

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

**ALLIANCE-HNI LEASING CO, LLC,
Plaintiff,**

v.

**Case No. 15-145024-CK
Hon. James M. Alexander**

**IMAGING ALLIANCE OF MICHIGAN, LLC,
and LIV IMAGING, LLC,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendant LIV Imaging's motion for partial summary disposition. In its Complaint, Plaintiff claims that it leased an MRI system and provided personnel to operate the system at four Defendant locations. These leases were governed by a Master Service Agreement, Master Lease Agreement, and several Addendums to the same. Each of these written Agreements was executed by Plaintiff and Defendant Imaging Alliance of Michigan.

Initially, Plaintiff provided MRI systems in one imaging center in Royal Oak. But, over the years, Plaintiff and Imaging Alliance contracted to add additional locations – including that of Defendant LIV in Farmington on February 7, 2013. And, just like the others, Plaintiff and Imaging Alliance executed the written Agreements placing the equipment for use by LIV. To be clear, there are no written agreements between Plaintiff and Defendant LIV.

Relevant to the present motion, Plaintiff claims that Defendants defaulted on its lease payments – leaving a total balance owing of \$657,331.11 (including \$115,998.97 attributable to

the equipment at LIV's location).

To recover this amount, Plaintiff alleges claims: (Count I) based in contract and brought against Defendant Imaging Alliance, and (Count II) for unjust enrichment against Defendant LIV only. LIV then filed the present motion for summary disposition – arguing that a written contract bars Plaintiff's unjust enrichment claim (Count II).

LIV seeks summary disposition of said claim under MCR 2.116(C)(8), which tests the legal sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). When analyzing such a motion, 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, 162-163; 483 NW2d 26 (1992). A (C)(8) motion 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.* And, when deciding such a motion, **the court considers only the pleadings.** MCR 2.116(C)(G)(5).

This motion presents a narrow issue. Can a specifically named, benefiting party in an express contract rely on said contract to defeat an unjust enrichment claim? In other words, if A and B expressly contract for the benefit of C, does C remain liable on an implied contract because it received the benefit?

LIV argues that Plaintiff “has improperly attempted to make a claim against LIV where the transaction is governed by an express written contract [between Plaintiff and co-Defendant Imaging Alliance].” This, LIV argues, is contrary to well-settled Michigan law, whereby, “A contract will be implied only where no express contract exists. There cannot be an express and implied contract covering **the same subject matter at the same time.**” *Campbell v Troy*, 42

Mich App 534, 537; 202 NW2d 547 (1972), citing *Superior Ambulance Service v Lincoln Park*, 19 Mich App 655; 173 NW2d 236 (1969) (emphasis added).

Generally, “in 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).

In support of their arguments, both parties cite extensively to *Kammer Asphalt Paving Co, Inc v East China Twp Schools*, 443 Mich 176; 504 NW2d 635 (1993) and *Morris Pumps*, 273 Mich App 187.

In *Kammer*, the defendant school district contracted with a general contractor for the construction of athletic facilities. The general contractor hired plaintiff subcontractor to complete base-paving work. But the general contractor furnished fraudulent payment bonds and failed to pay the subcontractor, who then sued the school district on an unjust enrichment theory.

Our Supreme Court held that the subcontractor’s unjust enrichment theory was valid because the school district “failed to notify [the subcontractor] of the fraudulent nature of the bonds” and may have actually “verified the validity of [said] bonds.” *Kammer*, 443 Mich at 186-187. In other words, the defendant school district **misled** the subcontractor.

In *Morris Pumps*, a supplier provided equipment and materials to a subcontractor for use on a large wastewater treatment project. When the subcontractor went out of business and abandoned the construction project, the suppliers’ equipment and materials remained on the worksite.

The general contractor then hired a replacement subcontractor to complete the work, and that subcontractor used the supplier's materials that were previously provided. The replacement subcontractor, however, did not bill for said materials because they were already there, and neither the general contractor nor the replacement subcontractor ever paid for the materials. The supplier then sued the general contractor on an unjust enrichment theory.

The Court first rejected the contractor's argument that "[the supplier's] unjust enrichment claims against it were barred by the existence of express contracts executed between [it] and [the original subcontractor], which covered the same subject matter." *Morris Pumps*, 273 Mich App at 194. In so doing, the *Morris Pumps* Court reasoned that only express contracts **between the same parties** will preclude an unjust enrichment claim. *Morris Pumps*, 273 Mich App at 194-195.

But this was not the end of the analysis, because the Court reasoned that it must address the merits of the claim itself. The *Morris Pumps* Court 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.

The Court of Appeals concluded that the supplier's unjust enrichment claim was valid because the general contractor's "retaining and using the materials, without ever ensuring that plaintiffs were compensated for the materials, [was not] innocent, just, or equitable." *Morris Pumps*, 273 Mich App at 197. In other words, there was some **misleading act**.

Our case is distinguishable from both *Kammer* and *Morris Pumps* because LIV there was no misleading act or requested benefit from LIV. This is so because Plaintiff and Imagining

Alliance specifically contracted for the benefit of LIV. In other words, LIV didn't request anything; Imaging Alliance did. Second, LIV misled no one. Plaintiff knew that it was supplying equipment and services to LIV under the contract. In fact, that was the purpose of the contract. And Plaintiff chose to execute said contract with Imaging Alliance, not LIV.

Because LIV did not mislead or request a benefit from Plaintiff, Plaintiff cannot seek to impose liability on LIV on an unjust enrichment theory. This reasoning has roots in over 100 years of Michigan caselaw. See, e.g., *Sullivan v Detroit, Y&AAR Co*, 135 Mich 661, 667; 98 NW 756 (1904) (reasoning "A contract will be implied only when no express contract exists. If A. makes an express contract with B. to perform services for C., C. is not liable on an implied contract because he received the benefit.").

For the above reasons, the Court finds that Plaintiff's unjust enrichment claim against Defendant LIV (Count II) is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. As a result, said Count is DISMISSED under (C)(8).

IT IS SO ORDERED.

August 19, 2015
Date

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