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

DARRELL FLETCHER

Plaintiff,

v

Case No. 23-199867-CB
Hon. Michael Warren

HASS HOLDINGS, LLC, RODNEY BURRELL, Co-Manager of Hass Holdings LLC, and RODNEY BURRELL, an individual,

Defendants.

OPINION AND ORDER REGARDING DEFENDANTS' MOTION FOR PARTIAL SUMMARY DISPOSITION UNDER MCR 2.116(C)(8) AND (10)

At a session of said Court, held in the County of Oakland, State of Michigan
January 13, 2025

PRESENT: HON. MICHAEL WARREN

OPINION

I

Overview

The instant action is before this Court on Defendants' Motion for Partial Summary Disposition Under MCR 2.116(C)(8) and (10). Having reviewed the Motion and

Response[1] and otherwise being fully informed in the premises, oral argument is dispensed as it would not assist the Court in its decision-making process.[2]

At stake in this Motion is whether, under the plain and unambiguous language of the Operating Agreement of Hass Holdings, LLC, the Plaintiff is entitled to allocation of profits or distributions based upon his status as a Co-Manager? Because the answer is "no," summary disposition is granted as to Count III (Breach of Operating Agreement).

Also at stake in this Motion is whether the Plaintiff fails to make an argument as to why summary disposition should not be granted as to Count IV (Unjust Enrichment-Land Fill Profits) and whether, in any event, there is an express contract covering the same subject matter? Because the answer to both questions is "yes," summary disposition is granted as to Count IV (Unjust Enrichment-Land Fill Profits).

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[1] The Defendants filed a non-conforming Reply on 11/20/24, the deadline for filing a reply brief. The Reply was rejected and the "Defendants' Motion for Leave to File or Refile a Conforming Reply to Plaintiff's Response to Defendants Motion for Partial Summary Disposition" was denied by this Court in an Order dated December 3, 2024.

[2] MCR 2.119(E)(3) provides court with discretion to dispense with or limit oral argument and to require briefing. MCR 2.116(G)(1) specifically recognizes application of MCR 2.119(E)(3) to summary disposition motions. Subrule (G)(1) additionally authorizes courts to issue orders establishing times for raising and asserting arguments. This Court's Scheduling Order clearly and unambiguously sets the time for asserting and raising arguments, and legal authorities to be in the briefing – not to be raised and argued for the first time at oral argument. Therefore, both parties have been afforded due process as they each had notice of the arguments and an opportunity to be heard by responding and replying in writing, and this Court has considered the submissions to be fully apprised of the parties' positions before ruling. Because due process simply requires parties to have a meaningful opportunity to know and respond to the arguments and submissions which has occurred here, the parties have received the process due.

The Defendant Hass Holdings, LLC ("Hass Holdings") is a Michigan limited liability company with real property located in Lyon Township as its sole asset. Hass Holdings is governed by an April 29, 2019, Operating Agreement ("Operating Agreement").[3] The Operating Agreement provides the following "Intention for Company":

> The objective in forming the Company is to purchase from Darrell Fletcher, for $200,000.00, three parcels of real property located in Lyon Township, Oakland County, Michigan, consisting of approximately 100 acres ("Property"). The right to purchase the Property from Wildlife, LLC belongs to Darrell Fletcher, who has agreed to sell and convey to Company the Property for $200,000.00, immediately after he has purchased and closed on the Property for $150,000.00. Rodney Burrell shall make an Initial Capital Contribution to the Company of $200,000.00, for Fifty (50) Units in the Company; the Company shall then loan to Darren Fletcher the sum of $150,000.00 for the purpose of Darrell Fetcher purchasing the Property from the title holder Wildlife, LLC. For Rodney Burrell's Initial Capital Contribution, Rodney Burrell shall receive Fifty (50) Units of membership interest in the Company, thus being the sole Member of Company, subject to the right of Darrell Fletcher to purchase Fifty (50) Units of membership interest in the Company within four (4) years as provided in the Membership Purchase Agreement entered into by Company, as the Seller, and Darrell Fletcher as the Purchaser of the Units. If Darrell Fletcher timely purchases the Units, then Darrell Fletcher shall hold Fifty (50%) percent of the Units and Rodney Burrell shall hold Fifty (50%) of the Units. In the event Darrell Fletcher fails to timely purchase the Units, as provided in the Membership Purchase Agreement, then Darrell Fletcher shall not be a member of Company, shall lose his right to purchase the Units (but shall retain the $50,000.00 payment for the sale and assignment of his right to the Property), and shall automatically be removed as a Co-Manager of the Company.[4]

[3] Motion, Exhibit C.
[4] Motion, Exhibit C, Operating Agreement, Section 1.6.

The Operating Agreement further states that "[t]he Company shall be managed by not less than one (1) Manager nor more than two (2) Managers who need not be Members" and that "[a]ny action required or permitted to be taken by the Manager must be with the unanimous consent of both Co-Managers, if there are two Managers appointed."[5] Burrell and Fletcher were named as the Initial Managers.[6] Additionally, the Operating Agreement states that "[n]o Manager shall be paid a compensation to serve as Manager."[7]

On the same day, April 29, 2019, Hass Holdings, as seller, and the Plaintiff Darrell Fletcher, as purchaser, entered into a Membership Purchase Agreement ("MPA").[8] The MPA stated that the Defendant Rodney Burrell ("Burrell") currently holds 50% of the membership interest in Hass Holdings and that the remaining 50% has not been issued to a member. It further states that:

> The Purchaser is allowed by Seller Forty Eight (48) months to purchase from Seller the last remaining Fifty (50) Units of ownership interest/membership interest in the Company consistent with the terms of this Agreement and subject to the Operating Agreement for Hass Holdings, LLC.[9]

The MPA also provides, in pertinent part:

[5] *Id.*, Section 4.1.
[6] *Id.*, Section 4.2.
[7] *Id.*, Section 4.7.
[8] Fletcher also signed the MPA as Co-Manager on behalf of Hass Holdings. Motion, Exhibit A, MPA, p 5.
[9] Motion, Exhibit A, MPA, p 1.

2. Purchase of Membership Interest. The Seller hereby agrees to sell to the Purchaser fifty (50) Units of membership interest in the Company (the "Membership Interest"), subject to the terms, restrictions, conditions, and provisions of the Company Operating Agreement. Purchaser is required to purchase all Fifty (50) units and shall not be permitted to buy a lesser amount at any time. Purchaser has paid a deposit of One and no/100 ($1.00) to Seller as consideration for this Agreement.

3. Purchase Price. The Seller hereby agrees to sell the Membership Interest (50 Units) to Purchaser for the sum of One Hundred Thousand and no/100 ($100,000.00) Dollars ("Purchase Price"), which shall be paid by the Purchaser to the Seller at Closing, unless this Agreement is terminated sooner.

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7. Termination, Expiration and Closing.

a. Period to Close on Purchase. **Purchaser has Four (4) years to close on the purchase of the total number of Units, otherwise this Agreement expires and terminates, without further action (the "Closing Term").** The Closing shall be scheduled when Purchaser, at any time during the Closing Term, provides written notice to Seller that Purchaser is ready to close, and Purchaser does close and pay the purchase Price within fourteen (14) days from the written notice.

b. Termination of Agreement. If Purchaser fails to close and pay the Purchase Price prior to the occurrence of any of the following events, then all rights herein provided for Purchaser shall expire and terminate without further action by Seller and Purchaser will have forfeited his right to purchase the Units of membership interest in the Company:

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3. Prior to April 29, 2023 ("Expiration Date" for closing on this Agreement) . . . .

c. Closing. During the Closing Term, but at least ten (10) days prior to Expiration Date, Purchaser, when prepared to close on the

> purchase, shall provide Seller written notice of Purchaser's ability to close ("Notice to Close"). Within ten (10) days fo [sic] the Notice to Close, Seller shall schedule the time, date, and location for the closing ("Closing Date"). On Closing Date, Purchaser shall close by paying the Purchase Price to Seller and Seller shall assign to Purchaser the Membership Interest.[10]

Under Section 8(n) of the MPA:

> Notices. All notices and other communications hereunder shall be in writing and shall be deemed given when received, if delivered in person, when receipt is electronically confirmed, if sent by telecopy, on the day deposited for delivery, if sent by a nationally recognized next-day delivery service (i.e., Federal Express) or on the day mailed, if sent by registered or certified mail (postage prepaid, return receipt requested) to the other party at the addresses first above written (or at such other address for a party as shall be specifically by like notice; provided that notices of a change of address shall be effective only upon receipt thereof). Notice by Purchaser to Seller must be sent to Rodney Burrell at 25025 Napier Road, South Lyon, MI 48178.[11]

Lastly, under Section 8(m), "[a]fter the assignment and transfer of Seller's Membership Interests, the Purchaser shall hold Fifty (50%) percent of all Units in the Company."[12]

The Plaintiff asserts that he decided to exercise the option to purchase a membership interest in November 2021 and that he "certified mailed a check for $100,000 as required by the Membership Purchase Agreement to our corporate attorney Donald

[10] Motion, Exhibit A, MPA, pp 1-3. Emphasis in original.
[11] *Id.* at p 5.
[12] *Id.*

Samhat."[13] The check was written to Burrell.[14] The Plaintiff asserts that "I wrote the check to Burrell due to the fact that Burrell refused to open a corporate bank account."[15]

Burrell asserts that he did not receive the check until two weeks later when it was forwarded to his Napier Road address by his attorney Samhat.[16] Burrell encountered Fletcher at a local restaurant a few days later and after being unsuccessful in his attempt to discuss the matter with Fletcher, Burrell departed the restaurant and left the check on the seat of Fletcher's vehicle.[17]

In a letter dated March 20, 2023, counsel for Fletcher wrote that "[t]his letter is Mr. Fletcher's second formal notification that he exercises his option to purchase 50% of Hass Holdings."[18] Fletcher demanded that:

> Hass Holdings, LLC and Rodney Burrell as an individual immediately complete all of the following:
>
> 1. Acknowledge, in writing, Mr. Fletcher's non-contingent, valid exercise of his option purchase.
> 2. Issue the certificates of ownership of the 50 units (50% of Hass Holdings, LLC) to Mr. Fletcher.
> 3. Sign any and all additional documents necessary to finalize this transaction.[19]

[13] Response, Exhibit 3, Fletcher Affidavit, ¶ 16.
[14] Motion, Exhibit J, Copy of Check.
[15] Response, Exhibit 3, Fletcher Affidavit, ¶ 18.
[16] Motion, Exhibit H, Burrell Affidavit, ¶¶ 14-15.
[17] *Id*. at ¶ 19.
[18] Motion, Exhibit L, 3/20/23 Letter. Fletcher took the position that the delivery of the check was the first notification.
[19] *Id*.

On April 13, 2023, counsel for Fletcher set another letter to Burrell stating that it was the "third formal notification that [Fletcher] exercised his option to purchase his 50% of Hass Holdings, LLC. . . ."[20] Further, it stated that the Defendants "have failed, refused or otherwise neglected to complete your portion of the option transaction by setting up a date for execution of the Certificate of Membership."[21] Fletcher asserts that "[n]either [he] nor [his] attorney ever received a specific date, time and location for the closing verbally or in writing.[22]

On April 17, 2023, Fletcher filed the instant action.[23] On May 18, 2023, he filed an amended complaint against Hass Holdings and Burrell alleging: "Breach of Contract – Purchase Agreement" (Count I); "Breach of Fiduciary Duty- Rodney Burrell" (Count II); "Breach of Contract – Operating Agreement" (Count III); "Unjust Enrichment-Land Fill Profits" (Count IV); and "Unjust Enrichment-Expenses Incurred" (Count V). The Defendants now move for partial summary disposition under MCR 2.116(C)(8) and (10) as to Counts III and IV.

[20] Motion, Exhibit L, April 13, 2023, letter.
[21] *Id*.
[22] Response, Exhibit 3, Fletcher Affidavit, ¶ 24.
[23] The MPA had not expired at this time. *See* Motion, Exhibit A, MPA, § 7(b)(3) (April 29, 2023 is Expiration Date for closing on MPA.)

II

Standard of Review

A

MCR 2.116(C)(8)

A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint, not whether the complaint can be factually supported. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-160 (2019); *Pawlak v Redox Corp*, 182 Mich App 758, 763 (1990). A motion for summary disposition based on the failure to state a claim upon which relief may be granted is to be decided on the pleadings alone. *Bailey v Schaaf*, 494 Mich 595, 603 (2013); *Parkhurst Homes, Inc v McLaughlin*, 187 Mich App 357, 360 (1991). Exhibits attached to pleadings may be considered under MCR 2.116(C)(8) because they are part of the pleadings pursuant to MCR 2.113(C). *El-Khalil*, 504 Mich at 163.

"All well-pleaded factual allegations are accepted as a true and construed in a light most favorable to the nonmovant." *Maiden v Rozwood*, 461 Mich 109, 119 (1999); *Wade v Dep't of Corrections*, 439 Mich 158, 162 (1992). Summary disposition is proper when the claim is so clearly unenforceable as a matter of law that no factual development can justify a right to recovery. *Parkhurst Homes*, 187 Mich App at 360; *Spiek v Dep't of Transportation*, 456 Mich 331, 337 (1998).

"[T]he mere statement of a pleader's conclusions, unsupported by allegations of fact, will not suffice to state a cause of action." *ETT Ambulance Serv Corp v Rockford Ambulance, Inc*, 204 Mich App 392, 395 (1994).

B

MCR 2.116(C)(10)

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim or defense. See, e.g., MCR 2.116(G)(3)(b); *Quinto v Cross & Peters Co*, 451 Mich 358, 362 (1996). Accordingly, "[i]n 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, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion." *Maiden v Rozwood*, 461 Mich at 120; MCR 2.116(C)(10); MCR 2.116(G)(4); *Quinto,* 451 Mich at 358. The moving party "must specifically identify the issues" as to which it "believes there is no genuine issue" of material fact and support its position as provided in MCR 2.116. MCR 2.116(G)(4).

Under Michigan law, the moving party may satisfy its burden of production under MCR 2.116(C)(10) by demonstrating to the court that the non-moving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. *Quinto,* 451 Mich at 361. If the moving party properly supports its motion, the burden "then shifts to the opposing party to establish that a genuine issue of disputed fact exists." *Id*. at 362. If

the moving party fails to properly support its motion for summary disposition, the nonmoving party has no duty to respond and the trial court should deny the motion. MCR 2.116(G)(4); see also *Meyer v City of Center Line*, 242 Mich App 560, 575 (2000) (concluding that the trial court erred when it granted an improperly supported motion for summary disposition under MCR 2.116(C)(10)).

Granting a motion for summary disposition under MCR 2.116(C)(10) is warranted if the substantively admissible evidence shows that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Quinto*, 451 Mich at 362-363.

III

Analysis

A

Summary Disposition is proper as to Count III (Breach of Contract-Operating Agreement) where there is no dispute that the Plaintiff never became a member of Hass Holdings, LLC and the Operating Agreement makes no provision for allocations of profits or distributions to non-members

Count III alleges:

> 22. On April 29, 2019, Plaintiff and defendant entered into a contract which immediately granted Plaintiff Co-Manager rights of Hass Holdings, LLC. (Attached as Exhibit G – Operating Agreement).

23. Defendant, Burrell wrongfully attempted to exercise exclusive control over the subject property, which is the sole physical asset of defendant Hass Holdings, LLC.

24. Defendant, Burrell used the subject property for profit, in numerous ways including but not limited to, as a location for commercial land fill dumping from 2019 through 2022.

25. Defendant, Burrell profited from the commercial land fill at the rate of approximately $1.00-2.00 per yard.

26. Defendant, Burrell accepted approximately 2,000,000 yards of commercial landfill onto the property.

27. Plaintiff, as co-manager of Hass Holdings, LLC is due 50% of any and all income from the subject property.

28. Defendant breached the contract in numerous ways including but not limited to:

a. Refusing to distribute profits gained by the defendant, LLC.
b. Failing to reimburse plaintiff for the expenses incurred while improving the property.
c. Failing to preserve the business assets.
d. Failure to make distributions.

29. Defendants' breach of contract have [sic] caused plaintiff economic damages.

30. Plaintiff has been damaged by Defendants' breach of contract in a multitude of ways, including but not limited to:

a. Not receiving the profits gained from the defendant LLC business's activities.
b. Not accounting for plaintiff's expenses incurred in the company's distributions.[24]

[24] First Amended Complaint, ¶¶ 22-30.

Under Michigan law "[a] party asserting a breach of contract must establish by a preponderance of the evidence that (1) there was a contract (2) which the other party breached (3) thereby resulting in damages to the party claiming breach." *Miller-Davis Co v Ahrens Constr, Inc*, 495 Mich 161, 178 (2014). "[T]he damages recoverable for breach of contract are those that arise naturally from the breach or those that were in the contemplation of the parties at the time the contract was made." *Kewin v Massachusetts Mut Life Ins Co*, 409 Mich 401, 414-415 (1980).

A court's "goal in contract interpretation is to give effect to the intent of the parties, to be determined first and foremost by the plain and unambiguous language of the contract itself." *Wyandotte Elec Supply Co v Electrical Technology Sys, Inc*, 499 Mich 127, 143-144 (2016). "[I]t has long been the law in this state that courts are not to rewrite the express terms of contracts." *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 199-200 (2008). See also *Kendzierski v Macomb County*, 503 Mich 296, 311-312 (2019) (emphasis in original) ("A fundamental tenet of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be *enforced as written*" and a court "will not create ambiguity where the terms of the contract are clear").

The Defendants argue that summary disposition should be granted on the breach of Operating Agreement claim because Fletcher never became a Member in Hass Holdings and under the terms of the Operating Agreement he is not entitled to distributions or profits based solely upon his Co-Manager status. The Plaintiff argues that

factual issues exist because Count III is for unjust enrichment and the Operating Agreement does not "supersede" that equitable doctrine. The Plaintiff also argues that Burrell breached the Membership Purchase Agreement ("MPA") when he refused to set a date for the closing on the Plaintiff's exercise of his option to purchase the 50% membership share.

Summary disposition is proper as to Count III. First, contrary to the Plaintiff's argument this is a claim for breach of contract (the Operating Agreement) and not a claim for unjust enrichment.[25] Second, this claim is for breach of the Operating Agreement not a claim for breach of the MPA which is alleged in Count I of the Amended Complaint. It is not relevant to Count III whether the Plaintiff did or did not strictly comply with the option terms in the MPA or whether the Defendants properly scheduled a closing under the MPA. What is relevant to Count III is that there is no dispute that membership rights in Hass Holdings were never transferred to the Plaintiff.[26]

[25] *See* Amended Complaint at ¶¶22-30 quoted above.

[26] *See* Amended Complaint, ¶¶ 11-13 where it is alleged that the option to purchase transaction was never completed and that the Plaintiff did not receive the 50% ownership interest in Hass Holdings. *See also* Response, Exhibit 3, Fletcher Affidavit and Exhibit L, April 13, 2023 Letter.

In his Response, the Plaintiff asserts that his "conversion of his option to purchase 50% membership of Hass Holdings, LLC elevates his status from not only a 50% co-manager, but also he enjoys the rights and privileges as a 50% member (owner) of Hass Holdings, LLC . . . ." However, the Plaintiff does not explain why this is so. Moreover, under the plain language of the MPA the assignment of the Membership interest does not occur until closing which never happened. Motion, Exhibit A, MPA, § 7(c). *See also* §8(m) (emphasis added) ("*After the assignment and transfer* of Seller's Membership Interests, the Purchaser shall hold Fifty (50%) percent of all Units in the Company.")

The Plaintiff alleges that the Defendants breached the Operating Agreement by refusing to allocate profits or make distributions to him. The Plaintiff alleges that these amounts were due to him as a "Co-Manager" not as a Member. However, the Operating Agreement only requires allocations and distributions be made to Members.[27] However, the Plaintiff fails to identify any provision in the Operating Agreement that gives *Managers* the right to profits or distributions.

The Plaintiff also alleges in the First Amended Complaint that the Defendants breached the Operating Agreement by failing to preserve business assets and failing to reimburse the Plaintiff for expenses incurred while improving the Property.[28] However, in his Response, the Plaintiff again fails to identify any provision in the Operating Agreement that was allegedly breached. The Plaintiff also fails to explain how, as a

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[27] The Operating Agreement provides, in relevant part:

> 7.1.1 In General. Except as may be required by the [Internal Revenue Code], for each year the net profits, net losses, and other items of income, gain, loss, deduction and credit of the Company shall be allocated among the Members in proportion to the number of units held by each Member in relation to all Units issued to Members and the proration for the time duration held over the tax year by the Member. [Motion, Exhibit C, Operating Agreement, Article VII.]

See also Section 7.2.1 regarding Distributions which provides:

> The Company may make distributions to the Members from time to time, when there is sufficient net cash flow. Distributions may be made only after the Manager determines that the Company has sufficient cash on hand which exceeds its current and the anticipated needs to fulfill its business purposes (including needs for operating expenses, debt service, acquisitions, and reserves, if any). All distributions shall be made to the Members in proportion to the number of Units held by each Member in relation to all Units issued to Members ("Percentage Interest") . . . . [Motion, Exhibit C, Operating Agreement, Article VII.]

[28] First Amended Complaint, ¶¶ 28(b) and (c).

Manager, he is entitled to damages for the failure to preserve business assets. Accordingly, the Plaintiff has abandoned any argument that the Operating Agreement was breached by a failure to preserve business assets or to reimburse for improvements. *Moses, Inc v Southeast Mich Council of Governments*, 270 Mich App 401, 417 (2006) ("If a party fails to adequately brief a position, or support a claim with authority, it is abandoned"); *Mercurio v Huntington Nat'l Bank*, __ Mich App __ (2023) (Docket No. 361855), 2023 WL 4981374 at p 10 (trial court did not err by finding that the plaintiff made no substantive response to legal argument made by the defendant in a motion for summary disposition).

Based on the foregoing analysis, summary disposition is granted as to Count III.[29]

B

Summary disposition is granted as to Count IV (Unjust Enrichment-Land Fill Profits) where the Plaintiff has abandoned any counterargument and where, in any event, there is an express agreement covering the same subject matter

Count IV (Unjust Enrichment-Land Fill Profits) in pertinent part, alleges:

> 32. Defendant, Burrell wrongfully attempted to exercise exclusive control over the subject property, which is the sole asset of defendant, Hass Holdings, LLC.

[29] The Defendants move for summary disposition under MCR 2.116(C)(8) and (C)(10). Because this Court has considered provisions of the MPA and the Operating Agreement which do not appear to be attached to the Amended Complaint, as well as affidavits and other documentary evidence presented by the parties, summary disposition is proper under MCR 2.116(C)(10).

> 33. Defendant, Burrell used the subject property as a location for commercial land fill dumping from 2019 through 2022.
>
> 34. Defendant, Burrell profited from the commercial land fill at the rate of approximately $1.00-2.00 per yard.
>
> 35. Defendant, Burrell accepted approximately 2,000,000 yards of commercial landfill onto the property.
>
> 36. Defendant, Burrell was unjustly enriched in the amount of approximately $4,000,000.
>
> 37. Plaintiff, as co-manager of Hass Holdings, LLC is due 50% of any and all income from the subject property.[30]

Under the equitable doctrine of unjust enrichment, the law "indulges in the fiction of a quasi or constructive contract, with an implied obligation to pay for benefits received to ensure that exact justice is obtained." *Kammer v Asphalt Paving Co, Inc v East China Twp Schs*, 443 Mich 176, 185-186 (1993) (quotation marks and citations omitted). "Because this doctrine vitiates normal contract principles, the courts employ the fiction with caution. . . ." *Id.* at 186.

> [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 (2006) citing *Barber v SMH (US), Inc*, 202 Mich App 366, 375 (1993).

If the above elements are established "the law will imply a contract to prevent unjust enrichment." *Belle Isle Grill Corp v City of Detroit*, 256 Mich App 463, 478 (2003).

[30] Amended Complaint, ¶¶ 32-37.

However, "'a contract will be implied only if there is no express contract covering the same subject matter.'" *Landstar Express America, Inc v Nexteer Auto Corp*, 319 Mich App 192, 201-202 (2017) quoting *Belle Isle Grill*, 256 Mich App at 478. While the question of whether a claim for unjust enrichment can be maintained is a question of law, the question of whether a specific party has been unjustly enriched is generally a question of fact. *Morris Pumps*, 273 Mich App at 193.

The Defendants argue that summary disposition is proper on Count IV because the Operating Agreement controls the payment of profits and distributions and as was discussed above, makes no provision for payment to Managers. In his response brief the Plaintiff argues that his claim for unjust enrichment is against Defendant Burrell and that Burrell was unjustly enriched when "Fletcher spent hundreds of hours excavating the property and used his own equipment with the promise from defendant Burrell that the services were necessary. Fletcher also incurred over $130,000 in expenses maintaining the equipment all for the benefit of the defendant."[31] However, in Count IV the Plaintiff alleges unjust enrichment with regard to "land fill profits" in the amount of $4,000,000, fifty percent of which the Plaintiff claims to be owed as a Co-Manager of Hass Holdings. The allegations for unjust enrichment as to expenses incurred discussed by the Plaintiff in his Response are alleged in Count V (Unjust Enrichment-Expense Incurred) which is not at issue in this Motion.

[31] Response, p 10.

The Plaintiff has failed to make an argument as to why summary disposition should not be granted as to Count IV. Accordingly, he has abandoned any opposition to the Defendants' motion as to Count IV. *Moses, Inc*, 270 Mich App at 417 ("If a party fails to adequately brief a position, or support a claim with authority, it is abandoned"); *Mercurio*, __ Mich App __ (2023) (Docket No. 361855), 2023 WL 4981374 at p 10. Moreover, as was argued by the Defendants, the issue of entitlement to a portion of profits is covered in the Operating Agreement. As was explained previously, a claim for unjust enrichment fails where there is an express contract covering the same subject matter. *Landstar*, 319 Mich App at 201-202, 205.

Based on the foregoing analysis, summary disposition should be granted as to Count IV (Unjust Enrichment-Land Fill Profits).

ORDER

Based upon the foregoing Opinion, Defendants' Motion for Partial Summary Disposition under MCR 2.116(C)(8) and (10) is hereby GRANTED**.** Counts III (Breach of Contract-Operating Agreement) and IV (Unjust Enrichment-Land Fill Profits) of the First Amended Complaint are DISMISSED.

This Order does NOT resolve the last pending claim and does NOT close the case.

/s/ Michael Warren

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HON. MICHAEL WARREN
CIRCUIT COURT JUDGE