# CASENOTES:

# *Greenberg v. Miami Children's Hospital Research Institute*

*Abigail C. Lepsch**

* Abi is a senior Sociology major from Kingsport, TN. She hopes to pursue a juris doctorate upon graduating from Grove City College.

## I. Introduction

The court in *Greenberg v. Miami Children's Hospital Research Institute* upheld the principle of "unjust enrichment" as a cause of action in disagreements over the use of human tissue.[1] This case follows the landmark decision in *Moore v. Regents of the University of California,*[2] which the *Greenberg* Plaintiffs cited as precedent. Like Moore, the *Greenberg* Plaintiffs disputed the use of their tissue for research and the resulting economic gain. In *Moore v. Regents*, the Court decided that the Plaintiff did not have property rights to his excised tissue and the resulting technology, dismissing the claim of conversion. The Plaintiffs in the *Greenberg* case made similar claims which proved unsuccessful but their unique claim to "unjust enrichment" was upheld and provides an important precedent in cases concerning the patenting of biotechnology.

Unjust enrichment, the sole cause of action and the central legal issue in the *Greenberg* case, is based in principles of equity and restitution.[3] As described first in the 1937 Restatement of Restitution and most recently in the Third Restatement, "[a] person who has been unjustly enriched at the expense of another is required to make restitution to the other."[4] The relevant Florida law describes the conditions for unjust enrichment as the following: "(1) the plaintiff conferred a benefit on the defendant,

---

1 Greenberg v. Miami Children's Hosp. Research Inst., 264 F. Supp. 2d 1064 (S.D. Fla. 2003).

2 Moore v. Regents of the Univ. of Cal., 51 Cal. 3d 120 (1990).

3 Emily Sherwin, *Restitution & Equity: An Analysis of the Principle of Unjust Enrichment*, 79 Tex. L. Rev. 2083 (2001).

4 *Id.*

who had knowledge of the benefit; (2) the defendant voluntarily accepted and retained the benefit; and (3) under the circumstances it would be inequitable for the defendant to retain the benefit without paying for it."[5] With regard to the *Greenberg* case, the Plaintiff claimed that the Miami Children's Hospital Research Institute had profited through the patent and licensing of the genetic information that was discovered through use of the participants' tissue donations. By upholding the Plaintiffs' claim based on this vague and broadly-applied legal principle of unjust enrichment, the court has provided a unique strategy for challenging the patent of human genetic material.

## II. Facts

The case concerned a research endeavor that successfully identified the genes associated with the Canavan disease, a fatal disease that predominantly affects individuals of Ashkenazi Jewish ancestry. The Plaintiffs are a group of individuals and non-profit groups that entered into collaboration with Dr. Reuben Matalon and the Miami Children's Research Institute. In the late 1980s, Daniel Greenberg and the Chicago Chapter of the National Tay-Sachs and Allied Disease Association Inc. began locating families with individuals with Canavan disease and asking them to donate DNA samples. Dr. Matalon consented to work with the individuals and partnered with the Miami Children's Hospital Research Institute in 1990. With the collaboration and financial support of the Plaintiffs, Matalon and MCHRI collected a registry of human

5 Greenberg, 264 F. Supp. 2d at 1072.

tissue from individuals with Caravan disease. Through studying these samples, the associated gene was identified in 1993.[6]

From this information, related centers began offering Canavan testing but in 1997, the U.S. patent office granted a patent to MCHRI that gave them control over the use of the genetic information gained from their sequencing of the Canavan gene. The Plaintiffs claim that the Defendants threatened the centers to stop offering testing under the conditions stipulated by the patent. The point of contention was the private commercialization of the genetic information with the Plaintiffs arguing that the information should remain a public good. The Plaintiffs argue that they were not informed of the researchers' intention to acquire a patent for the knowledge that was gained from their donations. The Plaintiffs filed the lawsuit in October 30, 2000 in a district court in Illinois (subsequently transferred to Florida) claiming lack of informed consent, breach of fiduciary duty, unjust enrichment, fraudulent concealment, conversion and misappropriation of trade secrets.[7] On May 29, 2003, Judge Federico Moreno of the U.S. District Court of Southern Florida ruled to dismiss all the claims with the exception of unjust enrichment. According to a joint press release from the Canavan Foundation, the parties settled out of court and the Defendants successfully filed for dismissal on September 20, 2003.[8]

---

6 *Id.* at 1066-67.

7 *Id.*

8 Canavan Foundation, http://www.canavanfoundation.org/news/09-03_miami.php, (last visited on Mar. 30, 2012).

## III. Legal Background

The *Greenberg* case deals with the relatively emergent legal questions surrounding the patenting of human tissue. Beginning in the 1990s, the practice of patenting human genetic material has been controversial. The *Greenberg* case provides a significant block in the legal foundation surrounding this issue and no doubt will serve as precedent in future cases. Furthermore, the *Greenberg* case also raises the broader topic of "unjust enrichment" and provides a concrete example of how this obscure concept is applied in the courtroom.

### *A. Patenting Human Genetic Material*

The arguments raised by those objecting to the patenting of human genetic material span from those concerned with the ethical questions of human dignity to those arguing that patents will inhibit the progress of research. As these discussions continue in academia and the public, the practice of patenting has become well established with the rapid rise of biotechnology in the past three decades. The court has upheld companies' right to patent biotechnology derived from human genetic material without major exception despite international statements and public dissent.[9] The legal structures surrounding this new practice, however, have faced practical controversies. The *Greenberg* case represents a common area of dispute concerning the relationship between research and patient (or other donor).

---

9 Patenting human genetic material: refocusing the debate. Timothy Caulfield, E. Richard Gold, and Mildred K. Cho, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2220019/, (last visited on Mar. 30, 2012).

The most prominent case concerning this topic was *Moore v. Regents of the University of California*.[10] In this landmark case, the fundamental issue concerned whether one had property rights to his human tissue and the technology which is created from it. Moore sued his physician, Dr. David Golde, who was treating him for hairy-cell leukemia. After creating and patenting a cell-line from Moore's blood and tissue samples, Golde profited financially from the commercialization of his findings. Moore sued Golde under the claim of conversion.[11]

The tort claim of conversion rests on the premise that Moore's blood and tissue should be considered his tangible personal property.[12] As stated in the California Court of Appeals' decision on *Moore v. Regents*, conversion is a "distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his title or rights therein, . . . without the owner's consent and without lawful justification."[13] As the decision goes on to state, conversion is strictly a liability tort. It does not depend on the "knowledge or intent of the Defendant."[14] The case for conversion, in the *Moore* decision, depends on the foundational question of Moore's property rights to his tissue and the subsequent cell line.

In the California Supreme Court's decision, the court balances competing interests and recognizes the unprecedented case

10 Moore v. Regents of the Univ. of Cal., 249 Cal. Rptr. 494 (Ct. App. 1988), *rev'd*, 51 Cal. 3d 120 (1990).

11 *Id.* at 498.

12 *Id.* at 503-04.

13 *Id.* at 503.

14 *Id.*

of extending conversion liability to the domain of human tissue and derivative biotechnology. The decision states that no other court has imposed conversion liability in the case of research from human tissue, making Moore's claim unprecedented. The court argues that Moore did not expect to retain possession of the removed cells and under the stipulations of conversion, he must have maintained ownership interest. Also, the court concludes that:

> The subject matter of the Regents' patent - the patented cell line and the products derived from it - cannot be Moore's property. This is because the patented cell line is both factually and legally distinct from the cells taken from Moore's body. Federal law permits the patenting of organisms that represent the product of "human ingenuity," but not naturally occurring organisms.[15]

In light of these facts, the court concluded that it would be inappropriate to extend conversion liability in this case. The three reasons they cite for this are (1) the need to balance relevant policy considerations, (2) legislative resolution is better suited to problems in this area, and (3) tort conversion is not necessary to protect patients' rights. This decision created a precedent that the use of human tissue in medical research does not constitute conversion.[16]

The Plaintiffs in the *Greenberg* case also claimed conversion

15 Moore, 51 Cal. 3d at 141-42.

16 *Id.* at 169-70.

and the Court denied their claim, citing the *Moore* decision as precedent. The decision states that the "Plaintiffs have no cognizable property interest in body tissue and genetic matter donated for research under a theory of conversion."[17] The *Greenberg* case upheld the California Supreme Court's decision to dismiss conversion as a cause for action in the case concerning property rights of donors to the products derived from their genetic material.

### *B. Use of Unjust Enrichment*

An important outcome of the *Greenberg* case is its application of the principle of unjust enrichment. Unjust enrichment is related to the broader principle of restitution, which has been a part of English and U.S. common law; in application, unjust enrichment exists separately from restitution and outside of tort and contract law.[18] Recent efforts to clarify its role in judicial decision making have made some progress in identifying its proper application.[19] The broad application of unjust enrichment stems from its role as a "unifying principle" in the area of restitution.[20] Unjust enrichment does not necessarily involve liability or wrongdoing but is grounded more broadly in principles of equity.[21] Current understanding of this legal principle indicates that it exists

17 Greenberg, 264 F. Supp. 2d at 1074.

18 Debra Greenfield, *Greenberg v. Miami Children's Hospital: Unjust Enrichment and the Patenting of Human Genetic Material*, 15 ANNALS HEALTH L. 213 (2006).

19 *See* Greenfield, *supra* note 18; James S. Rogers, *Restitution for Wrongs and the Restatement (Third) of the Law of Restitution*, 42 Wake Forest L. Rev. 55 (2007); *and* Sherwin, *supra* note 3.

20 Sherwin, *supra* note 3.

21 *Id.*

separately from tort and contract law, as stated previously, but the space that it does inhabit is less clearly defined.[22] The obscurity lies in the relationship between equity, restitution and unjust enrichment. This principle was articulated most recently in the Restatement (Third) of Restitution and Unjust Enrichment, which has come to be widely accepted as a clarifying document of the concept.[23] Arguably, the outcome of the *Greenberg* case provides a practical example of changes in the application of this legal principle.

The importance of the Restatements in shaping the application of unjust enrichment merits further examination. Emily Sherwin in "Restitution and Equity: An Analysis of the Principle of Unjust Enrichment," describes the tension between unjust enrichment as an descriptive idea and unjust enrichment as a legal principle. Central to unjust enrichment as a descriptive, organizational idea is the term "quasi-contract," written into the first Restatement of Restitution (1937).[24] Defined most clearly in *Kozlowski v. Kozlowski*, a "quasi-contract is ... a legal concept rationalizing a sanction to prevent unjust enrichment based upon the equitable principle that whatsoever it is certain that a man ought to do, the law supposes him to have promised to do."[25]

Unjust enrichment as a legal principle is addressed in the introductory section of the third Restatement. The Restatement

---

22 Rogers, *supra* note 19.

23 *Id.*

24 Sherwin, *supra* note 3.

25 Greenfield, *supra* note 18, at 222, n. 57 (quoting Kozlowski v. Kozlowski, 395 A.2d 913, 918 (N.J. Super. Ct. Ch. Div. 1978)).

denies any intention "to repudiate the traditional, equitable explanation of restitution liability,"[26] as it was established in the First Restatement and has been understood since. However, the Third Restatement is not concerned with enrichment in a "broad sense, but with a narrower set of circumstances giving rise to what is more appropriately called unjustified enrichment .... Unjustified enrichment is enrichment that lacks an adequate legal basis . . . ."[27] Here lies the tension between previous understanding of unjust enrichment as an organizational principle and unjust enrichment as a legal principle. As a legal principle, unjust enrichment allows for greater judicial creativity as exemplified in its application in the *Greenberg* case.

## IV. Analysis

The *Greenberg* case provides important insight into the continuing legal controversies surrounding the patenting of human genetic material. Following *Moore v. Regents of the University of California,* it upholds the decision that individuals do not have property rights over the products derived from their genetic materials. The claim to conversion did not stand in either case, supporting the rights of researchers to patent their findings and reap the financial benefits. However, an important difference between the *Moore* and *Greenberg* cases indicates a potential change in the legal environment surrounding the patenting of human tissue, namely the use of unjust enrichment as a cause of action in these

26 Sherwin, *supra* note 3, at 2087.

27 *Id.* at 2088.

cases. With the development of unjust enrichment from guiding idea to legal principle, the court in the *Greenberg* case supported the Plaintiffs' claim that the exclusive patent rights and resulting financial profit of the researchers represented an inequitable and unjust gain. This use of unjust enrichment in the case of patenting human tissue may prove to be a valuable tool to those who challenge the practice but its full potential remains to be seen.