Arizona Supreme Court confirms that an Owner who seeks Improvements Performed under Contract with a Third Party and pays no one for them is not insulated from Unjust Enrichment liability by the absence of Contractual Privity

(Markham Contracting Co., Inc. v. Cahava Springs Phase 1, Inc., et al.; No. CV-25-0036-PR; CV2021-054458, reversed and remanded; No. 1 CA-CV 22-0746, 6/17/2026, vacated)

Audience: Arizona based **Subcontractors and Suppliers** working on Construction Projects.

Purpose: To **clarify Unjust Enrichment claims in the State of Arizona** and distinguish the holding of *Wang Electric, Inc. v. Smoke Tree Resort, LLC*, 230 Ariz. 314 (App. 2012).

The Short Answer:

The Arizona Supreme Court confirmed that the unjustness inquiry for an unjust enrichment claim turns on a straightforward question: ***Did the Owner seek, authorize, or acquiesce in receiving improvements that someone performed without gratuitous intent and did it pay no one for them?***

If so, the Owner's **retention of the benefit without compensating the Party** whose work was performed and not paid for is unjust.

What Changed:

1. The Arizona Supreme Court concluded that the *Wang* case and its improper conduct requirement does not extend beyond the landlord-tenant-contractor scenario.
2. As a result of the *Markham v. Cahava* case, the analysis of an unjust enrichment claim where there is no direct contractual privity depends on the answers referenced above.
3. The Arizona Supreme Court expressly recognized that unjust enrichment claims may be viable without a showing of improper conduct when an Owner itself arranges for improvements and agrees to pay for them but then does not do so.

Why this matters to Subcontractors:

- Subcontractors do not have to have contractual privity to present a claim to an Owner who does not pay a General Contractor for the subcontractor's work.

- Subcontractors can make the direct claim against an Owner that requested the work and did not pay for the work.
- Subcontractors do not have to establish improper conduct so long as they can clarify that the Owner sought the work, knew that the Subcontractor expected payment and paid no one for the completed work.

Important Limits still Apply:

- The ruling is very specific with regard to what Subcontractors must present. As in the Markham case, Markham sufficiently alleged that the Landowners enrichment at Markham's expense was unjustified.
- The Landowners petitioned to establish the District to finance and develop infrastructure work in Cahava Springs for the benefit of their own property.
- The agreement between the District & the Landowner evidences the Landowner's intent to obtain infrastructure work and fund those improvements in part through assessments.
- Markham's agreement with the District evidenced its intent not to construct the improvements gratuitously or officiously.
- The Landowners knew that someone would have to perform the work, and that they could not receive the benefit without paying for it.
- Markham did not need to allege that the Landowners acted improperly.
- Markham sufficiently alleged the Landowners were unjustly enriched.

Bottom Line:

- The Arizona Supreme Court in *Markham* confirmed that when an Owner seeks, authorizes, or acquiesces improvements to be done and pays no one, the Owner faces unjust enrichment liability.
- The Subcontractor must analyze whether the Owner has paid the General Contractor for the work.
- Once the analysis is done, so long as the Subcontractor can show that the elements set forth above are established, then the Subcontractor may submit a claim for unjust enrichment.
- A Subcontractor would then be paid as it would be unjustified for an Owner to seek, authorize or acquiesce the work of the Subcontractor and never pay for it.