

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ASPHALT SPECIALISTS, INC.,

Plaintiff/Cross-Defendant-Appellee,

v

STEVEN ANTHONY DEVELOPMENT  
COMPANY, GTR COMPANIES, GLACIER  
CLUB TWO, INC., GLACIER CLUB ONE, INC.,  
GLACIER DEVELOPMENT COMPANY, INC.,  
GTR BUILDERS, INC., ARLINGTON TRANSIT  
MIX, ROBERT F. TEMPLE, d/b/a CURRENT  
ELECTRIC CONTRACTING, JP MORGAN  
CHASE, BOARD OF COUNTY ROAD  
COMMISSIONERS, WASHINGTON  
ASSOCIATES, LLC, NAGY CONCRETE  
COMPANY, NATIONAL CITY BANK OF THE  
MIDWEST, d/b/a NATIONAL CITY BANK, and  
FEDERAL DEPOSIT INSURANCE COMPANY,

Defendants/Cross-Defendants,

and

GTR GLACIER GOLF HOLDINGS,

Defendant/Cross-Defendant  
/Counter-Plaintiff,

and

GTR GLACIER CLUB, LLC,

Defendant/Third-Party  
Defendant/Cross-Defendant,

and

LAKEVIEW CONTRACTING, INC.,

UNPUBLISHED

August 7, 2014

No. 305753

Macomb Circuit Court

LC No. 2007-001854-CK

Defendant/Third-Party Counter-  
Plaintiff-Appellee,

and

TONY ANGELO CEMENT CONSTRUCTION  
COMPANY,

Defendant/Third-Party Counter-  
Plaintiff/Cross-Defendant,

and

WELLS VENTURE CORPORATION,

Defendant/Counter-Plaintiff/Cross-  
Defendant-Appellant,

and

A & R SEALCOATING, INC.,

Defendant/Counter-Plaintiff/Cross-  
Defendant-Appellee.

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ASPHALT SPECIALISTS, INC.,

Plaintiff/Cross-Defendant,

v

STEVEN ANTHONY DEVELOPMENT  
COMPANY, GTR COMPANIES, GLACIER  
CLUB TWO, INC., GLACIER CLUB ONE, INC.,  
GLACIER DEVELOPMENT COMPANY, INC.,  
GTR BUILDERS, INC., ARLINGTON TRANSIT  
MIX, ROBERT F. TEMPLE, d/b/a CURRENT  
ELECTRIC CONTRACTING, JP MORGAN  
CHASE, BOARD OF COUNTY ROAD  
COMMISSIONERS, WASHINGTON  
ASSOCIATES, LLC, NAGY CONCRETE  
COMPANY, NATIONAL CITY BANK OF THE  
MIDWEST, d/b/a NATIONAL CITY BANK, and  
FEDERAL DEPOSIT INSURANCE COMPANY,

No. 311947  
Macomb Circuit Court  
LC No. 2007-001854-CK

Defendants/Cross-Defendants,

and

GTR GLACIER GOLF HOLDINGS,

Defendant/Cross-Defendant  
/Counter-Plaintiff,

and

GTR GLACIER CLUB, LLC,

Defendant/Third-Party  
Defendant/Cross-Defendant,

and

LAKEVIEW CONTRACTING, INC.,

Defendant/Third-Party Counter-  
Plaintiff-Appellee,

and

TONY ANGELO CEMENT CONSTRUCTION  
COMPANY,

Defendant/Third-Party Counter-  
Plaintiff/Cross-Defendant,

and

WELLS VENTURE CORPORATION,

Defendant/Counter-Plaintiff/Cross-  
Defendant-Appellant,

and

A & R SEALCOATING, INC.,

Defendant/Counter-Plaintiff/Cross  
Defendant.

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ASPHALT SPECIALISTS, INC.,

Plaintiff/Cross-Defendant-Appellee,

v

No. 314658  
Macomb Circuit Court  
LC No. 2007-001854-CK

STEVEN ANTHONY DEVELOPMENT  
COMPANY, GTR COMPANIES, GLACIER  
CLUB TWO, INC., GLACIER CLUB ONE, INC.,  
GLACIER DEVELOPMENT COMPANY, INC.,  
GTR BUILDERS, INC., ARLINGTON TRANSIT  
MIX, ROBERT F. TEMPLE, d/b/a CURRENT  
ELECTRIC CONTRACTING, JP MORGAN  
CHASE, BOARD OF COUNTY ROAD  
COMMISSIONERS, WASHINGTON  
ASSOCIATES, LLC, NAGY CONCRETE  
COMPANY, NATIONAL CITY BANK OF THE  
MIDWEST, d/b/a NATIONAL CITY BANK, and  
FEDERAL DEPOSIT INSURANCE COMPANY,

Defendants/Cross-Defendants,

and

GTR GLACIER GOLF HOLDINGS,

Defendant/Cross-Defendant  
/Counter-Plaintiff,

and

GTR GLACIER CLUB, LLC,

Defendant/Third-Party  
Defendant/Cross-Defendant,

and

LAKEVIEW CONTRACTING, INC.,

Defendant/Third-Party Counter-  
Plaintiff-Appellee,

and

TONY ANGELO CEMENT CONSTRUCTION  
COMPANY,

Defendant/Third-Party Counter-  
Plaintiff/Cross-Defendant,

and

WELLS VENTURE CORPORATION,

Defendant/Counter-Plaintiff/Cross-  
Defendant-Appellant,

and

A & R SEALCOATING, INC.,

Defendant/Counter-Plaintiff/Cross-  
Defendant.

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Before: BECKERING, P.J., and O'CONNELL and SHAPIRO, JJ.

PER CURIAM.

In these consolidated appeals after remand, appellant Wells Venture Corporation (WVC) appeals by right the circuit court's award of unjust enrichment damages to the contractor-appellees: Lakeview Contracting, Asphalt Specialists, Inc. (ASI), and A & R Sealcoating (A & R) (Docket No. 305753). WVC also appeals by right the circuit court's award of attorney fees to Lakeview (Docket No. 311947), and appeals by leave granted the award of attorney fees to ASI (Docket No. 314658).

We affirm the circuit court's decision to award unjust enrichment damages, because the unique circumstances of this case preclude the contractors from practical and timely recovery on their construction liens. We also affirm the attorney fee awards, because the amount of the awards is consistent with the attorney fee provision in the Construction Lien Act, MCL 570.1118.

## I. FACTS AND PROCEDURAL HISTORY

### A. INITIAL PROCEEDINGS

This lawsuit initially arose from disputes about the priority of various claims against a golf course developer. Appellant WVC had sold real property to the developer on a land contract; the contractor-appellees had built sewer lines and golf cart paths for the development. The developer defaulted on its payment obligations to WVC and to the contractors. WVC filed a district court action for possession of the real property, and the contractors filed construction

liens. Subsequently, one of the contractors—ASI—filed suit against the developer, and against WVC as the legal title owner of the real property. ASI also named the other contractors as defendants. Various cross-claims and counter-claims followed.

The circuit court determined that the contractors' construction liens had priority over WVC's claims. The court reasoned, in part, that granting priority to the contractors was consistent with the purpose of the Construction Lien Act, MCL 570.1101 *et seq.* The circuit court further reasoned that to allow a title owner like WVC to retain the benefit of improvements built by construction contractors would "undermine the equitable essence of the [Construction Lien Act] and provide the title owner a windfall and unjust enrichment." The circuit court also determined that the contractors' attorney fees could be included in the construction liens. The court ordered that the golf course real property be sold to satisfy the liens and entered judgments in favor of each contractor.

## B. FIRST APPEAL

WVC appealed the circuit court's decision. The prior panel of this Court concluded that the contractors were not entitled to construction liens on the real property of the golf course, and that the circuit court erred by ordering the sale of the real property. *Asphalt Specialists, Inc v Steven Anthony Dev, et al.*, unpublished opinion per curiam of the Court of Appeals, issued April 19, 2011 (Docket No. 295182), unpub op at 6. The prior panel further concluded that the circuit court erred by adding the attorney fee awards to the construction liens (Unpub op at 7). The panel indicated that on remand the attorney fee awards must be separated from the construction liens, and that the circuit court must assess the reasonableness of the attorney fee awards (Unpub op at 7-8). The panel's decision stated, "We vacate the portions of the judgments finding that the liens attached to the golf course, ordering the foreclosure sale of the golf course, awarding attorney fees and including the award of attorney fees in the amount due on the liens." Unpub op at 9-10. The panel remanded the case for further proceedings consistent with its opinion.<sup>1</sup>

## C. REMAND PROCEEDINGS

On remand, WVC moved the circuit court to amend the judgments to conform to the prior panel's decision. Specifically, WVC requested that the circuit court set aside its orders regarding the sale of the golf course, the attachment of the construction liens to the golf course real property, and the attachment of the attorney fees to the construction liens. In contrast, the contractors each moved for money judgments on unjust enrichment claims against WVC and for a hearing to determine the amount of the attorney fee awards. WVC opposed the contractors' motions.

The court amended its prior judgment to state that each contractor's construction lien attached only to the improvement built by that contractor (not to the real property of the golf

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<sup>1</sup> ASI sought leave to appeal the prior panel's decision, and our Supreme Court denied the leave application. *Asphalt Specialists, Inc v Steven Anthony Dev, et al*, 490 Mich 861; 801 NW2d 885 (2011).

course). The circuit court determined, “[a]s a practical resolution, the court will grant the parties an award against WVC, thus sustaining their claims for unjust enrichment.” Consequently, the court amended its judgment to award money damages for each contractor against WVC. The court scheduled an evidentiary hearing on the reasonableness of the contractors’ attorney fee claims.

WVC moved for rehearing and reconsideration of the amended judgment. The circuit court denied WVC’s motion for rehearing and reconsideration. The court subsequently held a hearing on the reasonableness of the contractors’ attorney fees. At the hearing, WVC did not challenge the attorneys’ rates. Rather, WVC argued that it was not liable to the contractors for attorney fees because their recovery was now based on unjust enrichment, rather than on the construction liens. In the alternative, WVC argued that if it had any liability for attorney fees, the liability was limited to the fees incurred in foreclosing the construction liens as against WVC, not fees the contractors incurred in foreclosing against the developer. The circuit court rejected WVC’s arguments and awarded attorney fees to the contractors.

WVC again appealed the circuit court’s judgments, and the appeal is now before this Court after remand.

## II. ISSUES AFTER REMAND

### A. UNJUST ENRICHMENT

#### 1. CIRCUIT COURT AUTHORITY TO CONSIDER UNJUST ENRICHMENT

WVC argues that the circuit court exceeded its authority on remand by awarding money damages for unjust enrichment. Similarly, WVC argues that the doctrine of res judicata barred the circuit court from considering unjust enrichment on remand. These arguments present questions of law that we review de novo. *Schumacher v Dep’t of Natural Resources (After Remand)*, 275 Mich App 121, 127; 737 NW2d 782 (2007) (law of the case); *Estes v Titus*, 481 Mich 573, 579; 751 NW2d 493 (2008) (res judicata).

A circuit court’s authority on remand is controlled primarily by the law of the case doctrine, which requires lower courts to follow appellate courts’ rulings regarding the same case with the same parties. See generally *Grievance Administrator v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000). Although a circuit court on remand must strictly comply with the appellate court’s directives, a circuit court may also take additional actions that are consistent with those directives. *TMW Enterprises Inc v Dep’t of Treasury*, 297 Mich App 590, 592-593; 824 NW2d 295 (2012). The circuit court may also consider matters not expressly addressed by the appellate court. *K & K Constr, Inc v Dep’t of Environmental Quality (After Remand)*, 267 Mich App 523, 544; 705 NW2d 365 (2005).

In this case, the circuit court on remand properly implemented the prior panel’s directives. The panel’s decision primarily addressed the Construction Lien Act, MCL 570.1101 *et seq.* In keeping with the prior panel’s decision, the circuit court set aside its order requiring sale of the golf course and its order attaching the construction liens to the golf course real property. The circuit court implemented the prior panel’s decision by ordering that the liens attach only to the improvements.

Nothing in the prior panel's decision precluded the circuit court from considering unjust enrichment on remand. The panel made no definitive decision regarding the viability of unjust enrichment claims. Rather, in the section of the opinion addressing possible alternative remedies, the prior panel noted that foreclosure on improvements is not a lien claimant's sole remedy. Unpub op at 6. The panel recognized, "Lakeview, ASI, and A & R could arguably pursue a claim against WVC outside the Construction Lien Act for unjust enrichment." Unpub op at 7. This statement neither required nor prohibited the circuit court from considering unjust enrichment on remand. Accordingly, the law of the case did not preclude the circuit court from considering unjust enrichment.

WVC also argues that the doctrine of res judicata precluded the circuit court from addressing unjust enrichment on remand. According to WVC, the contractors abandoned any claim for unjust enrichment by opting not to cross-appeal the circuit court's construction lien judgment. We disagree, for two reasons. First, an appellee need not cross-appeal to maintain alternate grounds of support for the relief granted by the circuit court. See *Middlebrooks v Wayne Co*, 446 Mich 151, 166 n 41; 521 NW2d 774 (1994). A cross-appeal is required if the appellee seeks relief that is more favorable than that granted by the circuit court. *Id.* In the first appeal, the contractors did not seek more favorable relief, so they were not required to file cross-appeals.

Second, in our view, the doctrine of res judicata does not extend to the particular issue presented in this case, which involved an alternate ground for relief in the same proceeding on remand. See generally *Vandenburg v Vandenburg*, 253 Mich App 658, 663; 660 NW2d 341 (2002); but see *Vanderwall v Midkiff*, 186 Mich App 191, 201; 463 NW2d 219 (1990).<sup>2</sup> In sum, we conclude that neither the law of the case nor the doctrine of res judicata precluded the circuit court from considering unjust enrichment on remand.

## 2. LEGAL VALIDITY OF THE UNJUST ENRICHMENT AWARDS

WVC argues that the unjust enrichment awards are invalid as a matter of law. We review de novo the legal grounds for the awards. *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 193; 729 NW2d 898 (2006).

WVC first argues that the contractors have a statutory remedy through the Construction Lien Act, and that the statutory remedy precludes the contractors from obtaining the equitable remedy of unjust enrichment damages. WVC's argument rests on an incorrect premise, i.e., that

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<sup>2</sup> The *Vanderwall* case is factually distinct from this case, because *Vanderwall* involved a jury verdict and a judgment notwithstanding verdict. 186 Mich App at 201-202. The *Vanderwall* panel indicated that the appellee should have raised the question at issue in the trial court prior to the original appeal. *Id.* at 202. Here, in contrast, once the circuit court entered judgment in favor of the contractors, they had no reason to assert alternate grounds for relief in the circuit court. Similarly, this case does not present the jurisprudential concerns discussed in *Wiselogle v Mich Mut Ins Co*, unpublished opinion per curiam of the Court of Appeals, issued September 21, 2001 (No. 219118), unpub op at 3-4.

the construction liens in this case were adequate legal remedies. When the available legal remedies are incomplete, doubtful, and uncertain, a court may award an equitable remedy. *Tkachik v Mandeville*, 487 Mich 38, 45-46; 790 NW2d 260 (2010). Our Supreme Court explained the circumstances that support the award of equitable remedies:

[T]o preclude a suit in equity, a remedy at law, both in respect to its final relief and its modes of obtaining the relief, must be as effectual as the remedy which equity would confer under the circumstances. Equity jurisprudence molds its decrees to do justice amid all the vicissitudes and intricacies of life. While legislative action that provides an adequate remedy by statute precludes equitable relief, the *absence* of such action does not. This is so because every equitable right or interest derives not from a declaration of substantive law, but from the broad and flexible jurisdiction of courts of equity to afford remedial relief, where justice and good conscience so dictate. Equity allows complete justice to be done in a case by adapting its judgments to the special circumstances of the case. [*Tkachik*, 487 Mich at 44-45, citations and quotation marks omitted, emphasis in original.]

Given the unique circumstances of this case—particularly the impracticality of severing the golf course improvements from the real property—the circuit court did not err by granting the contractors the equitable remedy of unjust enrichment damages. The prior panel confirmed that the contractors were not fully compensated for the improvements they made to the golf course. Unpub op at 3. The panel also let stand the circuit court’s determination that the contractors were entitled to compensation. *Id.* The contractors’ construction liens on the improvements are currently ineffectual, because the improvements cannot be separately sold to satisfy the liens. As a result, and as WVC tacitly acknowledges, the contractors cannot recover payment on their liens unless and until WVC opts to sell the real property. Absent the unjust enrichment awards, WVC controls not only the use of the improvements, but also controls whether the contractors will be paid for those improvements. Consequently, the contractors’ remedy under the construction liens is not adequate, and the circuit court did not err in providing alternate equitable relief.<sup>3</sup>

WVC next argues that the circuit court failed to engage in a sufficient analysis of the elements of the unjust enrichment claims. We disagree. Only two elements are required to establish an unjust enrichment claim: (1) the defendant received a benefit from the plaintiff; and (2) the defendant’s retention of the benefit is inequitable to the plaintiff. *Morris Pumps*, 273 Mich App at 195. The record in this case confirms that the contractors established both elements of unjust enrichment. There is no dispute that improvements installed by the contractors enabled

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<sup>3</sup> The Construction Lien Act states “an action to enforce a construction lien through foreclosure is equitable in nature.” MCL 570.1118(1). The statutory term “equitable in nature” indicates that the foreclosure action is an in rem proceeding against property, in which the available relief is in equity (foreclosure on property). See *Dane Constr, Inc v Royal’s Wine & Deli, Inc*, 192 Mich App 287, 292-293; 480 NW2d 343 (1991).

WVC to operate the real property as a golf course. There is also no dispute that operation of the golf course allows WVC the opportunity to earn income from the property, while the contractors have no realistic opportunity to receive compensation for their work.

Although WVC argues that the contractors failed to prove that the improvements increased the value of the property or increased the functionality of the golf course, the contractors had no burden to establish the difference between the value of the property before and after their improvements. To establish unjust enrichment, it was sufficient that the contractors demonstrate that WVC received the real property with the benefit of newly installed improvements, and that WVC retained the improvements while the contractors remained unpaid. The record confirms these elements, and the circuit court was not required to engage in further analysis to determine that the contractors were entitled to equitable relief.

WVC maintains, however, that it received the improvements involuntarily by operation of law, and that the involuntarily receipt of improvements bars an unjust enrichment claim. Our Supreme Court rejected a similar argument in *Tkachik*. In that case, the defendant husband had effectively abandoned his wife during her 18 month fatal illness. *Tkachik*, 487 Mich at 40. In those 18 months, the wife paid the mortgage, tax, and insurance expenses on the real properties that they owned together. *Id.* When the wife died, the fee-simple title to the real properties vested in the husband. *Id.* The personal representative of the wife's estate sued the husband for contribution on the expenses the wife had paid. *Id.* at 43. The probate court entered summary disposition in favor of the husband on the contribution claim, and this Court affirmed, reasoning that the husband had not been unjustly enriched because he received the properties by operation of law. *Id.* at 44.

Our Supreme Court reversed and explained, "the fact that the properties undisputedly passed to defendant automatically by operation of law does not defeat a finding that defendant was unjustly enriched or bar a claim for contribution." *Id.* at 51. Here, similarly, the legal method through which WVC received the improvements did not preclude the circuit court from finding that receipt of the improvements unjustly enriched WVC.

Two decisions of this Court demonstrate the validity of the circuit court's judgment. In the first decision, *Morris Pumps*, 273 Mich App 187, the Court affirmed unjust enrichment awards in favor of the plaintiffs, who were materials suppliers on a construction project. *Id.* at 190. The suppliers contracted to provide materials to a subcontractor for the project. *Id.* The subcontractor later abandoned the project. *Id.* The defendant, who was the general contractor, retained a new subcontractor to finish the project. *Id.* at 191. The new subcontractor used the materials supplied by the plaintiffs, but did not pay the plaintiffs for the supplies. *Id.* The plaintiffs sued the defendant general contractor for payment on an unjust enrichment theory. *Id.*

Like WVC, the general contractor in *Morris Pumps* argued that the plaintiffs had failed to establish unjust enrichment. *Id.* at 196. This Court disagreed, and reasoned,

[i]f defendant's retention of the materials supplied by plaintiffs had been completely innocent and without knowledge, we might be inclined to conclude that defendant's enrichment was not unjust. However, we simply cannot classify defendant's act of retaining and using the materials, without ever ensuring that

plaintiffs were compensated for the materials, as innocent, just, or equitable. Defendant's retention of the materials, coupled with defendant's failure to compensate plaintiffs, resulted in the unjust enrichment of defendant at plaintiffs' expense. [273 Mich App at 197, citations omitted.]

The *Morris Pumps* panel further concluded that plaintiffs were entitled to an unjust enrichment award even though the defendant's costs were increased by the first subcontractor's actions. *Id.* at 198. In this case, as in *Morris Pumps*, WVC retained tangible improvements without compensating the contractors for those improvements. The *Morris Pumps* decision supports the unjust enrichment award in this case.

The second case, *Karaus v Bank of New York Mellon*, 300 Mich App 9; 831 NW2d 897 (2013), demonstrates the fact-sensitive nature of unjust enrichment claims. The plaintiff contractor in *Karaus* had recorded a construction lien on a home. *Id.* at 11. The contractor brought unjust enrichment claims against the homeowners and against Mellon Bank, who held the mortgage on the property. *Id.* at 11-12. The circuit court granted summary disposition in favor of Mellon Bank. *Id.* at 14. This Court affirmed, reasoning that Mellon Bank had not received a benefit from the contractor. *Id.* at 24. The factual circumstances indicated that the defendant had not been unjustly enriched. The Court further explained, "it is not clear that Mellon has even benefitted from plaintiff's labor because Mellon has not yet foreclosed on the property and merely retains a mortgage interest." *Id.* at 24-25.

In contrast to Mellon Bank in *Karaus*, WVC consistently retained legal title to the golf course property and ultimately regained actual possession of the property—with the addition of the improvements built by the contractors. WVC's equitable position is therefore legally distinct from the bank's position in *Karaus*. Instead, WVC's position is analogous to the position of the general contractor in *Morris Pumps*. As in *Morris Pumps*, the factual circumstances in this case supported the award of an equitable remedy.<sup>4</sup>

### 3. FACTUAL VALIDITY OF THE UNJUST ENRICHMENT AWARDS

WVC argues that even if the contractors are legally entitled to unjust enrichment awards, the contractors failed to present evidence to establish the amount of their respective recoveries. We disagree. The equitable remedy of unjust enrichment allows a court to imply a contract to prevent the inequity that would result if one party receives and retains a benefit from the other. *Morris Pumps*, 273 Mich App at 194. As the prior panel recognized, the record in this case establishes the dollar amounts remaining unpaid on the contracts for each contractor. Unpub op

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<sup>4</sup> As an alternative argument, WVC maintains that this Court should hold that the statutory remedy of the Construction Lien Act is the exclusive recourse for the contractors. In support, WVC cites *Delagrangé Remodeling Inc v David Anthony*, unpublished opinion per curiam of the Court of Appeals, issued March 24, 2005 (Docket No. 250022). We need not address this argument, because, as we have explained, the statutory remedy is inadequate under the unique circumstances of this case. See *Tkachik*, 487 Mich at 44-45 ("legislative action that provides an adequate remedy precludes equitable relief" (emphasis added).)

at 5. This evidence was sufficient to establish the damages incurred by the contractors on the contracts.

Generally, in Michigan the measure of damages in an unjust enrichment claim is the value of the benefit received by the defendant. *Green v Bambrick*, 331 Mich 243, 250; 49 NW2d 160 (1951). However, the Michigan courts are also guided by the Restatement of Restitution & Unjust Enrichment. See *Mich Ed Employees Mut Ins Co v Morris*, 460 Mich 180, 198; 596 NW2d 142 (1999), and citations therein. The Restatement recognizes that where, as here, the unjust enrichment involves “nonreturnable benefits” to property, the court may be required to select alternative measures of value. 7 Restatement Restitution & Unjust Enrichment, 3d, § 49, Introductory Note, p 175. Specifically, the Restatement instructs:

Enrichment from the receipt of nonreturnable benefits may be measured by:

- (a) the value of the benefit in advancing the purposes of the defendant,
- (b) *the cost to the claimant of conferring the benefit*,
- (c) the market value of the benefit,
- (d) a price the defendant has expressed a willingness to pay, if the defendant’s assent may be treated as valid on the question of price. [*Id.*, § 49, pp 176-177 (emphasis added).]

In this case, the contractors’ costs of conferring the benefit to WVC are established by the contracts for the improvements. Because the improvements cannot be returned to the contractors, and because the record contains no other indication of the value of the improvements, the circuit court did not err in assessing the damages as the amount of the unpaid compensation for each contractor. Moreover, because the unjust enrichment remedy represents an implied contract, the circuit court reasonably used the contract amounts as the basis for the damages awards against WVC.

## B. ATTORNEY FEES

WVC argues that the circuit court erred on remand by awarding attorney fees under the attorney fee provision of the Construction Lien Act, MCL 570.1118. To resolve this issue, we must first determine whether the entitlement to attorney fees is the law of the case. See generally *Grievance Administrator v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000) (law of the case binds the appellate court and lower courts).

The prior panel devoted an entire section of its opinion to the attorney fee issue. Unpub op at 7-10. The panel expressly noted that “MCL 570.1118(2) makes attorney fees recoverable by a lien claimant who is the prevailing party, [but] does not address whether the attorney fees should be included or excluded from the lien claimant’s entitlement under the construction lien.” Unpub op at 7. The panel determined that the circuit court erred by including the attorney fees in the construction lien. The panel went on to specifically instruct the circuit court on remand to reconsider the reasonableness of the amount of the attorney fee awards in light of *Smith v Khouri*, 481 Mich 519, 537; 751 NW2d 472 (2008). Unpub op at 8.

The prior panel's analysis of the statutory attorney fee provision and its instructions regarding *Smith v Khouri* demonstrate the panel's conclusion that the contractors were entitled to attorney fees. WVC argues that even if the law of the case indicates that the contractors were entitled to fees, the entitlement was enforceable only against the golf course developer, not against WVC. This argument misconstrues the prior panel's analysis. WVC was the appellant in the prior appeal. If the prior panel had determined that the attorney fee award could not be enforced against WVC, the panel would have reversed the circuit court's initial attorney fee award without further discussion. Instead, the prior panel analyzed and resolved the issue of entitlement to attorney fees. We are bound by that resolution. *Hill v City of Warren*, 276 Mich App 299, 308; 740 NW2d 706 (2007).

Even if the prior panel had not resolved the attorney fee issue, we would affirm the attorney fee awards. We review the circuit court's decision to award attorney fees for an abuse of discretion. *Ronnisch Constr Group, Inc v Lofts on the Nine, LLC*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 314915, July 24, 2014), slip op p 3. In *Ronnisch*, this Court determined that a circuit court has discretion to award attorney fees under the Construction Lien Act when a plaintiff substantially prevails on an amount sought on a lien claim, even if no foreclosure on the lien ever occurred. *Ronnisch*, \_\_\_ Mich App at \_\_\_, slip op p 5, citing *Solution Source, Inc v LPR Assoc Ltd Partnership*, 252 Mich App 368, 378; 652 NW2d 474 (2002), and *Bosch v Altman Constr Corp*, 100 Mich App 289, 296; 298 NW2d 725 (1980). In this case, the contractors were the prevailing parties on their lien claims, even though their liens attached only to the improvements. See Unpub op at 7. Consequently, the attorney fees incurred in protecting those liens are recoverable. See *Solution Source*, 252 Mich App at 372-375.

Affirmed.

/s/ Jane M. Beckering  
/s/ Peter D. O'Connell  
/s/ Douglas B. Shapiro