

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND  
BUSINESS COURT**

**JOE GOUGH, ET AL,  
Plaintiffs,**

**Case No. 14-141820-CZ  
Hon. James M. Alexander**

v.

**ERIC VON SCOTT, ET AL,  
Defendants.**

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**OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on Defendants’ Linden Nelson, Sanford Nelson, Slam Productions, LLC, Slam Eloise, LLC, BPHH Productions and Michigan Motion Pictures Studios, LLC (collectively “the Movants”), motion for summary disposition and sanctions against Plaintiffs.

This case arose out of a dispute involving a film production project known as “Eloise,” which is based on a medical facility complex in Wayne County with the same name. Plaintiffs claim that, in early 2011, a relationship began between Defendant Linden Nelson and Plaintiff Gough for the primary purpose of obtaining financing for the film project. Plaintiffs allege that before this relationship began, they had already spent several years developing the storyline and related film materials, including hours of recorded footage.

Plaintiffs allege that “Joe Gough and Linden Nelson met in person numerous times, participated in multiple phone conversations, and had general electronic and verbal correspondence.” And after many communications back and forth, Plaintiffs then provided their screenplay, notes, and marketing plan to Defendant Nelson and then he “even led Plaintiffs

through his studio complex [Defendant Michigan Motion Picture Studios] to show them the capabilities.” Defendant Nelson also received many hours of edited footage of the Eloise DVD/trailer recorded by Plaintiff Ivan George. Plaintiffs further allege that on February 4, 2011, Defendant Nelson declared he wanted to finance the Eloise film.

Then after many months of continued communication, Plaintiffs claim that Defendant Nelson ceased contact and formed Defendant Slam Productions, LLC “with the intent to disenfranchise the Plaintiffs and pursue making [the] film based on Joe Gough’s Eloise screenplay, treatment and the trailers without them.”

Plaintiffs claim that, in April 2014, the Detroit Free Press published an article about Eloise that was produced by Defendant Sanford Nelson (son of Defendant Linden, Nelson). Not long after, in May 2012, Plaintiffs became aware of Movants’ devised plan to fraudulently acquire “Plaintiffs’ intellectual property, including video footage, screenplays, notes, research, artwork, marketing plans and other work product” relative to the Eloise film project.

Movants now move for summary disposition of Plaintiffs’ unjust enrichment claims against Defendant Nelson (Count I), Defendant Sanford Nelson (Count II), and Defendants Slam Productions, LLC, Slam Eloise, LLC, BHPH Productions 1, LLC, and Michigan Motion Pictures Studios (Count III) pursuant to MCR 2.116(C)(8).

A (C)(8) motion tests the legal sufficiency of the complaint when “the opposing party has failed to state a claim on which relief can be granted.” *Radke v Everett*, 442 Mich 368, 373 (1993). All well-pled factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade v Dept of Corrections*, 439 Mich 158; 483 NW2d 26 (1992). A motion under this subrule may be granted only where the claims alleged are “so clearly

unenforceable as a matter of law that no factual development could possibly justify recovery.”  
*Id.* When deciding such a motion, the court only considers the pleadings. MCR 2.116(C)(G)(5).

“[I]n order to sustain a claim of quantum meruit or unjust enrichment, a plaintiff must establish (1) the receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant.” *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 195; 729 NW2d 898 (2006); citing *Barber v SMH (US), Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993).

The *Morris Pumps* Court further reasoned:

[a] third party is not unjustly enriched when it receives a benefit from a contract between two other parties, where the party benefited **has not requested the benefit or misled the other parties** . . . . Otherwise stated, the mere fact that a third person benefits from a contract between two other persons does not make such third person liable in quasi-contract, unjust enrichment, or restitution. *Morris Pumps*, 273 Mich App at 196 (emphasis added); quoting 66 Am Jur 2d, Restitution and Implied Contracts, § 32, p 628.

### **I. Unjust Enrichment Claim against Defendant Linden Nelson (Count I)**

With respect to Count I, Movants argue Plaintiffs failed to allege a “misleading act” because “the Amended Complaint fails to allege any promise of ‘financing’ by [Linden] Nelson any time before [the] February 1, 2011 meeting” when the film project materials were handed over to Defendant Linden Nelson. Therefore, Movants argue, “it is temporally impossible for Mr. Gough to have been misled by Linden Nelson’s alleged promise.”

In support, movants claim that a misleading act supporting an unjust enrichment claim must *temporally occur* before the Plaintiff confers a benefit to the Defendant citing *Kammer Asphalt Paving Co, Inc v East China Twp Schools*, 443 Mich 176; 504 NW2d 635 (1993). Movants also support their argument with citation to Black’s Law Dictionary, which defines

“misleading” as “[d]elusive; calculated to lead astray or to lead into error.” BLACK’S LAW DICTIONARY 1000 (6th Ed. 1990).

In response, Plaintiffs claim that Defendant Linden Nelson was unjustly enriched when he “received a benefit from Plaintiffs, and an inequity resulted to the Plaintiffs because of Defendant Linden Nelson’s **retention of** such benefit.” (emphasis added). In other words, Plaintiffs claim that Defendants benefitted Linden Nelson’s retention of the Plaintiffs’ film project materials, including the Eloise DVD/trailer video and many hours of edited footage, which he then used “with the intent to deprive Plaintiffs of the benefits to be derived from production of the movie.”

In support of their argument, Plaintiffs cite *Morris Pumps*:

**[if] 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. We conclude that an inequity resulted to plaintiffs from defendant’s wrongful retention of the materials. **Defendant’s retention of the materials, coupled with defendant’s failure to compensate plaintiffs, resulted in the unjust enrichment of defendant at plaintiff’s expense.** *Morris Pumps, supra* at 196-197 (emphasis added).

Indeed, it appears that *Morris Pumps* supports Plaintiffs’ claim. An unjust enrichment claim may be based on a retention of materials – not temporally occurring before the Plaintiff hands over the materials. In other words, the alleged misleading act did not occur when Defendant Linden Nelson **received** the materials. Rather, it may have occurred if Defendant **knowingly and wrongfully retained** the film project materials without compensating Plaintiffs.

With this in mind, Plaintiffs generally allege:

- a. Defendant Linden Nelson misled Plaintiff Joe Gough into thinking the “two were entering into a mutually beneficial business relationship”;

- b. Defendant Linden Nelson misled Plaintiffs by claiming he did not receive anything directly from Plaintiffs and that he did not know Defendants, Von Scotts were associated with Eloise;
- c. Defendant Linden Nelson misled Plaintiffs when “after [he] had already received Plaintiffs materials and information related to their Eloise project, he misled ... Joe Gough, into believing that he was going to make Eloise *with* Plaintiffs.”;
- d. Defendant Linden Nelson misled Plaintiffs by “indicating that he had arranged a meeting with famed Director Sam Raimi, and would have the opportunity to approach Mr. Raimi to discuss Eloise. This was simply not true, and never occurred”; and
- e. Defendant Linden Nelson misled Plaintiffs “with the intent to disenfranchise the Plaintiffs and pursue making a film based on Joe Gough’s Eloise screenplay, treatment and the trailers without them, and without having to compensate Plaintiffs whatsoever.”

Based on the foregoing, this Court finds that Plaintiff sufficiently pled that Defendant Linden Nelson established trust in Plaintiffs whereby Plaintiff Gough believed he had to present the materials to Nelson first before the promise of financing.

For the foregoing reasons, the Court cannot conclude that Plaintiff’s claim is so clearly unenforceable as a matter of law that no factual development could justify a right of recovery. As a result, Defendants’ motion with respect to Defendant Linden Nelson is DENIED.<sup>1</sup>

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<sup>1</sup> The Court also rejects the Movants claim that Plaintiffs’ unjust enrichment claim attempts to “substitute Linden Nelson into Joe Gough’s Contract with the Von Scotts.” The fact that Plaintiff Gough had a contract with Defendant Von Scotts is not relevant to this claim. This claim was filed against Defendant Linden Nelson because there is no written contract for the use of movie materials and production.

## II. Unjust Enrichment against Defendant Sanford Nelson (Count II)

Movants next seek summary disposition of Plaintiffs' unjust enrichment claim (Count II) and claim Plaintiffs' failed to plead that Defendant Sanford Nelson received a direct benefit from or misled Plaintiffs in any way.

### A. Receipt of Benefit

Movants first argue that Plaintiffs have failed to allege that Defendant Sanford Nelson received a benefit *directly* from Plaintiffs. Movants point out that Plaintiffs allege, "Sanford Nelson purchased from the Von Scotts certain materials, including a screenplay for which he 'optioned' which was written by Joe Gough." But Movants fail recognize that the actual "screenplay, treatment and the trailers that [were] ultimately used were the ones handed to Linden Nelson by Joe Gough in February 2011." (Comp. at ¶ 68).

Movants base much of their argument on the notion that "the first element of unjust enrichment requires a finding that defendant *directly* benefited from plaintiff." *Smith v Glenmark Benerics, Inc*, an unpublished opinion per curiam of the Court of Appeals, issued August 19, 2014 (Docket No. 315989). But movants fail to present any binding authority that establishes the benefit must be received *directly* from Plaintiff.

In response, Plaintiffs argue that Defendant Sanford Nelson inequitably received the benefit of Plaintiffs' labor and materials. In support, they rely on a Michigan Supreme Court case where the court found the "Defendant may have inequitably received the benefit of plaintiff's labor and materials, to support Plaintiff's claim for unjust enrichment." *Kammer*, 443 Mich at 191.

The Michigan Court of Appeals has held:

where a third person benefits from a contract entered into between two other persons, **in the absence of some misleading act by the third person**, the mere failure of performance by one of the contracting parties does not give rise to a right of restitution against the third person. *Morris Pumps, supra* at 196 (emphasis added).

Here, Defendant Sanford Nelson is a third party who benefitted by Plaintiff Gough and Defendant Linden Nelson's negotiations. Therefore, it is necessary to decide whether Sanford Nelson "misled" Plaintiffs to obtain a receipt of the benefit from the materials handed over to Defendant Linden Nelson.

### **B. Misleading Act**

Movants claim Plaintiffs fail to allege a "misleading act" because there is no allegation that Defendant Sanford Nelson directly requested the movie materials. But Movants, again, rely solely on unbinding precedent. And Plaintiffs alleged that Sanford Nelson requested and paid the Von Scotts for the movie materials (see Plaintiffs' Motion, p. 11) after colluding with Defendant Linden Nelson with the intent to deprive Plaintiffs of the benefits to be derived from the movie.

In response, plaintiffs' claim Defendant Sanford Nelson instructed Defendant Von Scotts to end their agreement with Plaintiff Gough (Comp. at ¶ 64). Furthermore, Plaintiffs claim Defendant Sanford Nelson was working in concert with Defendant Nelson when they met with Von Scotts in regards to the Eloise project. (Comp. at ¶ 65). And Plaintiffs allege that Defendant Sanford Nelson has, in multiple interviews, fraudulently represented the Eloise film production as being solely comprised of his own research.

Plaintiffs, again, cite the *Morris Pumps* Court's reasoning:

Regardless of whether defendant itself retained and used the materials, or merely acquiesced in the replacement contractor's retention and use of the materials, defendant was a necessarily a party to the decision to use and retain the materials without paying plaintiffs. *Morris Pumps, supra* at 196-97.

The *Morris Pumps* Court further reasoned that the Defendant wrongfully retained materials, which resulted in an inequity to the plaintiff by stating:

if 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. *Morris Pumps, supra* at 197 (emphasis added).

Plaintiffs allege that Defendant Sanford Nelson's actions were not innocent and without knowledge. Plaintiffs claim that Defendant Sanford Nelson was aware of Plaintiffs' work on the Eloise film project, but yet still pursued obtaining the materials through other means.

For the foregoing reasons, the Court cannot conclude that Plaintiff's claim is so clearly unenforceable as a matter of law that no factual development could justify a right of recovery. As a result, Defendants' motion with respect to Defendant Sanford Nelson is DENIED.

### **III. Unjust Enrichment against Defendants Slam Productions, LLC, Slam Eloise, LLC, BHPH Productions 1, LLC, and Michigan Motion Pictures Studios, LLC (Count III)**

For the same reasons above in (Count II), Movants next seek summary disposition of Plaintiffs' unjust enrichment claim (Count III) against Defendants Slam Productions, LLC, Slam Eloise, LLC, BHPH Productions 1, LLC, and Michigan Motion Pictures Studios, LLC (the "Entities").

#### **A. Receipt of Benefit**

Again, movants rely on unbinding precedent as their sole argument in claiming that there had not been a *direct* benefit from Plaintiffs and that an indirect benefit received is not enough to

establish a claim for unjust enrichment. But because the Movants present no binding authority on this point, the Court rejects the same.

Similar to Count II, Defendant Entities were a third party and under *Morris Pumps*, a third party who “has not requested the benefit or misled the other parties” does not rise to the right of restitution against the third party unless there was the existence of a “misleading act” by the third party.

### **B. Misleading Act**

Here, movants claim Plaintiffs fail to allege the entities requested these materials or engaged in a “misleading act.” Plaintiffs claim that right after Defendant Linden Nelson terminated contact with Plaintiff Gough (in August 2011), and formed SLAM Productions, LLC, the main production company for Defendant Sanford Nelson’s Eloise production, with the intent to mislead and disenfranchise Plaintiffs. And, having done so with the knowledge that the proprietary and film materials belonged to Plaintiffs. Plaintiffs fail to address any allegation that Defendant Entities requested such materials. And Plaintiffs claim that Defendants SLAM Productions and SLAM Eloise/BHPH were necessary parties to the decision to use and retain Plaintiffs’ materials unjustly, and without reasonable compensation. Plaintiff argues that Slam Eloise and by extension, BHPH had actual knowledge as they were formed, managed, and controlled by Defendant Linden Nelson. But Plaintiffs fail to advance an allegation against Defendant Michigan Motion Pictures Studios, LLC.

Although, movants argue Defendant Entities could not have misled Plaintiff because they were not yet formed, the real issue is whether Plaintiffs’ were misled by Defendant Entities and whether Defendant Entities have received a benefit from that wrongful retention of materials.

Here Plaintiff alleges that SLAM Productions, LLC was formed with the knowledge that the materials were Plaintiffs and they had not been reasonably compensated, but it is not clear that any of Defendant Entities have even benefitted from Plaintiffs' materials because the movie, Eloise, has not even been released yet. Nor has it collected the State of Michigan Film Tax Incentive for Eloise. Plaintiffs, in their Complaint, instead only estimate that the tax incentive is expected to be \$1,950,000.00. In other words, Plaintiffs merely speculate that movants' will benefit from the use of the materials wrongfully retained by Defendants' Linden and Sanford Nelson.

Therefore, for the foregoing reasons, the Court finds that Movants' summary disposition of Plaintiffs' Count III claim under (C)(8) is GRANTED, and Plaintiffs' Count III is DISMISSED as to Defendants Slam Productions, LLC, Slam Eloise, LLC, BHPH Productions 1, LLC, and Michigan Motion Pictures Studios, LLC.

### **III. Dismissal of Plaintiffs George, Weber, and Indian Trail Productions**

Movants next argue Plaintiffs George, Weber and/or Indian Trial Productions' should be dismissed from this case because "Plaintiffs claim Joe Gough provided materials directly to Linden Nelson [and] there is no allegation that Plaintiffs George, Weber and/or Indiana Trail Productions provided any such materials." And as a result, movants argue "a benefit received indirectly is not enough to establish a claim for unjust enrichment." *Smith v Glenmark Benerics, Inc*, an unpublished opinion per curiam of the Court of Appeals, issued August 19, 2014 (Docket No. 315989).

In response, Plaintiffs argue that Plaintiffs George, Weber, and Indian Trail Productions, LLC did, in fact, provide a benefit to Defendant Linden Nelson when he received the Eloise

trailer/DVD that Plaintiff George had recorded and edited. And Plaintiffs Weber and Gough invested over \$20,000.00 in the creation of these materials, which was received by Defendant Linden Nelson.

Again, the Movants present only nonbinding authority that the benefit must be direct, and the Court has rejected this argument. Although Plaintiffs allege that Gough was the one to hand over the materials, it is clear that Plaintiffs Weber and George have rights in the material allegedly wrongfully retained by Defendant Linden Nelson.

However, this court agrees that no factual allegations are made as to Indian Trail Productions, LLC. As a result, this court must DISMISS Plaintiff Indian Trail Productions, LLC from this suit under (C)(8).

#### **IV. Sanctions**

Finally, Movants seek sanctions against Plaintiffs under MCL 600.2591. “If the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591.” MCR 2.625. Frivolous claims include a “legal position devoid of arguable legal merit.” MCL600.2591(3)(a)(iii). Movants argue Plaintiffs’ claims are legally deficient on their face and thus, sanctions should be imposed. This Court disagrees. “Whether a claim is frivolous within the meaning of MCL 600.2591 depends on the facts of the case.” *Kitchen v Kitchen*, 465 Mich. 654, 661 (2002). Plaintiffs’ on two of the three counts have pled sufficient evidence to give their claims merit.

Thus, Movants’ request for sanctions under MCL 600.2591 is DENIED.

## **V. Summary**

To summarize, Movants' motion for summary disposition is GRANTED IN PART. Plaintiffs' claim for: Unjust Enrichment against Defendants SLAM, Eloise, LLC, SLAM Productions, LLC, BHPH Productions 1, LLC, and Michigan Motion Pictures Studio, LLC is DISMISSED. Additionally, Plaintiff Indian Trail Productions, LLC is DISMISSED.

Movants' motion, however, with respect to Plaintiffs' claims for: Unjust Enrichment against Linden Nelson (Count I), and Unjust Enrichment against Sanford Nelson (Count II) are DENIED.

**IT IS SO ORDERED.**

February 11, 2015  
Date

/s/ James M. Alexander  
Hon. James M. Alexander, Circuit Court Judge