

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

**COMMERCIAL MANAGEMENT SERVICES LLC,**

**Plaintiff,**

**v**

**Case No. 2015-149677-CB**  
**Hon. Wendy Potts**

**BLUE SKY DISPOSAL, INC. and**  
**MIGENA GJONAJ,**

**Defendants.**

---

**OPINION AND ORDER RE:**  
**DEFENDANTS' MOTION FOR PARTIAL SUMMARY DISPOSITION**

At a session of Court  
Held in Pontiac, Michigan On  
SEP 27 2016

This matter is before the Court on Defendants' Motion for Partial Summary Disposition in which Defendants seek the dismissal of Plaintiff's Count Three, Unjust Enrichment/Quantum Meruit, of the Complaint pursuant to MCR 2.116(C)(10). The Court dispenses with oral argument under MCR 2.119(E)(3).

By way of background, Defendant Blue Sky Disposal, Inc. entered into a contract with Plaintiff Commercial Management Services LLC on July 1, 2014 where Plaintiff would provide solid waste collections services for Defendant's customers. Defendant Migena Gjonaj personally guaranteed Defendant's financial responsibilities to Plaintiff under the contract.

On October 16, 2015, Plaintiff filed this lawsuit on allegations that Defendants breached the parties' contract by failing to pay Plaintiff for the services it rendered and for prematurely

terminating the parties' contract. In its Complaint, Plaintiff has raised the following counts of breach of contract, breach of guaranty, unjust enrichment and quantum meruit.

Defendants have now filed this partial summary disposition motion to argue that unjust enrichment and quantum meruit are implied contract theories that are inapplicable when there is an express agreement between the parties regarding the same subject matter.

“The theory underlying quantum meruit recovery is that the law will imply a contract in order to prevent unjust enrichment when one party inequitably receives and retains a benefit from another.” *Morris Pumps v Centerline Piping, Inc.*, 273 Mich App 187, 194; 729 NW2d 898 (2006). However, “a contract will be implied only if there is no express contract covering the same subject matter.” *Barber v SMH (US), Inc.*, 202 Mich App 366, 375; 509 NW2d 791 (1993).

Defendants attach, as Exhibit B, Plaintiff's Response to Defendants' Request for Admissions wherein Plaintiff admits “that the contract referenced in paragraph six of the Complaint was an express agreement between the parties relating to the subject matter of the contract.” Since Plaintiff concedes that there is an express agreement between the parties, Defendants assert that Plaintiff cannot sustain a claim for implied contract. Therefore, Defendants request the Court to dismiss Count Three of Plaintiff's Complaint.

In its Response, Plaintiff argues that while it believes that there is an express agreement between the parties, Plaintiff did not know if Defendants would argue against the agreement's existence. As a result, Plaintiff pled alternative theories of liability.

Plaintiff maintains that absent an admission from Defendants that the contract is an express agreement, Plaintiff's claims for unjust enrichment and quantum meruit should not be dismissed. Plaintiff contends that all parties must admit that an express contract exists to

preclude a claim for implied contract. *See generally, Advanced Plastics Corp. v White Consol. Indus., Inc.*, 828 F Supp 484, 491 (ED Mich 1993).

In their Reply Brief, Defendants point out that they have acknowledged the existence of an express agreement between the parties in their Motion for Partial Summary Disposition. Defendants argue that Plaintiff, in its Complaint and Response herein, has also acknowledged the existence of an express agreement between the parties. Since all parties admit that an express agreement exists, Plaintiff's alternative pleading of an implied contract claim, as set forth in Count Three of the Complaint, must be dismissed with prejudice.

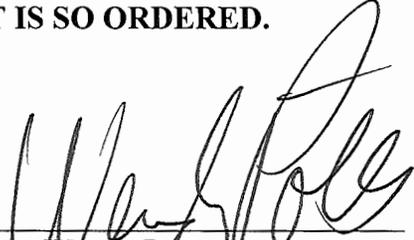
“A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties...in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law.” *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

The Court has considered the documentary evidence presented by Defendant, specifically Plaintiff's Response to Defendants' Request for Admissions, as well as the representations made by the parties in their respective filings, and finds that there is no genuine issue of material fact concerning the parties' acknowledgement of an express agreement that forms the basis of Plaintiff's breach of contract claim. In its Response, Plaintiff concedes that an express agreement exists between the parties and Defendant again corroborates the existence of the parties' express agreement in its Reply Brief. In light of the acknowledged, express agreement

between the parties, Plaintiff's Count Three, Unjust Enrichment/Quantum Meruit, shall be dismissed from the Complaint.

Accordingly, Defendants' Motion for Partial Summary Disposition is GRANTED pursuant to MCR 2.116(C)(10).

**IT IS SO ORDERED.**



---

Hon. Wendy Potts  
Circuit Court Judge

Dated:

SEP 27 2016