**[Cite as *Bender v. Logan*, 2016-Ohio-5317.]**

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

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| TRINA L. BENDER, et al., | : | |
| Plaintiffs-Appellants, | : | Case No. 14CA3677 |
| vs. | : | |
| JULIE A. LOGAN, et al., | : | DECISION & JUDGMENT ENTRY |
| Defendants-Appellees. | : | |

APPEARANCES:

James R. Cummins and Adam S. Brown, Cummins & Brown, LLC, Cincinnati, Ohio, for Appellants.

William A. Posey, Charles M. Miller, Sophia R. Jannace, Keating, Muething & Klekamp, PPL, Cincinnati, Ohio, and Stanley C. Bender, Portsmouth, Ohio for Appellees Julie A. Logan, Scott D. Logan, Burg DMI, LLC, Julie A. Logan Revocable Trust, and Elite Institute, Inc.[1]

Jason D. Winter and Holly Marie Wilson, Reminger Co., LPA, Cleveland, Ohio, for Appellee Joshua Howard.

CIVIL CASE FROM COMMON PLEAS COURT
DATE JOURNALIZED: 8-1-16
ABELE, J.

{¶ 1} This is an appeal from a Scioto County Common Pleas Court summary judgment entered in favor of Julie A. Logan, Scott D. Logan, Burg DMI, LLC, the Julie A. Logan Revocable Trust, Elite Institute, Inc. (the Logan defendants), and Joshua Howard, defendants below and appellees herein. Trina L. Bender and Mark K. Bender, plaintiffs below and appellants herein, assign the following errors for review:

[1] Although appellants' and the Logan defendants' appellate briefs name "Elite Industries, Inc.," as a defendant on their cover pages, the complaint and subsequent trial court filings refer to the corporation as Elite Institute, Inc.

FIRST ASSIGNMENT OF ERROR:

"THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED PLAINTIFF-APPELLANTS' MOTION TO STAY PENDING MOTIONS FOR SUMMARY JUDGMENT UNDER CIV.R. 56(F) AND MOTION TO ALLOW DISCOVERY."

SECOND ASSIGNMENT OF ERROR:

"THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO APPELLEES JULIE A. LOGAN, SCOTT D. LOGAN, BURG DMI, LLC, JULIE A. LOGAN REVOCABLE TRUST, ELITE INSTITUTE, INC. AND JOSHUA D. HOWARD."

## I

## BACKGROUND

### A

### FACTS

{¶ 2} This case arises out of an agreement among former friends to open a cosmetology school. Trina Bender and her friend, Julie Logan, decided to open a cosmetology school called Elite Institute. Julie and her husband, Scott, agreed to fund the corporation. Julie served as Elite's business manager and oversaw the finances. Trina used her knowledge as a cosmetologist to prepare the school for students and was a lead instructor. Trina's husband, Mark, provided labor to help oversee the renovations to the building that would house Elite and provided security for the school. Burg DMI (a Logan-owned entity) owned the building that would house Elite.

{¶ 3} The parties dispute many of the facts that surrounded the formation of Elite, including the alleged oral promises and representations.[2] According to Trina, she and Julie agreed that they would be equal partners with equal governance rights and that Elite would pay Trina and Mark each a $60,000 annual salary. According to the Logans, they did not agree to equally share control over Elite with Trina. Instead, the Logans believed that because they invested significant sums of money in Elite, and appellants invested none, the Logans would retain control of the corporation, while Julie and Trina would equally share any profits. The parties do not dispute that Joshua Howard, the Logans' attorney, prepared the corporate formation documents.

{¶ 4} In February 2011, appellants met with the Logans and signed various corporate documents, including a subscription to shares agreement that issued fifty class B shares to Trina, a stock certificate for class B nonvoting shares issued to Trina, and employment agreements. Julie was issued fifty shares of class A stock.

{¶ 5} Apparently, neither Trina nor Mark paid much attention to the documents that they signed. Indeed, Trina admits that she "signed papers * * * that ended up hurting me in the long run because I didn't read them." Appellants did, however, note that the employment agreements stated that each would be paid an annual salary of $30,000. Appellants informed the Logans that the parties had previously verbally agreed that each would be paid $60,000 per year. According to appellants, Scott told them that he would fix the discrepancy later. Appellants thus signed the employment agreements that indicated each would be paid $30,000 per year in

[2] As we explain, infra, even if some facts remain in dispute, only disputes over genuine issues of material fact preclude summary judgment.

reliance upon Scott's assurance that he would correct the salary figures. Appellants worked at Elite for the next several months and did not receive their verbally-promised $60,000 salaries. Nor did they receive the $30,000 salaries as provided for in the agreement that they signed. Mark eventually received approximately $4,000 as payment for some of his services.

{¶ 6} According to Julie, even though the parties had signed employment agreements that indicated that Trina and Mark each would be paid an annual salary, the parties mutually understood, through verbal discussions, that none of them would receive payment from Elite until the business became profitable. Julie stated that she had in essence forgotten about the employment agreements until appellants filed their complaint.

{¶ 7} According to the Logans, shortly before the school opened in May 2012 they realized that they would need to continue to fund the school for two years before the school could receive financial aid. Because they determined that they could not afford to fund the school if they received only half of the net operating loss, the Logans concluded that their options were to close the school or to have Julie hold all the equity. The Logans claim that they, along with Trina, decided to transfer Trina's class B shares to Julie's trust. Trina, however, denies that she verbally agreed to transfer her shares to the trust.

{¶ 8} According to Trina, in July 2012 Scott told Trina that he had paperwork for her to sign and described the paperwork as "nothing major." Trina visited Scott's house and he placed the paperwork in front of her. Trina claims that Scott showed her where to sign, but that he covered the contents of the documents. Trina signed the documents without reading them or questioning Scott about them, and jokingly asked Scott whether she was signing over her house

and car. Scott replied that it was "just some paperwork." Because Trina did not read the documents, she failed to realize that this paperwork actually consisted of documents in which Trina sold her fifty percent stake in Elite to the trust and resigned from the corporation. The documents provided that the effective date of her action was December 31, 2011. Trina admits that she could have read the documents, but did not because she trusted Scott.

{¶ 9} Trina and Mark continued to work at Elite until the fall of 2012 when Trina received a phone call from Howard. Howard informed Trina that Julie wanted to dissolve the business, and offered Trina a sum of money to "walk away." Trina told Howard that she did not want to give up her "50% ownership and 50% control" of the corporation.

{¶ 10} On October 4, 2012, Trina received a letter from Howard that stated: "It has become apparent there are irreconcilable differences that have arisen between you and the corporation." The letter contained a written settlement offer and further advised Trina that if she refused to accept the offer, the corporation would be dissolved and she would be liable for one-half of the corporation's debt of approximately $500,000. The letter also informed Trina that she was relieved of all of her responsibilities and asked her not to return to the premises. Mark received a similar letter. Appellants did not sign the settlement agreements, but instead sought legal counsel.

{¶ 11} Eventually, Trina learned that the documents she signed in July 2012 transferred her shares to the trust and stated that she resigned from Elite. She also learned that the shares she had been issued when the parties initially formed the corporation were non-voting shares.

B

FEDERAL COURT PROCEEDINGS

{¶ 12} Appellants filed a complaint against the Logan defendants in federal district court that contained a federal securities fraud claim and that also asserted state law claims for fraudulent inducement, unjust enrichment, conversion, civil conspiracy, and a claim to "pierce the corporate veil" so as to hold Julie personally liable to appellants.

{¶ 13} The Logan defendants requested summary judgment, and the district court granted their motion as it related to the federal securities claim. The court determined that Trina was not justified in relying upon any alleged misrepresentations in connection with the purchase or sale of securities. Bender v. Logan, S.D.Ohio No. 1:12-CV-956, 2014 WL 2515402 (June 3, 2014). The court noted that Trina admitted that she signed the documents without reading them, and that if she had read them, she would have noticed that two classes of stock were issued. The district court found that "the documents plainly disclosed that there were two classes of stock, and that Julie was receiving a different class than Trina." Id. at *12. With respect to the documents that sold her shares to the trust and Trina's allegation that Scott covered the content of the documents and simply pointed where to sign, the court noted that Trina did not claim that Scott prevented her from reading the documents or that she asked any questions about the documents. The court found that the "documents were not complex. If she had read them, the Court has no doubt she would have understood what they said." Id. The court further determined that Trina failed to establish that she suffered a loss as a result of any alleged misrepresentation in connection with the purchase or sale of securities. Thus, the district court (1) entered summary judgment in the

Logan defendants' favor regarding appellants' federal securities fraud claim, and (2) dismissed the state law claims without prejudice.

{¶ 14} While this appeal was pending, the United States Court of Appeals for the Sixth Circuit affirmed the district court's decision that granted the Logan defendants summary judgment regarding appellants' federal securities claim. Bender v. Logan, 608 Fed.Appx. 356 (6th Cir.2015). The Sixth Circuit concluded that Trina did not justifiably rely on the Logans' alleged misrepresentations in connection with the sale of securities and that Trina's failure to read the documents that she signed rendered any reliance she placed upon the Logans' verbal representations unjustified.

C

COMPLAINT FILED IN SCIOTO COUNTY COMMON PLEAS COURT

{¶ 15} On June 27, 2014, appellants filed a complaint against the Logan defendants and Howard in the Scioto County Common Pleas Court. Appellants' complaint alleged that Julie, Scott, and Howard fraudulently induced Trina and Mark into signing employment agreements, fraudulently induced Trina to sign corporate documents with the belief that Trina would share equal control of the corporation, fraudulently induced Trina to sell her shares of stock to the trust, and fraudulently induced Trina to resign from her position at Elite. Appellants' complaint further alleged that Julie and Scott were unjustly enriched as a result of the work that appellants performed on behalf of Elite. Appellants claimed that Mark's efforts to improve the property that housed Elite unjustly enriched Burg DMI, the owner of the property. They further asserted that Elite unjustly enriched Burg DMI by making expenditures that "were surreptitiously

executed without" Trina's knowledge or approval. Appellants also alleged that the trust was unjustly enriched by obtaining Trina's stock without payment.

{¶ 16} Appellants also claimed that Julie, Scott, the trust and Howard converted Trina's stock and her share of any tax benefit associated with Elite's net operating losses. Appellants additionally alleged that Julie, Scott and Howard engaged in a civil conspiracy to commit fraud, and that the court should "pierce the corporate veil" of Elite and hold Julie personally liable for Elite's obligations to appellants. Appellants requested the court award Trina $750,000 for her 50% ownership of Elite, award Trina $135,000 for the months that she worked for Elite without pay, award Mark $110,000 for the months that he worked without pay, and award appellants $1,500,000 in punitive damages.

D

SUMMARY JUDGMENT PROCEEDINGS

{¶ 17} On July 22, 2014, the Logan defendants filed a motion for summary judgment and asserted that no genuine issues of material fact remained regarding appellants' claims for relief.[3] The Logan defendants asserted that appellants could not establish that a genuine issues of material fact remains regarding appellants' fraudulent inducement claim. With respect to appellants' claim that the Logan defendants fraudulently induced Trina to sign corporate documents that did not give Trina an equal right to control Elite, the Logan defendants argued that appellants could not establish that Trina justifiably relied upon any verbal representations.

[3] The Logan defendants also requested summary judgment regarding a counterclaim they raised against Trina, which the trial court granted. However, the propriety of the trial court's summary judgment regarding the counterclaim is not at issue in this appeal, and we do not address it.

The Logan defendants noted that appellants do not dispute that Trina failed to read or to understand the corporate formation documents that she signed, and that Trina's failure to read the documents negates the element of justifiable reliance.

{¶ 18} The Logan defendants further contended that appellants cannot establish that the Logan defendants fraudulently induced appellants into signing employment agreements with Elite. They point out that the employment agreements clearly stated that appellants each would be paid a $30,000 annual salary. They recognize appellants' claim that before appellants signed the agreements, appellants advised Scott that the parties had verbally agreed appellants each would be paid a $60,000 annual salary and that Scott promised to correct the salary figure in an addendum. The Logan defendants asserted that despite the alleged error in the employment agreements, both appellants signed the agreements that stated each would be paid a $30,000 annual salary. They thus argued that the parol evidence rule barred appellants from attempting to vary the terms of the written employment agreements that they signed with alleged oral promises.

{¶ 19} The Logan defendants next contended that no genuine issues of material fact remain regarding Trina's claim that the Logan defendants, Scott in particular, fraudulently induced her into transferring her stock to the trust and into resigning from Elite. They noted that Trina again admits that she did not read the documents before she signed them, but claims that Scott instructed her where to sign and obscured the text of the documents. They further pointed out that Trina stated that she could have read the documents if she had asked. Consequently, the

Logan defendants asserted that Trina's failure to read the documents rendered any reliance that she placed upon Scott's verbal representations unjustifiable.

{¶ 20} The Logan defendants also argued that no genuine issues of material fact remained regarding appellants' unjust enrichment claim. They asserted that a signed employment agreement covered the terms of appellants' compensation, and that appellants could not, therefore, maintain an action for unjust enrichment. The Logan defendants further claimed that appellants "acted like any other business owner who provides 'labor' without wages in the hopes of making a profit." The Logan defendants contended that Trina's transfer of stock to the trust did not unjustly enrich the trust when Trina signed the documents that authorized the transfer, and that appellants' efforts did not unjustly enrich Burg DMI, the owner of the building where Elite was located.

{¶ 21} The Logan defendants next argued that no genuine issues of material fact remained regarding appellants' conversion claim. They claimed that Trina signed the documents that transferred her stock, and, thus, they did not wrongfully exercise control over Trina's stock. The Logan defendants also asserted that appellants' failure to establish a genuine issue of material fact regarding any of their primary claims was fatal to their civil conspiracy claim.

{¶ 22} Finally, the Logan defendants argued that appellants' attempt to "pierce the corporate veil" and to hold Julie personally liable for Elite's liability to appellants failed because appellants did not explicitly include Elite in any of the causes of action set forth in their

complaint. They also asserted that Trina, a shareholder of Elite, cannot pierce the corporate veil in order to impose liability on a fellow shareholder.

{¶ 23} On August 25, 2014, Howard requested a summary judgment. Howard asserted that no genuine issues of material fact remain regarding appellants' fraudulent inducement claim because he had no contact with appellants and he made no verbal representations to appellants before they signed the documents. Howard asserted that his preparation of the corporate documents does not mean that he made any representations, but even if it did, appellants' failure to read the documents was fatal to their fraudulent misrepresentation claim.

{¶ 24} Howard further contended that no genuine issues of material fact remain regarding appellants' claim that he converted Trina's stock or her purported tax benefit. Howard claimed that he did not exercise dominion or control over Trina's stock, but instead merely prepared the documents. He further argued that Trina admitted that she signed the documents that transferred her stock, effective December 31, 2011, and, the facts fail to show that any control he exercised was wrongful.

{¶ 25} Howard next asserted that appellants' failure to establish a genuine issue of material fact regarding any of the claims for relief was fatal to their civil conspiracy claim.

{¶ 26} Subsequently, appellants filed Civ.R. 56(F) motions to stay appellees' summary judgment motions pending further discovery. The appellants asserted that the Logan defendants filed their summary judgment motion less than one month after appellants filed their complaint and that appellants did not have sufficient time for discovery. Appellants contended that before they could adequately respond to appellees' summary judgment motions, "they must have an

opportunity to (1) complete the depositions of the Logans, Howard, Stephenson and Brown, (2) depose Amy Sand [Howard's legal assistant], and (3) depose the former instructors and students at Elite whose affidavits are relied upon and attached to Defendants' Motion for Summary Judgment." Appellants argued that even though discovery had been conducted in the federal case that they filed, Howard was not a party to the federal case and appellants have not therefore "explored the relationships among [Howard, Julie, and Scott] regarding fraudulent inducement and the civil conspiracy among them, as well as Howard's direction to his staff to tamper with documents." Appellants further claimed that during discovery in the federal case, appellants "left Howard's deposition open because the Logans had not provided complete discovery on issues relating to Howard and his multiple representations."

{¶ 27} Appellants also claimed that they needed additional time to complete the depositions of Jack Stephenson, the Logans' lender, and Greg Brown, the Logans' accountant. Appellants asserted that neither Stephenson nor Brown "provided full discovery prior to their depositions." Appellants also requested more time to depose the six employees who submitted affidavits in support of the Logan defendants' summary judgment motion. Appellants claimed that the affidavits "directly contradict portions of" the Benders' deposition testimony and "contain assertions that lack foundation."

{¶ 28} Appellees opposed appellants' motion to continue and asserted that appellants did not show that further discovery would produce evidence to help establish a genuine issue of material fact. Howard and the Logan defendants additionally argued that (1) appellants failed to

comply with Civ.R. 56(F) by failing to submit an affidavit of a party, and (2) appellants had adequate time for discovery during the federal court proceedings.

{¶ 29} On September 2, 2014, the trial court held a telephonic conference to consider several matters, including appellants' Civ.R. 56(F) motion. Appellants explained that they needed to re-depose the Logans and Howard regarding their relationship and they also wanted to question Howard regarding the responsibilities within his office for maintaining records and stated that this issue arose "because during his last deposition, Mr. Howard refused to say whether he put a notation on Ms. Bender's stock certificates that purported to give it a new effective date." Appellants also wished to question Howard regarding his role with Burg DMI, the Logan Trust, the lender, and the accountant. Appellants also wanted to (1) re-depose the accountant to ask "what facts he used to base 2011, 2012 tax returns for Elite on. [sic]"; (2) depose Howard's legal assistant because they claimed that she wrote the cancellation date on Trina's stock certificate, and appellants needed to know if Howard's office had a practice regarding back-dating of documents; and (3)to depose the six employees who submitted affidavits in support of the Logan defendants' summary judgment motion.

{¶ 30} On September 8, 2014, the trial court denied appellants' motion to stay the summary judgment proceedings to allow further discovery. On October 1, 2014, appellants filed an opposition memorandum and asserted that the following facts remain disputed: (1) whether the Logans promised Trina that she would be a fifty-fifty partner with equal rights of control and governance; (2) whether Scott knew that it would take two years for Elite to receive certification in order to be eligible for financial aid; and (3) whether Trina surrendered her stock to the trust

and whether she voluntarily resigned. Appellants claimed that the following facts are uncontested: (1) Trina worked at Elite for twenty-two months without pay; (2) Mark worked at Elite for eighteen months and received less than $4,000; (3) the value of Trina's services was at least $137,500, and the value of Mark's was at least $110,000; and (4) the present day value of Trina's shares was $751,874.

{¶ 31} Appellants also alleged that genuine issues of material fact remain regarding their fraudulent inducement claim. Appellants claimed that the Logans made false representations to induce them to work at Elite, i.e., that Trina and Julie would be equal partners with equal governance rights and that Elite would pay Trina and Mark each a $60,000 annual salary. Appellants argued that Julie did not intend to give Trina equal rights of control and did not intend to pay Trina and Mark a salary until Elite was profitable.

{¶ 32} Appellants additionally claimed that genuine issues of material fact remain regarding whether Scott fraudulently induced Trina into transferring her stock to the trust and into resigning from Elite. Appellants asserted that Scott texted Trina that he needed her to sign some documents–"nothing major–needing 2 minutes max" and that when Scott presented Trina with the documents, he concealed the text and only revealed the signature line. Appellants alleged that Trina asked Scott what the documents were, and Scott told her they were "[j]ust some paper we forgot in the beginning. No big deal."

{¶ 33} Appellants also asserted that genuine issues of material fact remain regarding their claim that Howard fraudulently induced Trina to relinquish control of her stock with an effective date of December 31, 2011. Appellants argued that Howard's backdating was fraudulent and

that Howard's request that appellants sign a settlement agreement and release is further evidence of fraud.

{¶ 34} Appellants next alleged that genuine issues of material fact remain regarding their unjust enrichment claim against the Logans, the trust, Elite, and Burg DMI. They asserted that the labor and services they provided without pay unjustly enriched the Logan defendants. Appellants disputed the Logan defendants' argument that the employment contracts govern appellants' compensation. Appellants argued that the Logan defendants never intended to honor the employment agreements and that the employment agreements are invalid contracts due to a lack of meeting of the minds.

{¶ 35} Appellants further asserted that genuine issues of material fact remain regarding their conversion claim. They assert that genuine issues of material fact exist as to whether Scott, Julie, and the trust converted Trina's shares. Appellants contend that Trina's statement that Scott concealed the text of the document purporting to transfer her shares to the trust shows that genuine issues of material fact remain as to whether Scott, Julie, and the trust wrongfully exercised control over Trina's stock. Essentially, appellants asserted that Scott, Julie, and the trust obtained control of her stock by deceit, i.e., a wrongful act.

{¶ 36} Appellants also argued that Howard wrongfully withheld Trina's stock certificate and Trina's and Mark's employment agreements.

{¶ 37} Appellants next contended that genuine issues of material fact remain regarding their civil conspiracy claim:

> "Julie and Scott Logan, together with Howard, maliciously combined to cause economic injury to Trina and Mark Bender. Julie and Scott Logan

> committed the torts of fraudulent inducement, unjust enrichment and conversion. Howard conspired to fraudulently induce Trina to accept nonvoting shares of Elite that gave Julie one hundred percent control of Elite and to fraudulently induce Trina to sell her fifty percent ownership interest in Elite for $1.00, as well as withholding her stock certificate and delivering it without authorization to Scott. Howard committed independent torts of conversion and fraudulent inducement."

{¶ 38} Appellants further claimed that genuine issues of material fact remain regarding their request to pierce Elite's corporate veil and to hold Julie personally liable. Appellants disputed the Logan defendants' argument that appellants' complaint failed to assert a cause of action against Elite and instead alleged that they asserted an unjust enrichment claim against Elite.

{¶ 39} Appellants also argued that summary judgment was inappropriate because they presented uncontroverted evidence regarding the damages they suffered as a result of appellees' conduct. Appellants assert that they presented evidence that the present value of Trina's shares at the time of her loss was $751,874, that the minimum value of Trina's services provided to Elite was $137,500, and the minimum value of Mark's services provided to Elite was $110,000.

{¶ 40} On December 1, 2014, the trial court, by separate decisions, entered summary judgment in Howard's and the Logan defendants' favor. The court determined that no genuine issues of material fact remain regarding appellants' fraudulent inducement claim against Howard. The court concluded that the facts failed to show that Howard had any communication with appellants before they signed any of the documents, or that he made any representations to appellants so as to impose liability for fraudulent inducement. The court found that Howard's preparation of the documents that appellants signed did not constitute a representation for

purposes of a fraudulent inducement claim. The court further concluded that whether Howard backdated the stock certificate or Trina's resignation letter was not a material issue that precluded summary judgment.

{¶ 41} With respect to appellants' fraudulent inducement claim against the Logan defendants as it pertained to the corporate formation and employment agreements appellants signed, the court found that appellants' failure to read the documents they signed was fatal to their claim. The court, however, found that genuine issues of material fact remain regarding appellants' fraudulent inducement claim as it related to the July 2012 transfer of Trina's stock and resignation. The court determined that genuine issues of material fact remain as to whether Scott misrepresented the nature of the documents to Trina. The court nevertheless concluded that the Logan defendants were entitled to summary judgment regarding appellants' fraudulent inducement claim because appellants failed to demonstrate that genuine issues of material fact remain as to whether they suffered a loss as a result of Trina unknowingly transferring her stock to the trust and resigning from Elite.

{¶ 42} The court next determined that no genuine issues of material fact remain concerning appellants' unjust enrichment claim because appellants' employment agreements precluded them from maintaining an unjust enrichment action for services they rendered without pay. The court additionally found that appellants did not present any evidence regarding the number of hours they worked or the actual benefits they provided. With respect to Mark's unjust enrichment claim against Burg DMI for alleged improvements he made to the building, the court determined that appellants failed to establish that a genuine issue of material fact exists

regarding the amount of any benefit Mark purportedly conferred. The court also determined that appellants failed to establish that genuine issues of material fact remain regarding their claim that the trust was unjustly enriched by obtaining Trina's fifty shares of stock. The court found that appellants did not set forth any admissible evidence regarding the value of Trina's stock at the time of transfer and that the only admissible evidence showed that the stock had a negative value at the time of transfer.

{¶ 43} The trial court also concluded that no genuine issues of material fact remain as to whether appellees converted appellants' property. The court recognized that the Logan defendants may have wrongfully exerted control over Trina's stock, but determined that no genuine issues of material fact remain concerning this claim. The court noted that it had determined that appellants could not establish the loss they suffered in order to succeed on their fraudulent inducement claim arising out of this transaction, and that this logic applied equally to their conversion claim arising out of the stock transfer. The court further found that no genuine issues of material fact remain as to whether the Logan defendants' converted appellants' alleged tax benefit. The court noted that appellants did not present any evidence as to the value of the alleged tax benefit.

{¶ 44} The court additionally determined that no genuine issues of material fact remain as to whether Howard converted appellants' property. The court found that the facts failed to establish that Howard wrongfully exerted control over appellants' property, but instead established that he acted consistent with his duties as an attorney.

{¶ 45} The court also concluded that no genuine issues of material fact remain regarding appellants' civil conspiracy claim. The court found that because appellants could not establish that any genuine issues of material fact precluded summary judgment regarding the underlying torts, their civil conspiracy claim could not survive. For similar reasons, the court determined that summary judgment was appropriate regarding appellants' request to pierce the corporate veil and hold Julie personally liable. This appeal followed.

II

{¶ 46} For ease of discussion, we first address appellant's second assignment of error, wherein appellants argue that the trial court improperly entered summary judgment in appellees' favor. Appellants contend that genuine issues of material fact remain regarding each claim for relief asserted in their complaint.

A

SUMMARY JUDGMENT STANDARD

{¶ 47} Generally, appellate courts conduct a de novo review of trial court summary judgment decisions. E.g., Snyder v. Ohio Dept. of Nat. Resources, 140 Ohio St.3d 322, 2014–Ohio–3942, 18 N.E.3d 416, ¶2; Troyer v. Janis, 132 Ohio St.3d 229, 2012–Ohio–2406, 971 N.E.2d 862, ¶6; Grafton v. Ohio Edison Co., 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Accordingly, an appellate court must independently review the record to determine if summary judgment is appropriate and need not defer to the trial court's decision. E.g., Brown v. Scioto Bd. of Commrs., 87 Ohio App.3d 704, 711, 622 N.E.2d 1153 (4th Dist. 1993); Morehead v. Conley, 75 Ohio App.3d 409, 411–12, 599 N.E.2d 786 (4th Dist. 1991). To determine

whether a trial court properly granted a summary judgment motion, an appellate court must review the Civ.R. 56 summary judgment standard, as well as the applicable law. Snyder at ¶2. Civ.R. 56(C) provides in relevant part:

> * * * Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. * * * *

{¶ 48} Thus, pursuant to Civ.R. 56, a trial court may not grant summary judgment unless the evidence demonstrates that: (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) after viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can come to but one conclusion, and that conclusion is adverse to the nonmoving party. E.g., Snyder at ¶20; Transtar Elec., Inc. v. A.E.M. Elec. Servs. Corp., 140 Ohio St.3d 193, 2014–Ohio–3095, 16 N.E.3d 645, ¶8; Smith v. McBride, 130 Ohio St.3d 51, 2011–Ohio–4674, 955 N.E.2d 954, ¶12; New Destiny Treatment Ctr., Inc. v. Wheeler, 129 Ohio St.3d 39, 2011–Ohio–2266, 950 N.E.2d 157, ¶24; Vahila v. Hall, 77 Ohio St.3d 421, 429–30, 674 N.E.2d 1164 (1997).

{¶ 49} We additionally observe that not every factual dispute precludes summary judgment. Rather, only disputes as to the material facts preclude summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)

(stating that "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment."). "As to materiality, the substantive law will identify which facts are material." Id.; accord Turner v. Turner, 67 Ohio St.3d 337, 340, 1993-Ohio-176, 617 N.E.2d 1123 (1993). Thus, the mere existence of factual disputes does not necessarily preclude summary judgment. See Water Works Supplies, Inc. v. Grooms Construction, Co., 4th Dist. Highland No. 04CA12, 2005-Ohio-1292, ¶10

{¶ 50} In the case at bar, the parties dispute several facts. As we explain below, however, we do not believe that those factual disputes preclude summary judgment under the circumstances present in the case sub judice.

B

FRAUDULENT INDUCEMENT

{¶ 51} Appellants assert that the trial court incorrectly awarded appellees summary judgment regarding their fraudulent inducement claim. In particular, appellants contend that genuine issues of material fact remain regarding whether Howard fraudulently induced appellants to ratify the Logan defendants' actions in obtaining Trina's stock and in asking Trina to resign by requesting that appellants sign a settlement agreement that stated that the effective date of Trina's transfer of shares and resignation was December 31, 2011. Appellants further argue that the trial court wrongly determined that no genuine issues of material fact remain as to whether appellants sustained any loss as a result of the Logan defendants' conduct in obtaining Trina's stock and her resignation. They assert that appellants testified regarding the amount of work they performed for Elite, without pay, and that also offered expert testimony as to the value of the services that

they provided. Appellants further complain that the trial court improperly discounted their experts' testimony regarding the value of Trina's stock at the time the Logans fraudulently induced her to transfer it to the trust.

{¶ 52} A successful fraudulent inducement claim requires clear and convincing proof of each of the following elements:

> "(1) a representation (or concealment of a fact when there is a duty to disclose) (2) that is material to the transaction at hand, (3) made falsely, with knowledge of its falsity or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred, and (4) with intent to mislead another into relying upon it, (5) justifiable reliance, and (6) resulting injury proximately caused by the reliance."

Volbers-Klarich v. Middletown Mgt., Inc., 125 Ohio St.3d 494, 2010-Ohio-2057, 929 N.E.2d 434, ¶27, citing *Burr v. Stark Cty. Bd. of Commrs.*, 23 Ohio St.3d 69, 73, 491 N.E.2d 1101 (1986); Simon Property Group, L.P. v. Kill, 3rd Dist. Allen No. 1-09-30, 2010-Ohio-1492, ¶17, citing Mid–America Tire, Inc. v. PTZ Trading Ltd., 95 Ohio St.3d 367, 768 N.E.2d 619, 2002–Ohio–2427, ¶62 ("Fraudulent inducement must be proven by clear and convincing evidence.").

{¶ 53} Generally, the "'question of justifiable reliance is one of fact and requires an inquiry into the relationship between the parties.'" Mar Jul, L.L.C. v. Hurst, 4th Dist. Washington No. 12CA6, 2013-Ohio-479, ¶61, quoting Crown Property Dev., Inc. v. Omega Oil Co., 113 Ohio App.3d 647, 657, 681 N.E.2d 1343 (12th Dist. 1996). When, however, no genuine "issues of material fact exist as to whether a party justifiably relied on a misrepresentation, summary judgment on that issue is appropriate." March v. Statman, 1st Dist.

Hamilton No. C-150337, 2016-Ohio-2846, ¶22, citing Donson v. Comey & Shepherd, Inc., 1st Dist. Hamilton No. C–920105 (Apr. 7, 1993).

{¶ 54} The rule that reliance be justified is based upon policy and purpose:

> "'The rule of law is one of policy and its purpose is, while suppressing fraud on the one hand, not to encourage negligence and inattention to one's own interests. There would seem to be no doubt that while in ordinary business transactions, individuals are expected to exercise reasonable prudence and not to rely upon others with whom they deal to care for and protect their interests, this requirement is not to be carried so far that the law shall ignore or protect positive, intentional fraud successfully practiced upon the simple-minded or unwary."

Amerifirst Savings Bank of Xenia v. Krug, 136 Ohio App.3d 468, 495–496, 613 N.E.2d 1060 (2nd Dist. 1999), quoting 50 Ohio Jurisprudence 3d (1984), Fraud and Deceit, Section 132 (citations omitted).

{¶ 55} In determining whether reliance was justified, the factfinder may "'"consider the various circumstances involved, such as the nature of the transaction, the form and materiality of the representation, the relationship of the parties, the respective intelligence, experience, age, and mental and physical condition of the parties, and their respective knowledge and means of knowledge."'" Mar Jul at ¶62, quoting Feliciano v. Moore, 64 Ohio App.2d 236, 241, 412 N.E.2d 427 (1979), quoting 37 American Jurisprudence 2d [1968] 330, 332, Fraud and Deceit, Section 248.

{¶ 56} Additionally, "[t]he law in Ohio is well-settled that one competent to contract who signs a written document without reading it is bound to its terms, assumes any risks attendant to his omission, and cannot avoid its consequences by asserting detrimental reliance upon the representations (or presumably the misrepresentations as well) of others." Cossin v. Ron Rush

Motor Sales, 10th Dist. Franklin No. 86AP-182, 1986 WL 10750, *2 (Sept. 25, 1986); accord Long v. Northern Illinois Classic Auto Brokers, 9th Dist. Summit No. 23259, 2006-Ohio-6907, ¶12. Thus, courts have understandably been unwilling to find justifiable reliance when a party failed to read a document before signing it. "'A person of ordinary mind cannot be heard to say that he was misled into signing a paper which was different from what he intended, when he could have known the truth by merely looking when he signed.'" ABM Farms v. Woods, 81 Ohio St.3d 498, 503, 692 N.E.2d 574 (1998), quoting McAdams v. McAdams, 80 Ohio St. 232, 240-241, 88 N.E. 542, 544 (1909), and citing Upton v. Tribilcock, 91 U.S. 45, 50, 23 L.Ed. 203 (1875) ("It will not do for a man to enter into a contract, and, when called upon to respond to its obligations, to say that he did not read it when he signed it, or did not know what it contained. If this were permitted, contracts would not be worth the paper on which they are written."). Instead, "parties to contracts are presumed to have read and understood them and * * * a signatory is bound by a contract that he or she willingly signed." Preferred Capital, Inc. v. Power Eng. Group, Inc., 112 Ohio St.3d 429, 2007-Ohio-257, 860 N.E.2d 741, ¶10, citing Haller v. Borror Corp., 50 Ohio St.3d 10, 14, 552 N.E.2d 207 (1990).

{¶ 57} In the case sub judice, we agree with the trial court's ultimate decision to grant appellees summary judgment, but do so for different reasons. The trial court determined that genuine issues of material fact remain as to whether Scott fraudulently induced Trina into signing the stock transfer agreement and her resignation letter based upon Trina's statement that Scott concealed the text of the documents, but we believe that Trina's failure to read these documents, as well as other corporate documents, is fatal to her fraudulent inducement claim.

{¶ 58} Trina does not dispute that she failed to read the corporate formation documents, the documents regarding her Class B shares, the document in which she transferred her shares to the trust, or the document in which she resigned from her position at Elite. Nor does she raise any serious dispute that had she read any of these documents, she would have seen that her shares were nonvoting shares, that she sold her shares to the trust, or that she resigned from Elite. Instead, she claims that she should be excused from the language of the documents because the Logans allegedly lied to her and concealed the text when she signed the stock transfer agreement and her resignation letter. However, even if the Logans lied, or if Scott somehow concealed the text, Trina failed to set forth any evidence that she would not have been permitted to read the documents had she asked. In fact, Trina jokingly asked Scott whether she was signing away her house and her car. Trina thus demonstrated at least some knowledge of the rights that she could theoretically surrender by signing documents without having read them. Her decision to not read the documents is the principal cause of any loss that she may have suffered. We believe that under the circumstances of this case, it would be unreasonable to find that Trina justifiably relied upon any of the Logans' representations when she could have discovered the contents of the documents simply by reading them.

{¶ 59} Furthermore, even if the documents were "like Chinese" to her, Trina cannot simply disclaim responsibility for signing the documents. Instead, she had a duty to understand the documents that she signed and cannot now claim fraudulent inducement in an attempt to disavow them. Pettit v. Glenmoor Country Club, Inc., 5th Dist. Stark No. 2013CA00108, 2014-Ohio-902, ¶¶31-32 (recognizing that party has obligation to understand terms of contract

before signing); Cheap Escape Co. Inc. v. Crystal Windows & Doors Corp., 8th Dist. No. 93739, 2010–Ohio–5002, ¶17 ("A party entering a contract has a responsibility to learn the terms of the contract prior to agreeing to its terms.").

{¶ 60} A different analysis applies with respect to appellants' employment agreements. Trina and Mark apparently read, at the least, the section of the employment agreements that stated that each would be paid a $30,000 annual salary. Thus, appellants were not ignorant of the contents of the employment agreements. Instead, they signed despite the alleged discrepancy. Appellants claim that they signed the employment agreements with the allegedly incorrect salary figures based upon Scott's assurances that he would correct the documents to reflect that each would be paid a $60,000 annual salary. Appellants, therefore, have shown that genuine issues of material fact remain regarding whether Scott falsely made a material representation, i.e., that he would correct the salary figures, with the intent to mislead appellants into relying upon it. Moreover, nothing appears patently unreasonable about appellants' reliance upon Scott's representation that he would correct the salary figures. We believe, however, that the parol evidence rule precludes appellants from maintaining a fraudulent inducement claim based upon an alleged verbal agreement at variance with the written document that they signed.

> "The parol evidence rule is a rule of substantive law that prohibits a party who has entered into a written contract from contradicting the terms of the contract with evidence of alleged or actual agreements. 'When two parties have made a contract and have expressed it in a writing to which they have both assented as the complete and accurate integration of that contract, evidence, whether parol or otherwise, of antecedent understandings and negotiations will not be admitted for the purpose of varying or contradicting the writing.'"

Ed Schory & Sons, Inc. v. Soc. Natl. Bank, 75 Ohio St.3d 433, 440, 662 N.E.2d 1074 (1996) (citation omitted), quoting 3 Corbin, Corbin on Contracts 357, Section 573 (1960), and citing Charles A. Burton, Inc. v. Durkee, 158 Ohio St. 313, 49 O.O. 174, 109 N.E.2d 265 (1952). Thus, "'absent fraud, mistake or other invalidating cause, the parties' final written integration of their agreement may not be varied, contradicted or supplemented by evidence of prior or contemporaneous oral agreements, or prior written agreements.'" Galmish v. Cicchini, 90 Ohio St.3d 22, 27, 734 N.E.2d 782 (2000), quoting 11 Williston on Contracts (4 Ed.1999) 569-570, Section 33:4. Consequently, "the parol evidence rule does not prohibit a party from introducing parol or extrinsic evidence for the purpose of proving fraudulent inducement." Id. at 27-28 (citations omitted).

{¶ 61} The parol evidence rule does apply to fraudulent inducement claims that allege "that the inducement to sign the writing was a promise, the terms of which are directly contradicted by the signed writing." *Marion Prod. Credit Assn. v. Cochran*, 40 Ohio St.3d 265, 533 N.E.2d 325 (1988), paragraph three of the syllabus. "Accordingly, an oral agreement cannot be enforced in preference to a signed writing which pertains to exactly the same subject matter, yet has different terms." *Id.* "In other words, 'a fraudulent inducement case is not made out simply by alleging that a statement or agreement made prior to the contract is different from that which now appears in the written contract. Quite to the contrary, attempts to prove such contradictory assertions is exactly what the Parol Evidence Rule was designed to prohibit.'" Galmish, 90 Ohio St.3d at 29, quoting Shanker, Judicial Misuses of the Word Fraud to Defeat the Parol Evidence Rule and the Statute of Frauds (With Some Cheers and Jeers for the Ohio

Supreme Court) (1989), 23 Akron L.Rev. 1, 7. Thus, although the parol evidence rule does not flatly prohibit extrinsic evidence in order to prove fraudulent inducement, the rule does prohibit such evidence if the evidence would contradict the express terms of the signed writing.

{¶ 62} In the case at bar, appellants seek to prove fraudulent inducement by introducing extrinsic evidence of the Logans' alleged oral promises to pay each a $60,000 annual salary and that Scott would correct the employment agreements. However, evidence that each would receive a $60,000 annual salary directly contradicts the terms of the written employment agreements. Consequently, the parol evidence rule prohibits appellants from introducing extrinsic evidence to contradict the terms of their employment agreements. Thus, appellants are unable to establish their fraudulent inducement claims based upon the employment agreements.[4]

{¶ 63} For the same basic reasons we discussed supra, the trial court properly determined that Howard is entitled to summary judgment. Even if Howard made any misrepresentations to appellants via the documents that he prepared, appellants' failure to read them is fatal to their claim.

{¶ 64} Appellants nevertheless assert that the trial court wrongly determined that no genuine issues of material fact remain as to whether they suffered damages as a result of the Logan defendants' fraudulent misrepresentation. Appellants, however, have not shown that genuine issues of material fact remain regarding other elements of their fraudulent inducement claim. Whether they suffered damages as a result of appellees' alleged fraudulent inducement

[4] We additionally observe that appellant's unjust enrichment claim disavows the validity of the written employment agreements, see infra, yet their fraudulent inducement claim appears to presuppose the validity of the agreements.

is, therefore, a moot issue. State ex rel. Cincinnati Enquirer v. Hunter, 141 Ohio St.3d 419, 2014-Ohio-5457, 24 N.E.3d 1170, ¶4 (internal quotations omitted) (explaining that issues are moot "when they are or have become fictitious, colorable, hypothetical, academic or dead"); State v. Hudnall, 4th Dist. Lawrence No. 15CA8, 2015-Ohio-3939, ¶7 ("A[n issue] is moot when a court's determination on a particular subject matter will have no practical effect on an existing controversy."). Thus, we need not address this aspect of appellants' first assignment of error. See App.R. 12(A)(1)(c).

C

UNJUST ENRICHMENT

{¶ 65} Appellants next argue that the trial court improperly entered summary judgment in the Logan defendants' favor regarding their unjust enrichment claim. They contend that genuine issues of material fact remain as to whether they conferred a benefit upon the Logans, personally, and as to the amount of any benefit conferred upon the Logan defendants, collectively. We again agree with the trial court's ultimate decision, albeit for different reasons.

{¶ 66} "[U]njust enrichment is a quasicontractual theory of recovery." Dailey v. Craigmyle & Son Farms, L.L.C., 177 Ohio App.3d 439, 2008–Ohio–4034, 894 N.E.2d 1301 (4th Dist.), ¶20, citing Hummel v. Hummel, 133 Ohio St. 520, 14 N.E.2d 923 (1938), paragraph one of the syllabus. "[L]iability in quasi-contract arises out of the obligation cast by law upon a person in receipt of benefits which he is not justly entitled to retain.'" Hambleton v. R.G. Barry Corp., 12 Ohio St.3d 179, 183, 465 N.E.2d 1298 (1984), quoting Hummel, 133 Ohio St. at 525.

{¶ 67} Unjust enrichment occurs when a person "has and retains money or benefits which in justice and equity belong to another." Hummel, 133 Ohio St. at 528. An unjust enrichment claim is intended "'not to compensate the plaintiff for any loss or damage suffered by him but to compensate him for the benefit he has conferred on a defendant.'" Johnson v. Microsoft Corp., 106 Ohio St.3d 278, 2005-Ohio-4985, 834 N.E.2d 791, ¶21, quoting Hughes v. Oberholtzer, 162 Ohio St. 330, 335, 123 N.E.2d 393 (1954). Furthermore, "'enrichment alone will not suffice to invoke the remedial powers of a court of equity. Because [the plaintiff] is seeking the equitable remedies available under a claim of unjust enrichment, it must show a superior equity so that it would be unconscionable for [the defendant] to retain the benefit.'" Chesnut v. Progressive Cas. Ins. Co., 166 Ohio App.3d 299, 2006-Ohio-2080, 850 N.E.2d 751 (8th Dist.), ¶30, quoting Directory Servs. Group v. Staff Builders Internatl., Cuyahoga App. No. 78611, 2001 WL 792715 (July 12, 2001). Accordingly, to prevail on a claim of unjust enrichment, a plaintiff must demonstrate: "'(1) a benefit conferred by a plaintiff upon a defendant; (2) knowledge by the defendant of the benefit; and (3) retention of the benefit by the defendant under circumstances where it would be unjust to do so without payment (unjust enrichment).'" Johnson at ¶20, quoting Hambleton, 12 Ohio St.3d at 183.

{¶ 68} "Quantum meruit is the measure of damages afforded in an action for quasicontract." Dailey at ¶20.

> "'Quantum meruit is an equitable doctrine resting on the principle that an individual should not be permitted to unjustly enrich himself or herself at another's expense without making compensation or restitution for the benefits received.' 'Quantum meruit is generally awarded when one party confers some benefit upon another without receiving just compensation for the reasonable value

> of services rendered.' Quantum meruit implies a promise to pay the reasonable value of services rendered or materials supplied by one person for another when the services or materials are knowingly and voluntarily accepted by the recipient. The law presumes that the services or materials were given and received in the expectation of payment and implies a promise to pay what they are worth."

Beckler v. Bacon, 170 Ohio App.3d 612, 2007-Ohio-1319, 868 N.E.2d 716, ¶13 (1st Dist.) (footnotes omitted), quoting Brose v. Bartlemay, 1st Dist. Hamilton No. C-960423 (Apr. 16, 1997), and Aultman Hosp. Assn. v. Community Mut. Ins. Co., 46 Ohio St.3d 51, 55, 544 N.E.2d 920 (1989).

{¶ 69} In the absence of fraud, illegality, or bad faith, however, a plaintiff may not recover in quantum meruit when an express contract governs the parties' obligations. Aultman Hosp., 46 Ohio St.3d at 54-55; e.g., Scott Charles Laundromat Inc. v. Akron, 9th Dist. Summit No. 26125, 2012-Ohio-2886, ¶13; Bickham v. Standley, 3rd Dist. No. 8-09-1, 183 Ohio App.3d 422, 2009-Ohio-3530, 917 N.E.2d 330, ¶14; Metz v. Am. Elec. Power Co., 172 Ohio App.3d 800, 2007-Ohio-3520, 877 N.E.2d 316, ¶45 (10th Dist.); Struna v. Ohio Lottery Comm., 10th Dist. Franklin No. 03AP-787, 2004-Ohio-5576, ¶22. "There can be no implied covenant in a contract in relation to any matter that is specifically covered by the written terms of the contract." Aultman Hosp., 46 Ohio St.3d at 53-54, citing Kachelmacher v. Laird, 92 Ohio St. 324, 110 N.E. 933 (1915), paragraph one of the syllabus; accord Hughes v. Oberholtzer, 162 Ohio St. 330, 335, 123 N.E.2d 393 (1954) ("It is generally agreed that there can not be an express agreement and an implied contract for the same thing existing at the same time"). "A person is not entitled to compensation on the ground of unjust enrichment if he received from the other that which it was agreed between them the other should give in return." Ullmann v. May, 147 Ohio St. 468,

478, 72 N.E.2d 63 (1947), quoting 1 Restatement of the Law, Restitution, Section 107, at 448 cmt. A (1937). Instead, "[w]hen an express contract exists, a party must pursue a breach of contract action. The general measure of damages in a breach of contract case is the amount necessary to put the non-breaching party in the position that the party would have occupied had the breach not occurred." Loop v. Hall, 4th Dist. Scioto No. 05CA3041, 2006-Ohio-4363, ¶23, citing Osbourne v. Ahern, 4th Dist. Jackson No. 05CA9, 2005-Ohio-6517, ¶21, and S.H.Y., Inc. v. Garman, 3rd Dist. Union No. 14-04-04, 2004-Ohio-7040, ¶35.

{¶ 70} A party may, however, seek alternative theories of relief and recover "'under a quantum meruit theory if his contractual claim fails.'"[5] J. Bowers Constr. Co. v. Gilbert, 9th Dist. Summit No. 27044, 2014-Ohio-3576, 18 N.E.3d 770, ¶11, quoting Bldg. Industry Consultants, Inc. v. 3M Parkway, Inc., 9th Dist. Lorain No. 182 Ohio App.3d 39, 2009-Ohio-1910, 911 N.E.2d 356, ¶17. Moreover, "[w]hen a contract fails for a lack of 'meeting of the minds,' equity should be imposed to prevent an unjust enrichment. * * * The proper remedy is quantum meruit, or the value of the benefit conferred on the other party." Myers v. Good, 4th Dist. Ross No. 06CA2939, 2007-Ohio-5361, 2007 WL 2897753, ¶12.

{¶ 71} In the case at bar, appellants signed express contracts, (their employment agreements) that governed their compensation. Thus, absent fraud, illegality, or bad faith, or a failure of the contract due to a lack of a meeting of the minds, appellants are limited to recovery for breach of contract and cannot maintain an action for unjust enrichment. Appellants suggested during the trial court proceedings that the employment contracts failed due to a lack of

a meeting of the minds. They argued that Julie's deposition testimony shows that she did not intend to honor the employment agreements and that the parties had mutually understood that none of them would receive compensation until Elite became profitable. Assuming, arguendo, that the employment agreements fail for a lack of meeting of the minds, we believe that the trial court properly determined that appellants had not established the existence of a genuine issue of material fact regarding their unjust enrichment claim.

{¶ 72} Even if appellants established genuine issues of material fact as to whether they conferred a benefit upon the Logan defendants, we do not believe that any genuine issues of material fact remain as to whether the Logan defendants' retention of those purported benefits would be unjust. Appellants do not dispute that the Logans invested significant sums of money into making Elite an operational business and that appellants did not invest any sum of money into Elite. Appellants in essence are seeking to have the Logan defendants use the money that the Logans personally invested into Elite to pay appellants for the time they spent working for Elite. Appellants overlook, however, that the parties entered into what was supposed to be a mutually-beneficial relationship. Trina was to finally achieve her dream of opening a cosmetology school without having to invest her own money. Mark would benefit via Trina's fifty percent ownership of Elite. Basically, the Logans gave appellants a once-in-a-lifetime opportunity without requiring appellants to invest any money. While we do not question whether appellants worked hard to help Elite become operational, under the circumstances present in the case at bar we cannot state that it would be unjust for the Logan defendants to

[5] Appellants' complaint did not allege a breach of contract claim.

receive any purported benefit of appellants' labor without pay. We do not believe that appellants have shown "a superior equity so that it would be unconscionable for [the Logan defendants] to retain [any] benefit." Directory Servs. Group, supra. Consequently, we believe that the trial court properly entered summary judgment in the Logan defendants' favor regarding appellants' unjust enrichment claim.

D

CONVERSION

{¶ 73} Appellants next assert that the trial court improperly entered summary judgment in the Logan defendants' and Howard's favor regarding their conversion claim.

{¶ 74} Conversion is "'the wrongful exercise of dominion over property to the exclusion of the rights of the owner, or withholding it from his possession under a claim inconsistent with his rights.'" Allan Nott Ents, Inc. v. Nicholas Starr Auto, L.L.C., 110 Ohio St.3d 112, 2006-Ohio-3819, 851 N.E.2d 479, ¶36, quoting Joyce v. Gen. Motors Corp., 49 Ohio St.3d 93, 96, 551 N.E.2d 172 (1990). To prevail on a conversion claim, a plaintiff must show: (1) ownership or right to possession of the property at the time of the conversion; (2) defendant's conversion by a wrongful act or disposition of the plaintiff's property right, and (3) damages. Mitchell v. Thompson, 4th Dist. Gallia No. 06CA8, 2007–Ohio–5362, ¶37; Orebaugh v. Am. Family Ins., 4th Dist. Highland No. 06CA11, 2007–Ohio–3891, ¶ 27.

{¶ 75} In the case sub judice, appellants claim that appellees converted Trina's stock and alleged tax benefit. Appellants allege that appellees' exercise of control over these two items was wrongful because Scott lied to her about the stock transfer agreement, and because Howard

knew of Scott's intent. Scott exercised control over Trina's stock certificates (which supposedly deprived Trina of a tax benefit) after Trina signed the document that transferred ownership of her stock to the trust. However, although Trina claims that Scott obtained the document fraudulently, and hence wrongfully, the written agreement that Trina signed controls. As we indicated in our discussion of appellants' fraudulent inducement claim, Trina did not read the stock transfer agreement before she signed it. Had she read it, she would have seen the consequences of signing the document. Her failure to read the stock transfer agreement does not make Scott's exercise of control over her stock ipso facto wrongful. Had Trina not wanted to relinquish control of her stock, she should have read the document that she signed. Accordingly, we do not believe that the trial court improperly entered summary judgment in the Logan defendants' favor regarding appellants' conversion claim.

{¶ 76} We also do not believe that the trial court incorrectly entered summary judgment in Howard's favor regarding appellants' conversion claim. Appellants appear to suggest that Howard's retention of Trina's stock certificate during her employment with Elite, as well as Howard's retention of appellants' employment agreements, was wrongful. While it does appear that Howard kept Trina's stock certificate and appellants' employment agreements in his office after appellants signed the documents, he stated that he did so as a matter of routine. We find no evidence to show that Howard's exercise of control over the documents, as Elite's attorney, was wrongful. Even if we assume for purposes of argument that Howard's exercise of control was wrongful, the record does not contain any evidence that appellants suffered damages by Howard retaining their employment agreements or by safekeeping Trina's stock certificate. His

safekeeping of the stock certificate may have made it easy for Scott to obtain it, but his safekeeping did not wrongfully deprive Trina of her stock ownership. Consequently, the trial court did not improperly enter summary judgment in Howard's favor regarding appellants' conversion claim.

E

CIVIL CONSPIRACY

{¶ 77} Appellants also assert that the trial court incorrectly entered summary judgment in appellees' favor regarding their civil conspiracy claim.

{¶ 78} A civil conspiracy is "a malicious combination of two or more persons to injure another person or property, in a way not competent for one alone, resulting in actual damages." Kenty v. Transamerica Premium Ins. Co., 72 Ohio St.3d 415, 419, 650 N.E.2d 863 (1995), quoting LeFort v. Century 21–Maitland Realty Co., 32 Ohio St.3d 121, 126, 512 N.E.2d 640 (1987), citing Minarik v. Nagy, 8 Ohio App.2d 194, 196, 193 N.E.2d 280 (8th Dist. 1963). Ohio law does not recognize civil conspiracy as an independent cause of action. Minarik, 8 Ohio App.2d at 195–196. Rather, to prevail upon a civil conspiracy claim, a plaintiff must demonstrate the existence of an underlying unlawful act. Williams v. Aetna Fin. Co., 83 Ohio St.3d 464, 475, 700 N.E.2d 859 (1998), citing Gosden v. Louis, 116 Ohio App.3d 195, 219, 687 N.E.2d 481 (1996).

{¶ 79} In the case sub judice, we have concluded that no genuine issues of material fact remain regarding appellants' underlying tort claims. Because appellants cannot demonstrate the existence of a genuine issue of material fact concerning their underlying tort claims, they cannot

establish a genuine issue of material fact regarding their civil conspiracy claim. Consequently, the trial court did not err by entering summary judgment in appellees' favor regarding appellants' civil conspiracy claim.

F

PIERCE THE CORPORATE VEIL

{¶ 80} Appellants next assert that the trial court improperly entered summary judgment regarding their request to pierce Elite's corporate veil and to hold Julie personally liable for Elite's obligations to appellants.

{¶ 81} "[I]n certain circumstances the corporate form may be disregarded, and the corporate veil pierced, for the purpose of reaching the assets of the corporation's individual shareholders. 'Piercing the corporate veil' is '[t]he judicial act of imposing personal liability on otherwise immune corporate officers, directors, or shareholders for the corporation's wrongful acts.'" Minno v. Pro-Fab, Inc., 121 Ohio St.3d 464, 2009-Ohio-1247, 905 N.E.2d 613, ¶8, quoting Black's Law Dictionary (8th Ed.2004) 1184. An obvious predicate for the doctrine is a finding that the corporation engaged in wrongful acts.

{¶ 82} In the case at bar, we concluded that no genuine issues of material fact remain regarding any of appellants' claims for relief. Thus, no genuine issue of material fact exists as to whether Elite engaged in wrongful acts. Therefore, whether Elite's corporate veil should be pierced is a moot issue. See Cincinnati Enquirer, supra. Consequently, the trial court did not improperly enter summary judgment regarding this claim.

{¶ 83} Accordingly, based upon the foregoing reasons, we overrule appellant's second assignment of error.

III

{¶ 84} In their first assignment of error, appellants assert that the trial court abused its discretion by denying their request to continue the summary judgment proceedings until appellants had conducted additional discovery. Appellants claim that they needed additional time to depose Howard's legal assistant to question whether Howard instructed his legal assistant to inscribe "cancelled 12/31/11" on Trina's stock certificate. They argue that whether Howard instructed his legal assistant to write "cancelled 12/31/11" or simply "cancelled" is relevant to establishing their fraudulent inducement claim against Howard and the civil conspiracy claims against appellees. Appellants additionally assert that they needed additional time to finish deposing Howard. Appellants also argue that they needed more time so that they could depose the six Elite employees who submitted affidavits in support of the Logan defendants' summary judgment motion. Appellants assert that permitting them to depose the six affiants would have allowed appellants to confront the affiants regarding appellants' contributions to Elite and to impeach their credibility.

{¶ 85} Appellants further contend that they needed additional time to continue the Logans' and their accountant's depositions to discover additional facts relating to Elite's profitability and how the Logans benefitted from claiming Elite's net operating losses on their personal tax returns.

A

STANDARD OF REVIEW

{¶ 86} A reviewing court will not overturn a trial court's ruling regarding a Civ.R. 56(F) continuance unless the trial court abused its discretion. State ex rel. Denton v. Bedinghaus, 98 Ohio St.3d 298, 305, 2003-Ohio-861, 784 N.E.2d 99, ¶31; Arnold v. Columbus, 10th Dist. Franklin No. 14AP-418, 2015-Ohio-4873, ¶23; Citizens Bank of Logan v. Hines, 4th Dist. Athens No. 12CA5, 2013-Ohio-690, ¶8. "'[A]buse of discretion' [means] an 'unreasonable, arbitrary, or unconscionable use of discretion, or * * * a view or action that no conscientious judge could honestly have taken.'" State v. Kirkland, 140 Ohio St.3d 73, 15 N.E.3d 818, 2014–Ohio–1966, 15 N.E.3d 818, ¶67, quoting State v. Brady, 119 Ohio St.3d 375, 2008–Ohio–4493, 894 N.E.2d 671, ¶23. "An abuse of discretion includes a situation in which a trial court did not engage in a '"sound reasoning process."'" State v. Darmond, 135 Ohio St.3d 343, 2013–Ohio–966, 986 N.E.2d 971, ¶34, quoting State v. Morris, 132 Ohio St.3d 337, 2012–Ohio–2407, 972 N.E.2d 528, ¶14, quoting AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp., 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990). The abuse-of-discretion standard is deferential and does not permit an appellate court to simply substitute its judgment for that of the trial court. Darmond at ¶34.

B

CIV.R. 56(F)

{¶ 87} Civ.R. 56(F) states:

> Should it appear from the affidavits of a party opposing the motion for summary judgment that the party cannot for sufficient reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the

> application for judgment or may order a continuance to permit affidavits to be obtained or discovery to be had or may make such other order as is just.

{¶ 88} A party seeking a Civ.R. 56(F) continuance must state the particular reasons why the party is unable to present, by affidavit, facts essential to oppose the summary judgment motion. Doriott v. MVHE, Inc., 2nd Dist. Montgomery App. No. 20040, 2004–Ohio–867, 40. "Mere allegations requesting a continuance or deferral of action for the purpose of discovery are not sufficient reasons why a party cannot present affidavits in opposition to the motion for summary judgment." Gates Mills Inv. Co. v. Pepper Pike, 59 Ohio App.2d 155, 169, 392 N.E.2d 1316 (8th Dist. 1978). Instead, "[t]here must be a factual basis stated and reasons why [the party] cannot present facts essential to its opposition to the motion." Id. A trial court does not abuse its discretion by overruling a Civ.R. 56(F) motion to continue when further discovery would prove fruitless. See Fifth Third Mortgage Co. v. Rankin, 4th Dist. Pickaway No. 10CA45, 2011-Ohio-2757, ¶33.

{¶ 89} In the case at bar, even if we were to conclude that the trial court abused its discretion by denying appellants' motion to continue the summary judgment proceedings pending further discovery, any error in refusing appellants' request to conduct additional discovery did not affect the outcome of the proceedings. Niskanen v. Giant Eagle, Inc., 122 Ohio St.3d 486, 2009 Ohio 3626, ¶ 26, 912 N.E.2d 595, quoting Smith v. Flesher, 12 Ohio St.2d 107, 110, 233 N.E.2d 137 (1967) (explaining that "'in order to secure a reversal of a judgment,'" a party "'must not only show some error but must also show that that error was prejudicial to him'"); Theobald v. Univ. of Cincinnati, 160 Ohio App.3d 342, 2005-Ohio-1510, 827 N.E.2d 365, ¶17 ("When

avoidance of the error would not have changed the outcome of the proceedings, then the error neither materially prejudices the complaining party nor affects a substantial right of the complaining party."). Instead, even if the court had permitted appellants to depose Howards' legal assistant, to depose the six affiants, and to continue deposing the Logans, Howard, and the accountant, appellants have not shown that any additional evidence would have established that genuine issues of material fact remain regarding each element of appellants' claims for relief so as to preclude summary judgment in appellees' favor. With respect to the fraudulent inducement claim, we concluded that appellants could not establish any genuine issues of material fact regarding the justifiable reliance element of their fraudulent inducement claim. Trina's failure to read the documents and appellants' decision to sign employment agreements that contained terms contrary to the parties' alleged oral agreements preclude their fraudulent inducement claim. Appellants have not shown how further discovery would have altered the basic facts that Trina did not read the documents she signed, or that if she and Mark did, they signed the documents when they contained terms contrary to what they believed was the parties' agreement. Whether Howard directed his legal assistant to write "cancelled 12/31/11" does not help negate the fact that appellant did not read the documents she signed. Furthermore, additional evidence regarding Howard's relationship with the Logans would not have established a genuine issue of material fact regarding appellants' fraudulent inducement claim. None of the sought-after evidence would have allowed appellants to establish a genuine issue of material fact as to whether appellants' reliance upon alleged oral representations was justifiable.

{¶ 90} Appellants further assert that deposing the six affiants would have permitted them to show that genuine issues of material fact remain regarding appellants' contributions to Elite and this would be helpful in establishing whether they conferred a benefit upon Elite or whether they suffered damages. However, we determined that no genuine issues of material fact remain regarding the justifiable reliance element of appellant's fraudulent inducement claim and the last element of their unjust enrichment claim, i.e., whether it would be unjust to allow the Logans to retain any alleged benefit without compensating appellants. The evidence appellants sought to obtain from the six affiants might help them establish damages, but appellants' damages are a moot point in the absence of genuine issues of material fact regarding the other elements of their claims. See Cincinnati Enquirer, supra.

{¶ 91} Similarly, any additional evidence appellants would have discovered regarding whether the Logans benefitted from claiming Elite's losses on their tax returns and Elite's profitability would appear to help establish that appellants suffered damages. Even if further discovery would have helped appellants establish material facts regarding their damages, their damages are not an issue unless genuine issues of material fact remain regarding each and every element of the claims for relief. Once again, we concluded that no genuine issues of material fact remain regarding at least one element of each of appellants' claims for relief. Without the ability to establish genuine issues of material fact regarding every element of their claims, whether appellants suffered damages and the amount of those damages are moot issues. Consequently, the trial court did not abuse its discretion by overruling appellants' motion to continue the summary judgment proceedings pending further discovery.

{¶ 92} Accordingly, based upon the foregoing reasons, we hereby overrule appellants' first assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellees recover of appellants the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Scioto County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

*Dorrian, J. & *Klatt, J.: Concur in Judgment & Opinion

For the Court

BY: _____
Peter B. Abele, Judge

**NOTICE TO COUNSEL**

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.

*Judge Dorrian & *Judge Klatt, judges in the Tenth Appellate District, sitting by assignment of the Ohio Supreme Court in the Fourth Appellate District.