public sale of the property results after a full judicial proceeding involving all interested parties. In a foreclosure by power of sale, no judicial proceeding is required, and the property is generally sold by the sheriff.

The contract for deed increases the marketability of the vendor's land by expanding the pool of available buyers.¹⁵ Individual financing also offers tax advantages to the vendor.¹⁶ The vendor may spread realization of gain over a period of years rather than recognizing it in a single year, as is the case with conventional third-party financing.¹⁷ In addition, the vendor can shift the cost of high credit risk to the vendee by increasing the purchase price or the rate of interest.¹⁸ Furthermore, a contract for deed encourages vendors to extend credit because security is realized quickly by means of a simple and conclusive cancellation.¹⁹

At common law, most installment land contracts provided that "time is of the essence."²⁰ This provision enabled a vendor to can-

Under both mechanisms, the proceeds from the public sale are first applied to satisfy the mortgage debt. See Nelson & Whitman, *supra* note 8, at 559-65; G. OSBORNE, *supra* note 8, § 7.11, at 446-47. For a concise discussion of mortgage foreclosure in Minnesota, see Amundson & Rotman, *supra* note 8, at 813-16.

The traditional rule distinguishing contracts for deed from mortgages has recently come under attack. See, e.g., Skendzel v. Marshall, 261 Ind. 226, 242, 301 N.E.2d 641, 650 (1973), *cert denied*, 415 U.S. 921 (1974) (where vendee's equity was two-thirds of the contract price, the court ordered the contract foreclosed under the mortgage statute); Sebastian v. Floyd, 585 S.W.2d 381, 383 (Ky. 1979) (no distinction between a contract for deed and a purchase money mortgage); OKLA. STAT. ANN. TIT. 16, § 11A (West Supp. 1983-84) (similar treatment of contracts for deed and mortgages); Uniform Land Transactions Act § 3-102(a), 13 U.L.A. 654 (1980) (traditional distinctions between contracts for deed and mortgages are not retained).

15. See Power, *supra* note 12, at 399. When the only available buyers lack sufficient cash either to make the down payment necessary for refinancing or to buy the seller's equity, the seller may be forced to leave his mortgage outstanding and sell to a buyer using a contract for deed as a junior lien. *Id.* at 404-05. Contracts for deed are also used to finance expensive homes when the price exceeds commercial loan limitations imposed by state regulations. Wealthy sellers can use the land contract for favorable tax treatment and when the buyer lacks the cash required for the down payment. *Id.* at 405.

Contracts for deed are also popular in farm sales, because they aid in meeting the increasing capital requirements of farm operations. *Id.* at 405-06. Finally, contracts for deed are frequently used to finance income-producing property such as motels, restaurants, and apartment houses. In these situations, conventional mortgage credit is often unavailable because the risk involved is relatively high. The businesses are often speculative, and the lender cannot be sure of a rapid realization on the security in the event of default. *Id.* at 406-07.

16. *Id.* at 407.

17. *Id.* at 400.

18. *Id.* at 401.

19. Wertheim, *Unjust Enrichment Claim of Cancelled Vendee*, 2 MINN. REAL EST. L. J. 117, 119 (1984); see *infra* notes 20-23 and accompanying text.

20. True v. Northern Pac. Ry. Co., 126 Minn. 72, 74, 147 N.W. 948, 949 (1914); Johnson v. Eklund, 72 Minn. 195, 196-98, 75 N.W. 14, 14-15 (1898). In a cancellation proceeding, a court will not imply that "time is of the essence," unless the contract for deed specifically contains the requirement. The vendor would then be required to give reasonable notice. See, e.g., Graceville State Bank v. Hofschild, 166

cel a contract immediately upon default by the vendee.²¹ The vendor would retain the property as well as all installments paid.²² Despite the vendor's windfall gain and the vendee's substantial loss, these forfeiture provisions were upheld because they reflected the intent of the parties.²³

Many states, including Minnesota,²⁴ have mitigated the harsh consequences of automatic cancellation.²⁵ Several states provide a statutory period of redemption to the defaulting vendee.²⁶ During the

Minn. 58, 61, 206 N.W. 948, 949 (1926); *Austin v. Wacks*, 30 Minn. 335, 339-40, 15 N.W. 409, 410-11 (1883).

A standard contract for deed specifies that "time is of the essence." *Cane, Equity and Forfeitures on Contracts for the Sale of Land*, 4 U. HAWAII L. REV. 61, 61 n.3 (1982). This implies that there will be no grace period for reinstatement or redemption. *Id.*; see also *Ballantine, Forfeiture for Breach of Contract*, 5 MINN. L. REV. 329, 345 (1921); *Lee, Remedies for Breach of the Installment Land Contract*, 19 U. MIAMI L. REV. 550, 561 (1965); Comment, *The Uniform Land Transactions Act: Time to Reform Washington's Default Procedures for Secured Sale of Land*, 17 GONZ. L. REV. 119, 123 (1981).

21. See *supra* note 20.

22. See *Nelson & Whitman, supra* note 8, at 542; Note, *Forfeiture and the Iowa Installment Land Contract*, 46 IOWA L. REV. 786, 787 (1961). Upon the vendee's default, the vendor has several remedies available in addition to cancellation. The vendor may (1) sue for installments due; (2) sue for specific performance of the contract; (3) sue for damages resulting from the breach; (4) foreclose the vendee's rights; or (5) quiet title. See *Nelson & Whitman, supra* note 8, at 542.

23. *Nelson & Whitman, supra* note 8, at 543; see Note, *supra* note 22, at 788. The courts, in refusing to grant relief from forfeitures in these cases, relied on the fact that the parties made the contract and are bound by its terms. *Vanneman, Strict Foreclosure on Land Contracts*, 14 MINN. L. REV. 342, 346 (1930). The reason for the vendee's default is immaterial. *Id.* at 347.

In *Oconto Co. v. Bacon*, 181 Wis. 538, 195 N.W. 412 (1923), the Wisconsin Supreme Court stated: "Parties should have some regard and respect for the terms of their own contracts and ought to make the terms thereof conform to their real understanding and not rely wholly or even largely upon a court of equity for protection from their own acts." *Id.* at 548, 195 N.W. at 415.

24. MINN. STAT. § 559.21 (1984 & Supp. 1985).

25. See *infra* note 26 and accompanying text.

26. See, e.g., IOWA CODE §§ 656.1-.6 (1950 & Supp. 1985); MINN. STAT. § 559.21 (1984 & Supp. 1985); N.D. CENT. CODE §§ 32-18-01 to -06 (1976); S.D. CODIFIED LAWS ANN. §§ 21-50-1 to -7 (1979); see also *Nelson & Whitman, supra* note 8, at 544; Comment, *Real Property: Cause of Action for Unjust Enrichment Upheld After Cancellation of Contract for Deed*, 54 MINN. L. REV. 1152, 1153 (1970). See generally Note, *Cancellation of Contracts for Deed: The Constitutionality of the Minnesota Statutory Procedure*, 58 MINN. L. REV. 247 (1973) (discussion of forfeiture in contracts for deed).

Where legislative intervention is lacking, many courts have responded with similar ameliorating approaches. For a general discussion of judicially-created redemption periods, see *Nelson & Whitman, supra* note 8, at 550-54. Other courts prefer a more flexible approach and simply respond to the particular facts of a case in determining whether to abrogate cancellations. One frequent method used by the courts to avoid forfeitures is to find that some act of the vendor constitutes a waiver of the forfeiture provision in the contract. The vendor's acceptance of late payments is the typical situation in which waiver will be found. See, e.g., *Krentz v. Johnson*, 36 Ill. App. 3d 142, 343 N.E.2d 165 (1976); *Soltis v. Liles*, 275 Or. 537, 551 P.2d 1297

redemption period, the vendee is given an opportunity to cure the default.²⁷ If the default is cured, the contract is reinstated.²⁸

As in most jurisdictions with statutory cancellation procedures,²⁹ the Minnesota courts have limited review to the question of whether the parties have complied with the statutory procedures.³⁰ The Min-

(1976); *Williamson v. Wanlass*, 545 P.2d 1145 (Utah 1976); *but see Pacific Dev. Co. v. Stewart*, 113 Utah 403, 195 P.2d 748 (1948); *see also Cohler v. Smith*, 280 Minn. 181, 189, 158 N.W.2d 574, 579 (1968) (vendor has not waived when collecting rents under claim that forfeiture is complete).

27. In Minnesota, the legislature has established a reinstatement period whereby the vendee can avoid cancellation by curing the default. *See* MINN. STAT. § 559.21, subd. 4 (1984 & Supp. 1985). The statute's predecessor was enacted in 1897. *See* Act of Apr. 23, 1897, ch. 223, 1897 Minn. Laws 431. The statute's purpose was to defer cancellation until after notice to the vendee of the default and an opportunity to cure. *See Hofschild*, 166 Minn. at 61, 206 N.W. at 949. Minnesota Statutes section 559.21 originally provided that the reinstatement period would progressively lengthen as the vendee's equity in the property grew. Accordingly, as a vendee made payments on the property, more time was given to cure the default. *See* Act of Apr. 23, 1897, ch. 223, 1897 Minn. Laws 431.

Contracts executed before August of 1976 could be terminated upon 30 days' notice regardless of the percentage price paid under the contract. MINN. STAT. § 559.21, subd. 1(a). For contracts executed between August, 1976 and May, 1980, the reinstatement period was adjusted according to the percentage of the total purchase price paid under the contract. *Id.* subd. 2. *But see* Act of July 5, 1985, ch. 18, 1985 Minn. Sess. Law Serv. 1289 (codified at MINN. STAT. § 559.21, subd. 2(a)(Supp. 1985)) (effective August 1, 1985, reinstatement period changed to a flat 60-day period for all vendees, regardless of the percentage of purchase price paid and regardless of when the contract was executed). *Id.*

28. MINN. STAT. § 559.21, subd. 4(c). The statutory redemption period begins to run when the vendor gives proper notice of intent to cancel. *Id.*, subd. 2(a). Notice must include an explanation of the reasons why there has been a default and the applicable reinstatement period as defined in the statute. *Id.* The notice must state that the contract will terminate at the end of the applicable time period if not reinstated. *Id.* In addition to making back payments, reinstatement includes costs of service, mortgage registration tax, and, within limits, attorney's fees. *Id.*

For examples of other statutory reinstatement procedures, *see* IOWA CODE ANN. §§ 651.1-6 (West 1950 & Supp. 1985); N.D. CENT. CODE §§ 32-18-01 to -06 (1976); S.D. CODIFIED LAWS ANN. §§ 21-50-01 to -07 (1978). In Ohio, the reinstatement period is combined with a requirement of judicial foreclosure after 20 percent of the purchase price is paid. *See* OHIO REV. CODE ANN. §§ 5313.05-.10 (1981).

Many states lack a comprehensive legislative scheme of regulating contracts for deed. This is partially due to the unique treatment of mortgage foreclosure by the states. In agricultural states such as Minnesota, Iowa, and North Dakota, legislation has made mortgage foreclosure difficult. Thus, contracts for deed are common in these states. *See* Power, *supra* note 12, at 401-03. *See generally* Prather, *Foreclosure of the Security Interest*, 1957 U. ILL. L.F. 420, 450-51 (detailed discussion of foreclosure in the fifty states).

29. *See* Nelson & Whitman, *supra* note 8, at 545; *see also* Note, *supra* note 22, at 788 (suggesting that legislative regulation of contract for deed cancellation tends to institutionalize forfeitures, and therefore, courts in these jurisdictions emphasize technical compliance over independent analyses of fairness).

30. *See supra* notes 27-28. For other cancellation statutes, *see supra* note 26.

nesota Supreme Court consistently has held that a cancelled vendee has no right to a refund of payments made under the contract regardless of the harsh results.³¹ Thus, after the contract for deed is terminated by cancellation, the vendee cannot bring a claim against the vendor.³² As a result, any action for damages under a cancelled

31. *Wayzata Enterprises, Inc. v. Herman*, 268 Minn. 117, 119, 128 N.W.2d 156, 158 (1964); *See Andresen v. Simon*, 171 Minn. 168, 170, 213 N.W. 563, 564 (1927); *Nelson Real Estate Agency v. Seeman*, 147 Minn. 354, 357, 180 N.W. 227, 229 (1920); *Citizens' State Bank of Twin Valley v. Moebeck*, 143 Minn. 291, 297, 173 N.W. 853, 855 (1919).

The result is based upon the fact that a cancelled vendee no longer owns the property. Consequently, any claim based upon the contract is eliminated. *See Olson v. Northern Pac. Ry. Co.*, 126 Minn. 229, 231-32, 148 N.W. 67, 68 (1914). Statutory cancellation also precludes any claim under the contract to recover payments made. *See id.* at 233-34, 148 N.W. at 69. This is referred to as the *Olson* rule. *See also McManus v. Blockmarr*, 47 Minn. 331, 335, 50 N.W. 230, 231 (1891) (preclusion of recovery is so widely accepted that it does not require citation of authorities).

For similar holdings in other jurisdictions, see generally *Sawyer v. Sterling Realty Co.*, 41 Cal. App. 2d 715, 107 P.2d 449 (1940) (denying an action by the defaulting vendee for recovery in installment payments under the theory of unjust enrichment); *Beatty v. Flannery*, 49 So.2d 81 (Fla. 1950) (defaulting vendee who believed that title to the property was unmarketable could not recover payments made under that contract); *Dimon v. Wright*, 206 Iowa 693, 214 N.W. 673 (1927) (not allowing a defaulting vendee to recover the initial payment on the contract because equity does not allow one to gain from his own breach); *McCain v. Hicks*, 150 La. 43, 90 So. 506 (1921) (denying vendee's prior payments under the contract after default even though the vendee was not satisfied with the land); *King v. Milliken*, 248 Mass. 460, 143 N.E. 511 (1924) (vendee, who defaulted on the contract after the vendor refused an extension for a complete registration of title, was held not entitled to recovery of a \$500 deposit made as partial payment on the contract); *In re First Nat'l Bank of Adrian v. Dalton*, 207 Mo. App. 115, 230 S.W. 358 (1921) (vendee who defaulted on the basis of a bad faith objection to title was held not entitled to recovery of earnest money); *Gilmore v. Cover*, 134 Neb. 559, 279 N.W. 177 (1938) (defaulting vendee not entitled to recovery of a down payment made on the contract because the vendor had engaged in no wrongful conduct); *Mikulich v. Diltz*, 71 Nev. 115, 281 P.2d 800 (1955) (vendee who made improvements to the land, and who subsequently failed to make the down payment on the contract, held not entitled to recover the cost or value of the improvements); *Fleischer v. Lockwood Lumber Co.*, 258 A.D. 900, 16 N.Y.S.2d 205 (1939) (counterclaim by a defaulting vendee for recovery of the down payment was denied since the vendee was not willing or ready to perform); *Harrington v. Eggen*, 51 N.D. 87, 199 N.W. 447 (1924) (defaulting vendee not entitled to recovery of payments after vendor resold the land to a third party); *Jackson v. Peddycoart*, 98 Okla. 198, 224 P. 689 (1924) (defaulting vendee not entitled to refund of payments made); *Seekins v. King*, 66 R.I. 105, 17 A.2d 869 (1941) (defaulting vendee not entitled to recovery of payments since vendor was not guilty of fraud, nor did he retain a benefit which was "shocking to the conscience of the court").

32. *See Olson*, 126 Minn. at 231-32, 148 N.W. at 68-69. In *Olson*, the vendor agreed to sell 320 acres of land to the vendee for \$4,640. The vendor executed a contract for deed that required the vendee to make 10 annual installments. The vendee made an initial down payment of \$464, but he failed to make further payments for two years. The vendor served the vendee with a statutory notice of intention to cancel the contract. The vendee, however, did not attempt to cure his default, but

contract is absolutely barred.³³

There is a narrow exception to the rule; specifically, post-cancellation rescission for fraud.³⁴ This remedy, however, is reserved for rather blatant abuses and is limited to situations where the vendee would have been justified in rescinding the contract prior to cancel-

rather, sued the vendor for fraudulent misrepresentation inducing execution of the contract. The vendee sought damages of \$1,440. The damages represented the difference in value of the land in its actual, as opposed to its represented, condition. *Id.* at 229-30, 148 N.W. at 68.

The court denied recovery to the vendee. The court stated that since the contract had been cancelled, the vendee no longer possessed any rights in the property, and consequently, could not predicate damages upon the contract. *Id.* at 231-33, 148 N.W. at 68-69. The court stated the following:

It cannot be that a person may enter a contract to buy property for a large sum to be thereafter paid, never make the payments agreed upon, suffer the other party to cancel the contract by reason of the default, and then sue and recover heavy damages for deceit inducing him to buy property which he never saw fit to accept or pay for.

Id. Thus, the court held that before damages may be recovered, it must appear that the vendee had accepted the property and that there remained an obligation to pay for it. *Id.*

The *Olson* court noted that the vendee could have chosen to seek recovery only of the money paid on the contract, through an action at law for money had and received, regardless of vendor's cancellation of the contract. *Id.* at 234, 148 N.W. at 69. The court stated that such an action would be considered the same as one for rescission and would be governed by the principles used in equity to rescind for fraud. *Id.* As a result, once the contract for deed has been cancelled in Minnesota, a vendee may not maintain an action against the vendor for false representations.

In a dissenting opinion, Justice Brown pointed to the illogic of allowing a vendor, after obtaining a vendee's money by fraud, to secure legal sanction for the retention of the money merely by cancellation of the tainted contract. *Id.* at 236, 148 N.W. at 70. Justice Brown, contrary to the majority, felt that justice dictated allowing the vendee to pursue his fraud claim despite cancellation of the contract by the vendor. *Id.* at 237, 148 N.W. at 71.

Despite criticism, however, *Olson* remains the law in Minnesota, and as such, once a contract for deed is cancelled, a vendee may not maintain an action against the vendor for false representations regarding the contract.

For an explanation and criticism of the *Olson* rule, see Note, *supra* note 26, at 250 (arguing that a fraud action should survive cancellation because it is not based on the contract).

33. See *West v. Walker*, 181 Minn. 169, 171, 231 N.W. 826, 827 (1930); *Olson*, 126 Minn. at 231, 148 N.W. at 68.

34. See, e.g., *Gable v. Niles Holding Co.*, 209 Minn. 445, 447, 296 N.W. 525, 527 (1941) (defaulting vendee recovered payments on a contract for deed after statutory cancellation, since fraud was used to induce the vendee to purchase the property); *Woodward v. Western Can. Colonization Co.*, 134 Minn. 8, 10-11, 158 N.W. 706, 707 (1916) (vendee allowed to recover payments made prior to discovery of the fraud even though vendee had defaulted).

The policy behind the strict rule is to encourage parties to fix their rights in advance so the parties know to what extent each is bound. G. OSBORNE, *supra* note 8, § 3.26, at 80-81 (forfeiture has been routinely enforced to uphold the intent of the parties); Note, *supra* note 8, at 788.

lation due to the vendor's fraud.³⁵ Beyond this exception, a vendee in default cannot maintain an action in equity.³⁶

An action for unjust enrichment is permitted whenever the property of another has been obtained which in equity and good conscience ought to be returned.³⁷ One must return property obtained from another, however, only when it has been unjustly retained.³⁸ The mere fact that a person benefits from another is not itself sufficient to require restitution.³⁹

35. See *Gable*, 209 Minn. at 447, 296 N.W. at 526-27 (vendee defrauded into trading her home for a fourplex by misrepresentations regarding her ability to make payments); see also *Raach v. Haverly*, 269 N.W.2d 877, 880-81 (Minn. 1978) (refusing to apply the *Olson* rule to real estate broker who made misrepresentations to a buyer).

The supreme court actually has found a situation justifying post-cancellation rescission for fraud in only one case. *Wertheim*, *supra* note 19, at 118 & n.11, (citing *Gable*, 209 Minn. 445, 296 N.W. 525).

36. Although the Minnesota courts have suggested that a cancelled vendee might recover under general equitable principles such as money had and received or unjust enrichment, this relief consistently has been denied.

"Money had and received" is an equitable remedy compelling one unjustly enriched at the expense of another to disgorge the profit made. See *Todd v. Bettingen*, 109 Minn. 493, 498, 124 N.W. 443, 446 (1910).

The *Olson* court stated that an action for money had and received "might be considered virtually the same as one for rescission and would be governed by the principles which are applied in equity suits to rescind for fraud." 126 Minn. at 234, 148 N.W. at 69. Despite these words, the *Olson* court denied such relief, as have other subsequent decisions. *Olson*, 126 Minn. at 234-35, 148 N.W. at 69-70; see also *West v. Walker*, 181 Minn. 169, 231 N.W. 826 (1930); *International Realty & Sec. Corp. v. Vanderpoel*, 127 Minn. 89, 148 N.W. 895 (1914).

In *Cady v. Bush*, 283 Minn. 105, 166 N.W.2d 358 (1969), the Minnesota Supreme Court declared that Minnesota law allowed recovery by a defaulting vendee where it would be "morally wrong for one party to enrich himself at the expense of another." *Id.* at 110, 166 N.W.2d at 362. Similarly, in *Zirinsky v. Sheehan*, 413 F.2d 481 (8th Cir. 1969), the Eighth Circuit Court of Appeals interpreted Minnesota law as allowing a defaulting vendee to recover previous payments even in the absence of fraud or mistake. *Id.* at 486-90.

Both *Zirinsky* and *Cady*, however, denied recovery because it was not shown that the vendor was unjustly enriched. In *Cady*, the court demonstrated what was necessary to prove "moral wrongdoing" by deciding that the vendee could not recover if he could not prove fraud by the vendor. *Cady*, 283 Minn. at 110, 166 N.W.2d at 362. In *Zirinsky*, recovery was denied because the vendee could not show that he was entitled to a sum in excess of the vendor's damages. *Zirinsky*, 413 F.2d at 490. The *Zirinsky* court centered its analysis upon Minnesota cases involving fraud. See *id.* at 484-90.

37. The principle of unjust enrichment is recognized throughout the United States. It should be noted, however, that the overwhelming weight of authority denies restitution to defaulting vendees under a contract for deed. See, e.g., *Melton v. Amar*, 86 Idaho 262, 385 P.2d 406 (1963); *Graves v. Winer*, 351 S.W.2d 193 (Ky. Ct. App. 1961); *Davies v. Boyd*, 73 N.M. 85, 385 P.2d 950 (1963).

38. See, e.g., *Gard v. Razanskas*, 248 Iowa 1333, 1339, 85 N.W.2d 612, 616 (1957).

39. See generally RESTATEMENT RESTITUTION § 1 (1957) (discussing examples of unjust enrichment).

The principle of unjust enrichment will not be invoked simply because one party has made a bad bargain.⁴⁰ The Minnesota Supreme Court has stated that equity will not rewrite or abrogate contracts to protect parties from consequences which were reasonably foreseeable when the contract was executed.⁴¹ Early in the century, the Minnesota Supreme Court described the situations in which the doctrine of unjust enrichment would be applied. Fraud has been the primary basis for an action in unjust enrichment.⁴² Mistake, failure of consideration, or money obtained through imposition, extortion, oppression, or undue advantage are other situations where an action based on unjust enrichment is appropriate.⁴³ Moreover, the Minnesota Supreme Court stated that unjust enrichment can be applied in situations where it would be “morally wrong” for one party to become enriched at the expense of another.⁴⁴

In *Zirinsky v. Sheehan*,⁴⁵ the Eighth Circuit Court of Appeals applied

40. *Cady*, 283 Minn. at 110, 166 N.W.2d at 362.

41. *Id.*

42. *See id.* at 110, 166 N.W.2d at 361 (action resulting from cancellation of a contract for the sale of real estate; while the supreme court found no actionable fraud, it did recognize that a cause of action could be maintained on that basis); *Gable*, 209 Minn. at 447, 296 N.W. at 527 (widow traded her home as a down payment on a contract for deed; the fraud related to her ability to make the payments); *Olson*, 126 Minn. at 234, 148 N.W. at 69 (misrepresentation of quality and character of land inducing vendee to enter into contract).

43. *Anderson v. DeLisle*, 352 N.W.2d 794, 796 (Minn. Ct. App. 1984).

44. *See Klass v. Twin City Fed. Sav. & Loan Ass'n*, 291 Minn. 68, 71, 190 N.W.2d 493, 495 (1971) (allowing recovery in absence of fraud or mistake); *Cady*, 283 Minn. at 110, 166 N.W.2d at 361. In *Cady*, the court stated that a cause of action in unjust enrichment could be based on “situations where it would be morally wrong for one party to enrich himself at the expense of another.” *Id.* The *Klass* court reaffirmed the validity of this proposition. *Klass*, 291 Minn. at 71, 190 N.W.2d at 495.

45. 413 F.2d 481 (8th Cir. 1969), *cert denied*, 396 U.S. 1059 (1970). In *Zirinsky*, the plaintiff agreed to purchase 560 acres of real estate from a corporation for \$2,750,000. The parties entered into a contract for deed, which called for a down payment of \$50,000, two installments of \$225,000, a final installment of \$850,000, and the assumption of a \$1,400,000 mortgage. The plaintiff made the first three installments totalling \$500,000, but was unable to pay the final installment of \$850,000. The corporation thereupon notified Zirinsky of its intention to cancel the contract and to retain the \$500,000 as provided in a liquidated damages provisions of the contract. *Id.* at 482-83.

Zirinsky brought suit to have the contract reformed, the liquidated damages provisions declared invalid as a penalty, the notice of termination declared ineffective, rescission of the contract because of defendant's breach, or for damages because of defendant's unjust enrichment. Recovery was denied on all theories. *Id.* at 483.

The Eighth Circuit recognized the Minnesota rule that once a contract has been terminated, all rights on the part of both vendee and vendor are also terminated. *Id.* at 484-85. Termination of the contract does not, however, preclude a vendee's suit for unjust enrichment. *Id.* at 486.

The court also held that since the vendor had cancelled the contract, it could not seek retention of damages under the liquidated damages clause since the contract

Minnesota law and suggested that a cancelled vendee could recover when there was no fraud.⁴⁶ Traditionally, relief for unjust enrichment in contract for deed cancellation cases was limited to cases involving fraud.⁴⁷ The court stated that a vendee could recover payments made in excess of the vendor's damages under a theory of unjust enrichment.⁴⁸ The *Zirinsky* decision has been criticized as misstating Minnesota law and ignoring Minnesota's rule prohibiting a nonfraud recovery by a cancelled vendee.⁴⁹

In *Anderson*, the Minnesota Court of Appeals addressed the issue of whether an unjust enrichment action could be maintained in the absence of fraud.⁵⁰ On July 31, 1979, Richard Andersen signed an earnest money contract to purchase real estate from Thomas DeLisle for \$275,000.⁵¹ The earnest money contract provided that the purchase was contingent upon the sale of Andersen's residence.⁵² From the beginning of the negotiations, DeLisle was aware of Andersen's financial difficulties. Between July and October, the parties had several discussions concerning Andersen's financial problems.⁵³

had been terminated. *Id.* at 485-86. Rather, the vendor's rights must be determined under the statutory cancellation. *Id.* at 486. A review of Minnesota law indicated that the vendor could retain a fair equivalent of the actual damages sustained from failure to perform the contract and no more. *Id.* at 487.

The *Zirinsky* court noted that Minnesota has "repeatedly recognized actions based upon a theory of unjust enrichment in real estate contracts." *Id.* at 488. The court then proceeded to cite three Minnesota cases dealing with post-cancellation rescission for fraud: *Cady*, 283 Minn. at 105, 166 N.W.2d at 358 (theory of unjust enrichment not meant to aid one who voluntarily enters a binding contract); *Gable*, 209 Minn. at 445, 296 N.W. at 525 (unjust enrichment allows recovery for money had and received); *West*, 181 Minn. at 169, 231 N.W. at 827 (vendor's statutory cancellation prevents vendee's suit for fraud).

The Eighth Circuit declared that it was unimportant that these cases involved fraud, because Minnesota courts have recognized that "cancellation *per se* does not prevent a suit for unjust enrichment on executory real estate contracts in Minnesota." *Zirinsky*, 413 F.2d at 488. To support this statement, the court cited *Todd v. Bettingen*, 109 Minn. 493, 124 N.W. 443 (1910). *Zirinsky*, 413 F.2d at 488. *Todd*, however, did not involve an executory real estate contract, nor did it even discuss such a contract.

The Eighth Circuit denied recovery to the plaintiff because the plaintiff failed to establish entitlement to a sum in excess of the defendant's actual damage. *Id.* at 490; see also Wertheim, *supra* note 19, at 118-19.

46. *Zirinsky*, 413 F.2d at 489; see Wertheim, *supra* note 19, at 118.

47. See *supra* notes 33, 34 and accompanying text.

48. *Zirinsky*, 413 F.2d at 489-90.

49. Wertheim, *supra* note 19, at 118; Comment, *supra* note 26, at 1154.

50. *Anderson*, 352 N.W.2d 794, 795-96.

51. *Id.* at 795.

52. Brief for the Appellant at A-13, *Anderson v. DeLisle*, 352 N.W.2d 794 (Minn. Ct. App. 1984).

53. *Id.* at A-25. At one point, the parties renegotiated the original purchase agreement to account for Andersen's financial problems and to give him more time to perform. *Id.*

Before the earnest money contract was signed, Andersen began making improvements on the DeLisle property.⁵⁴ Although DeLisle, the vendor, did not expressly consent to the work, the improvements were made with his knowledge.⁵⁵

The parties entered into a contract for deed on December 31, 1979.⁵⁶ At this point in time, Andersen had completed the improvements by spending \$25,000 on labor and materials.⁵⁷ The improvements enhanced the value of the property by \$47,000.⁵⁸ DeLisle knew at the execution of the contract that Andersen's financial problems had not abated.⁵⁹ He also knew that Andersen probably would be unable to perform under the contract.⁶⁰

The contract executed by the parties contained standard language which is found in the printed forms commonly used in Minnesota.⁶¹ The contract specified that all existing improvements were the property of DeLisle.⁶² In addition, the contract provided that upon Andersen's default and cancellation, all improvements and payments belonged to the vendor as liquidated damages.⁶³

Andersen's down payment check was dishonored.⁶⁴ DeLisle cancelled the contract.⁶⁵ As a result, Andersen never took possession of the property.⁶⁶ Andersen sued DeLisle to recover the value of the improvements made under a theory of unjust enrichment.⁶⁷

The trial judge submitted the issue of unjust enrichment to the jury which found that the DeLisles were unjustly enriched.⁶⁸ Andersen was awarded \$47,000 for enhancing the property's value.⁶⁹ The trial judge later granted judgment notwithstanding the verdict, and

54. *Anderson*, 352 N.W.2d at 795.

55. *See id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *See* MINN. STAT. § 507.14, Forms 54-57.

62. *Anderson*, 352 N.W.2d at 795.

63. *Id.* Agreed Statement of the Record at 2 (appended to Appellant's Informal Brief and Appendix).

64. *Anderson*, 352 N.W.2d at 795.

65. *Id.*; *see* MINN. STAT. § 559.21 (1982).

66. *Anderson*, 352 N.W.2d at 795. DeLisle cancelled the contract in accordance with Minnesota statutes section 559.21. Under this statute, the vendor may terminate the contract by serving upon the vendee a notice specifying the conditions in which default has been made, and stating that the contract will terminate 60 days after service of the notice, unless the vendee complies with certain conditions outlined in the statute, including, of course, cure of the default. *See* MINN. STAT. § 559.21 (1982).

67. *See Anderson*, 352 N.W.2d at 795.

68. *Id.*

69. *Id.*

Andersen appealed.⁷⁰

The Minnesota Court of Appeals upheld Andersen's claim for unjust enrichment and remanded the case to the trial court with instructions to enter judgment in favor of Andersen for his expenditures totaling \$25,000.⁷¹ The effect of the court's decision is that a defaulting vendee under a contract for deed can bring a cause of action in Minnesota for unjust enrichment despite the absence of fraud.⁷²

Despite the criticism of the *Zirinsky* decision⁷³ and its non-binding effect,⁷⁴ the court of appeals relied on *Zirinsky* for its conclusion that statutory cancellation does not preclude a suit for unjust enrichment on executory real estate contracts in Minnesota.⁷⁵ The court stated that fraud and mistake are not the only grounds for recovery in an unjust enrichment action.⁷⁶ The court concluded that an action in unjust enrichment is appropriate in circumstances where it would be "morally wrong" for a party to enrich himself at the expense of another.⁷⁷

Although there was no fraud or mistake,⁷⁸ the court of appeals concluded that a jury reasonably could find that equity and good conscience required DeLisle to compensate Andersen for the improvements.⁷⁹ The court emphasized that DeLisle stood silent while Andersen made extensive improvements to the property.⁸⁰ Also significant to the court was DeLisle's knowledge of Andersen's precarious financial condition. DeLisle contracted to retain the improvements upon default knowing that because of Andersen's financial problems, a default was imminent.⁸¹

At the same time, however, the court of appeals recognized Andersen's wrongdoing.⁸² The court held that Andersen should be

70. *Id.*

71. *Id.* at 796. The trial judge found that he had committed an error of law by submitting the issue of unjust enrichment to the jury in the absence of any evidence of fraud or mistake on the vendor's part. *Id.* at 795.

72. *Id.* at 796.

73. See *supra* note 47 and accompanying text.

74. The Eighth Circuit's statement in *Zirinsky* that Minnesota recognizes an action in unjust enrichment by a cancelled vendee was dicta and has been criticized as a misinterpretation of Minnesota law. See *supra* note 47. In addition, the Eighth Circuit's statement is not binding precedent. A federal court's interpretation of state law is binding only upon the parties presenting the state law issue to the federal court.

75. *Anderson*, 352 N.W.2d at 796.

76. *Id.*

77. *Id.*

78. The trial court found that there was no evidence of mistake or fraud. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. See *id.* The court refused to condone Andersen's behavior by awarding him

awarded no more than \$25,000, the actual cost of the improvements, even though the improvements enhanced the value of the property by \$47,000.⁸³ Andersen signed a contract for deed knowing he was financially unable to perform.⁸⁴ The court specifically stated that to award Andersen more than the cost of the improvements would reward him for defaulting on the contract.⁸⁵ The court acknowledged that its decisions contravened the general rule that recovery for unjust enrichment is based upon what the person enriched has received, rather than what the opposing party has lost.⁸⁶ Nevertheless, the court decided that it would be grossly inequitable for Andersen to recover more than the actual cost of the improvements.⁸⁷

The court of appeals cited *Cady v. Bush*⁸⁸ as support for the proposition that a claim for unjust enrichment by a cancelled vendee is justifiable where there has been moral wrongdoing.⁸⁹ The court neglected to mention, however, that *Cady* also states that the theory of unjust enrichment will not be invoked to protect parties from consequences reasonably foreseeable when the contract was entered into.⁹⁰ According to the facts as set forth by the court, it was foreseeable to both parties that Andersen would eventually default and that the contract would be cancelled.⁹¹ It was also foreseeable that upon default and cancellation, Andersen's improvements would remain with DeLisle as liquidated damages.⁹² This forfeiture was written into the contract.⁹³ Under the *Cady* holding, Andersen should not be protected by the doctrine of unjust enrichment, since the forfeiture of improvements was reasonably foreseeable when the parties entered into the contract.

In addition, the facts of this case did not fall within that category of circumstances that are so shocking that the court is compelled to grant relief. The vendor, DeLisle, was enriched by Andersen's ef-

the value of the improvements he made. Rather, he was given the cost of those improvements. *Id.*

83. *Id.*

84. *Id.* The court also noted that Andersen began to make improvements before the earnest money contract was signed and before obtaining consent from DeLisle. *Id.*

85. *Id.* Andersen's down payment check was dishonored and he made no further payments. *Id.*

86. *Id.*; see also *Zirinsky*, 413 F.2d at 489; *Georgopolis v. George*, 237 Minn. 176, 185, 54 N.W.2d 137, 142 (1952).

87. *Anderson*, 352 N.W.2d at 796.

88. 283 Minn. 105, 166 N.W.2d 358 (1969).

89. *Anderson*, 352 N.W.2d at 796.

90. *Cady*, 283 Minn. at 110, 166 N.W.2d at 362.

91. Both parties were aware of the circumstances and negotiated the contract with Andersen's financial problems in mind. See *supra* note 53 and accompanying text.

92. See *Anderson*, 352 N.W.2d at 795.

93. *Id.*; see also *supra* note 63.

forts, but it is not clear that DeLisle's enrichment was unjust. The contract was freely negotiated.⁹⁴ DeLisle may have stood silent while Andersen made the improvements,⁹⁵ but certainly this is not unreasonable behavior. DeLisle anticipated that Andersen would purchase the property. Although DeLisle was aware of Andersen's financial problems,⁹⁶ he may have believed they would be resolved in the near future.

In any event, Andersen was in the best position to assess his own financial condition. Andersen was clearly more aware of his inability to satisfy the terms of the contract than was DeLisle, yet he still signed the contract. Moreover, Andersen began making improvements before the earnest money contract was signed.⁹⁷ Even though he had no rights in the property, he decided to invade the land and altered its character without obtaining express consent from the owner.⁹⁸ In addition, Andersen's first check under the contract for deed was dishonored,⁹⁹ and he made no further effort to retain the property.¹⁰⁰ The court of appeals, however, felt it was equitable to uphold Andersen's recovery because of DeLisle's wrongdoing.¹⁰¹

The court of appeals awarded Andersen his out-of-pocket costs instead of the amount of DeLisle's enrichment,¹⁰² which suggests that the court was treating the case as an action for damages of fraud even though there was no fraud.¹⁰³ Even if there had been fraud, an

94. See Respondent's Brief and Appendix at A-15, *Anderson v. DeLisle*, 352 N.W.2d 794 (Minn. Ct. App. 1984) (there was no evidence of fraud or wrongdoing by the defendant).

95. See *Anderson*, 352 N.W.2d at 796.

96. See *supra* note 53 and accompanying text.

97. See *Anderson*, 352 N.W.2d at 796.

98. See *id.*

99. *Id.*

100. See Appellant's Brief and Appendix, *supra* note 52, at A-15. Andersen never possessed the property in the sense of "use" or "enjoyment". *Id.*

101. See *Anderson*, 352 N.W.2d at 796.

102. The out-of-pocket rule is used in fraud damage actions. Wertheim, *supra* note 19, at 117. The rule allows recovery of the difference between the amount paid and the value of the property bought. *Olson*, 126 Minn. at 232, 148 N.W. at 69; Wertheim, *supra* note 19, at 117. The *Olson* court reasoned that this rule is not applicable in cases where the property purchased has been forfeited under a cancelled contract for deed because the vendee retains no property the value of which can be deducted from what has been paid. The vendee in default must return the property to the vendor. The contract is extinguished.

103. *Anderson*, 352 N.W.2d at 796. In upholding recovery for Andersen, the court of appeals failed to acknowledge that a plaintiff seeking relief through equity must come into the court with "clean hands." See *Precision Instrument Mfg. Co. v. Automotive Maintenance Mach. Co.*, 324 U.S. 806 (1945). The clean hands doctrine bars relief to those guilty of improper conduct in the matter as to which they seek relief. *Id.* at 814-15. This doctrine protects the integrity of the court and reflects public policy by ensuring that equitable powers are not wasted on undeserving plaintiffs. See *Gaudiosi v. Mellon*, 269 F.2d 873, 881-82 (3rd Cir. 1959). In this case, Ander-

action for damages by a cancelled vendee is absolutely barred under Minnesota case law.¹⁰⁴ The *Anderson* court allowed recovery because the vendee's out-of-pocket expenses exceeded the vendor's damages.¹⁰⁵ The court's decision is baffling since Andersen's behavior could be viewed as significantly more blameworthy than DeLisle's.¹⁰⁶ This is simply not a case which factually justifies recovery by the cancelled vendee in the absence of any fraud on the vendor's part. In addition, the court's failure to analyze the case in light of prior case law leaves current Minnesota case law on contract for deed cancellation unclear.

While *Anderson* only involved recovery of the costs of improvements,¹⁰⁷ the court did not distinguish these costs from payments under the contract. The court's reliance on *Zirinsky* suggests that the unjust enrichment action may be open to vendees seeking recovery of payments.¹⁰⁸ After *Anderson*, vendors risk liability for all payments made upon default of the vendee. Vendors also risk liability for the costs of improvements made to the property.¹⁰⁹

The court of appeals, however, attempted to limit the *Anderson* holding in *Brakke v. Hilgers*.¹¹⁰ In dicta, the *Brakke* court indicated

sen's complaint of unjust enrichment arises only because of his own default on the contract. A party to a contract for deed cannot breach the contract and secure a right to the detriment of the other party. *Miller v. Snedeker*, 257 Minn. 204, 217, 101 N.W.2d 213, 223 (1960).

104. See *Olson*, 126 Minn. at 232, 148 N.W. at 68.

105. See *Anderson*, 352 N.W.2d at 796; Wertheim, *supra* note 19, at 119.

106. See *supra* notes 97-101 and accompanying text.

107. See *Anderson*, 352 N.W.2d at 795.

108. See *Zirinsky*, 413 F.2d at 483. The court in *Zirinsky* stated:

[T]he court made it clear the vendee had the burden of showing the fraud to receive back his whole purchase price. In the instant case in order to establish any actionable wrong the defaulting vendee must show he is entitled to a sum in excess of defendant's actual damage. . . . [P]laintiff failed to prove any unjust enrichment to the defendant.

Id. at 490. The *Zirinsky* court seems to be saying that if the plaintiff had shown he was entitled to a sum in excess of the defendant's actual damages, he would have proven unjust enrichment. The *Anderson* court used *Zirinsky* to support its approval of an action in unjust enrichment for the recovery of improvements even though the plaintiff in *Zirinsky* sought recovery of payments. Since the *Anderson* court cited *Zirinsky* approvingly, the inference is that it would uphold a defaulting vendee's claim for the recovery of payments if the payments exceeded the vendor's damages. See Wertheim, *supra* note 19, at 119.

109. The cost of the improvements could easily be many times the property's contract price. Many vendors are not in a position to buy out their vendee's interest.

110. 374 N.W.2d 553 (Minn. Ct. App. 1985). *Brakke* involved the sale of property under a contract for deed. Under the contract, the vendees were to make annual payments commencing on November 1, 1983. The vendees made the first payment, but failed to make any further payments. Before defaulting, the vendees had made extensive improvements to the property. *Id.* at 555. The vendors commenced cancellation proceedings, and the notice of cancellation was filed on December 11, 1984. On the same date, the vendees filed a labor and material lien against the property.

that according to the facts of the case, a cause of action for unjust enrichment was unwarranted, since the vendors could not anticipate that the vendees would have difficulty in meeting their financial obligations under the contract.¹¹¹ The court distinguished *Anderson* on the basis that the vendor in *Anderson* was aware that the vendee would be unable to make the required payments.¹¹²

Even though the court's discussion in *Brakke* attempts to limit the application of the unjust enrichment doctrine, the analysis fails to address an important issue left unanswered in *Anderson*; specifically, to what degree will a vendor's knowledge of a vendee's financial instability create liability under the doctrine if the contract is substantially cancelled. As a result, both cases recognize that a vendor has an obligation to refrain from entering a contract for deed with a vendee who has questionable financial standing. Neither case, however, defines the parameters of the requisite vendor inquiry or examination. Consequently, this inquiry will require judicial resolution in many cases.

Unless the unjust enrichment doctrine is limited to a further degree by either the court of appeals or the supreme court, the *Anderson* holding will continue to have a major impact on future contract of deed cancellations in Minnesota. The uncertainty created by these cases could negatively influence the use of this alternative method of financing, thereby making it more difficult for many individuals to purchase real property. The courts should examine this factor in future analyses of the doctrine.

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The vendors sued to quiet title. *Id.* In a separate suit, the vendees sued to recover the cost of the improvements and the payments made under the contract for deed. *Id.* The trial court dismissed the vendees' complaint on the grounds that it failed to state a claim upon which relief could be granted. *Id.*

On appeal, the vendees claimed that they were entitled to damages for unjust enrichment for the improvements they made to the land. *Id.* The court of appeals affirmed the trial court's dismissal by indicating that the vendees' original complaint failed to assert a claim for unjust enrichment. *Id.* at 556. In dicta, the court went on to state that even if the complaint contained an unjust enrichment claim, the facts did not satisfy the parameters of a cause of action under the doctrine. *Id.*

111. The court specifically stated that the "Brakkes' claims do not indicate Hilgers plotted unfair advantage of the Brakkes or anticipated from the beginning the Brakkes would be unable to meet their contractual obligations." *Id.* at 556.

112. The court distinguished *Anderson* in the following analysis:

In *Anderson* we determined a cause of action existed for unjust enrichment where the vendor remained silent and watched the vendee make extensive improvements to the property, knowing that because of the vendee's financial problems there was little or no chance he could perform under the contract.

Id.