STATE OF MICHIGAN

COURT OF CLAIMS

GREAT LAKES WATER AUTHORITY,

Plaintiff,

v

Case No. 24-000019-MZ

MICHIGAN DEPARTMENT OF TRANSPORTATION,

Hon. Sima G. Patel

Defendant.
_____ /

OPINION AND ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION FOR SUMMARY DISPOSITION AND DENYING PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION

This matter involves a dispute between plaintiff, the Great Lakes Water Authority (GLWA), and defendant, the Michigan Department of Transportation (MDOT), over GLWA's entitlement to approximately $2 million in requested relocation costs for property previously occupied by GLWA that was conveyed by the City of Detroit to MDOT in connection with the construction of the Gordie Howe International Bridge (the Bridge). Both parties move for summary disposition following the close of discovery. The motions were heard on August 11, 2026. The key issue in this case involves the interpretation of a Transfers of Properties, Assets, Interests, and Jurisdiction Agreement (the Transfer Agreement) between MDOT and the City of Detroit. Specifically, the parties dispute whether MDOT's promise in the Transfer Agreement to "fully fund" GLWA's "eligible relocation costs" referred to eligible relocation costs under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), 42 USC 4601

et seq. The Court concludes that the term "eligible relocation costs" as it appears in the Transfer Agreement is ambiguous and requires a trial for purposes of GLWA's breach-of-contract claim. However, for the reasons discussed in this Opinion and Order, GLWA cannot establish its promissory estoppel, declaratory judgment, or restitution/unjust enrichment claims. Therefore, the Court GRANTS IN PART and DENIES IN PART MDOT's motion for summary disposition, DENIES GLWA's motion for summary disposition, and DISMISSES GLWA's claims for promissory estoppel, declaratory judgment, and unjust enrichment.

I. BACKGROUND

GLWA operates the water supply and sewage disposal system for the metropolitan Detroit area. This matter involves property located at 303 South Livernois, Detroit, Michigan (the Property). Before the events giving rise to this lawsuit, the City of Detroit owned the Property, which contained a large building. The City, through a division known as the Detroit Water and Sewerage Department (DWSD), leased the Property to GLWA. GLWA operated its Industrial Waste Control Division (IWCD) in the Property. The IWCD serviced industrial waste users and served as a processing center for collecting, testing, and sampling wastewater.

In 2016, MDOT sought to acquire the Property for use in the construction of the Bridge. On October 24, 2016, MDOT made a good faith written offer to the "Interested Parties" (including the City of Detroit and GLWA) for the Property, following the procedures outlined in Michigan's Uniform Condemnation Procedures Act (UCPA), MCL 213.51 *et seq*. MDOT stated in the Good Faith Letter that it decided that the Property was "necessary" for the construction of the Bridge and stated, "MDOT is authorized to acquire the property by purchase or condemnation." MDOT offered to buy the Property for $1.13 million, or to have the Property replaced with a "functional replacement facility" as that term is defined under applicable federal regulations.

The City of Detroit and GLWA rejected the Good Faith offer, and the parties began negotiating the amount of just compensation. On June 19, 2017, MDOT and the Detroit Parties (including the City of Detroit and its agents, officers, and departments), entered into the Transfer Agreement "to effectuate the transfer of properties, assets and/or interests that are owned and jurisdiction that is exercised by any Detroit Party and located within the boundaries of the [Bridge] project to facilitate construction of the [Bridge]." The Transfer Agreement stated that it was "consistent with" a 2012 Crossing Agreement between Michigan and Canada, which required Michigan to acquire properties located within the boundaries of the Bridge project.

The 2012 Crossing Agreement conditioned funding for the Bridge project on compliance with "Federal Aid Eligibility Requirements" advanced by the Federal Highway Administration, which MDOT argues would include the URA. The Crossing Agreement provided, in relevant part, "The Michigan Parties shall be responsible for complying with all Federal Aid Eligibility Requirements applicable to Federal Aid Highway Project Activities for which the Michigan Parties are responsible under this Agreement." MDOT argues that providing relocation assistance under the URA is a condition of federally assisted land acquisition under 42 USC 4622.

The Transfer Agreement provided that the Detroit Parties would convey the Property to MDOT via quitclaim deed. Article VII(F) of the Transfer Agreement provided, in relevant part:

> DWSD Moving Out of 303 South Livernois. DWSD agree [sic] that it and any tenant will move out of 303 South Livernois and tender exclusive possession thereof to MDOT no later than January 1, 2019, **provided that MDOT has fully funded all eligible relocation costs to DWSD** and that all operations of DWSD have been relocated from 303 South Livernois with such relocated operations up and running. [Bolded emphasis added.]

The parties agreed that MDOT would pay the City of Detroit $2,771,520 in just compensation, which was for the real estate only and did *not* include eligible relocations costs

because those costs had "not yet been determined." Importantly, the Transfer Agreement did not cite the URA. The Transfer Agreement had an express merger clause.

According to MDOT, its Real Estate Project Manager, Thomas Schafer, added the term "eligible" into the Transfer Agreement during negotiations to ensure MDOT's obligations were limited to reimbursement of costs allowed under the URA. Schafer testified during his deposition that the word "eligible" meant "eligible under the [URA]." He explained that the Transfer Agreement would risk becoming "an open checkbook" had the word "eligible" not been inserted into the Transfer Agreement.

The Possession and Use Agreement (PUA) is a separate contract that GLWA and MDOT executed following the Transfer Agreement but before the transfer of the Property. During a January 17, 2019 e-mail conversation between Randal Brown (GLWA's general counsel) and Mary Waddell (MDOT's attorney), Brown indicated that GLWA's relocation and moving expenses would total approximately $2 million. According to Brown, GLWA wanted to sign the PUA because GLWA was taking a risk by transferring the Property without finalizing the relocation costs, and the PUA would "find language that allowed us to do that." According to Waddell, the purpose of the PUA was to address the gap in time between the date GLWA would surrender possession and the date of closing and payment of just compensation.

On January 25, 2019, the City of Detroit, MDOT, and GLWA executed the PUA "to memorialize the surrender of possession of the Property in this Agreement." The PUA provided that the City of Detroit and GLWA agreed to "surrender possession of the Property to MDOT on January 25, 2019." At that point, "MDOT will have sole and exclusive possession of the Property as of January 25, 2019." The PUA further provided, in relevant part:

> The grant of possession does not waive any claims of the City, through DWSD, or [GLWA] to just compensation, business interruption damages or relocation benefits under the [URA], 42 USC 4601, et seq., and its applicable federal regulations published at 49 CFR 24 or [UCPA], MCL 231.51, et seq. Further, MDOT has given the City, through DWSD, and [GLWA] reasonable assurances that MDOT has at least $2,000,000 to fund any business interruption claims and relocation benefits claims made by the City, through DWSD or [GLWA].

The PUA further provided, "This Agreement shall expire upon the closing on the Property." (Bolded emphasis omitted.) Like the Transfer Agreement, the PUA contained a merger clause.

GLWA relocated the IWCD to an existing facility on January 15, 2019. According to GLWA, it had to renovate the facility to meet certain legal requirements, resulting in over $2 million in relocation costs. The new property was also smaller, forcing GLWA to reduce its spatial footprint and digitize certain records. The closing on MDOT's purchase of the Property occurred on April 12, 2019.

The dispute in this case arose when GLWA submitted a request for $2,023,720.10 in relocation costs on August 14, 2020. In February 2021, MDOT responded to GLWA's request, denying most of the claim. MDOT concluded, in relevant part, that "[m]ost of the expenses submitted by GLWA are essentially functional relocation costs. . . . [T]he regulations prohibit paying the functional replacement costs in addition to just compensation, as doing so would be considered a duplication of payment. . . ." MDOT concluded that the total reimbursement for eligible relocation costs under the URA was $203,341.66. MDOT's view was that GLWA's relocation costs were limited to moving expenses under the URA, yet GLWA requested reimbursement for renovation costs, attorney fees, and other "functional replacement costs" that did not come within the URA.

In April 2021, GLWA appealed MDOT's determination. On July 7, 2021, MDOT's Division Administrator of Development Services, Larry Doyle, upheld MDOT's decision on GLWA's claim for additional relocation expenses under the URA. GLWA appealed that decision in late July 2021. On August 3-4, 2022, an evidentiary hearing was conducted before Administrative Law Judge (ALJ) Erik Williams.[1]

On October 21, 2022, ALJ Williams issued a Proposal for Decision, recommending that "this matter be referred to the MDOT staff to evaluate GLWA's reimbursement claim under the cost development and reimbursement rules governing utility claims." ALJ Williams concluded that the PUA supported that "the parties agreed that, after collecting $2,771,520 from MDOT and after the [IWCD] relocated, GLWA would make an additional claim for reimbursement of relocation costs, and MDOT would pay eligible relocation costs." However, he reasoned, "[t]here is no evidence of an agreement as to the rules that applied to the additional claim for reimbursement of relocation costs." The focus of the ALJ's findings was on eligibility under the URA, and ALJ Williams found that a key issue was whether the IWCD building was part of a "utility system" as defined under the URA. ALJ Williams concluded that MDOT overlooked certain costs under the URA and recommended that the Agency reconsider its prior assessment.

On February 3, 2024, MDOT issued a 22-page Final Decision that rejected ALJ Williams's conclusions and recommendation, and reaffirmed MDOT's determination. In the Final Decision, MDOT Bureau of Development Director Demetrius Parker concluded that ALJ Williams improperly shifted the burden of proof regarding whether the Property was used as a "utility

[1] Williams took over this case from ALJ Adam Purnell, who handled the prehearing matters.

facility" under the URA to MDOT and concluded that the Property was not, in fact, a "utility facility" under the URA. Parker concluded that MDOT's assessment of the relocation costs complied with the URA and that there were no errors in its calculations. GLWA did *not* appeal the Final Decision in the circuit court for reasons that are not clear from the record. Notably, although ALJ Williams discussed the PUA in his Proposal for Decision, none of the administrative decisions engaged in a legal analysis of the terms of the Transfer Agreement.

GLWA then filed this lawsuit, raising the following claims:

- Breach of contract for failing to reimburse GLWA for eligible relocation costs (Count I).
- Promissory estoppel on the basis that MDOT should have expected that its promise to pay GLWA's reimbursement costs would induce GLWA to surrender possession of the Property (Count II).
- Declaratory relief on the basis that GLWA is entitled to the full relocation costs under the URA (Count III).
- Restitution on the basis that GLWA never received compensation for its relocation costs while MDOT received the benefit of possession of the facility (Count IV).

MDOT moved for summary disposition at the outset of the case, which this Court denied in a July 15, 2024 Opinion and Order. See *Great Lakes Water Auth v Mich Dep't of Transp*, opinion and order of the Court of Claims, issued July 15, 2024 (Case No. 24-000019-MZ) (*GLWA*). MDOT challenged whether this Court had jurisdiction, arguing that GLWA was required to challenge the agency decision in a circuit-court appeal. This Court disagreed: "It is apparent from a review of the complaint that GLWA is not asking this Court to review the administrative decision, nor is it seeking to appeal from the administrative decision." This Court explained, "Rather the complaint raises theories—breach of contract, promissory estoppel, declaratory relief, and restitution—that do not sound in nature like an appeal from MDOT's administrative decision."

This Court also rejected MDOT's arguments about the timeliness of the complaint and GLWA's standing to sue. This Court concluded that GLWA stated a breach-of-contract claim. The case proceeded to discovery. Following the close of discovery, both parties moved for summary disposition. GLWA's motion is limited to its breach-of-contract and promissory estoppel claims, while MDOT's motion requests summary disposition in its favor on each of GLWA's claims.

II. ANALYSIS

GLWA moves for summary disposition under MCR 2.116(C)(10), and MDOT moves for summary disposition under MCR 2.116(C)(4), (7), (8), and (10). A motion under MCR 2.116(C)(4) examines whether the trial court has jurisdiction over the subject matter of the case. *True Care Physical Therapy, PLLC v Auto Club Group Ins Co*, 347 Mich App 168, 176; 14 NW3d 456 (2023). The Court will examine "the affidavits, together with the pleadings, depositions, admissions, and documentary evidence" to determine whether they demonstrate a lack of subject-matter jurisdiction. *Id*.

A motion for summary disposition filed under MCR 2.116(C)(7) may be filed on the basis that a claim is barred by res judicata or an issue is barred by collateral estoppel. See MCR 2.116(C)(7).

> When reviewing a motion under MCR 2.116(C)(7), [the Court] must accept all well-pleaded factual allegations as true and construe them in favor of the plaintiff, unless other evidence contradicts them. If any affidavits, depositions, admissions, or other documentary evidence are submitted, the court must consider them to determine whether there is a genuine issue of material fact. If no facts are in dispute, and if reasonable minds could not differ regarding the legal effect of those facts, the question whether the claim is barred is an issue of law for the court. However, if a question of fact exists to the extent that factual development could provide a basis for recovery, dismissal is inappropriate. [*Dextrom v Wexford Co*, 287 Mich App 406, 428-429; 789 NW2d 211 (2010) (cleaned up).]

A motion for summary disposition under MCR 2.116(C)(8) examines the legal sufficiency of the plaintiff's claims on the basis of the factual allegations raised in the complaint. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). The Court must accept the factual allegations in the complaint as true and will decide the motion on the pleadings alone. *Id*. at 160. The motion is granted if the claim is so clearly unenforceable as a matter of law that no factual development would justify recovery. *Id.*

In contrast, a motion for summary disposition filed under MCR 2.116(C)(10) examines the factual sufficiency of the plaintiff's claims considering all submitted evidence in the light most favorable to the nonmovant. *Id*. MCR 2.116(C)(10) provides, "Except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." A (C)(10) motion is granted when there is no genuine issue of material fact. *El-Khalil*, 504 Mich at 160.

The following contract-interpretation principles also apply in this case:

> The main goal in the interpretation of contracts is to honor the intent of the parties. This is done by giving the plain and unambiguous words of a contract their plain and ordinary meaning. The words and phrases of the contract cannot be read in isolation but must be construed in context and read in light of the contract as a whole. If the contract, although inartfully worded or clumsily arranged, fairly admits of but one interpretation, it is not ambiguous. [*Allen Park Retirees Ass'n, Inc v Allen Park*, 347 Mich App 1, 11; 13 NW3d 865 (2023) (cleaned up).]

If a contract is found to be ambiguous, then the meaning of the ambiguous contract becomes an issue to be decided by the trier of fact. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 469; 663 NW2d 447 (2003). The trier of fact must interpret the contract's terms, considering the purpose of the contract as a rule, the rules of contractual construction, and the extrinsic evidence about the intent and meaning of the contract. *Id.*

A. JURISDICTION

MDOT first argues that this Court should grant summary disposition in its favor under MCR 2.116(C)(4) on the basis that this Court lacks subject-matter jurisdiction. MDOT reasons that GLWA did not pursue judicial review of the Final Decision and chose instead to pursue this action as "a collateral attack on MDOT's determination" of eligible relocation costs under the URA.

The Court recognizes that it must have subject-matter jurisdiction as a prerequisite to hear and decide a claim. *Mich Farm Bureau v Dep't of Environment, Great Lakes, & Energy*, 515 Mich 481, 512; 28 NW3d 629 (2024). "Because subject-matter jurisdiction is a prerequisite for a court to hear and decide a claim, the court may consider it sua sponte at any time, and parties cannot confer subject-matter jurisdiction by their conduct, nor can they waive a subject-matter-jurisdiction challenge by not raising it." *Id.*

Although this Court has already examined its subject-matter jurisdiction once, it is mindful that "the lack of jurisdiction of the subject matter may be raised at any time . . . ." *Council of Orgs & Others for Ed about Parochiaid v Michigan*, 321 Mich App 456, 465; 909 NW2d 449 (2017) (cleaned up). The Court's subject-matter jurisdiction is determined through reference to the pleadings, and the Court has subject-matter jurisdiction provided that the allegations fall within the class of cases over which the Court has the power to act. *Id*.

This Court has jurisdiction to, among other things, "hear and determine any claim or demand, statutory or constitutional, liquidated or unliquidated, ex contractu or ex delicto, or any demand for monetary, equitable, or declaratory relief or any demand for an extraordinary writ against the state or any of its departments or officers . . . ." MCL 600.6419(1)(a). To support that

this Court lacks subject-matter jurisdiction, MDOT relies on the Administrative Procedures Act (APA), MCL 24.201 *et seq*. MDOT argues that GLWA was required to appeal the Final Decision within 60 days, and argues that, under MCR 7.104(A)(1), the circuit court had jurisdiction over the appeal. GLWA argues, in contrast, that this Court already decided this issue in its July 15, 2024 Opinion and Order. As GLWA explains, "MDOT's Final Decision is not the cause of GLWA's damages claim, but rather the cause is MDOT's failure to abide by its promise to fully compensate GLWA for its relocation."

The Court agrees with GLWA that MDOT raised the same general argument on subject-matter jurisdiction in its first motion for summary disposition. MDOT argued in its first motion for summary disposition as follows: "GLWA's claims all arise out of MDOT's final administrative decision under the URA. Therefore, GLWA's sole remedy was to invoke the circuit court's exclusive jurisdiction to review administrative appeals, which it did not do." This Court ruled in its July 15, 2024 Opinion and Order that, while an appeal of the agency decision would need to be filed in the circuit court, this complaint was not an attempt to appeal the administrative decision. *GLWA*, op at 6. This Court explained, "It is apparent from a review of the complaint that GLWA is not asking this Court to review the administrative decision, nor is it seeking to appeal from the administrative decision." *Id*. Instead, the complaint raised legal theories that did not sound in nature like an appeal from MDOT's administrative decision. *Id*. at 6-7.

The only new element of MDOT's jurisdictional argument is a citation to *Green v Dep't of Health & Human Servs*, opinion and order of the Court of Claims, issued October 2, 2023 (Case No. 23-000095-MZ), a decision granting summary disposition based on the lack of subject-matter jurisdiction in a case before Judge JAMES ROBERT REDFORD that was later appealed to the Court

of Appeals. See *Green v Dep't of Health & Human Servs*, unpublished per curiam opinion of the Court of Appeals, issued November 19, 2024 (Docket No. 368269).

In *Green*, the owner of a home-based personal Medicaid service provider contested a determination by the Michigan Department of Health and Human Services (MDHHS) that the company was overpaid. *Id*. at 1. Following an administrative hearing, the Director of MDHHS issued a Final Order upholding the demand for recoupment. *Id*. The plaintiff appealed the decision in the circuit court, which dismissed the appeal for failure to perfect. *Id*. at 2. The plaintiff initiated a new action in this Court, and this Court ruled that it lacked subject-matter jurisdiction. *Id*. On appeal of this Court's decision, MDHHS challenged this Court's subject-matter jurisdiction, and the Court of Appeals concluded that the gravamen of the complaint was an attack on the Final Decision. *Id*. at 3. Thus, the Court of Appeals affirmed this Court's ruling that it lacked subject-matter jurisdiction over the case because the appeal was required to be filed in the circuit court under the APA or MCL 600.631. *Id*. at 3-4. *Green* involved an appeal of an agency's Final Decision—not a distinct breach-of-contract or equitable claim. It is distinguishable from this matter. Therefore, this Court has subject-matter jurisdiction under MCL 600.6419(1)(a) to decide the issues presented in this case.

B. RES JUDICATA/COLLATERAL ESTOPPEL

MDOT next argues that this Court should grant summary disposition in its favor under MCR 2.116(C)(7) because GLWA's claims are barred by res judicata or collateral estoppel. MDOT argues that the Final Decision resolved GLWA's eligibility for additional reimbursement under federal law, which encompassed the issues of whether the Property was a utility facility,

whether MDOT made promises to pay all relocation costs, and whether GLWA was entitled to additional compensation for relocation costs.[2]

The doctrine of res judicata bars multiple lawsuits arising from the same cause of action. *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 418; 733 NW2d 755 (2007). "The doctrine bars a second, subsequent action when (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first." *Id*. (cleaned up). The party claiming that res judicata applies has the burden of proof. *Garrett v Washington*, 314 Mich App 436, 441; 886 NW2d 762 (2016). The doctrine bars claims that were litigated in a prior proceeding, as well as claims arising from the same transaction that the parties could have raised with the exercise of reasonable diligence but did not. *Id*. at 442.

In contrast, the doctrine of collateral estoppel examines whether the claim is barred by issue preclusion and requires the movant to establish three elements: "(1) a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment; (2) the same parties must have had a full and fair opportunity to litigate the issue; and (3) there must be mutuality of estoppel." *Monat v State Farm Ins Co*, 469 Mich 679, 682-684; 677 NW2d 843 (2004) (cleaned up).

[2] MDOT did not raise the issues of res judicata and collateral estoppel in its opening motion for summary disposition. MDOT explains that this was "[b]ecause it viewed GLWA's Complaint as a collateral attack on a final URA determination—not a traditional civil action invoking claim preclusion." As a result, this Court did not address the preclusion doctrines in its July 15, 2024 Opinion and Order: "The Court takes no position at this time on the issue of whether the administrative decision would preclude relitigation of these matters in the instant case." *GLWA*, op at 7 n 1.

> Mutuality of estoppel requires that in order for a party to estop an adversary from relitigating an issue that party must have been a party, or in privy to a party, in the previous action. In other words, the estoppel is mutual if the one taking advantage of the earlier adjudication would have been bound by it, had it gone against him. [*Id*. at 684-685 (cleaned up).]

Mutuality of estoppel is not needed when collateral estoppel is asserted defensively against a party who had a full and fair opportunity to litigate the issue. *Id*. at 695.

As it relates to administrative actions, "the preclusion doctrines are applicable to administrative decisions (1) that are adjudicatory in nature, (2) when a method of appeal is provided, and (3) when it is clear that the Legislature intended to make the decision final absent an appeal." *William Beaumont Hosp v Wass*, 315 Mich App 392, 399; 889 NW2d 745 (2016) (cleaned up). "To determine whether an administrative agency's determination is adjudicatory in nature, courts compare the agency's procedures to court procedures to determine whether they are similar." *Id*. (cleaned up). "Quasi-judicial proceedings include procedural characteristics common to courts, such as a right to a hearing, a right to be represented by counsel, the right to submit exhibits, and the authority to subpoena witnesses and require parties to produce documents." *Id*. (cleaned up).

GLWA's breach-of-contract and equitable claims could not have been litigated in the context of the administrative appeal. Administrative tribunals do not have jurisdiction over equitable claims unless the Legislature has granted that authority by statute. See *Huron Behavioral Health v Dep't of Community Health*, 293 Mich App 491, 497-498; 813 NW2d 763 (2011). MDOT cites no legal authority that would have permitted the Agency to consider any equitable claims. The Michigan Supreme Court has also held that contract-based claims for declaratory relief against a state agency fall within this Court's exclusive jurisdiction. *Parkwood Ltd Dividend Housing Ass'n v State Housing Dev Auth*, 468 Mich 763, 772; 664 NW2d 185 (2003).

The issues presented in the administrative action and decided in the Final Decision involved "GLWA's claim for relocation expenses under the URA." During the administrative proceedings, ALJ C. Adam Purnell granted MDOT's motion for partial summary disposition and limited the scope of the agency appeal to "a review of [MDOT's] determination regarding [GLWA's] relocation claim and eligibility for reimbursement under [the URA] and the related promulgated rules." Given the limited scope and the nature of the agency appeal, GLWA could not have raised contractual claims or related equitable claims, and those claims could not have been litigated or decided in the context of the administrative matter. As such, the Final Decision was limited to matters falling within the URA. The agency did not adjudicate whether MDOT owed GLWA additional relocation costs under any contract theory or on the basis of any equitable principles. MDOT's argument that res judicata bars claims arising from "the same nucleus of facts" is incorrect because the claims raised in this case could not have been asserted in the administrative proceeding. Res judicata does not apply to bar this lawsuit.

As for collateral estoppel, given that the subject of the administrative proceeding was MDOT's determination of eligible expenses under the URA, any issues involving eligibility under the URA would be precluded because that issue *was* decided in a final agency decision. As it relates to the legal questions presented under the URA, (1) those questions were actually litigated and determined by a valid and final judgment, (2) the same parties had a full and fair opportunity to litigate the issues, and (3) mutuality is not required because collateral estoppel is being asserted defensively. The Court will outline in this Opinion and Order where certain issues are barred by collateral estoppel.

C. BREACH OF CONTRACT

Both parties advocate for summary disposition in its favor on the merits. Starting with GLWA's breach-of-contract claim,[3] "[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; 848 NW2d 95 (2014). Fundamentally, a contract requires offer, acceptance, and "mutual assent or a meeting of the minds on all the essential terms." *Yoches v City of Dearborn*, 320 Mich App 461, 479; 904 NW2d 887 (2017) (cleaned up). A contract also requires consideration, which is "some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other." *Id.* (cleaned up).

As a threshold issue, MDOT argues that GLWA did not make a formal request for reimbursement until 17 months after MDOT surrendered possession of the Property and notes that GLWA did not sign and return a Relocation Claim form that MDOT sent to Brown for $203,341.66 in reimbursable relocation costs. However, MDOT provides no legal basis for finding that the alleged delays in filing a reimbursement claim would render the breach-of-contract claim meritless. This Court previously concluded that GLWA's claims were filed within the three-year limitations period in MCL 600.6452(1) and complied with the notice-and-verification requirements in MCL 600.6431. See *GLWA*, op at 7-8. MDOT does not raise a timeliness issue

[3] The Court agrees with GLWA that, because it previously decided that GLWA stated a valid breach-of-contract claim for purposes of MCR 2.116(C)(8), and considering the parties rely on documents beyond the complaint in making their arguments, the correct court rule is MCR 2.116(C)(10).

in its motion for summary disposition and does not provide any legal grounds for finding that the delay in taking the formal step of submitting a claim mooted MDOT's contractual obligation to reimburse GLWA's relocation costs. It is apparent that GLWA did not sign and return the Relocation Claim form that MDOT sent to Brown because GLWA did not agree with MDOT's assessment of eligible costs under the Transfer Agreement. This dispute forms the basis for this lawsuit and does not constitute a basis to dismiss the breach-of-contract claim.

The main issue for purposes of breach of contract is the meaning of the phrase "fully funded eligible relocation costs" in the Transfer Agreement. GLWA argues that the plain language of the Transfer Agreement provided that "MDOT will fully fund all eligible relocation costs, meaning that MDOT will pay all GLWA's costs it incurs in relocating from the Property to the New Facility." In other words, MDOT would fully pay the amount necessary for GLWA to move into its new space and become functional. GLWA relies on dictionary definitions to define the term "eligible" as " 'qualified to participate or be chosen.' " GLWA further argues that the plain language of the Transfer Agreement and PUA favor GLWA's interpretation of "eligible" relocation costs because MDOT's interpretation would render the Transfer Agreement and the PUA illusory, indefinite, and unenforceable. GLWA further argues that the PUA constituted a separate promise to pay at least $2 million in relocation costs. In GLWA's view, this case did not present an ordinary taking under the URA because the Property did not function as a residence or office building. Rather, the Property housed a sophisticated water-testing facility that was highly regulated. So, simply reimbursing GLWA's moving costs (as allowed under the URA) would not be sufficient to compensate GLWA for its relocation expenses.

MDOT argues, in contrast, that the Transfer Agreement and the PUA required MDOT to reimburse costs eligible for reimbursement under the URA. MDOT contends that the reference to

"fully funded" meant that funds would be available, not necessarily that all relocation costs would be paid, regardless of eligibility under the URA.[4] Its position is supported by the testimony of Waddell, who confirmed at her deposition that this was her understanding of the term "fully funded." MDOT argues that a substantial part of GLWA's request was for "functional replacement costs," which are ineligible under the URA. MDOT further argues that it fully performed its obligations under the two Agreements when it reimbursed eligible costs. MDOT further argues that GLWA has not suffered damages. Finally, MDOT argues that GLWA's interpretation of the Transfer Agreement would require MDOT to violate the law by paying functional replacement costs that do not fall within the allowable costs under the URA.

Again, the Transfer Agreement provided, in relevant part, that GLWA would move out of the Property and tender exclusive possession to MDOT no later than January 1, 2019, provided that MDOT "fully funded all eligible relocation costs to DWSD." There is no dispute that GLWA stood in the position of DWSD for purposes of this provision of the Transfer Agreement. MDOT also agreed to pay $2,771,520 in just compensation, which was for real estate only. The Agreement expressly excluded eligible relocation costs as part of the just compensation, which were noted to have not yet been determined. Importantly, the Transfer Agreement does not reference the URA or otherwise define the term "eligible."

Both parties argue that the Agreements are unambiguous and that this Court need not examine extrinsic evidence to determine the meaning of the term "eligible relocation costs." The Court disagrees. The word "eligible" is equally susceptible to two meanings—costs eligible for

[4] MDOT does not appear to dispute that it is obligated to pay all "eligible relocation costs." It argues, instead, that the term is limited to those costs under the URA.

reimbursement under the URA *or* costs that are eligible because they were incurred and substantiated. Neither meaning is clear from the plain language of the Agreement. Therefore, the Court concludes that the term "eligible relocation costs" in the Transfer Agreement is ambiguous, and its meaning is a question of fact.

To support that there was at least an indirect reference to the URA in the Transfer Agreement, MDOT notes that the Transfer Agreement stated that it was "consistent with" a 2012 Crossing Agreement between MDOT and Canada. The Crossing Agreement required that MDOT follow Federal Aid Eligibility Requirements, which MDOT argues would include compliance with the URA. The Court concludes that the attenuated reference to the URA through the provision in the Transfer Agreement providing that it was "consistent with" the 2012 Crossing Agreement does not establish that the term "eligible" meant eligible under the URA. This conclusion is not evident from the plain language of the Transfer Agreement.

Both parties have presented competing extrinsic evidence on the meaning of the term "eligible relocation costs."[5] MDOT relies on Schafer's testimony to support that MDOT's focus at the time the Transfer Agreement was executed was on ensuring that it was obligated to pay costs

[5] GLWA argues that MDOT is attempting to use "parol evidence" to support its position, which should not be permitted because there is a sufficiently formalized contract memorializing the parties' agreement, and that agreement contains a merger clause. Under the parol-evidence rule, "parol evidence of contract negotiations, or of prior or contemporaneous agreements that contradict or vary the written contract, is not admissible to vary the terms of a contract which is clear and unambiguous." *Hamade v Sunoco Inc (R & M)*, 271 Mich App 145, 166; 721 NW2d 233 (2006) (cleaned up). There are exceptions to this general rule, but none apply in this case. See *id*. The Court concludes that because the Transfer Agreement is ambiguous, extrinsic evidence may be admitted at trial to determine the meaning of the ambiguous term "eligible relocation costs," which does not violate the parol-evidence rule. See *Klapp*, 468 Mich at 470 ("Looking at relevant extrinsic evidence to aid in the interpretation of a contract whose language is ambiguous does not violate the parol-evidence rule.") (cleaned up).

under the URA so that it would not be liable to repay unlimited relocation costs. MDOT also provides this Court with a redlined version of the Transfer Agreement, showing that the term "eligible" was inserted in lieu of the word "applicable."

In contrast, GLWA relies on the PUA and evidence regarding communications about the PUA to support that the intention of the parties to the Transfer Agreement was to require reimbursement of all incurred relocation costs. Brown testified that his understanding was that eligible relocation costs would not be capped based on what is eligible under the URA.[6] GLWA has also presented evidence that it submitted an estimate of approximately $2 million in relocation costs in advance of signing the PUA. GLWA also presents evidence about the context surrounding the execution of the Transfer Agreement, such as letters between the City of Detroit and MDOT, to support that the parties to that Agreement contemplated the payment of full relocation costs. This evidence, considered as a whole, creates a factual dispute about the intent of MDOT and the City of Detroit when executing the Transfer Agreement on the meaning of the word "eligible" in the context of the promise to fully fund "eligible replacement costs." That factual dispute will be resolved at trial.[7]

[6] Brown's deposition testimony on this issue was conflicting. Although Brown testified at one point during his deposition that the term "eligible relocation costs" would be "under the [URA]," he later clarified that he did *not* believe that the eligible relocation costs would be capped based on what was eligible under the URA. The parties will have the opportunity to explore these inconsistencies at trial.

[7] The Court recognizes that the PUA is not prior or contemporaneous evidence of the intent of the parties to the Transfer Agreement. However, that fact would go toward the weight of the evidence rather than the admissibility. See *Klapp*, 468 Mich at 469-470 (explaining that "extrinsic evidence, particularly evidence which would indicate the contemporaneous understanding of the parties, would be admissible as an aid in construction of the disputed terms") (cleaned up).

GLWA also argues that the PUA—an agreement executed between GLWA and MDOT—included a distinct promise to pay GLWA at least $2 million for business interruption and relocation benefits claims. Again, the PUA provided, in relevant part:

> The grant of possession does not waive any claims of the City, through DWSD, or [GLWA] to just compensation, business interruption damages or relocation benefits under the [URA], 42 USC 4601, et seq., and its applicable federal regulations published at 49 CFR 24 or [UCPA], MCL 231.51, et seq. Further, MDOT has given the City, through DWSD, and the [GLWA] reasonable assurances that MDOT has at least $2,000,000 to fund any business interruption claims and relocation benefits claims made by the City, through DWSD or the [GLWA].

The language of the PUA does not unambiguously require reimbursement of $2 million in relocation costs. In fact, the PUA references the URA in the context of discussing that the grant of possession does not waive a claim for payment of "relocation benefits," which favors MDOT's position that the relocation benefits were meant to be those that are compensable under the URA. Additionally, the statement that MDOT has given GLWA "reasonable assurances" that it has at least $2 million to fund any business interruption and relocation benefits claim does not constitute a clear, unambiguous promise to pay $2 million in relocation benefit claims.

On the other hand, it is noteworthy that business interruption claims are not compensable costs under the URA, suggesting that the meaning of MDOT's promise in the PUA to set aside $2 million for business interruption and relocation benefits claims was not limited to expenses covered under the URA. A strong argument can be made on the basis of the contractual language that the parties contemplated that the relocation-cost claim would be in the realm of $2 million.

For these reasons, while the PUA may serve as evidence at trial, the PUA itself does not include a distinct promise to pay a certain amount in relocation benefits claims.[8]

As far as MDOT's argument that GLWA has not suffered any damages, this argument is tied into the meaning of the term "eligible" in the Transfer Agreement. Damages are an element of a breach-of-contract claim. *Van Buren Charter Twp v Visteon Corp*, 319 Mich App 538, 550; 904 NW2d 192 (2017). "The party asserting a breach of contract has the burden of proving its damages with reasonable certainty, and may recover only those damages that are the direct, natural, and proximate result of the breach." *Id.* at 551 (cleaned up). Damages may not be speculative or conjectural in nature. *Id.*

MDOT argues that it did not agree to make any reimbursement to GLWA that was not eligible under the URA, noting that both Waddell and Brown testified that the URA would govern eligibility. This argument hinges on whether the Transfer Agreement required reimbursement of GLWA's full request for reimbursement costs or only those costs that are permitted under the

[8] The Court further disagrees with GLWA that the Transfer Agreement would be rendered illusory if MDOT did not reimburse its entire relocation costs and instead only reimbursed costs eligible under the URA. GLWA argues that MDOT was already liable to pay URA-eligible relocation expenses under Michigan condemnation law, so this agreement to do what the law already required was illusory. MDOT paid a purchase price for the Property as part of a much larger, complex agreement in which MDOT agreed to payment of millions in just compensation in exchange for the transfer of title and land, and this Court agrees that MDOT's interpretation would not strip the contract of consideration. See *Yoches*, 320 Mich App at 481 ("[T]he basic rule of contract law is that whatever consideration is paid for all the promises is consideration for each one[.]") (cleaned up).

URA. GLWA has alleged damages with reasonable certainty as it requests the full amount of relocation costs, which it represents was $2,023,720.10.[9]

MDOT also argues that GLWA's interpretation of the Transfer Agreement would require MDOT to violate federal and state legal requirements by requiring payment of ineligible expenses under the URA. MDOT relies on the general principle that "when the terms of [an] agreement have two possible interpretations, by one of which the agreement would create a valid contract and by the other it would be void or illegal, the former will be preferred." *Universal Underwriters Ins Co v Kneeland*, 464 Mich 491, 497; 628 NW2d 491 (2001) (cleaned up).

MDOT's argument is that it was required to follow federal highway funding eligibility requirements for federally aided highway projects when it signed the Crossing Agreement, which was incorporated by reference into the Transfer Agreement. MDOT further argues that the Michigan Legislature prohibited MDOT from using state-appropriated funding for construction planning relating to the Bridge. MDOT cites 2019 PA 66, which stated, in relevant part, "Except as otherwise provided in subsection (2), the department shall not obligate the state to expend any state transportation revenue for construction planning or construction of the [Bridge] or a renamed successor."

This argument is not well-developed, but it appears MDOT is arguing that because it cannot use federal funding for any costs falling outside the scope of eligibility under the URA, it would be required to use state funding to reimburse the nearly $2 million in additional relocation costs,

[9] There is no dispute for purposes of the cross-motions for summary disposition that this figure was not supported through adequate documentation.

which would violate this provision in the 2019 appropriations law. However, GLWA was not bound by the Crossing Agreement and did not agree to abide by the URA. Moreover, as GLWA notes, the Transfer Agreement provided that the amounts MDOT was required to pay under the Agreement would be fully reimbursed by the Windsor-Detroit Bridge Authority (a Canadian corporation), meaning that the funding would not necessarily come from MDOT's appropriated funding, as MDOT maintains. MDOT also does not specify in its briefing how payment of the relocation costs would constitute "construction planning or construction" of the Bridge in violation of the 2019 appropriations law.

In sum, MDOT argues that there is no legal authority authorizing MDOT to pay for relocation costs barred by federal law and that doing so would jeopardize MDOT's obligation to comply with federal and state law. MDOT relies on this argument to support its interpretation of the word "eligible" in the Transfer Agreement, which again the Court finds to be ambiguous. MDOT may present evidence on this issue at trial to support its interpretation that the meaning of the term "eligible" in the Transfer Agreement referred to eligibility under the URA.

D. PROMISSORY ESTOPPEL

GLWA argues in the alternative that, if its breach-of-contract claim fails, summary disposition should be granted in its favor on its promissory estoppel claim. GLWA relies on alleged promises made in the Transfer Agreement and the PUA. MDOT, in contrast, argues that summary disposition should be granted in its favor on this claim because there is no genuine issue of material fact regarding a promise made by MDOT. The Court agrees with MDOT.

The elements of promissory estoppel include "(1) a promise (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the

promisee and (3) that, in fact, produced reliance or forbearance of that nature (4) in circumstances requiring enforcement of the promise if injustice is to be avoided." *Zaremba Equip, Inc v Harco Nat'l Ins Co*, 280 Mich App 16, 41; 761 NW2d 151 (2008). "A promise is a manifestation of intention to act or refrain from acting in a specific way, so made as to justify a promisee in understanding that a commitment has been made." *Id*. (cleaned up). The promise must be definite and clear in nature, and the promisee's reliance must be reasonable. *Id*. The doctrine should be applied cautiously and only when the facts of the case—including the evidence of the parties' works, actions, and relationship—are "unquestionable" and the wrong is "undoubted." *Bodnar v St John Providence, Inc*, 327 Mich App 203, 227; 933 NW2d 363 (2019) (cleaned up).

GLWA first argues that the Transfer Agreement and the PUA contained promises to fully fund GLWA's relocation costs, mandating reimbursement of all relocation costs. "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 NW2d 898 (2006) (cleaned up). The Court declines to analyze the language of the Transfer Agreement and PUA under the framework of promissory estoppel because those two documents are express contracts governed by contract-interpretation principles.

Outside of the contractual language, GLWA has not presented evidence to show that MDOT made a definite and clear promise to reimburse all GLWA's relocation costs. GLWA relies solely on a statement by Brown in an e-mail exchange with Waddell relating to the PUA that he intended that GLWA's relocation costs would be "fully funded." But the e-mail exchange did not contain a response from Waddell making any form of promise that MDOT would pay all requested relocation costs. GLWA's argument appears to hinge on the fact that Waddell did not correct or seek to clarify Brown's statement about being "fully funded" for GLWA's relocation

expenses. Waddell's silence did not constitute a definite and clear promise. Reviewing the evidence in the light most favorable to GLWA, this is not a case involving a definite promise and an undoubted wrong. For this reason, a genuine issue of material fact does not exist to support its promissory estoppel claim.

E. DECLARATORY RELIEF

Count III of the complaint requests a declaratory judgment ruling that the IWCD facility was a "utility facility" under the URA and that GLWA is entitled to reimbursement of its full claim for relocation expenses. MDOT requests summary disposition on this claim, arguing that the claim is a repackaged contract or promissory estoppel claim.

MCR 2.605(A)(1) provides, "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted." GLWA argues that assuming that MDOT's position on the Agreements is correct and it was obligated to compensate GLWA for its relocation expenses under the URA, then this Court "may be required to determine what proper compensation was under the URA to determine whether MDOT complied with its contractual obligation." However, that precise issue was already decided in the context of the administrative matter and is barred by collateral estoppel. There is no dispute that GLWA did not timely appeal MDOT's Final Decision. GLWA may not relitigate in the context of this matter what amount is owed under the URA. Therefore, MDOT is entitled to summary disposition of GLWA's restitution claim under MCR 2.116(C)(10).

F. UNJUST ENRICHMENT/RESTITUTION

Count IV of the complaint is a claim for restitution. Restitution is an equitable remedy affiliated with a claim for unjust enrichment. See *Wright v Genesee Co*, 504 Mich 410, 417-418; 934 NW2d 805 (2019). "Unjust enrichment is a cause of action to correct a defendant's unjust retention of a benefit owed to another." *Id*. at 417. "A claim of unjust enrichment can arise when a party has and retains money or benefits which in justice and equity belong to another." *Id*. at 418 (cleaned up). The elements of unjust enrichment are "(1) the receipt of a benefit by defendant from plaintiff, and (2) an inequity resulting to plaintiff because of the retention of the benefit by defendant." *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 478; 666 NW2d 271 (2003). Again, "an implied contract may not be found if there is an express contract between the same parties on the same subject matter." *Morris Pumps*, 273 Mich App at 194 (cleaned up).

GLWA maintains that MDOT never compensated it for the expense of moving its operations to its new facility. Yet GLWA conferred the benefit of title and possession of the Property onto MDOT, resulting in unjust enrichment of just over $2 million. MDOT argues that GLWA will receive almost $3 million between the just compensation payment and the approved relocation costs, yet it only spent $2 million to move operations to a new facility. MDOT argues, therefore, that GLWA cannot sustain a claim for unjust enrichment.

This Court initially denied summary disposition on this claim on the pleadings, concluding that "information is needed about the nature of the costs and about federal law." *GLWA*, op at 11. Now that discovery is complete, and information has been provided about the nature of the costs and about federal law, the Court concludes that GLWA cannot sustain its unjust-enrichment claim because the claim arises from the same subject matter as the express contracts between the same parties on the same subject matter. Although GLWA was not a named party to the Transfer Agreement, there is no dispute for purposes of the instant motions that it was an intended third-

party beneficiary of that Agreement. GLWA also signed the PUA with MDOT, in which it agreed to transfer possession of the Property in advance of the closing. GLWA's unjust-enrichment claim arises from the same subject matter as these Agreements considering that GLWA bases its claim on its provision of the "the title and possession of the Property" without receipt of the "the [full] amount of GLWA's relocation costs." GLWA has pleaded a valid breach-of-contract claim as noted earlier and for the reasons noted in the July 15, 2024 Opinion and Order. GLWA therefore cannot sustain an unjust-enrichment claim premised on the same subject matter.

III. CONCLUSION

IT IS ORDERED:

1. The Court GRANTS IN PART and DENIES IN PART MDOT's motion for summary disposition.
2. The Court DENIES GLWA's motion for summary disposition.
3. The Court will conduct a trial limited to the meaning of the term "eligible relocation costs" as it appears in the Transfer Agreement.
4. GLWA's claims for promissory estoppel, declaratory judgment, and restitution/unjust enrichment are DISMISSED WITH PREJUDICE.
5. This Court will enter a separate pretrial order.
6. This order is not a final order and does not resolve all issues in this action.

Date: September 3, 2026

Sima G. Patel
Judge, Court of Claims