STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

QUALITY CUSTODIAL RESIDENTIAL AND COMMERCIAL CLEANING SERVICE,

Plaintiff/Counter-Defendant,

v.

BEECHER COMMUNITY SCHOOL DISTRICT,

Defendant/Counter-Plaintiff.

Case No.: 22-117551-CB

Judge Brian S. Pickell (P-57411)

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ORDER ON DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

BACKGROUND/INTRODUCTION

The instant matter before the Court is Defendant Beecher Community School District's (hereinafter "Defendant's") motion for summary disposition pursuant to MCR

2.116(C)(10) (hereinafter "the summary-disposition motion"). Therein, Defendant asks the Court to dismiss all remaining claims brought against it by Plaintiff Quality Custodial Residential and Commercial Cleaning Service (hereinafter "Plaintiff"). Plaintiff's remaining claims consist of breach of contract, promissory estoppel, and unjust enrichment.

LEGAL STANDARD UNDER MCR 2.116(C)(10)

A motion for summary disposition pursuant to MCR 2.116(C)(10) "tests the factual sufficiency of the complaint." *Redmond v Heller*, 332 Mich App 415, 438 (2020). MCR 2.116(C)(10) examines whether there is a genuine issue of material fact. *Pioneer State Mut Ins Co v Dells*, 301 Mich App 368, 377 (2013). A trial court may review pleadings, affidavits, and other documentary evidence in a light most favorable to a non-moving party to determine if there is no genuine issue of material fact. *Id.* "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue on which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183 (2003). "The trial court is not permitted to assess credibility, weigh the evidence, or resolve factual disputes, and if material evidence conflicts, it is not appropriate to grant a motion for summary disposition under MCR 2.116(C)(10)." *Pioneer State Mut Ins Co*, 301 Mich App at 377.

RELEVANT FACTUAL BACKGROUND

The dispute between Plaintiff and Defendant arises out of a subject contract for custodial and maintenance services originally formed by and between Plaintiff and Defendant in September 2019 (hereinafter "the contract"). The term of the contract was to last until June 30, 2021. When the "COVID-19" pandemic (hereinafter "COVID") struck, Defendant instructed Plaintiff to modify its regular cleaning protocols. Plaintiff contends that, by its doing so, Defendant "demanded" that Plaintiff provide "additional services" not contemplated within the contract and Defendant "promised to pay" for those additional services. In other words, Plaintiff contends that Defendant and Plaintiff validly modified the contract. Plaintiff contends further that, since Defendant never made any payments to Plaintiff outside of an originally agreed-upon flat fee, Defendant breached the modified contract and owes Plaintiff damages. In the alternative, Plaintiff forwards theories of promissory estoppel and unjust enrichment to support a claim for restitution.

Defendant contends, on the contrary, that "[t]he requested COVID cleaning protocols were within the scope of services contemplated in the [initial] Agreement." That is, Defendant contends that there was no modification of the contract and, by performing the additional services, Plaintiff was merely rendering performance already due under the contract.

EXPRESS TERMS OF CONTRACT

It is undisputed that the contract between Plaintiff and Defendant was formed through Defendant's acceptance of Plaintiff's bid, which Plaintiff offered in response to Defendant's written request for proposals (published in 2019). It is undisputed also that the contract, either expressly or through the request for proposals (which the contract adopted and incorporated therein by reference) included the following language and provisions:

1) Language clearly indicating that Plaintiff agreed to perform *all* custodial-services for Defendant:

> 4.1 Generally. Proposer shall, during the term of the Contract, furnish all management, supervision, supplies, equipment, services, and necessary insurances required to provide all School District custodial services and School District maintenance and repair services in accordance with this RFP.

2) Language specifying certain minimum duties that Plaintiff would have to perform to fulfill its obligation to supply custodial services (this section of the contract is too lengthy to reproduce; the listed services are characterized as "the minimum acceptable standard"; and the following language, which immediately precedes the list, makes it clear that the list *may be modified* and the tasks may be "further described"):

> It is acknowledged that the School District's services may be further described and that the Proposer is expected to perform any reasonably modified list of services. In no event shall services received by the School District be of lesser Plaintiff or frequency than that currently provided. A Proposer may seek clarification of those standards pursuant to the processes set forth in this RFP.

3) Language clearly indicating that, under the contract, Defendant could task Plaintiff with additional duties (beyond those regularly performed by Plaintiff) so long as the additional duties did not conflict with Plaintiff's existing obligations:

> 4.3.1.2 As requested by the School District, the Proposer shall provide other custodial/maintenance/repair services when such services do not conflict with regular service obligations.

4) A fixed-fee provision specifying compensation that Defendant would be contractually obligated to pay Plaintiff under the contract:

> The Parties agree that the School District shall pay to Contractor Two Hundred Ninety-Nine Thousand Seven Hundred Eighty Dollars ($299,780) from August 12, 2019, through June 30, 2020. Further, the Parties agree that the School District shall pay to Contractor Two Hundred Ninety-Nine Thousand Seven Hundred Eighty Dollars ($299,780) from July 1, 2020 to June 30, 2021.

5) A provision specifying the initial term of the contract:

> The initial term of this Agreement shall commence on September 9, 2019, and continue through June 30, 2021 (the "Initial Term"). The Parties shall meet at least one hundred twenty (120) days prior to expiration of the initial term of this Agreement to commence discussions regarding an extension of this Agreement.

6) A provision allowing either Plaintiff or Defendant to petition for re-negotiation of Plaintiff's compensation in the event that Defendant's custodial needs materially changed . . . along with a provision explaining the parties' respective rights in the event that negotiations failed:

> In the event the School District's custodial/maintenance/repair needs materially change during the term of the Contract and the School District desires to alter the base services provided by the Proposer . . . then at the request of either party, the rate(s) of compensation shall be subject to renegotiation . . . and, if the parties are unable to reach agreement on such renegotiation, the School District shall have the option of either continuing the contract as then applicable or terminating the contract.

7) An integration clause:

> This Agreement, together with its attachments, constitutes the entire agreement between the Parties, supersedes all previous agreements, written or oral, and there are no understandings, representations or warranties of any kind, express, implied or otherwise, not expressly set forth in this Agreement.

PLAINTIFF'S ADDITIONAL DUTIES

With respect to the question of what modifications or additions were made to Plaintiff's cleaning protocols, Plaintiff cites two e-mail messages from Dr. Davenport—the superintendent of Beecher Community School District during the term of the contract—in which Dr. Davenport asks Plaintiff to make certain changes and additions to its regular activities. In the first e-mail message, sent on January 29, 2021, Dr. Davenport asks Plaintiff to do seven things. First, Plaintiff was to create a schedule to ensure that at least one staff member was always present in each of Defendant buildings whenever students were present there. The staff member would be required to stay in the building after the students had departed to disinfect relevant areas of the building. Second, Plaintiff was to ensure that the high-school gym was "completely sanitized and wet mopped." Third, each day, Plaintiff was to "fog and sanitize"

Defendant buildings during Defendant's "face to face program." Fourth, Plaintiff was to "complete stripping and waxing the back hallways at the high school" near certain rooms. Fifth, each day, Plaintiff was to disinfect and sanitize the wrestling room. Sixth, Plaintiff was to prepare for return of students to Defendant buildings by removing unused equipment from hallways and ensuring that janitor closets were neat and secure. Finally, seventh, Plaintiff was to "provide a legitimate fogging/disinfecting schedule for all buildings and especially the high traffic areas" of Defendant.

In the second e-mail message from Dr. Davenport, sent on February 11, 2021, Dr. Davenport does not ask Plaintiff to perform any additional or different tasks, but, instead, thanks Plaintiff for performing these tasks and asserts that COVID has forced Defendant to "consider some extreme changes to our current protocols." Dr. Davenport further says that "[w]e now must also change how we clean after [athletic] contests and clear crowds from events between doubleheaders."

COURT'S ANALYSIS

BREACH OF CONTRACT

To succeed on its "breach of contract" claim, Plaintiff must show that the contract was modified. In turn, to modify a contract, parties to the contract must *mutually* agree with each other to alter its terms. *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362 (2003).

In this case, it is undisputed that the parties to the contract are Plaintiff and Defendant. It is undisputed also that—at least as early as March 12, 2021 (i.e., when

Plaintiff sent its first written request by e-mail message for increased compensation)—Plaintiff desired to modify terms of the contract. The dispositive question, then, is whether Defendant also agreed (or manifested an assent) to modify the terms.

Plaintiff's Arguments

Plaintiff has offered two main arguments to demonstrate that Defendant agreed to modify the contract. First, Plaintiff points to a provision in the contract establishing that, before Plaintiff could perform services outside the scope of the contract, Plaintiff had to receive permission from Defendant:

> Plaintiff/Counter-Defendant maintains the emails and actions of the parties after the initial contract are likened to amendments of the Agreement, which form a valid and enforceable contract based on Plaintiff/Counter-Defendant's conduct and performance, as the Agreement provides, "[b]efore rendering any services outside the scope of custodial and maintenance services, Plaintiff/Counter-Defendant must receive written approval from Defendant/Counter-Plaintiff. Defendant/Counter-Plaintiff approved Plaintiff/Counter-Defendant to perform additional, extensive services that were beyond the scope of the original Agreement."

Here, Plaintiff appears to reason that—because Defendant gave Plaintiff written approval to perform relevant "COVID" cleaning protocols (in the form of e-mailed directives from Dr. Davenport) and the contract requires such approval to be given before Plaintiff was authorized to engage in services "outside the scope of custodial and maintenance services"—the services that Plaintiff performed *actually were* outside the scope of the contractually contemplated duties and Defendant consented to Plaintiff

performing them. But, if this were the case, then there would have to have been a modification of the contract since Plaintiff would have been tasked by Defendant with performing new duties.

This argument is ultimately not convincing because it misstates the plain meaning of the provision of the contract cited by Plaintiff. It is within the Court's province to establish this because, when the meaning of contractual language is plain, interpretation of it is a matter of law. *Shaw v Ecorse*, 283 Mich App 1, 22 (2009). The cited provision here clearly establishes that, before Plaintiff was permitted to perform work outside the scope of custodial and maintenance services, Plaintiff had to obtain written permission from Defendant. However, this does not logically establish that, any time Defendant gave Plaintiff written permission to do something, that something must have been outside the scope of custodial and maintenance services.

Indeed, by its plain meaning, the cited provision establishes only a necessary condition that had to be met before Plaintiff could undertake work outside established scope of the contract. Therefore, whether Plaintiff had written permission to perform "COVID" cleaning tasks that it performed does not settle the question of whether those tasks were within the scope of the contract . . . much less the question of whether Defendant agreed to a modification of it. Indeed, the contract itself contemplates that Plaintiff could be assigned by Defendant additional custodial tasks not explicitly listed in the contract. Thus, evidence that Defendant did assign Plaintiff additional tasks—even when the evidence shows that this assignment was made in writing—is not sufficient to show that those additional tasks were outside the scope of the contract.

The second argument offered by Plaintiff to show that Defendant assented to modifying the contract is the claim made by Mr. Davis (i.e., the president of Plaintiff) that Dr. Davenport represented to him that Plaintiff "would be taken care of" in exchange for performing additional custodial tasks related to COVID. Plaintiff made this claim in its initial complaint, and Mr. Davis reaffirmed the claim in a deposition.

If it could be shown that Defendant did, in fact, offer to "take care of" Plaintiff in exchange for Plaintiff's performing custodial tasks related to COVID, then there would be evidence that Defendant agreed to modifying the contract since Defendant, in that case, would have been manifesting its desire to change an aspect of the contract (i.e., the "payment" provision) in exchange for a reciprocal change to the contract (i.e., an expansion of Plaintiff's duties to include cleaning related to COVID not contemplated within the contract). In that case, Plaintiff would be well positioned to establish that a modification had taken place since there would be evidence that both Plaintiff *and* Defendant agreed to the modification.

Aside from the fact that the evidentiary record that was developed through discovery offers no corroboration of Mr. Davis' claim that Dr. Davenport offered to increase Plaintiff's compensation (or otherwise represented that Plaintiff would "be taken care of"), this argument is fatally flawed insofar as the evidentiary record now clearly indicates that Mr. Davis was aware that Dr. Davenport was not in a position to bind Defendant to any modifications to the contract at all. Indeed, the evidentiary record contains uncontradicted evidence that Mr. Davis understood that Dr. Davenport—because he was the superintendent of Defendant, but not a member of the

school board—was not a contracting party and, thus, not in a position to modify the contract between Defendant and Plaintiff.

Mr. Davis made it clear that he understood limits of Dr. Davenport's authority in the following exchange:

> Q: Okay. What did Dr. Davenport tell you about getting grant money?
> A: It's not grant money that he said. He said I would get extra funds for doing my job. And apparently I was doing a good job, because they never got rid of my company.
> Q: Oh. When did he tell you that?
> A: He always told me that. He the one even also told me that I should come to the board meeting and suggest or request that I get the money.
>
> See, let me explain this. A superintendent can only do what the board allows him to do. I'm on the city council. The mayor can only do what city councilmen allows the mayor to do. The president of the United States of America can only do what the House allows him to do.
>
> See, people think that the president is the most important person in America. It is not. It was Nancy Pelosi.
>
> Superintendent can only do what the president of the school board and the board members allow you. So only thing he can do is make suggestions . . . .

But, since modification of a contract requires that both *parties* to the contract agree with each other to the modification, Dr. Davenport was not a party to the contract, and the uncontradicted evidence just referenced establishes that Mr. Davis *knew* that Dr. Davenport was not a party to the contract, Mr. Davis cannot maintain that the contract was modified through any representation of Dr. Davenport or he reasonably believed that the contract had been so modified. Therefore, Mr. Davis' claim that Dr. Davenport agreed to modification of the contract on behalf of Defendant cannot establish that the contract actually was modified.

Additional Considerations

It is also worth noting here that, in his deposition, Mr. Davis made it clear that—in addition to understanding that Dr. Davenport was not in a position to modify the contract on behalf of Defendant—the party that Mr. Davis knew to have the power to make such a modification (i.e., *Defendant itself*) also refused to agree to Plaintiff's proposals for additional compensation.

> Q: Thank you so much. Did the school ask you to submit a proposal about the new and extra work they were asking you to do?
> A: No.
> Q: Were you given the impression that the school was going to approve funding for you, they just had to figure it out for the extra work?
> A: They told me to submit a proposal, and - well, let me correct this.
> Q: Thank you.
> A: Let me correct this. Because my memory sometime don't serve me right because of my epilepsy.
>
> They did tell me to submit a proposal, and I did submit a proposal, and I think that was the language that he just read to me right there about the $500,000. That was a part of the proposal.
>
> So I did submit a proposal, and I did ask for more money, and they never paid me. The superintendent always told me to go to the board and explain to the board what it is that I needed, I want, and they would blow me off.
> Q: But were you -
> A: They told me to submit a proposal, and I did.
> Q: Okay. And were you given the impression that funding would be approved for you?
> A: I did get that impression. That was the impression I got from them. Because they never told me no. They just always blew me off. And they just kept telling you to throw me through the hula hoop, and I continued to work. And then in the end, I never received anything.
> Q: Did you go and present your proposal in front of the board?

A: Yes, I did.

There is no reasonable way to understand Mr. Davis' repeated assertion that, in response to his request for a contractual modification, the school board "blew him off" . . . other than to understand that, per Mr. Davis' own admission, the school board refused to agree to Plaintiff's request for a modification. This fact also is determinative with respect to the question of whether the contract was modified. It establishes both that there was no modification and Plaintiff understood that there was no modification.

Finally, Defendant points out that the contract actually contained a provision that established the procedure for modifying the contract. Under that provision, reproduced above, Plaintiff could petition Defendant to renegotiate Plaintiff's compensation if Plaintiff believed that custodial needs of Defendant had materially changed. However, the provision expressly establishes that Defendant was under no obligation to agree to such a modification, and—per the undisputed factual record as it has been developed through discovery—Defendant did not assent to such a modification.

Both of Plaintiff's arguments that Defendant agreed to modification of the contract are fatally flawed, and modification of a contract requires agreement (or mutual assent) of the parties to the contract with each other. Therefore, because there is no genuine issue of material fact here, summary disposition is appropriate with respect to Plaintiff's "breach of contract" claim, and Defendant's request that this claim be dismissed is GRANTED.

PROMISSORY ESTOPPEL

To establish a claim on a theory of promissory estoppel, Plaintiff must establish that it acted on the basis of a promise, Defendant should reasonably have expected that Plaintiff would act on the basis of the promise, Plaintiff was damaged by acting on the promise, and injustice can be avoided only by enforcing the promise. *Bodnar v St John Providence, Inc,* 327 Mich App 203, 227 (2019).

Here, the only evidence that Plaintiff has offered to show that a promise of additional compensation was made to Plaintiff is an assertion made by Mr. Davis that Dr. Davenport said that Plaintiff "would be taken care of." As already established, there is nothing in the evidentiary record supporting the claim that Dr. Davenport actually made this promise.

However, even assuming that Dr. Davenport did make the promise as Plaintiff alleges, Plaintiff would still not be able to succeed on a "promissory estoppel" claim. The reasons for this are clear. In short, per Mr. Davis' deposition, it is clear that Plaintiff knew that Dr. Davenport did not have the power to direct Defendant to pay additional compensation to Plaintiff. Indeed, per sections of Mr. Davis' deposition that have already been reproduced above, Mr. Davis made it clear that Dr. Davenport repeatedly advised Plaintiff to appeal *to the school board* for additional compensation. But, in that case, Plaintiff cannot have relied on any promise made by Dr. Davenport that additional compensation would be forthcoming because Plaintiff, per admission of Mr. Davis, would have to have known that the board might decide not to grant additional payment to Plaintiff. But, since actual dependence on the relevant promise is a basic

element of a "promissory estoppel" claim, this is fatal to Plaintiff's "promissory estoppel" argument. Therefore, because there is no genuine issue of material fact here, summary disposition is appropriate with respect to Plaintiff's "promissory estoppel" claim, and Defendant's request that this claim be dismissed is GRANTED.

UNJUST ENRICHMENT

Plaintiff's final claim against Defendant is premised on a theory of unjust enrichment. An "unjust enrichment" claim allows a contract to be implied by law when a party has been enriched by another entity, and it is just to require the enriched party to pay restitution to the other entity for that enrichment. *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 194 (2007). Plaintiff claims that Defendant was enriched by the "COVID" custodial work that Plaintiff did for Defendant insofar as the work exceeded the scope of the contract and Defendant did not pay Plaintiff anything other than the consideration agreed to in the initial contract.

> Defendant received the benefit of the Covid Cleaning Procedures from Plaintiff, without fully paying for same. It would be inequitable to allow Defendant to retain the benefit of the Covid Cleaning Procedures it requested Plaintiff to perform (and which Plaintiff fully performed), without compensating Plaintiff for such benefit.

In its response to Plaintiff's "unjust enrichment" claim, Defendant cites *Belle Isle Grill Corp v City of Detroit*, 256 Mich App 463, 478 (2003) for the principle that "a party cannot prevail on an unjust enrichment claim where a valid written contract exists concerning the same subject area." Defendant reasons that, because Plaintiff's claim is

based on a theory that Plaintiff was not compensated for "cleaning" and the written contract between Plaintiff and Defendant governs "cleaning" duties that Plaintiff owed to Defendant, Plaintiff is prevented from forwarding a claim of unjust enrichment because a written contract concerning the same subject matter – namely, the contract – does exist. Plaintiff's counter to this argument is that additional work that it performed under the contract "exceeded the scope of the parties' express Agreement" such that the contract actually did not concern the "subject area" of Plaintiff's "unjust enrichment" claim.

The dispositive question here, then, is whether the custodial work related to COVID that Plaintiff performed for Defendant was covered by the contract between Plaintiff and Defendant. To make that determination, the Court must look to the contract. If, per the plain meaning of terms of the contract, it does cover the kind of work for which Plaintiff is seeking compensation, then Plaintiff cannot succeed on an "unjust enrichment" claim.

The Court is empowered to interpret meaning of provisions of a contract when it is unambiguous and its terms carry a plain meaning. *Shaw v Ecorse*, 283 Mich App 1, 22 (2009). Here, the contract between Plaintiff and Defendant unequivocally establishes that the contract did deal with the same subject matter as Plaintiff's claim for unjust enrichment. Indeed, it has already been established that Plaintiff's claim for unjust enrichment is based on Plaintiff's provision of "COVID" custodial services for Defendant. The contract between Plaintiff and Defendant also clearly governs this subject matter, insofar as the contract obligates Plaintiff to "furnish *all* management,

supervision, supplies, equipment, *services*, and necessary insurances *required to provide all School District custodial services*" (emphasis added). Because language of the contract unambiguously governs all custodial services required by Defendant and the subject matter of Plaintiff's "unjust enrichment" claim is also "custodial services," there is no question that Plaintiff's claim is barred by the general principle that a claim for unjust enrichment cannot be based on the same subject matter as a pre-existing valid contract. Therefore, because there is no genuine issue of material fact here, summary disposition is appropriate with respect to Plaintiff's "unjust enrichment" claim, and Defendant's request that this claim be dismissed is GRANTED.

CONCLUSION

Plaintiff seeks to recover damages against Defendant on multiple theories: breach of an implied contract, promissory estoppel, and unjust enrichment. However, Plaintiff cannot succeed on these claims because, per uncontradicted facts contained in the evidentiary record, there was no implied contract and no promise for compensation on which Plaintiff could have reasonably relied. Additionally, the claim for unjust enrichment is barred because the contract at issue covered the same subject matter as Plaintiff's claim for unjust enrichment. Therefore, summary disposition is appropriate with respect to Plaintiff's remaining claims, and they must be dismissed.

The summary-disposition motion is **GRANTED** for the reasons set forth above.

The Court does not award costs or fees to either of the parties.

This is a final order, and the case is closed.

IT IS RESPECTFULLY SO ORDERED.

April 1, 2024

Judge Brian S. Pickell (P57411)

cc: Counsel of Record
Court File

Proof of Service: The undersigned certifies that a copy of the foregoing Court's Order on Defendant's Motion for Summary Disposition, executed 4/1/24, was issued to the attorneys and/or parties of record, to the above cause by emailing to the same to them at their respective email addresses listed on the pleadings, on:

Date: April 1, 2024. *s/ Michelle A. Orvis*