STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

BUSINESS COURT

ALLIANCE-HNI LEASING CO., L.L.C., a Michigan Limited Liability Company,

Plaintiff,

v.

IMAGING ALLIANCE OF MICHIGAN, L.L.C., a Michigan Limited Liability Company and LIV IMAGING, L.L.C., a Michigan Limited Liability Company,

Defendants.

Case No. 15-145024-CK
Hon. James M. Alexander

_____/

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DEFENDANT LIV IMAGING, L.L.C.'S MOTION FOR PARTIAL SUMMARY DISPOSITION AS TO UNJUST ENRICHMENT COUNT PURSUANT TO MCR 2.116(C)(8)

NOW COMES Defendant, LIV IMAGING, L.L.C, by and through its attorneys, THE HEALTH LAW PARTNERS, P.C., and for Defendant LIV Imaging, L.L.C.'s Motion for Partial Summary Disposition as to Unjust Enrichment Count Pursuant to MCR 2.116(C)(8), state the following:

FEE

1. For the reasons set forth in Defendant LIV Imaging, L.L.C. ("**LIV**")'s Brief in Support of Plaintiff's Motion for Partial Summary Disposition Pursuant to MCR 2.116(C)(8), LIV respectfully requests that this Honorable Court dismiss Count II of Plaintiff's Complaint against LIV for failure to state a claim for which relief can be granted.

WHEREFORE, LIV respectfully requests that this Honorable Court dismiss Count II of Plaintiff's Complaint with payment of costs to LIV and any other relief this Honorable Court sees fit.

Respectfully submitted,

THE HEALTH LAW PARTNERS, P.C.

Dated: July 6, 2015

/s/ Phillip B. Toutant

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BRIEF IN SUPPORT OF DEFENDANT LIV IMAGING, L.L.C.'S MOTION FOR PARTIAL SUMMARY DISPOSITION OF UNJUST ENRICHMENT COUNT PURSUANT TO MCR 2.116(C)(8)

I. INTRODUCTION

> As in physics two solid bodies cannot occupy the same space at the same time, so in law and common sense there cannot be an express and an implied contract for the same thing existing at the same time. This is an axiomatic truth. It is only when parties do not expressly agree that the law interposes and raises a promise.[1]

[1] *Walker v Brown*, 28 Ill 378, 383; 18 Peck 378 (1862).

The eloquent holding of the Illinois Supreme Court in 1862 is applicable to the Unjust Enrichment allegations pled against Defendant LIV Imaging, L.L.C. ("**LIV**"), and its holding is consistent with Michigan's law on the issue. Simply put, Plaintiff's allegations against LIV cannot stand.

Here, this Honorable Court is presented with a very simple issue that is well-supported by Michigan case law: that a claim for unjust enrichment must fail where there is an express contractual agreement concerning the transaction. As such, summary disposition should be granted as to Plaintiff's allegations of Unjust Enrichment against LIV.

II. FACTS

On January 9, 2010, Plaintiff Alliance-HNI Leasing Co., L.L.C. ("**AHNI**") entered into two written agreements with co-Defendant, Imaging Alliance of Michigan, L.L.C. ("**Imaging Alliance**"): a Master Service Agreement and a Master Lease Agreement.[2] On March 4, 2011, both of these agreements were amended.[3] Initially, the Agreements pertained only to one imaging center in Royal Oak, Michigan: Clear Imaging, L.L.C. ("**Clear**").[4] Subsequently, Imaging Alliance and AHNI agreed to add additional locations: (i) Horizon Imaging, L.L.C. ("**Horizon**") in Berkley, Michigan on January 20, 2012;[5] (ii) West Michigan Imaging Partners, L.L.C.

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[2] Plaintiff's Complaint, p 2 ¶¶ 6-7; (**Exhibit 1 – Exhibits to Plaintiff's Complaint, pp 000002-000018**). Defendants' counsel has bates stamped Plaintiff's Complaint's Exhibits for ease of reference by the Court. Collectively, the Master Services Agreement and the Master Lease shall be referred to as the "**Agreements**."

[3] *Id.*

[4] See Plaintiff's Complaint, p 2 ¶ 8; see (**Exhibit 1, pp 000002 ¶ 1 & 000011 ¶ 1**).

[5] Plaintiff's Complaint, p 3 ¶ 10; see (**Exhibit 1, pp 000020-000021**).

("**WMIP**") in Grand Rapids, Michigan on March 6, 2013;[6] and Defendant LIV Imaging, L.L.C. ("**LIV**") on February 7, 2013.[7] ***Thus, there is a written agreement in place governing the relationship between LIV, Imaging Alliance and AHNI.***[8]

Both of the at-issue Agreements are fully integrated. The Master Services Agreement states:

> **7.6 Entire Agreement; Amendment**. This Service Agreement is the parties' entire understanding and supersedes all prior agreements, oral and written, with respect to the subject matter of this Service Agreement, and no party will be bound by any representations, covenant, term, or condition other than as expressly stated in this Service Agreement. No statements, promises, or representations have been made by any of the Parties to any other, and no consideration has been offered, promised, expected or held out other than as is expressly provided herein. This Service Agreement may not be amended except by written agreement signed by both parties to this Service Agreement.[9]

The Master Leasing Agreement contains similar language:

> **7.6 Entire Agreement; Amendment**. This Lease Agreement is the parties' entire understanding and supersedes all prior agreements, oral and written, with respect to the subject matter of this Lease Agreement, and no party will be bound by any representation, covenant, term, or condition other than as expressly stated in this Lease Agreement. No statements, promise, or representations have been made by any of the Parties to any other, and no consideration has been offered, promised, expected or held out other than as is expressly provided herein. This Lease Agreement may not be amended except by written agreement signed by both parties to this Lease Agreement.[10]

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6 Plaintiff's Complaint, p 3 ¶ 12; see (**Exhibit 1, pp 000026-000029**).

7 Plaintiff's Complaint, p 3 ¶ 11; see (**Exhibit 1, pp 000023-000024**).

8 *Id.*

9 (**Exhibit 1, p 000005** ¶ 7.6).

10 (**Exhibit 1, p 000014** ¶ 7.6).

Thus, the Agreements are fully integrated. Relative to LIV, all amendments to the Agreements incorporated this same language, by virtue of Imaging Alliance and AHNI agreeing in the relevant Addendum to the Master Service Agreement that "[e]xcept as herein above provided, no other change, amendment or modification of the Service Agreement is hereby intended or implied, including, but not limited to any prior drafts of this Addendum that have not been fully executed . . . "[11] Imaging Alliance and AHNI agreed to the same language in the Addendum of the Master Lease Agreement pertaining to LIV.[12]

AHNI filed the instant action on January 16, 2015.[13] AHNI sued Imaging Alliance for Claim and Debt Under Service Agreement and Lease Agreement (Count I)[14] and sued LIV for Unjust Enrichment (Count II).[15] AHNI did not file suit against Clear, Horizon or WMIP.[16] However, the fact that the services provided to LIV are governed by a written agreement that makes the Unjust Enrichment Count against LIV invalid, as discussed *infra*.

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[11] (**Exhibit 1, p 000023**).

[12] (**Exhibit 1, p 000024**).

[13] Plaintiff's Complaint.

[14] Plaintiff's Complaint, pp 3-4 ¶¶ 14-20.

[15] Plaintiff's Complaint, pp 4-5 ¶¶ 21-29.

[16] See Plaintiff's Complaint.

III. ARGUMENT

Standard of Review

A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint.[17] All well-pleaded factual allegations are accepted as true and considered in a light most favorable to the non-movant.[18] A claim under MCR 2.116(C)(8) is properly granted where the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.[19] As this case involves a dispute over a written document, when a written instrument is attached to a complaint, it becomes part of the pleading "even for purposes of review under MCR 2.116(C)(8)."[20] Thus, the content of the written instruments incorporated into Plaintiff's Complaint can be evaluated through the lens of MCR 2.116(C)(8), without making the Court's inquiry a question of fact subject to analysis under MCR 2.116(C)(10).

Discussion

Plaintiff's Unjust Enrichment Claim Against LIV Should be Dismissed.

In Michigan, it is black-letter law that if a contract governs a particular transaction, a dissatisfied party cannot file suit for unjust enrichment. "A contract will be implied only where no express contract exists. ***There cannot be an express and implied contract covering the same***

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[17] *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999); *Systems Technology Group, Inc. v ATEM Corp.*, Business Court opinion of the Sixth Circuit Court, issued January 29, 2014 (Docket No. 13-134488-CK; Alexander, J.), p 3.

[18] *Maiden v Rozwood*, n. 17, *supra*; *Pope v Mid-Oakland Foot Care, P.L.L.C., et al.*, Business Court opinion of the Sixth Circuit Court, issued January 7, 2015 (Docket No. 14-142884-CK; Alexander, J.), p 2.

[19] *Id.*

[20] *Laurel Woods Apartments v Roumayah*, 274 Mich App 622, 635; 736 NW 2d 284 (2007).

subject matter at the same time."[21, 22] This is a long-standing rule. For example, in *Sullivan v Detroit, Ypsilanti & Ann Arbor Railway*,[23] the Michigan Supreme Court held that "[a] contract will be implied only when no express contract exists. If A. makes an express contract with B. to perform services for C., C. is not liable on an implied contract because he received the benefit. The two contracts cannot exist together, governing the same relationship."[24]

More recent case law similarly supports this proposition. The Michigan Supreme Court cautioned as to the overzealous application of unjust enrichment claims in *Kammer Asphalt Paving Co. v East China Twp. Schools*:[25] "[b]ecause this doctrine vitiates normal contract principles, the courts 'employ the fiction with caution, and will never permit it in cases where contracts, implied in fact, must be established ***or substitute one promisor or debtor for another.***"[26]

Here, AHNI has improperly attempted to make a claim against LIV where the transaction is governed by an express written contract. As held in *Campbell*, this Court and other controlling authorities, there cannot be an unjust enrichment action when the at-issue goods/services are

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[21] *Campbell v City of Troy*, 42 Mich App 534, 537; 202 NW2d 547 (1972) (emphasis added); *Martin v East Lansing School District*, 193 Mich App 166, 177; 483 NW2d 656 (1992); Superior *Ambulance Service v City of Lincoln Park*, 19 Mich App 655, 663; 173 NW2d 236 (1970); *Pope v Mid-Oakland Foot Care, P.L.L.C., et al.*, Business Court opinion of the Sixth Circuit Court, issued January 7, 2015 (Docket No. 14-142884-CK; Alexander, J.), p 4; ("***Indeed, it is well settled that equitable claims*** (such as these [breach of implied contract/unjust enrichment claims]) ***cannot be maintained when there is an express contract covering the disputed subject matter.***" *Id.* (emphasis added; citations omitted)).

[22] Note: claims for unjust enrichment are a subset of implied contract allegations under Michigan law. See *Martin*, n 21, *supra* at 177-178.

[23] 135 Mich 661; 98 NW 756 (1904).

[24] *Id.* at 667.

[25] 443 Mich 176, 186; 504 NW2d 635 (1993).

[26] See also *Cascaden v Magryta*, 247 Mich 267, 270; 225 NW 511 (1929).

covered by an express contract.[27] The legal remedy of a breach of contract action against Imaging Alliance bars the equitable claim for the same damages against LIV.[28]

The unpublished Michigan Court of Appeals Opinion in *Winters v Deloof*[29] illustrates why the unjust enrichment allegations against LIV must be dismissed. In *Winters*, Defendants Peter Deloof and Sarah Bassett hired M.N.S. General Contractors, Inc. ("**MNS**") to install a septic system, amongst other services Defendants hired MNS to perform.[30] MNS subcontracted with Plaintiff Kurt Winters d/b/a Action Sanitarian to install the septic system.[31] After the work was performed, Defendants Deloof/Bassett disputed the amounts charged and the quality of the work performed by MNS.[32] Then, prior to the above-cited case filed by Mr. Winters, MNS independently sued Defendants Deloof/Bassett for payment, including allegations pertaining to the $9,000 for the septic system installed by Mr. Winters.[33]

Subsequently, Mr. Winters himself filed the case cited above, alleging breach of contract. The breach of contract case was dismissed because there was "no contract of any kind between the parties."[34] Then, Winters filed suit again, this time alleging unjust enrichment.[35] This claim

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27 See n 21, *supra*.

28 See *Kingsley Associates, Inc. v Moll PlastiCrafters, Inc.*, 65 F3d 498, 506 (CA 6, 1995) (attached to this brief as **Exhibit 2**).

29 Unpublished opinion per curiam of the Court of Appeals, issued July 28, 2000 (Docket No. 216537) (attached to this brief as **Exhibit 3**).

30 *Id.* at 1.

31 *Id.*

32 *Id.*

33 *Id.*

34 *Id.*

35 *Id.*

was dismissed by the trial court on the grounds of res judicata, collateral estoppel and alternatively that there was an adequate remedy at law (namely, suing MNS, the general contactor).[36] Mr. Winters appealed.

The Michigan Court of Appeals affirmed.[37] Though the *Deloof* court's affirmation of summary disposition was based on res judicata,[38] it discussed the unjust enrichment analysis in a footnote:

> In light of our conclusion concerning res judicata, we need not address plaintiff's further argument that the trial court erred in finding plaintiff's unjust enrichment claim precluded by the existence of an express contract covering the septic system services. We note briefly, however, that ***while plaintiff provided defendants services, these services arose from plaintiff's contract with MNS. Plaintiff had no agreement with defendants. Thus, although defendants received a benefit from plaintiff, the trial court properly found that plaintiff's equitable claim against defendants was precluded by the existence of an express contract between plaintiff and MNS concerning the septic system services.***[39]

The facts here are analogous. LIV had an agreement with Imaging Alliance. Imaging Alliance had a written contract with AHNI concerning the services provided to LIV. The same analysis is quoted above in *Sullivan*.[40] Thus, AHNI's equitable claim against LIV cannot stand because of the express contract between AHNI and Imaging Alliance.

Finally, since the Agreements are integrated, the parol evidence rule bars claims for implied contract and/or collateral side agreements. "[A] contract with a merger clause nullifies all antecedent

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36 *Id.*

37 *Id.* at 2.

38 See *Id.* at 2 n 1.

39 *Id.* at 2 n 1; (emphasis added).

40 N 24, *supra.*

claims."[41] The interpretation of a contract is a question of law,[42] and a written agreement that is attached to a pleading is considered part of the pleading itself for all purposes.[43] As such, this issue is ripe for summary disposition pursuant to MCR 2.116(C)(8).

IV. CONCLUSION

For the reasons set forth herein, LIV respectfully requests that Count II of Plaintiff's Complaint be dismissed, and requests costs caused by the need to file this motion.

Respectfully submitted,

THE HEALTH LAW PARTNERS, P.C.

Dated: July 6, 2015

/s/ Phillip B. Toutant

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[41] *UAW-GM Human Resource Center v KSL Recreation Corp.*, 228 Mich App 486, 502; 579 NW2d 411 (1998); see *Pope v Mid-Oakland Foot Care*, n 20, *supra* at 3 (where agreement contains a merger clause, '"all antecedent claims"' are "'nullified."').

[42] *Coates v Bastian Brothers, Inc.*, 276 Mich App 498, 503-504; 741 NW2d 539 (2007).

[43] MCR 2.113(F)(2).

PROOF OF SERVICE

I hereby certify that I am employed by The Health Law Partners, P.C., and that on July 6, 2015, I served Defendant LIV Imaging, L.L.C.'s Motion for Partial Summary Disposition Pursuant to MCR 2.116(C)(8) and this Proof of Service upon Plaintiff in the above-captioned matter by filing with the Sixth Judicial Circuit's Tyler/Wiznet electronic filing system.

/s/ Phillip B. Toutant

Phillip B. Toutant

4811-2634-3973, v. 1

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

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Plaintiff,

vs.

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Defendants.
_____/

Case No. 15-145024-CK

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PLAINTIFF'S RESPONSE TO DEFENDANT LIV IMAGING, LLC'S MOTION FOR PARTIAL SUMMARY DISPOSITION AS TO UNJUST ENRICHMENT COUNT

Defendant LIV Imaging, LLC ("**LIV Imaging**") argues that the mere existence of an express contract bars any claim for unjust enrichment. This mischaracterizes Michigan law. On the contrary, an express contract only precludes unjust enrichment when it covers the same subject matter and is made between the same parties. There is no dispute that LIV Imaging is not a party to any contract with Plaintiff Alliance-HNI Leasing Co, LLC ("**AHNI**"). Yet, LIV Imaging received the benefit of the use MRI equipment and the personnel necessary to operate that equipment, to AHNI's expense and detriment. Accordingly, LIV Imaging's Motion for

Partial Summary Judgment (the "**Motion**") must be denied, and AHNI's claim for unjust enrichment against LIV Imaging must be allowed to proceed.

STATEMENT OF FACTS

Alliance-HNI Leasing and Imaging Alliance Enter Into Two Contracts for Services

AHNI and Imaging Alliance of Michigan, LLC ("**Imaging Alliance**") entered into a Master Service Agreement (the "**MSA**") and Master Lease Agreement (the "**MLA**"), both effective January 9, 2010 and amended by the parties on March 4, 2011 (collectively, the "**Agreements**"). (Pl's Compl at ¶¶ 6-7; Pl's Compl, MSA at Ex A; Pl's Compl, MLA at Ex B.) Under the MLA, AHNI agreed to provide Imaging Alliance with an MRI system at 907 South Main Street, Royal Oak, Michigan 48067 (the "**Clear Imaging Facility**"). (Pl's Compl at ¶ 8; MSA, Ex A to Pl's Compl.) Under the MSA, AHNI also agreed to provide Imaging Alliance with the personnel necessary to operate the MRI system. (Pl's Compl at ¶ 8; MLA, Ex B to Pl's Compl.) Imaging Alliance agreed to pay AHNI for the MRI system and personnel at the scheduled rates set forth in the Agreements. (Pl's Compl at ¶ 9; Pl's Compl, Exs A and B at ¶ 3 of General Terms and Conditions.)

Over the next several years, AHNI and Imaging Alliance contracted to add MRI systems and personnel at three additional locations (each location referred to in the Agreements and their addenda as "**Unit Locations**," including the Clear Imaging Facility). (Pl's Compl at ¶¶ 10-12.) One such Unit Location, located at 20343 Farmington Road, Livonia, Michigan 48152 (the "**LIV Imaging Facility**"), is operated by Defendant LIV Imaging. LIV Imaging has existed and operated the LIV Imaging Facility since March 22, 2012. (Pl's Compl at ¶ 22.) AHNI and Imaging Alliance amended the Agreements on February 7, 2013 to add the LIV Imaging Facility as a Unit Location. (Pl's Compl at ¶ 11; Pl's Compl at Ex D.)

Imaging Alliance Breaches the Agreements with Alliance-HNI Leasing

In return for the supply of MRI systems and necessary personnel at each Unit Location, Imaging Alliance agreed to pay AHNI at the scheduled rates set forth in the Agreements. (Pl's Compl, at ¶¶ 9, 15-16; Pl's Compl, Exs A and B at ¶ of General Terms and Conditions.) Imaging Alliance breached the Agreements and defaulted on its obligations thereunder by failing to pay those invoices when they came due. (Pl's Compl at ¶ 16.) As of August 15, 2014, Imaging Alliance owed a total of $657,331.11, plus interest, expenses, and attorneys' fees, to AHNI in unpaid invoices for all Unit Locations. (Pl's Compl at ¶¶ 18-20.)

Defendant LIV Imaging Received the Benefit of MRI Equipment and Personnel

There is no contract between LIV Imaging and AHNI. Yet, LIV Imaging received the benefit of the use of the MRI equipment and operating personnel from February 2013 until April 2014. (Pl's Compl at ¶ 25; Pl's Compl at Ex G.) LIV Imaging has not paid AHNI for the use of the equipment and personnel. As of August 15, 2014, the total amount of unpaid invoices for the MRI equipment and operating personnel used by LIV Imaging at the LIV Imaging Facility was $115,998.97. (Pl's Compl at ¶ 29.)

STANDARD OF REVIEW

LIV Imaging seeks summary disposition as to AHNI's unjust enrichment claim pursuant to MCR 2.116(C)(8). A motion under MCR 2.116(C)(8) "tests the legal sufficiency of the claim on the pleadings alone to determine whether the plaintiff has stated a claim on which relief may be granted." *Spiek v Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). Such a motion may only be granted "where the claims alleged are 'so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.'" *Lansing Sch Ed Ass'n v Lansing Bd of Ed (On Remand)*, 293 Mich App 506, 513; 810 NW2d 95 (2011). All well-

pleaded factual allegations are accepted as true and considered in the light most favorable to the non-movant. *Maiden v Rozwood*, 461 Mich 109, 119, 597 NW2d 817 (1999). If it appears that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party. MCR 2.116(I)(2).

ARGUMENT

I. Only An Express Contract *Between The Same Parties* Bars An Unjust Enrichment Claim

AHNI has asserted a claim for unjust enrichment against LIV Imaging based on LIV Imaging's use of MRI equipment and personnel provided by AHNI, and LIV Imaging's failure to pay AHNI for those services. Under Michigan law, "[e]ven though no contract may exist between two parties, under the equitable doctrine of unjust enrichment, 'a person who has been unjustly enriched at the expense of another is required to make restitution to the other.'" *Kammer Ashphalt Paving Co v East Chine Twp Schs*, 443 Mich 176, 185, 504 NW2d 635 (1993). Pursuant to this theory of recovery, "the law will imply a contract in order to prevent unjust enrichment when one party inequitably receives and retains a benefit from another." *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 194, 729 NW2d 898 (2006). To state a claim for unjust enrichment, AHNI is required to show (1) the receipt of a benefit by LIV Imaging from AHNI, and (2) an inequity resulting to AHNI because of the retention of the benefit by LIV Imaging. *Dumas v Auto Club Ins Ass'n*, 437 Mich 521, 546, 473 NW2d 652 (1991). AHNI can show both elements.

In its Brief in Support of its Motion (the "**Brief in Support**"), LIV Imaging argues that AHNI's unjust enrichment claim must fail because there is an express contract between AHNI and Imaging Alliance regarding the MRI equipment and personnel. According to LIV Imaging, there is a blanket rule that no unjust enrichment claim can be stated if a contract covering the

same subject matter exists. There is no such rule. Rather, the existence of an express contract is not sufficient to bar an unjust enrichment claim brought against a defendant with which the plaintiff has no express contractual relationship. *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 194-95, 729 NW2d 898 (2006). Only an express contract **between the same parties** will preclude an unjust enrichment claim. *Id.* at 194-95 (citing 42 CJS, Implied and Constructive Contracts, § 34, p. 33, emphasis added).

In *Morris Pumps v Centerline Piping*, for example, the City of Detroit contracted with Defendant EBI, a general contractor, to construct a wastewater treatment facility. *Id.* at 190. EBI hired Defendant Centerline to complete the mechanical portion of the construction project and Centerline, in turn, contracted with Plaintiffs for the equipment and supplies necessary to complete the job. *Id.* Plaintiffs timely delivered the equipment and supplies to the construction site, but Centerline never paid Plaintiffs. *Id.* In fact, Centerline abandoned the project altogether. *Id.* EBI hired a replacement contractor and the replacement contractor used the materials Plaintiffs had delivered in order to complete the mechanical portion of the project. *Id.* at 190-91. When EBI failed to pay Plaintiffs for the materials, Plaintiffs sued EBI for unjust enrichment. *Id.* at 191. The trial court granted summary disposition in favor of Plaintiffs on the claim. *Id.* at 192.

Like LIV Imaging claims in its Brief in Support, EBI argued on appeal that Plaintiffs' claim for unjust enrichment was barred by the existence of express contracts between Plaintiffs and Centerline, which covered the same subject matter. *Id.* at 194. The Court of Appeals disagreed:

> It is true that Centerline has express contracts with plaintiffs concerning the supplies and materials that plaintiffs agreed to furnish. However, the mere existence of these express contracts between plaintiffs and Centerline was not

> sufficient to bar plaintiffs' unjust enrichment claims against defendant, with which plaintiffs had no express contractual relationships.

Id. Although the court agreed that express contracts covered the subject matter, the mere existence of the contracts did not bar Plaintiffs' unjust enrichment claims because Defendant EBI was not a party to any to any of those contracts. *Id.* at 194-95. "Because there were no express contracts *between the same parties* on the same subject matter...defendant's argument with respect to this issue must fail." *Id.* at 195 (emphasis in original).

Similarly, in *Kammer Asphalt Paving Co, Inc v East China Twp Schls*, a case LIV Imaging cites to in its Brief in Support, the Michigan Supreme Court held that Plaintiff could proceed with its unjust enrichment claim despite the existence of an express contract covering the same subject matter. 443 Mich 176, 186-87, 504 NW2d 635 (1993). In *Kammer*, the defendant school district contracted with a general contractor for the construction of athletic facilities. *Id.* at 179. The general contractor, in turn, contracted with Plaintiff to complete base paving work for the project. *Id.* Ultimately, the general contractor failed to pay Plaintiff for its paving work. *Id.* at 179-80. Plaintiff filed suit against the general contractor for breach of contract and against the defendant school district for unjust enrichment. *Id.* at 180. The Court of Appeals reversed the trial court's grant of summary disposition to the school district on Plaintiff's unjust enrichment claim. *Id.* at 186-87. Although there was an express contract between Plaintiff and the general contractor regarding the paving work, the Court of Appeals nevertheless held that Plaintiff's unjust enrichment claim against the school district could proceed because the school district received the benefit of the Plaintiff's work. *Id.*

As set forth above, under Michigan law an express contract only acts as a bar to an unjust enrichment claim if it is between the same parties. In this case, there is no dispute that LIV Imaging is not a party to the Agreements between AHNI and Imaging Alliance. Indeed, LIV

Imaging could not even argue that it is a third party beneficiary of the Agreements as both the MSA and MLA disclaims third party beneficiaries. (Pl's Compl, Exs A and B at ¶ 7.8 of General Terms and Conditions.) Accordingly, LIV Imaging's Motion must be denied. Further, AHNI requests the Court grant summary disposition in favor of AHNI with respect to its ability to bring a claim for unjust enrichment against LIV Imaging despite the existence of the Agreements.

II. The Cases Cited By LIV Imaging Do Not Support It's Position

LIV Imaging cites a litany of cases in its Brief in Support that are not binding authority or are otherwise factually distinguishable. LIV Imaging either relies on dicta in these cases or the cases themselves are inapposite and therefore provide no authority for LIV Imaging's arguments.

For example, LIV Imaging relies on *Sullivan v Detroit, Ypsilanti & Ann Arbor Railway,* 135 Mich 661, 98 NW 756 (1904) and *Winters v Deloof*, No 216537, 2000 WL 33415221 (Mich Ct App, July 28, 2000) as support for the proposition that an express contract bars an unjust enrichment claim, regardless of whether the defendant was a party to that contract. (Br in Support at 5-7). However, in neither *Sullivan* nor *Winters* did the court hold that a plaintiff's unjust enrichment claim was barred by an express contract. In *Sullivan,* the Michigan Supreme Court ultimately held that the plaintiff's unjust enrichment claim failed not because of the existence of an express contract, but because the defendant fulfilled all of its obligations under the contract. 135 Mich at 676. And, as LIV Imaging admits, *Winters* was decided on res judicata grounds. 2000 WL 33415221 at *8.

All other cases cited in LIV Imaging's Brief in Support are factually distinguishable from the present case because they all involve a plaintiff asserting an unjust enrichment claim against a defendant with whom it already has an express contract. Unlike the present case, none of them

involve a plaintiff asserting an unjust enrichment claim against a defendant who was not a party to a contract. Accordingly, the cases LIV Imaging relies upon for support miss the mark and are inapplicable to the instant dispute.

CONCLUSION

Only an express contract between the same parties precludes an unjust enrichment claim. AHNI and LIV Imaging were not parties to a contract. The Agreements between AHNI and Imaging Alliance do not bar AHNI's unjust enrichment claim against LIV Imaging. For this reason and those stated above, AHNI respectfully requests that the Court deny LIV Imaging's Motion. In addition, AHNI requests that the Court grant summary disposition in its favor with regard to its ability to bring an unjust enrichment claim against LIV Imaging despite the existence of the Agreements under MCR 2.116(I)(2).

Respectfully submitted,

Dated: August 5, 2015

By: */s/ Laura N. You*

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

ALLIANCE-HNI LEASING CO., LLC, a Michigan limited liability company,

Plaintiff,

vs.

IMAGING ALLIANCE OF MICHIGAN, LLC, a Michigan limited liability company, and, LIV IMAGING, LLC, a Michigan limited liability company,

Defendants.
_____/

Case No. 15-145024-CK

HON. James M. Alexander

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CERTIFICATE OF SERVICE

Valerie Butler states that on August 5, 2015, she caused to be served the attached Plaintiff's Response to Defendant Liv Imaging, LLC's Motion for Partial Summary Disposition As To Unjust Enrichment Count and Certificate of Service via electronically using Wiznet E-File & Serve to counsel of record as stated above.

I declare that the above statement is true to the best of my knowledge, information and belief.

/s/ Valerie Butler
Valerie Butler

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

BUSINESS COURT

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Plaintiff,

v.

IMAGING ALLIANCE OF MICHIGAN, L.L.C., a Michigan Limited Liability Company and LIV IMAGING, L.L.C., a Michigan Limited Liability Company,

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REPLY BRIEF CONCERNING LIV IMAGING, L.L.C.'S MOTION FOR SUMMARY DISPOSITION

Plaintiff Alliance-HNI Leasing Co., L.L.C. ("**AHNI**")'s reliance on *Morris Pumps v Centerline Piping, Inc.*[1] is misplaced. This is because Plaintiff has not alleged that LIV misled AHNI or requested a benefit from AHNI. Further, as alleged, equitable relief is inappropriate. Finally, to the extent that this Court finds *Morris Pumps* to be applicable to the facts at bar, the

[1] 273 Mich App 187; 729 NW2d 898 (2006).

case (as applied here) is contrary to controlling Michigan Supreme Court precedent, which dictates the outcome pursuant to the doctrine of stare decisis.

A. LIV Did Not Mislead or Request a Benefit from AHNI and Thus, an Unjust Enrichment Claim Cannot Lie.

AHNI's opposition to LIV's Motion for Summary Disposition is based largely upon the *Morris Pumps* case. However, *Morris Pumps* itself holds that a third party can benefit from two parties' contract without facing liability for unjust enrichment:

> [a] third party is not unjustly enriched when it receives a benefit from a contract between two other parties, where the party has benefited has not requested the benefit or misled the other parties ... Otherwise stated, the mere fact that a third person benefits from a contract does not make such a third person liable in quasi-contract, unjust enrichment, or restitution. Moreover, where a third person benefits from a contract entered into between two other persons, in the absence of some misleading act by the third person, the mere failure of performance by one of the contracting parties does not give rise to a right of restitution against a third person.[2]

Here, AHNI has not pled the existence of misconduct or requesting of a benefit on behalf of LIV.[3] Moreover, AHNI has not alleged that LIV requested the services from AHNI, that it gave AHNI assurances that it would pay for the at-issue services or that LIV was involved in the negotiations with AHNI.[4] Thus, AHNI's reliance upon *Morris Pumps* fails and LIV should be

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[2] N 1, *supra* at 196.

[3] See Plaintiff's Complaint.

[4] See Plaintiff's Complaint. See *Karaus v Bank of New York Mellon*, 300 Mich App 9, 24-25; 831 NW2d 897 (2012) ("There is no allegation or evidence to support the contention that Mellon requested any of the work performed by the plaintiff or misled the plaintiff to receive any benefit. Further, there is no evidence that Mellon gave any assurance that it would pay for the work completed by plaintiff . . . In light of the fact that Mellon was completely uninvolved with any negotiations that had occurred before the work on the property was

granted summary disposition under MCR 2.116(C)(8) because AHNI fails to state a claim against LIV.

B. AHNI's Allegations Show Why Equitable Relief Against LIV is Improper. In This Vein, *Morris Pumps* is Factually Distinguishable.

In Count I of AHNI's Complaint (Claim of Debt Under Service Agreement and Lease Agreement), it alleges that "[a]s of August 15, 2014, Imaging Alliance [the party with which AHNI actually has a contract] owed the following amounts: . . . c) LIV Imaging Facility: $115,998.97".[5] Then, in Count II (Unjust Enrichment), AHNI alleges that "[a]s of August 15, 2014, the total amount LIV Imaging owed AHNI was $115,998.97."[6] AHNI has sued both LIV and Defendant Imaging Alliance of Michigan, L.L.C. ("**Imaging Alliance**") for the same amount for the same contractual obligation. This is why longstanding Michigan case law precludes equitable relief where relief at law is already available and has cautioned courts as to the overzealous use of the doctrine:[7] if allowed to proceed, AHNI is essentially being allowed to "double dip" on damages owed pursuant to its contract with Imaging Alliance.

Morris Pumps is factually distinguishable. There, the unjust enrichment claims involved a general contractor who had retained equipment and construction materials that had been contractually obtained from a subcontractor after the subcontractor's insolvency/going out of business.[8] Prior to and during the course of the litigation, defendant EBI Detroit possessed the

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commenced, it cannot be said that any benefit Mellon does retain is unjust . . . Therefore, the trial court properly granted summary disposition in favor of Mellon in regard to plaintiff's unjust enrichment claim.")

[5] Plaintiff's Complaint, p 3-4 ¶ 17.

[6] Plaintiff's Complaint, p 5 ¶ 29.

[7] See LIV's Motion for Summary Disposition, p 6.

[8] N 1, *supra* at 190-191.

continuing benefit of equipment and materials that Morris Pumps and other plaintiff's had provided, leaving the plaintiffs with contracts with a defunct entity.[9] This is distinct from the facts at bar. Here, Imaging Alliance still exists, and existed at all times that services were provided. AHNI had and a contract with Imaging Alliance for the services provided to LIV. Unlike *Morris Pumps*, LIV does not possess equipment or other materials obtained by Imaging Alliance. Under facts like those at bar, it is not equitable to allow AHNI to pursue the same damages (contractual damages) against two separate parties when LIV was not a party to the contract with AHNI. Summary disposition should be granted.

C. To the Extent That This Court Finds *Morris Pumps* to be Applicable to the Motion at Bar, *Morris Pumps* was Wrongly Decided Contrary to Longstanding Michigan Supreme Court Precedent and the Doctrine of Stare Decisis. Thus, Longstanding Michigan Supreme Court Precedent Should Be Dispositive, Rather than *Morris Pumps*.

Under Michigan law, it has long been held that where there is a contract between two parties, the damaged party cannot pursue a third party for unjust enrichment. This is recognized throughout case law cited in LIV's moving papers, including *Sullivan v Detroit Y. & AA. Ry. Co.*,[10] where the Michigan Supreme Court held that "[i]f A. makes an express contract with B. to perform services for C., C. is not liable on an implied contract because he received the benefit. The two contracts cannot exist together, governing the same relationship."[11] The Michigan Supreme Court's holding is controlling: "[u]nder the rule of stare decisis, [the Michigan Court

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[9] N 1, *supra* at 190-191.

[10] 135 Mich 661; 92 NW 756 (1904).

[11] N 9, *supra* at 667.

of Appeals] is bound to follow decisions of the Michigan Supreme Court, even if we disagree with them."[12] To the extent that *Morris Pumps* is seen as applicable to the instant motion, it is distinct in light of controlling Michigan Supreme Court precedent. LIV requests that the Court grant summary disposition pursuant to MCR 2.116(C)(8).

Respectfully submitted,

THE HEALTH LAW PARTNERS, P.C.

Dated: August 12, 2015

/s/ Phillip B. Toutant

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4820-8571-2414, v. 1

[12] *Edwards v Clinton Valley Center*, 138 Mich App 312, 313; 360 NW2d 606 (1984); see also *People v Beasley*, 239 Mich App 548, 556; 609 NW2d 581 (2000).

PROOF OF SERVICE

I hereby certify that I am employed by The Health Law Partners, P.C., and that on August 12, 2015, I served Reply Brief Concerning LIV Imaging, L.L.C.'s Motion for Summary Disposition and this Proof of Service upon Plaintiff in the above-captioned matter by filing with the Sixth Judicial Circuit's Tyler/Wiznet electronic filing system.

/s/ Phillip B. Toutant

4820-2047-5942, v. 1

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT

ALLIANCE-HNI LEASING CO, LLC,
Plaintiff,

v.

Case No. 15-145024-CK
Hon. James M. Alexander

IMAGING ALLIANCE OF MICHIGAN, LLC, and LIV IMAGING, LLC,
Defendants.
_____/

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendant LIV Imaging's motion for partial summary disposition. In its Complaint, Plaintiff claims that it leased an MRI system and provided personnel to operate the system at four Defendant locations. These leases were governed by a Master Service Agreement, Master Lease Agreement, and several Addendums to the same. Each of these written Agreements was executed by Plaintiff and Defendant Imaging Alliance of Michigan.

Initially, Plaintiff provided MRI systems in one imaging center in Royal Oak. But, over the years, Plaintiff and Imaging Alliance contracted to add additional locations – including that of Defendant LIV in Farmington on February 7, 2013. And, just like the others, Plaintiff and Imaging Alliance executed the written Agreements placing the equipment for use by LIV. To be clear, there are no written agreements between Plaintiff and Defendant LIV.

Relevant to the present motion, Plaintiff claims that Defendants defaulted on its lease payments – leaving a total balance owing of $657,331.11 (including $115,998.97 attributable to

the equipment at LIV's location).

To recover this amount, Plaintiff alleges claims: (Count I) based in contract and brought against Defendant Imaging Alliance, and (Count II) for unjust enrichment against Defendant LIV only. LIV then filed the present motion for summary disposition – arguing that a written contract bars Plaintiff's unjust enrichment claim (Count II).

LIV seeks summary disposition of said claim under MCR 2.116(C)(8), which tests the legal sufficiency of the complaint. Maiden v Rozwood, 461 Mich 109, 120; 597 NW2d 817 (1999). When analyzing such a motion, all well-pled factual allegations are accepted as true and construed in a light most favorable to the nonmovant. Wade v Dept of Corrections, 439 Mich 158, 162-163; 483 NW2d 26 (1992). A (C)(8) motion may be granted only where the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." Id. And, when deciding such a motion, **the court considers only the pleadings**. MCR 2.116(C)(G)(5).

This motion presents a narrow issue. Can a specifically named, benefiting party in an express contract rely on said contract to defeat an unjust enrichment claim? In other words, if A and B expressly contract for the benefit of C, does C remain liable on an implied contract because it received the benefit?

LIV argues that Plaintiff "has improperly attempted to make a claim against LIV where the transaction is governed by an express written contract [between Plaintiff and co-Defendant Imaging Alliance]." This, LIV argues, is contrary to well-settled Michigan law, whereby, "A contract will be implied only where no express contract exists. There cannot be an express and implied contract covering **the same subject matter at the same time**." Campbell v Troy, 42

Mich App 534, 537; 202 NW2d 547 (1972), citing Superior Ambulance Service v Lincoln Park, 19 Mich App 655; 173 NW2d 236 (1969) (emphasis added).

Generally, "in order to sustain a claim of quantum meruit or unjust enrichment, a plaintiff must establish (1) the receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant." Morris Pumps v Centerline Piping, Inc, 273 Mich App 187, 195; 729 NW2d 898 (2006); citing Barber v SMH (US), Inc, 202 Mich App 366, 375; 509 NW2d 791 (1993).

In support of their arguments, both parties cite extensively to Kammer Asphalt Paving Co, Inc v East China Twp Schools, 443 Mich 176; 504 NW2d 635 (1993) and Morris Pumps, 273 Mich App 187.

In Kammer, the defendant school district contracted with a general contractor for the construction of athletic facilities. The general contractor hired plaintiff subcontractor to complete base-paving work. But the general contractor furnished fraudulent payment bonds and failed to pay the subcontractor, who then sued the school district on an unjust enrichment theory.

Our Supreme Court held that the subcontractor's unjust enrichment theory was valid because the school district "failed to notify [the subcontractor] of the fraudulent nature of the bonds" and may have actually "verified the validity of [said] bonds." Kammer, 443 Mich at 186-187. In other words, the defendant school district **misled** the subcontractor.

In Morris Pumps, a supplier provided equipment and materials to a subcontractor for use on a large wastewater treatment project. When the subcontractor went out of business and abandoned the construction project, the suppliers' equipment and materials remained on the worksite.

The general contractor then hired a replacement subcontractor to complete the work, and that subcontractor used the supplier's materials that were previously provided. The replacement subcontractor, however, did not bill for said materials because they were already there, and neither the general contractor nor the replacement subcontractor ever paid for the materials. The supplier then sued the general contractor on an unjust enrichment theory.

The Court first rejected the contractor's argument that "[the supplier's] unjust enrichment claims against it were barred by the existence of express contracts executed between [it] and [the original subcontractor], which covered the same subject matter." Morris Pumps, 273 Mich App at 194. In so doing, the Morris Pumps Court reasoned that only express contracts **between the same parties** will preclude an unjust enrichment claim. Morris Pumps, 273 Mich App at 194-195.

But this was not the end of the analysis, because the Court reasoned that it must address the merits of the claim itself. The Morris Pumps Court reasoned:

> [a] third party is not unjustly enriched when it receives a benefit from a contract between two other parties, **where the party benefited has not requested the benefit or misled the other parties** . . . . Otherwise stated, the mere fact that a third person benefits from a contract between two other persons does not make such third person liable in quasi-contract, unjust enrichment, or restitution. Morris Pumps, 273 Mich App at 196 (emphasis added); quoting 66 Am Jur 2d, Restitution and Implied Contracts, § 32, p 628.

The Court of Appeals concluded that the supplier's unjust enrichment claim was valid because the general contractor's "retaining and using the materials, without ever ensuring that plaintiffs were compensated for the materials, [was not] innocent, just, or equitable." Morris Pumps, 273 Mich App at 197. In other words, there was some **misleading act**.

Our case is distinguishable from both Kammer and Morris Pumps because LIV there was no misleading act or requested benefit from LIV. This is so because Plaintiff and Imagining

Alliance specifically contracted for the benefit of LIV. In other words, LIV didn't request anything; Imagining Alliance did. Second, LIV mislead no one. Plaintiff knew that it was supplying equipment and services to LIV under the contract. In fact, that was the purpose of the contract. And Plaintiff chose to execute said contract with Imaging Alliance, not LIV.

Because LIV did not mislead or request a benefit from Plaintiff, Plaintiff cannot seek to impose liability on LIV on an unjust enrichment theory. This reasoning has roots in over 100 years of Michigan caselaw. See, e.g., Sullivan v Detroit, Y&AAR Co, 135 Mich 661, 667; 98 NW 756 (1904) (reasoning "A contract will be implied only when no express contract exists. If A. makes an express contract with B. to perform services for C., C. is not liable on an implied contract because he received the benefit.").

For the above reasons, the Court finds that Plaintiff's unjust enrichment claim against Defendant LIV (Count II) is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. As a result, said Count is DISMISSED under (C)(8).

IT IS SO ORDERED.

August 19, 2015
Date

/s/ James M. Alexander
Hon. James M. Alexander, Business Court Judge