

IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
STARK COUNTY, OHIO

WILLIAM P. HUTH, et al.,

Plaintiffs - Appellants

-vs-

ROLAND BURNS, et al.,

Defendants - Appellees

Case No. 2026CA00044

Opinion And Judgment Entry

Appeal from the Stark County Court of
Common Pleas, Case No. 2023 CV 2251

Judgment: Affirmed in part; Reversed in part

Date of Judgment Entry: September 24, 2026

BEFORE: William B. Hoffman; Craig R. Baldwin; Robert G. Montgomery, Judges

APPEARANCES: ROBERT N. FARINACCI, MICHELA HUTH, Co-counsel for Plaintiffs-Appellants; SCOTT M. ZURAKOWSKI, KALLEN L. BOYER, Co-counsel for Defendants-Appellees Roland Burns and Convst, LLC; ANDY A. GINELLA, JANEL MYERS NEWELL, Co-counsel for Defendant-Appellee Trevor Rice.

Baldwin, J.

{¶1} The appellants, William P. Huth (“Huth”), his wife, Whitney Harris (“Harris”), and their company, Juicy X3, LLC (“Juicy X3”), appeal a trial court judgment granting summary judgment in favor of the appellees, Roland Burns (“Burns”), Convst, LLC (“Convst”), and Trevor Rice (“Rice”), in an action arising from the attempted purchase of a liquor business and its associated real property in Bolivar, Ohio.

STATEMENT OF FACTS AND THE CASE

{¶2} In early 2021, Huth learned that his cousin planned to retire and sell Bolivar Spirits, Inc., a business operating under state liquor licenses and located at 365 Canal Street, Bolivar. Huth, Harris, and Burns determined to form a joint venture to acquire the business.

His cousin agreed to sell the liquor licenses for \$30,000 and the Canal Street property for \$110,000, for a total purchase price of \$140,000.

{¶3} The parties structured the transaction through two limited liability companies. Harris, who was eligible to hold the liquor licenses when Huth and Burns were not, would be the sole member of Juicy X3, which would hold the liquor licenses. Convst, which Burns had organized in April 2021, would hold the real property. All three parties met with an attorney who specialized in liquor license transfers and signed an engagement letter dated July 16, 2021. Huth signed beneath a signature block for Convst, Harris signed as the managing member of Juicy X3, and Burns also signed.

{¶4} The appellants contend that between April 1, 2021, and October 31, 2021, they paid Burns approximately \$109,000 to be deposited with Convst toward the purchase price, and that Burns was to provide the remaining \$30,000. The parties agreed that Burns would manage Bolivar Spirits while the liquor licenses were transferred, a process that could exceed one year.

{¶5} In December 2022, the appellants learned that Bolivar Spirits was in default on state tax obligations, and they allege that Burns had misappropriated funds from the business. The appellants paid \$13,212 to cure the default. On January 19, 2023, Burns filed a forcible entry and detainer action on behalf of Convst against Harris and Juicy X3, seeking to remove them from the property. That complaint identified Burns as the sole member of Convst. The appellants contend that this was the first time they learned Burns claimed to be Convst's only member.

{¶6} Also on January 19, 2023, Burns borrowed \$240,000 from Rice. The loan was evidenced by a cognovit note and secured by the Canal Street property. Burns made no

payments on the loan, and on September 27, 2023, Rice obtained a judgment against Convst and Burns.

{¶7} The appellants' amended complaint asserted nine claims against Burns and Convst: (1) breach of fiduciary duty in company formation; (2) breach of fiduciary duty by collateralizing the building; (3) fraud and intentional misrepresentation as to entity formation; (4) fraud and intentional misrepresentation as to theft of the building and purchase monies; (5) tortious interference with prospective business relations; (6) unjust enrichment as to the Canal Street property; (7) conversion of the sales proceeds of Juicy X3; (8) breach of fiduciary duty to Juicy X3; and (9) unjust enrichment as to Juicy X3. The appellants asserted three additional claims against Burns and Rice as part of an alleged common scheme: (10) quiet title; (11) a declaratory judgment that title is vested solely in the appellants; and (12) a common scheme to defraud Huth by omitting him as a member of Convst.

{¶8} On February 2, 2026, the trial court granted summary judgment in favor of Burns, Convst, and Rice.

{¶9} The appellants filed a timely notice of appeal and raised the following two assignments of error:

{¶10} "I. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT WHERE GENUINE ISSUES OF MATERIAL FACT EXISTED, AND THE COURT IMPROPERLY WEIGHED EVIDENCE AND CREDIBILITY IN FAVOR OF DEFENDANTS."

{¶11} "II. THE TRIAL COURT ERRED BY APPLYING AN IMPROPER LEGAL STANDARD AND GRANTING SUMMARY JUDGMENT ON PLAINTIFFS' CLAIM FOR UNJUST ENRICHMENT."

I., II.

{¶12} In their first and second assignments of error, the appellants argue that the trial court erred in granting summary judgment. We agree, in part.

STANDARD OF REVIEW

{¶13} Summary judgment proceedings present the appellate court with the unique opportunity of reviewing the evidence in the same manner as the trial court. *Smiddy v. The Wedding Party, Inc.*, 30 Ohio St.3d 35, 36 (1987). Accordingly, this Court reviews a trial court's award of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 1996-Ohio-336.

{¶14} Civ.R. 56(C) states in pertinent 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. ... 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.

Thus, summary judgment may be granted only after the trial court determines that:

(1) No genuine issue as to any material fact remains to be litigated;
(2) the moving party is entitled to judgment as a matter of law; and
(3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.

Temple v. Wean United, Inc., 50 Ohio St.2d 317, 327 (1977).

{¶15} As this Court observed in *Infield v. Westfield Ins. Co.*, 2023-Ohio-1199, ¶ 21 (5th Dist.):

It is well established that the party seeking summary judgment bears the burden of demonstrating no issues of material fact exist for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 330, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The standard for granting summary judgment is delineated in *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107, 662 N.E.2d 264 (1996): “* * * a party seeking summary judgment, on the ground that the nonmoving party cannot prove its case, bears the initial burden of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact on the essential element(s) of the nonmoving party’s claims. The moving party cannot discharge its initial burden under Civ.R. 56 simply by making a conclusory assertion the nonmoving party has no evidence to prove its case. Rather, the moving party must be able to specifically point to some evidence of the type listed in Civ.R. 56(C) which affirmatively demonstrates the nonmoving party has no evidence to support the

nonmoving party's claims. If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied. However, if the moving party has satisfied its initial burden, the nonmoving party then has a reciprocal burden outlined in Civ.R. 56(E) to set forth specific facts showing there is a genuine issue for trial and, if the nonmovant does not so respond, summary judgment, if appropriate, shall be entered against the nonmoving party." The record on summary judgment must be viewed in the light most favorable to the opposing party. *Williams v. First United Church of Christ*, 37 Ohio St.2d 150, 309 N.E.2d 924 (1974).

ANALYSIS

Formation and Ownership of Convst

{¶16} The trial court's decision rested on findings that no written partnership or joint-venture agreement existed, that Huth "offered no evidence in support at deposition," and that the Articles of Organization showed Burns as Convst's sole member. These conclusions, while supported by discrete pieces of evidence, do not account for the genuine factual disputes that should have precluded summary judgment.

{¶17} The engagement letter illustrates the problem. The trial court acknowledged that Huth signed the letter beneath a signature block for Convst. It nevertheless concluded that, viewed objectively, the letter "does not establish the parties intended to form a partnership or joint venture, or that Huth and Burns intended to form Convst, LLC together," reasoning that Convst already existed and that the letter mentions Convst only in its signature line. Those observations support one reasonable inference, but not the only one. Huth signed beneath Convst's signature block three months after Burns organized it, and a factfinder could

reasonably infer from that signature that the parties regarded Huth as a principal of Convst. Choosing between those inferences was for the factfinder. *Pearson v. Alpha Phi Alpha Homes, Inc.*, 2019-Ohio-960, ¶ 9 (9th Dist.).

{¶18} Harris testified that before the building was purchased, she asked Burns by text message whether Huth was also part of Convst. The message, dated January 29, 2022, reads: “Are you the only one that is on Convst or is Patrick [Huth] too?” Burns replied: “Both.” The exchange postdates the November 17, 2021, sales agreement between Huth’s cousin and Convst but predates the January 6, 2023, recording of the deed. The trial court set the exchange alongside Harris’s acknowledgment that there was “no formal written agreement regarding Convst, LLC.” But the absence of a written agreement does not eliminate a factual dispute about the parties’ intent. A factfinder could reasonably read Harris’s question and Burns’s answer as an acknowledgment that Huth was a member of Convst.

{¶19} The payment evidence points the same way. The appellants contend that Huth paid Burns approximately \$41,000 and Harris approximately \$67,000, and they submitted documents they contend total \$109,000. Burns, by contrast, testified that Huth paid “[z]ero” toward the purchase of the Canal Street property and that Huth was to serve as a consultant. A factfinder could reasonably infer that parties do not transfer six-figure sums toward an acquisition without expecting an ownership interest in what is acquired. Treating the payments as consistent with a consulting arrangement rather than ownership required the trial court to choose between competing inferences, which Civ.R. 56 does not permit.

{¶20} The trial court also relied on the Articles of Organization, which it read to show that Convst was organized on April 21, 2021, with Burns as its sole member. The appellants dispute that reading, contending that the Articles do not identify Convst’s members and

instead list the company's attorney as a representative. Even accepting the trial court's reading, a filing showing that Burns organized Convst does not establish who the parties later agreed its members would be.

{¶21} Burns's own testimony sharpens the dispute. He testified that Huth "was the only consultant," that neither Huth nor Harris was "going on Convst," and that separating the entities "protected everybody." He also acknowledged that he had at times received money from Huth and Harris but said he would have to "look and figure out what all it was for." Whether to credit that account over the documentary evidence and the "Both" text message is a credibility question. Where the resolution of a factual dispute depends on credibility, summary judgment is inappropriate. *Turner v. Turner*, 67 Ohio St.3d 337, 341 (1993).

{¶22} The appellants represent that Burns answered "I don't know" 124 times during his deposition. The trial court itself observed that the appellants' allegations "were aided by the defendants' palpably disingenuous obtuseness, alleged memory failures, and overall stonewalling during depositions." The trial court correctly recognized that it could not make credibility determinations on summary judgment. Having characterized the defendants' testimony in those terms, however, it could not then resolve the resulting ambiguities in their favor.

{¶23} The appellants advance several theories of the parties' relationship, including partnership, joint venture, and membership in a multi-member limited liability company. We need not decide which, if any, the evidence ultimately supports. It is enough that the evidence, construed in the appellants' favor, creates a genuine dispute about whether the parties agreed that Huth would hold an ownership interest in Convst.

{¶24} Construing the evidence most strongly in the appellants' favor, reasonable minds could conclude that Huth and Burns intended Convst to be jointly owned. The engagement letter, the "Both" text message, and the payment evidence together create a genuine issue of material fact on that question, and the trial court erred in resolving it on summary judgment. The first assignment of error is sustained as to Burns and Convst.

Unjust Enrichment

{¶25} The elements of unjust enrichment are: (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. *Hambleton v. R.G. Barry Corp.*, 12 Ohio St.3d 179, 183 (1984). "Unjust enrichment is an equitable doctrine to justify a quasi-contractual remedy that operates in the absence of an express contract or a contract implied in fact to prevent a party from retaining money or benefits that in justice and equity belong to another." *Beatley v. Beatley*, 2005-Ohio-1846, ¶ 61 (10th Dist.). "Ohio law does not permit recovery under the theory of unjust enrichment when an express contract covers the same subject." *Zoar View Wilkshire, LLC v. Wilkshire Golf, Inc.*, 2023-Ohio-2848, ¶ 26 (5th Dist.), quoting *Padula v. Wagner*, 2015-Ohio-2374, ¶ 48 (9th Dist.).

{¶26} After reciting the elements, the trial court resolved the unjust enrichment claim in a single sentence: "Again, plaintiffs have not established that they paid Burns \$110,000 for the purpose of purchasing the property." But unjust enrichment asks whether the defendant received a benefit, knew of it, and retained it under circumstances in which retention without payment would be unjust. *KN Excavation, L.L.C. v. Rockmill Brewery, L.L.C.*, 2022-Ohio-3414,

¶ 24 (5th Dist.). Proof of the purpose behind each payment is not a separate element of the claim.

{¶27} Even measured by the trial court’s own framing, the record presents a genuine dispute. The appellants submitted cancelled checks, a bank statement, and a withdrawal receipt that they contend total \$109,000, and Harris testified that the money was paid toward the purchase of the real estate. Burns acknowledged receiving money from the appellants but denied that it was paid toward the purchase of the Canal Street property. Which account to believe is a credibility question that could not be resolved on summary judgment. *Turner*, 67 Ohio St.3d at 341.

{¶28} The record contains circumstantial evidence from which a factfinder could find retention unjust: (1) Huth signed the engagement letter beneath Convst’s signature block; (2) Burns answered “Both” when Harris asked whether Huth was on Convst; (3) the appellants contend they paid Burns approximately \$109,000 while the parties pursued the acquisition together; (4) title to the Canal Street property is held by Convst, of which Burns claims to be the sole member; and (5) the appellants contend Burns has never accounted for their funds.

{¶29} Because the record presents a genuine issue of material fact on the unjust enrichment claim, the trial court erred in granting summary judgment on that claim. The second assignment of error is sustained as to Burns and Convst.

Appellee Rice

{¶30} The appellants’ tenth, eleventh, and twelfth claims were asserted against Burns and Rice as part of an alleged common scheme. The trial court found no evidence that Rice played any role in the formation or ownership of Convst, no evidence tying Rice to the appellants, and no evidence that Rice was aware of any plan to purchase Bolivar Spirits. On

appeal, the appellants direct their arguments under both assignments of error to their dealings with Burns and the formation of Convst, and they identify no Civ.R. 56 evidence connecting Rice to either. To the extent the appellants' first and second assignments of error challenge the judgment in favor of Rice, they are overruled, and the trial court's judgment as to Rice is affirmed.

CONCLUSION

{¶31} For the foregoing reasons, the judgment of the Stark County Court of Common Pleas is affirmed in part and reversed in part. The matter is remanded to the Stark County Court of Common Pleas for further proceedings consistent with this opinion.

{¶32} Costs to be split equally between the appellants and appellees Burns and Convst.

By: Baldwin, J.

Hoffman, P.J. and

Montgomery, J. concur.