[Cite as *Johnson v. Lindquist*, 2012-Ohio-5474.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Mary L. Johnson et al.,	:	
Plaintiffs-Appellants,	:	
		No. 12AP-140
v.	:	(M.C. No. 2008 CVF 57006)
Sherrill F. Lindquist,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on November 27, 2012

Thomas L. Weber, for appellants.

James G. Vargo, for appellee.

APPEAL from the Franklin County Municipal Court

DORRIAN, J.

{¶1} Plaintiffs-appellants, Mary L. Johnson and Charles Conroy, appeal from the January 24, 2012 judgment of the Franklin County Municipal Court granting judgment in favor of defendant-appellee, Sherrill F. Lindquist.

{¶2} In 1998, at the suggestion of appellee, appellants invested $15,000 in a start-up airline venture. The venture failed. Over the course of the next several years, appellee told appellants that he intended to pay back the appellants for their lost investment because it was "the right thing to do" and because he had a "moral obligation" to do so. Indeed, appellee began making payments to appellants and ultimately paid them $5,600. However, appellee was not able to make any additional payments.

{¶3} On December 5, 2008, appellants filed a complaint against appellee alleging he owed them $9,400 in damages, plus costs and interest, for breach of contract, breach

of implied contract, unjust enrichment, and promissory estoppel. Appellants were granted a default judgment on March 10, 2010; however, the trial court granted relief from judgment on March 28, 2011. In lieu of trial, the parties submitted briefs and joint stipulations of fact to the trial court for a decision.

{¶4} On January 24, 2012, the trial court entered judgment in favor of appellee. The trial court found the appellants had not met the burden of proof and were not entitled to judgment on any of their claims. The court dismissed the case with prejudice. This appeal followed.

{¶5} Appellants bring the following assignment of error:

> The lower court erred as a matter of law in dismissing with prejudice appellants' claims that Appellee was unjustly enriched and that he was, moreover, estopped from denying the validity of said claims asserted against him.

{¶6} At the outset, we note that, although in their discussion of law and argument appellants raise issues related to the trial court's finding that the breach of contract and implied contract claims fail, appellants did not assign error as to this particular finding. Furthermore, at oral argument, appellants' counsel confirmed that his appeal addressed only the unjust enrichment and estoppel claims. Therefore, we will not address issues raised regarding the trial court's findings on the breach of contract and implied contract claims.

{¶7} As noted by the trial court, in order to prevail on a claim of promissory estoppel, a plaintiff must prove "(1) a clear and unambiguous promise, (2) reliance by the party to whom the promise was made, (3) the reliance is reasonable and foreseeable, and (4) the party relying on the promise must have been injured by the reliance." (June 24, 2012 Decision at 4, citing *Reif v. Wagenbrenner*, 10th Dist. No. 10AP-948, 2011-Ohio-3597, ¶ 42.) Appellants argue that they reasonably relied upon the repeated written assurances and representations of appellee that he would repay the money they invested and that a clear injustice would arise if appellee were free to abandon his payment obligation.

{¶8} Even if we were to accept this as true, appellants would only prove the second and third elements of promissory estoppel. The trial court found, however, that

they did not meet the first and fourth elements of promissory estoppel. The court found that there was no clear and unambiguous promise and no evidence that appellants were injured by their reliance on the promise. Having reviewed the stipulated facts, we agree. Therefore, we find no error with the trial court's finding as to promissory estoppel.

{¶9} Appellants also argue that the trial court should have applied the doctrine of quasi-contracts, which is equitable in nature and creates an obligation that arises from a voluntary and lawful act of the parties in the absence of an agreement. In order to recover under a theory of unjust enrichment or quasi-contract, a plaintiff must prove by a preponderance of the evidence that " '(1) the plaintiff conferred a benefit upon the defendant, (2) the defendant had knowledge of such benefit, and (3) the defendant retained the benefit under circumstances where it would be unjust for him to retain that benefit without payment.' " *Anchor Realty Constr., Inc. v. New Albany Links Golf Course Co., Ltd.*, 10th Dist. No. 09AP-840, 2010-Ohio-6347, quoting *Redi Mix Co., Inc. v. Steveco, Inc.*, 4th Dist. No. 95CA3 (Feb. 6, 1996), citing *Hambleton v. R.G. Barry Corp.*, 12 Ohio St.3d 179, 183 (1984).

{¶10} The trial court, considering the nature of the initial investment, found that the appellants' investment cannot be a "benefit conferred upon the [appellee]" and that, even if it were, the benefit was not retained "under circumstances where it would be unjust to do so without payment." (June 24, 2012 Decision, at 4.) We agree. This court has previously opined that "[o]ne factor in deciding whether there has been unjust enrichment is the party's expectation when the loss was incurred. *Concrete Designers, Inc. v. Demmler*, 10th Dist. No. 95APE06-722 (Dec. 28, 1995); *see Paugh & Farmer, Inc. v. Menorah Home for Jewish Aged*, 15 Ohio St.3d 44, 46 (1984). Thus, where a "loss" resulted from a risk the plaintiff knowingly undertook, and there was no evidence from which to infer that the plaintiff had an expectation that the defendant would reimburse him for amounts incurred, we have found it was not inequitable for plaintiff to bear the loss. *Concrete Designers, Inc.* Similarly here, appellants incurred their "loss" when they initially invested in the start-up airline. The evidence shows that at that time they understood the risk of their investment and had no expectation of reimbursement. Therefore, it was not inequitable for appellants to bear this loss, regardless of appellee's ultimate desire and assertion that he would reimburse them.

{¶11} Therefore, we find that the trial court did not err in finding that appellants had not proven the elements of promissory estoppel or unjust enrichment. Appellants' assignment of error is overruled, and the judgment of the Franklin County Municipal Court is affirmed.

Judgment affirmed.

BROWN, P.J., and CONNOR, J., concur.