

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)	
)	
SPECTRULITE CONSORTIUM, INC.,)	Bankruptcy Case No. 03-30329
)	
Debtor.)	
)	
CHARLES W. RISKE, Liquidating)	
Trustee,)	
)	
Plaintiff,)	
)	
vs.)	Adversary Case No. 09-3190
)	
THE DOW CHEMICAL COMPANY,)	
)	
Defendant.)	

OPINION

This matter having come before the Court on Defendant The Dow Chemical Company's Motion to Dismiss Count III and Plaintiff's Memorandum in Opposition to Defendant The Dow Chemical Company's Motion to Dismiss Count III; the Court, having reviewed written memoranda of the parties and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

In its Motion to Dismiss, Defendant The Dow Chemical Company asserts that the Plaintiff's claim for unjust enrichment, found in Count III of the Complaint, is foreclosed as a result of the Plaintiff's legal duty to clean up waste on a contaminated site owned by Spectrulite Consortium, Inc. In support of this proposition, Defendant cites In re Energy Coop, Inc., 1995 U.S. Dist. LEXIS 7545, and also Ford Motor Co.

v. Edgewood Props., Inc., 2008 U.S. Dist. LEXIS 84776. Defendant The Dow Chemical Company also cites § 106 of the Restatement of Restitution as explained in Griffith Wrecking Co. v. Greminger, 382 N.E.2d 1387 (4th Dist. Ill. App. Ct. 1978).

The Court has reviewed the authority cited by the Defendant and finds it persuasive. In applying the authority cited to the instant case, the Court finds that the Plaintiff's own allegations in its Complaint preclude any claim for unjust enrichment. However, the Plaintiff is free to pursue the relief sought in Counts I and II of its Complaint.

ENTERED: December 1, 2009.

/s/Gerald D. Fines
GERALD D. FINES
United States Bankruptcy Judge

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ORDER

For the reasons set forth in an Opinion entered on the 1st day of December 2009;

IT IS HEREBY ORDERED that:

A. Defendant The Dow Chemical Company's Motion to Dismiss Count III is ALLOWED; and,

B. Defendant The Dow Chemical Company shall file a written answer to Counts I and II of Plaintiff's Complaint within 21 days of the date of this Order.

ENTERED: December 1, 2009.

/s/Gerald D. Fines
GERALD D. FINES
United States Bankruptcy Judge