

plaintiff freely entered into the membership agreement. The plaintiffs further claim that the refund mitigation technique caused Trilegiant to retain an unfair benefit by offering only partial refunds. But as with their failed CUTPA claim, they cannot argue that Trilegiant was unjustly enriched by not refunding additional, legitimate past membership fees to which its customers were not entitled. See, e.g., *Berger v. Home Depot USA, Inc.*, 741 F.3d 1061, 1070 (9th Cir. 2014) (requiring "unjust retention of [a] benefit" as an element of an unjust enrichment claim).

CONCLUSION

For the foregoing reasons, we hereby **AFFIRM** the judgment of the district court.

**In the Matter of: MPM Silicones, L.L.C. MOMENTIVE
PERFORMANCE MATERIALS INCORPORATED, APOLLO
GLOBAL MANAGEMENT, LLC, AD HOC COMMITTEE OF
SECOND LIEN HOLDERS, Plaintiffs-Appellees, v. BOKF, NA,
AS FIRST LIEN TRUSTEE, WILMINGTON TRUST, N.A., AS 1.5
LIEN TRUSTEE, Defendants-Appellants. U.S. BANK NATIONAL
ASSOCIATION, AS INDENTURE TRUSTEE, Plaintiff-Appellant,
v. WILMINGTON SAVINGS FUND SOCIETY, FSB, AS
SUCCESSOR INDENTURE TRUSTEE, MOMENTIVE
PERFORMANCE MATERIALS INCORPORATED, AD HOC
COMMITTEE OF SECOND LIEN NOTEHOLDERS, APOLLO
MANAGEMENT, LLC, AND CERTAIN OF ITS AFFILIATED
FUNDS, Defendants-Appellees.**

Nos. 15-1682 (L); 15-1824 (CON), No. 15-1771

UNITED STATES COURT OF APPEALS FOR THE SECOND
CIRCUIT

874 F.3d 787; 2017 U.S. App. LEXIS 20596; Bankr. L. Rep. (CCH)
P83,176; 64 Bankr. Ct. Dec. 216

November 9, 2016, Submitted
October 20, 2017, Decided

SUBSEQUENT HISTORY: US Supreme Court certiorari denied by *BOKF, N.A. v. Momentive Performance Materials, Inc.*, 2018 U.S. LEXIS 3822 (U.S., June 18, 2018)
US Supreme Court certiorari denied by *Wilmington Trust, N.A. v. Momentive Performance Materials, Inc.*, 2018 U.S. LEXIS 3753 (U.S., June 18, 2018)

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