S T A T E O F M I C H I G A N

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

THOMAS WINQUIST,

Plaintiff/Counter-Defendant,

v.

BRAD SCOTT, and Individual,

Defendant/Counter-Plaintiff,

THE TOP CIRCLE COMPANY, a Michigan corporation, DOUBLE CIRCLE, LLC, a Michigan limited liability company, TRIPLE CIRCLE, LLC, a Michigan limited liability company, and FOUR CIRCLES, LLC, a Michigan limited liability company,

Defendants.
_____/

Case No. 22-11925-CBB

Hon. Curt A. Benson

FINDINGS OF FACT & CONCLUSIONS OF LAW

INTRODUCTION

The parties conducted a bench trial before the court on June 24, 2025. After closing arguments, the court took the case under advisement.

MCR 2.517

The relevant court rule states as follows:

> (1) In actions tried on the facts without a jury or with an advisory jury, the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment.
>
> (2) Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts.

MCR 2.517(1) and (2).

FINDINGS OF FACT

Thomas Winquist and Brad Scott became acquainted when both men had been involved in separate invisible fence dealerships. The two reconnected when Scott entered the retail generator industry and invited Winquist to become a partner in what was described as a statewide generator supercenter franchise model. Scott had established several corporate entities for this purpose, including The Top Circle Company (the umbrella entity), Double Circle, LLC (Detroit area), Triple Circle, LLC (Grand Rapids area), and Four Circles, LLC (Kalamazoo and Battle Creek area.) Although Scott initially proposed a 50/50 partnership across all franchises, Winquist ultimately agreed only to participate in the Grand Rapids and Four Circles ventures, deliberately excluding himself from any ownership in the Detroit-based Double Circle entity.

From early 2021 into 2022, Winquist and Scott engaged in extensive discussions and exchanged numerous draft agreements through legal counsel to formalize their partnership. It all went to naught. Neither man ever signed a contract. Thus, Winquist never acquired an interest, as a member, manager, or otherwise, in any of the three Limited Liability Companies. The evidence supports, and the court so finds, that, over time, Winquist contributed to the venture $576,173.72 in cash.

Winquest also provided approximately $26,000 worth of unpaid labor, use of his personal vehicle, and storage space valued at an additional $6,500. These contributions supported building out a storefront on Plainfield Avenue in Grand Rapids, hiring staff, and acquiring inventory, including generators.

Despite these significant investments, the two men never finalized the partnership. Winquist testified that Scott misappropriated the money for his own benefit, particularly to support the Detroit-area operations through Double Circle, a business Winquist had expressly declined to join.

In cross examining Winquist, Scott pointed out, and Winquist agreed, that throughout the business relationship the warehouse in Detroit stored more than a hundred generators. And whenever Winquist paid for a generator, it would be delivered to the Detroit warehouse. So, whenever someone from Triple Circle (Detroit operation) grabbed a generator to install on the east side of the State, he had no idea whether he was grabbing one purchased by Winquist or by Triple Circle. Moreover, Winquist testified that whenever he or his manager Randy was in Detroit, they usually grabbed one or two generators from the warehouse and took it back to Grand Raids. This, Winquist stated, happened “often.” From the witness stand, Winquist agreed with Scott that on those occasions, no one knew whether they were bringing to Grand Rapids generators purchased by Winquist, or by Triple Circle. In short, both parties agree, and Winquist so testified, that neither man kept adequate records regarding the purchase and installation of the generators.

CONCLUSIONS OF LAW

Winquist and Scott were partners under the Uniform Partnership Act.

In 1917, the Michigan Legislature drafted the Michigan Uniform Partnership Act. 1917 PA 72. Under this act, as amended from time to time, a partnership is defined as an association of two or more persons "to carry on as co-owners a business for profit." MCL 449.6(1). The Supreme Court described the definition of a partnership like this:

> That is, if the parties associate themselves to "carry on" as co-owners a business for profit, they will be deemed to have formed a partnership relationship regardless of their subjective intent to form such a legal relationship. The statutory language is devoid of any requirement that the individuals have the subjective intent to create a partnership. Stated more plainly, the statute does not require partners to be aware of their status as "partners" in order to have a legal partnership.

Byker v. Mannes, 465 Mich. 637, 645–46, 641 N.W.2d 210, 214–15 (2002)

In this case, the court must determine whether Winquist and Scott intended to carry on as co-owners a business for profit, and whether they in fact did so. As the *Byker* Court put it, "[p]ursuant to M.C.L. § 449.6(1), in ascertaining the existence of a partnership, the proper focus is on whether the parties intended to, and in fact did, 'carry on as co-owners a business for profit' and not on whether the parties subjectively intended to form a partnership." *Id.*, at 653.

After considering the testimony of both Winquist and Scott, and after reviewing the exhibits received into evidence, the court is satisfied that Winquist and Scott agreed to engage in an ongoing business enterprise for profit, and to commit capital, labor and skill to such enterprise, to raise investment funds and to share equally in the profits, losses and expenses of the enterprise. The evidence shows that while both men intended to reduce their agreement to writing, they also made a conscious decision to proceed with the partnership while negotiations continued. On this point, Winquist testified that "we had to get rolling," and that "[w]e agreed on a handshake." That the two men never reduced their agreement to writing does not change the fact that they were conducting themselves as general partners throughout the relevant time period.

This finding poses a problem for plaintiff though. Though the first amended complaint asks this court to dissolve the partnership, it is apparent that one or both of the parties had already dissolved the partnership long before they came to court. "The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business." MCL 449.29. The dissolution of a partnership may occur by the acts of the partners, by operation of law, or by decree of the trial court. See MCL 449.31 and MCL 449.32.

Winquist and Scott had no agreement respecting the expiration of the partnership, nor did they agree to a procedure for dissolution. Thus, by law, either party was free to dissolve the partnership at will. MCL 449.31(1)(b) provides that dissolution is "caused" by, among other things, "the express will of any partner when no definite term or particular undertaking is

specified." A partner's right to dissolve a partnership is "inseparably incident to every partnership." *Urbain v. Beierling*, 301 Mich. App. 114, 122–23, 835 N.W.2d 455, 459 (2013), quoting *Atha v. Atha,* 303 Mich. 611, 614, 6 N.W.2d 897 (1942) (quotation marks and citation omitted). In other words, "[w]hen no definite time has been fixed for the continuance of a partnership, it may be dissolved by the express will of any partner." *Cole v. Cole,* 289 Mich. 202, 204, 286 N.W. 212, 213 (1939).

The court finds that Winquist dissolved the partnership before filing the complaint. He testified that at one point in the life of the partnership, Scott suggested that Winquist and his wife buy the Grand Rapids operation. They negotiated the sale, but it fell through when Scott announced that he had changed his mind, was going to keep the Grand Rapids operation and fire its employees. Winquist's testimony was unambiguous. "I'm out." Soon thereafter, Winquist's wife, who was handling payroll, was locked out of the payroll accounts. The partnership dissolved.

Winquist points to MCL 449.18 which states in pertinent part as follows:

> Each partner shall be repaid his or her contributions, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied. Except as provided in section 46, each partner shall contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to his or her share in the profits.

MCL 449.18(a)

Winquist essentially argues that as the partnership has dissolved, he is entitled to a return of his capital contributions and to share equally in all profits. Were it so simple.

The court must first look to the proper order of events. See MCL 449.30. The Court of Appeals has said this about this section:

> The terms "dissolution" and "termination," as employed in the Partnership Act, are not synonyms and, as used, have different meanings. Dissolution does not terminate the partnership and does not end completely the authority of the partners. The order of events is: (1) dissolution; (2) winding up; and (3) termination. Termination extinguishes their authority. It is the ultimate result of the winding up and occurs at the conclusion of the wind up.

Commonwealth Cap. Inv. Corp. v. McElmurry, 102 Mich. App. 536, 539, 302 N.W.2d 222, 224 (1980), quoting with approval, *Englestein v. Mackie,* 35 Ill.App. 276, 288-289, 182 N.E.2d 351, 357-358 (1962).

Winquist argument also ignores MCL 449.40:

> MCL 449.40 sets forth rules for distributing partnership property upon dissolution of a partnership. In general, MCL 449.40(b) provides that creditors should be paid first, then monies owed to partners for liabilities other than for capital and profits, followed by distribution of capital and, finally, profits to partners. Valuation should be made at the

> time of dissolution, and the winding-up of partnership affairs entails gathering the assets, paying and settling debts, and distributing any net surplus to parties entitled to it.

Urbain, supra, at 130.

Under MCL 449.22(a), (b), and (d), Winquest had the right to a formal accounting of partnership affairs "[i]f he is wrongfully excluded from the partnership business or possession of its property by his copartners," "[i]f the right exists under the terms of any agreement," or "[w]henever other circumstances render it just and reasonable." It appears from the facts of this case that it would have been "just and reasonable" for Winquist to demand a formal accounting of the partnership's affairs. Whether he did so was not revealed at trial. In short, Winquist presented no evidence at trial constituting an accounting of the assets and liabilities of the partnership. He presented no evidence of "valuation …. at the time of dissolution." He thus failed to prove by a preponderance of the evidence that the partnership had sufficient assets available to return his capital contributions *after* the partnership paid its creditors.

Accordingly, the court finds no cause for action against Scott under Count IX of the Complaint.

The fact of partnership resolves much of the complaint in Scott's favor.

The substance of Count I of the First Amended Complaint, entitled Fraudulent Misrepresentation, is that Scott represented to Winquest that they were "business partners" and that this representation was false "as no business partnership existed nor was it ever intended by Scott." See Complaint ¶22.

As noted above, the men were business partners as that term is used in the Uniform Partnership Act. Thus, as a matter of fact and law, there can be no recovery under Count I.

The same is true with Count VI, entitled Silent Fraud, and Count VII entitled Innocent Misrepresentation.

Under the facts of this case, Winquist has no cause of action for unjust enrichment.

The Uniform Partnership Act is largely a series of default rules that govern the relations among partners in situations that they have not addressed in a partnership agreement, acting as gap-filling rules and controlling only when a question is not resolved by the parties' express provisions in the partnership agreement. 59A Am. Jur. 2d Partnership § 24(Footnotes omitted). The Uniform Partnership Act's gap-filling default rules control only when a question is not resolved by the parties' express provisions in the partnership agreement. To the extent that the partners fail to agree upon a contrary rule, the Uniform Partnership Act provides the default rule. *Id.,* at § 93(Footnotes omitted)

In this case, of course, there was no writing between the partners. Thus, the partnership was exclusively governed by the Uniform Partnership Act. Though there is no Michigan case on point, both logic and foreign caselaw dictate that principals of law and equity may apply between partners, so long as some provision of the Uniform Partnership Act does not displace it. See, e.g.,

Leon v. Kelly, 618 F. Supp. 2d 1334, 1340 (D.N.M. 2008)("unless displaced by particular provisions of the UPA, the principles of law and equity supplement the UPA. Thus, the UPA and the common law may both apply to partnerships, and unless some provision of the UPA displaces it, the common law will apply.")

Unjust enrichment is of course a common law concept that exists independently of the Uniform Partnership Act. The Supreme Court describes unjust enrichment as follows:

> Unjust enrichment is a cause of action to correct a defendant's unjust retention of a benefit owed to another. It is grounded in the idea that a party shall not be allowed to profit or enrich himself inequitably at another's expense. A claim of unjust enrichment can arise when a party has and retains money or benefits which in justice and equity belong to another.
>
> The remedy for unjust enrichment is restitution.

Wright v. Genesee Cnty., 504 Mich. 410, 417–18, 934 N.W.2d 805, 809 (2019)(quotation marks and citation omitted)

The Court of Appeals has elaborated on this:

> To show that a benefit would unjustly enrich the defendant, the plaintiff must establish that the defendant received a benefit from the plaintiff and that it would be inequitable for the defendant to keep the benefit. No person is unjustly enriched unless the retention of the benefit would be unjust. Courts may not imply a contract under an unjust-enrichment theory if there is an express agreement covering the same subject matter.

Zwiker v. Lake Superior State Univ., 340 Mich. App. 448, 482, 986 N.W.2d 427, 445 (2022)(quotation marks and citation omitted).

Once again, on one important issue, there is no Michigan case on point. The issue is this: if, instead of an express agreement covering the same subject matter, there is an express statute covering the same subject matter, does the statute preclude the unjust enrichment claim? Again, both logic and foreign caselaw says, yes. One appellate court, in upholding a trial court dismissing an unjust enrichment claim, stated "[t]he fact that it is a statute instead of a written contract that supplies the disputed term does not change the result." See, *Bos. Mountain Reg'l Solid Waste Mgmt. Dist. v. Benton Cnty. Reg'l Solid Waste Mgmt. Dist.,* 2019 Ark. App. 488, 8–9, 587 S.W.3d 292, 296–97 (2019).

The Uniform Partnership Act provides comprehensive provisions for partnership dissolution, including procedures for winding up operations, returning capital contributions to partners, and satisfying outstanding debts. Given this explicit statutory framework, Winquest's attempt to recover his investments through an implied contract theory fails. *Belle Isle Grill Corp. v. City of Detroit,* 256 Mich. App. 463, 479, 666 N.W.2d 271, 281 (2003).

For much the same reason, the plaintiff's promissory estoppel claim fails.

> A promissory estoppel claim is precluded by the existence of an enforceable contract. 28 Am. Jur. 2d Estoppel and Waiver § 54(footnote omitted). "In other words, promissory

> estoppel is inapplicable when there is a written contract. *Id.* (footnote omitted). This is the law in Michigan: "Under Michigan law, promissory estoppel may not be used to override the express agreement of the parties contained in written agreements. *APJ Assocs., Inc. v. North Am. Philips Corp.*, 317 F.3d 610, 617 (6th Cir. 2003); *see also Willis v. New World Van Lines, Inc.*, 123 F. Supp. 2d 380, 395 (E.D. Mich. 2000).

Though, again, there was no express contract between Winquest and Scott, there is a statute covering the same subject matter of the alleged promises. Parties may not use promissory estoppel to override the express will of the legislature.

The plaintiff has no cause for action under Count V.

The legal principals outlined here apply with equal force to Count VIII – Quasi Contract/Quantum Meriut.

> 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. However, a contract will be implied only if there is no express contract covering the same subject matter. Generally, an implied contract may not be found if there is an express contract between the same parties on the same subject matter.

Morris Pumps v. Centerline Piping, Inc., 273 Mich. App. 187, 194, 729 N.W.2d 898, 903 (2006)(Cleaned up)

Though, again, there was no express contract between Winquest and Scott, there is a statute covering the same subject matter. A court may not imply a contract if the implied contract will have the effect of overriding the express will of the legislature.

The plaintiff has no cause for action under Count VIII.

The plaintiff has no cause for action for common law or statutory conversion.

The property plaintiff claims Scott converted is money.

> To support an action for conversion of money, the defendant must have obtained the money without the owner's consent to the creation of a debtor-creditor relationship and must have had an obligation to return the specific money entrusted to his care.

Lawsuit Fin., L.L.C. v. Curry, 261 Mich. App. 579, 591, 683 N.W.2d 233, 240 (2004)(Citations and quote marks omitted)

Thus, for a conversion of money to occur, the defendant must have an obligation to return the specific money entrusted to his or her care, and the defendant must have obtained the money without the owner's consent to the creation of a debtor and creditor relationship. *Head v. Phillips Camper Sales & Rental, Inc.*, 234 Mich.App. 94, 593 N.W.2d 595, 603 (1999); *Citizens Ins. Co.*, 444 N.W.2d at 213. To put it another way, the Sixth Circuit, applying Michigan law, held that the tort of conversion requires the plaintiff to have "a property interest to distinguish it from a

contractual obligation, which will not support a conversion claim by itself." *In re Schwartz*, 622 Fed.Appx. 485, 491 (6th Cir. 2015). See also, *Hagan v. Baird*, 288 F. Supp. 3d 803, 807 (W.D. Mich. 2018), *aff'd sub nom. In re B & P Baird Holdings, Inc.,* 759 F. App'x 468 (6th Cir. 2019).

Winquest, of course, put his money into the business hoping to share in the profits. He has not shown that the money was specific or identifiable. Nor has he shown that Scott (as Winquest's business partner) obtained the money without Winquest's consent to the creation of a debtor-creditor relationship.

Accordingly, with respect to Count II, the court finds no cause for action.

Plaintiff has no cause for action for Civil Conspiracy.

A recent published decision of the Court of Appeals described a civil conspiracy as follows:

> A civil conspiracy is a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose, or to accomplish a lawful purpose by criminal or unlawful means. A plaintiff alleging a civil conspiracy must prove a separate, actionable tort as the basis of the conspiracy. Our Supreme Court has described a tort in this context as a civil wrong that arises from the breach of a legal duty other than the breach of a contractual duty.

Green v. Pontiac Pub. Libr., No. 363459, 2024 WL 994950, at 8 (Mich. Ct. App. Mar. 7, 2024), *appeal denied,* 10 N.W.3d 271 (Mich. 2024)(For Publication)(Citations and quote marks omitted)

The only separate, actionable tort alleged by the plaintiff was that the defendants "engaged in a concerted action to concert and/or steal Winquist's money, labor, and services." See Complaint ¶¶36, 37.

For the reasons already described, the defendants cannot be liable for converting the plaintiff's money.

As for labor and services, "[c]onversion is based on property law principles." See *Wrench LLC v. Taco Bell Corp.,* 256 F.3d 446, 460 (6th Cir. 2001). And while "Michigan appellate courts have held that certain intangible property can be the subject of a conversion action,"[1] the plaintiff has pointed to no caselaw, and this court has found none, suggesting that "labor and services" is "property" that can be the subject of conversion either at common law or by statute.

[1] *Sarver v. Detroit Edison Co.,* 225 Mich. App. 580, 586, 571 N.W.2d 759, 762 (1997)

CONCLUSION

The court enters a judgment of no cause for action.

IT IS ORDERED.

This order resolves all pending claims. It is a final order. MCR 2.602(A)(3).

Dated: August 1, 2025
at Grand Rapids, Michigan.

P 38891

Honorable Curt A. Benson