2019 IL App (1st) 181083-U
No. 1-18-1083
Order filed April 30, 2019

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

MEGA CORPORATION, Plaintiff-Appellant, v. HELMUT MUELLER, HELM TOOL COMPANY, AMERICAN INJECTION MOLDING, INC. and INTERMOLDING TECHNOLOGY, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 17 L 4621 The Honorable Patrick J. Sherlock, Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court, with opinion.
Justices Lavin and Pucinski concurred in the judgment and opinion.

ORDER

¶ 1 *Held*: Oral contract was unenforceable under the Statute of Frauds because multiple components were of indefinite duration and required a writing.

¶ 2 Mega Corporation, Helm Tool Co., and American Injection Molding manufactured molded plastic components. Arch Van Meter, president of Mega Corporation and Helmut Mueller, president of defendants Helm Tool Co. and American Injection Molding (AIM), agreed in May 2014 to merge their companies' assets and operations. According to the complaint, their

agreement was "formalized" a month later but no one ever reduced it to a writing. Helm Tool gave Mega Corp. $182,000 and employed Van Meter and his wife as consultants (with salaries). In return, Van Meter transferred Mega Corp.'s assets to Mueller's companies.

¶ 3 The relationship between Van Meter and Mueller later soured and ultimately the Van Meters were fired. Mega Corp. sued for breach of the oral contract. After the initial pleading was dismissed without prejudice (claims against Intermolding Technology, LLC, were dismissed with prejudice), Mega Corp. amended its complaint, alleging one count of "Unjust Enrichment" and one count of "Conversion."

¶ 4 Defendants moved for dismissal under section 2-619 of the Code of Civil Procedure, asserting that the Statute of Frauds barred the suit. 735 ILCS 5/2-619 (a)(7) (West 2016); 740 ILCS 80/1 (West 2016). The trial court found the amended complaint failed to overcome the requirements of the Statute of Frauds, and dismissed with prejudice.

¶ 5 We affirm. The Statute of Frauds bars this suit as a matter of law because both the profit-sharing agreement and the Van Meters' employment were for an indefinite period of time. Further, Mega Corp.'s amended complaint, eliminating the promissory estoppel count and seeking equitable relief, unsuccessfully attempts to skirt the requirement of a writing. Equitable relief may not be granted where a remedy at law exists.

¶ 6 Background

¶ 7 The two-count amended complaint alleges unjust enrichment and conversion. In May 2014, Mueller and Van Meter verbally agreed to combine their manufacturing assets into a single operation "to later effectuate their mutual retirement by selling the combined enterprise." Van Meter would transfer the assets and client list of Mega Corp. to Mueller's companies. In return, Mueller promised to share the profits with Van Meter. The parties also agreed Van Meter and his

wife would work as paid consultants and Mueller would loan Mega Corp. $182,000 to pay off its "outstanding obligations."

¶ 8 In June 2014, the Van Meters met with Mueller, Mueller's accountant, attorney, and his son "to formalize the agreement." At that time, Mega Corporation had average annual sales "in excess of $350,000" while defendants had "average annual revenue in excess of $5,000,000 per year." Van Meter moved Mega Corp.'s equipment, inventory of raw materials, "work in process," finished goods, open orders, and customer list to AIM. The value of the assets exceeded $500,000. On June 12, Mueller tendered a Helm Tool check for $182,000, as agreed.

¶ 9 Mueller allegedly "falsely promised" to "employ Van Meter and his wife as consultants" as well as share the profits of the "combined enterprise." The complaint stated the Van Meters "began working out of offices at American Injection Molding and nominal compensation as consultants (*sic*)" and that their "consulting fees were far less than average compensation for someone working in that position with that experience without any ownership interest or other source of compensation." Van Meter received a $72,000 annual salary and his wife received a $52,000 annual salary, "pursuant to the oral consulting agreement." Further, according to the amended complaint, Mueller's behavior created a hostile work environment that drove out "several key employees and contractors." Van Meter and his wife "toughed out" the abusive behavior "much longer that other employees" because they feared losing Mega Corp.'s assets and profits.

¶ 10 In October 2016, Mueller and the general manager for AIM told Van Meter that they were "shutting down the business" and that Van Meter and his wife were fired. AIM's general manager told Mega Corp.'s customers that Van Meter had retired and the customers needed to

stay with Mueller's companies. Mega Corp. demanded return of its customers and equipment. Instead, Mueller and his companies continued to service all of Mega Corp.'s customers.

¶ 11 In the unjust enrichment count, Mega Corp. seeks compensatory damages, return of "Plaintiffs' materials," and a constructive trust for the profits earned from Mega Corp.'s 19 customers. The second count alleges conversion and requests compensatory and punitive damages, or, in the alternative, a permanent injunction requiring the return of "Plaintiffs' materials," and an order requiring defendants to cease doing business with Mega Corp.'s customers.

¶ 12 Mueller and his two companies moved to dismiss under section 2-619(a)(7) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(7) (West 2016)), arguing that the Statute of Frauds barred Mega Corp.'s breach of contract claim. Section 1 of the Statute of Frauds requires a promise to pay for the debt of another "must be in writing and signed by the promisor." 740 ILCS 80/1 (West 2016).

¶ 13 The trial court held the amendments failed to remove the matter from the Statute of Frauds. First, a cause of action for unjust enrichment cannot exist when there is an express contract between the parties. See *La Throp v. Bell Federal Savings & Loan Association*, 68 Ill. 2d 375, 391 (1977). Second, regarding the conversion claim, the trial court found the transfer of the equipment and customers was "part and parcel" of the oral agreement and, therefore, subject to the Statute of Frauds.

¶ 14 Standard of Review

¶ 15 A section 2-619 motion admits the legal sufficiency of the complaint but argues that some defense or affirmative matter defeats the claim. *Boswell v. City of Chicago*, 2016 IL App (1st) 150871, ¶ 15 (citing *Ball v. County of Cook*, 385 Ill. App. 3d 103, 107 (2008)). When

reviewing a section 2-619 dismissal, we accept the complaint's well-pleaded facts as true, along with all reasonable inferences from those facts in favor of the non-moving party. *Dopkeen v. Whitaker*, 399 Ill. App. 3d 682, 684 (2010). The Statute of Frauds is a basis for dismissal. 735 ILCS 5/2-619 (a)(7) (West 2016). We review a dismissal under section 2-619 *de novo*. *Mabry v. Village of Glenwood*, 2015 IL App (1st) 140356, ¶ 12.

¶ 16 Analysis

¶ 17 Mega Corp.'s reply brief describes this case as "aris[ing] from a very disorganized business combination between two elderly small business owners." But in reality, two business owners entered into an oral agreement regarding their respective businesses that required a writing to satisfy the Statute of Frauds. The agreement Mega Corp. seeks to enforce includes several terms, among them promises to share profits earned from business transactions with Mega Corp.'s customers after the companies merged, and employment for the Van Meters.

¶ 18 The Statute of Frauds provides: "No action shall be brought *** upon any agreement that is not to be performed within the space of one year from the making thereof, unless the promise or agreement *** shall be in writing, and signed by the party to be charged." 740 ILCS 80/1 (West 2014). The one-year period begins on the date the contract is made, not when performance is promised. See *Sinclair v. Sullivan Chevrolet Co.*, 31 Ill. 2d 507, 509-10 (1964). "The test for determining whether [the Act] applies to a contract is whether the contract is capable of being performed within one year of its formation, not whether such occurrence is likely." *Robinson v. BDO Seidman, LLP*, 367 Ill. App. 3d 366, 370 (2006).

¶ 19 Mega Corp. asserts that it plead both full and partial performance so dismissal under the Statute of Frauds constitutes error. Mega Corp. posits that pleading full performance of its obligations "necessarily precludes" applying the Statute of Frauds and that executed, as opposed

to executory, contracts are never voided by the Statute of Frauds. Mueller responds that contracts of indefinite duration cannot, by definition, be fully performed.

¶ 20 Mega Corp. relies on a 1960 Second District case, *Balstad v. Solem Machine Co*., 26 Ill. App. 2d 419, 422 (1960), as analogous and controlling the outcome. In *Balstad*, the court affirmed a jury verdict for an employee who was discharged by the defendant without notice, finding the verdict was not contrary to the manifest weight of the evidence. The plaintiff had "indisputably shown that the contract was terminable at[ ] the will of either party." *Id.* at 422. The court reasoned that the Statute of Frauds had been interpreted to render a contract unenforceable only if it was impossible to perform within one year, and, under the facts, the contract could have been performed at any time. *Id*. at 422-425. The court speculated that the contract "could have been concluded by many conditions, all occurring within one year. The death or resignation of the plaintiff, or abandonment or bankruptcy of the defendant would have effectively terminated the contract. This being so, the contract could be performed in one year and so was not within the statute." *Id*. at 422-23.

¶ 21 Thirty-seven years later, the Illinois Supreme Court discussed the "judicially created exclusion of contracts of uncertain duration from the writing requirement," labeling this interpretation "hollow and unpersuasive." *McInerney v. Charter Golf, Inc.*, 176 Ill. 2d 482, 489-90 (1997), The *McInerney* court held the Statute of Frauds required a writing for a lifetime employment contract because, "inherently," it anticipated a long relationship, "certainly longer than one year." *Id*. at 490.

¶ 22 Mega Corp.'s argument ignores the general and indefinite nature of the profit sharing arrangement and the employment agreement for the Van Meters. Under *McInerney*, without a writing to satisfy the Statute of Frauds, the oral contract is unenforceable. See *id.* at 491 ("Full or

complete performance of the instant contract, by its terms, would have required the plaintiff to work until his death, but our plaintiff lives.").

¶ 23 Partial Performance

¶ 24 Relying on *Gibbons v. Stillwell*, 149 Ill. App. 3d 411, 415 (1986), Mega Corp. argues at least partial performance of an oral contract. But the doctrine of partial performance does not take an action at law from the Statute of Frauds. Courts will not grant equitable relief where the plaintiff has an adequate remedy at law. See *Horwitz v. Sonnenschein Nath & Rosenthal*, 2018 IL App (1st) 161909, ¶ 31 ("The absence of an adequate remedy at law is not an element of an equitable claim but rather a condition precedent to seeking equity itself.").

¶ 25 Moreover, for the partial performance doctrine to apply, (i) terms of the alleged oral contract must be clear, definite, and unequivocal; (ii) the party seeking the remedy must have at least partially performed; and (iii) the acts of performance must be "positively attributable exclusively to the contract." *Intini v. Marino*, 112 Ill. App. 3d 252, 256 (1983) (regarding oral agreement to sell land). Other than the general plan, Mega Corp.'s complaint does not allege details that satisfy the requirement of clear, definite, and unequivocal terms.

¶ 26 Although the promise was to transfer the assets and then share ownership of a combined business which would be sold later—possibly more than a year later—Mega Corp. contends it was equally possible that the conditions could have been completed within a year. For example, Mega Corp. suggests the death of either of the principals would have forced the newly-created company to dissolve. But the amended complaint's substantive allegations are for breach of an express oral contract. Multiple components of the oral contract were of indefinite duration, and, accordingly, the Statute of Frauds required a writing. Without it, the contract was unenforceable.

¶ 27 Profit Sharing Arrangement

¶ 28 Equally open-ended was the agreement to "share profits." The amended complaint states that the oral contract included this term, without providing further detail. Count I asserts unjust enrichment, and Mega Corp. seeks a constructive trust for the profits the defendants realized from doing business with Mega Corp.'s former customers. Count II seeks compensatory and punitive damages or, alternatively, an order requiring defendants to cease doing business with Mega Corp.'s customers.

¶ 29 Again, this term in the contract was not capable of being performed within the one-year time period contemplated by the Statute of Frauds. It was an ongoing, albeit vague and indefinite, requirement under the contract.

¶ 30 Unjust Enrichment

¶ 31 Even if the Statute of Frauds did not preclude this action, Mega Corp.'s amended complaint cannot survive a motion to dismiss. Count I of Mega Corp.'s amended complaint alleges unjust enrichment. Where a specific contract governs the relationship between the parties, the doctrine of unjust enrichment is inapplicable because the theory depends on an implied contract. *People ex rel. Hartigan v. E & E Hauling, Inc.*, 153 Ill. 2d 473, 497 (1992). Thus, if the complaint expressly alleges a contract, the count alleging unjust enrichment must be dismissed. *Id*. See *Village of Bloomingdale v. CDG Enterprises, Inc.*, 196 Ill. 2d 484, 500 (2001) ("quasi-contract is 'no contract at all' but instead is a remedy based upon the principle of unjust enrichment"). As the trial court found, Mega Corp. pleaded the existence of an agreement between the parties in both the original and amended complaints.

¶ 32 Additionally, this theory of recovery requires Mega Corp. to show that defendants "voluntarily accepted a benefit which would be inequitable for [them] to retain without payment." *E & E Hauling, Inc.*, 153 Ill. 2d 473, 497 (1992). A party is not entitled to

compensation based on an unjust enrichment claim "if he [or she] receives from the other that which it was agreed between them the other should give in return." *La Throp,*68 Ill. 2d at 391 (citing Restatement of Restitution sec. 107, comment (1)a). Nothing in the record indicates the Van Meters were not paid the agreed-on salary. Moreover, as agreed, they received the $182,000 check from Mega Corp. The promise of profit-sharing was the only unfulfilled term alleged, one which by definition was a promise of future payment, lacking definite and clear terms.

¶ 33 Conversion

¶ 34 Count II alleged conversion based on defendants' wrongful possession of Mega Corp.'s assets and 19 customers. Conversion is the improper deprivation of property from one who has a right to the "immediate possession of the object unlawfully held." *Bender v. Consolidated Mink Ranch, Inc.*, 110 Ill. App. 3d 207, 213 (1982). The subject of conversion must be "an identifiable object." *In re Thebus*, 108 Ill. 2d 255, 260 (1985). To prove conversion, plaintiff must establish (1) a right in the property, (2) a right to immediate possession, (3) wrongful control by the defendant, and (4) a demand for possession. *Cirrincione v. Johnson*, 184 Ill. 2d 109, 114 (1998). Mega Corp. tries to plead the elements: (1) right to the property ("Mega Corporation had an ownership interest in the assets and client relationships"); (2) a right to immediate possession ("Defendants now have all of Mega Corporation's clients, equipment, and inventory without paying a dime for any of it"); (3) Wrongful control by Defendants ("Defendants did not have the right to convert the items"); and (4) Demand for return was futile and a demand was made ("Mega demanded return of its customers and equipment"). But, as defendants point out, the facts alleged demonstrate Mega Corp. voluntarily transferred the assets and client list as agreed, contradicting its own claim of conversion. See *Bender v. Consolidated Mink Ranch, Inc.*, 110 Ill.

App. 3d 207, 213 (1982) ("The essence of conversion is the wrongful deprivation of one who has a right to the immediate possession of the object unlawfully held.").

¶ 35 In *McInerney*, our Supreme Court noted the Illinois statute "tracks the language of the original English Statute of Frauds and Perjuries. 29 Charles II ch. 3 (1676)" which had a stated purpose of prohibiting "many fraudulent practices" like "perjury and subordination of perjury." *Id.* at 489. Referring to the problems of proof inherent in these types of cases, the Supreme Court stated, "Illinois' statute of frauds seeks to do the same by barring actions based upon nothing more than loose verbal statements." *Id*. Although there was some detail asserted in the amended complaint, the agreement needed a writing to bind the parties. Transferring assets worth hundreds of thousands of dollars, relying on an employment promise based on what appears to be close to a handshake, and leaving retirement plans open-ended, fit the definition of "loose verbal statements," never formalized or memorialized by a writing.

¶ 36 Multiple components of the oral contract were of indefinite duration, and so the Statute of Frauds required a writing. Without it, the contract was unenforceable.

¶ 37 Affirmed.