

STATE OF MICHIGAN
COURT OF APPEALS

THOMAS R. PATERNOSTER and CLAUDIA
M. PATERNOSTER,

UNPUBLISHED
September 17, 1996

Plaintiffs-Appellants,

v

No. 184771
LC No. 93-002354

THE BRAKE SHOP, INC. and TBS
MANAGEMENT GROUP, INC.,

Defendants-Appellees.

Before: MacKenzie P.J., and Markey and J.M. Batzer,* JJ.

MEMORANDUM.

Plaintiffs appeal as of right from an order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10) and MCR 2.116(I)(2) in this action for a constructive trust.¹ We affirm.

In ruling on motions brought pursuant to MCR 2.116(C)(10), we must decide whether, giving the benefit of reasonable doubt to the opposing party, the kind of record might be developed that would leave open an issue upon which reasonable minds might differ. *Farm Bureau Mutual Ins Co of Michigan v Stark*, 437 Mich 175, 184-185; 468 NW2d 498 (1991).

Plaintiffs argue that the trial court erred in granting summary disposition in favor of defendants because, according to plaintiffs, their claim for constructive trust was not based on fraud. We disagree.

* Circuit judge, sitting on the Court of Appeals by assignment.

A constructive trust may be imposed when property has been obtained through fraud, misrepresentation, concealment, undue influence, duress, taking advantage of one's weakness or necessities, or any other similar circumstances that render it unconscionable for the holder of legal title to retain and enjoy the property. *Kammer Asphalt Paving Co v East China Twp Schools*, 443 Mich 176, 188; 504 NW2d 635 (1993). A review of plaintiffs' brief in support of their motion for summary disposition reveals that the trial court properly found that unjust enrichment as well as fraud were the basis for plaintiffs' constructive trust claim.² The trial court also found, however, that plaintiffs' fraud claim must fail because a future promise by defendant TBS Management to pay off plaintiffs' home equity loan could not constitute fraud; rather an action for fraud must be based on a representation relating to a past or an existing event. *Hi-Way Motor Co v Int'l Harvester Co*, 398 Mich 330, 336; 247 NW2d 813 (1976). Thus, plaintiffs' claim for a constructive trust on this basis must fail. *Id.*

Moreover, even assuming that plaintiffs' claim for a constructive trust was not based on fraud, we find that plaintiffs' claim that a constructive trust should have been imposed due to unjust enrichment lacks merit. Unjust enrichment occurs when one party receives a benefit from another, and retaining the benefit would be inequitable. *Martin v East Lansing School District*, 193 Mich App 166, 177; 483 NW2d 656 (1992). A constructive trust may be imposed without a showing of fraud if necessary to prevent unjust enrichment. *Ooley v Collins*, 344 Mich 148, 158; 73 NW2d 464 (1955). But a constructive trust may not be imposed on parties who have not "contributed to the reasons for imposing a trust." *Id.* Defendant The Brake Shop holds the monies that plaintiffs believe should be held in constructive trust because their home equity mortgage was not paid off pursuant to their agreement with defendant TBS Management Group. The Brake Shop had no obligation to pay off plaintiffs' home equity mortgage, however. Under the contract, payment of the home equity mortgage was the responsibility of TBS Management Group only. Although plaintiffs state that TBS and The Brake Shop are the same entity, they failed to submit any evidence proving this relationship. Thus, because The Brake Shop did not contribute to the reasons for imposing a constructive trust, a constructive trust may not be imposed upon it. Summary disposition for defendants was properly granted.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Jane E. Markey

/s/ James M. Batzer

¹ Although plaintiffs also brought a claim for fraud and breach of contract, the resolution of these claims by the trial court is not disputed on appeal.

² Specifically, plaintiffs argued in their brief in support of summary disposition:

The Paternosters were induced by fraud to surrender the franchise, believing the home equity loan would be paid off. They would not have entered into the agreement to surrender the franchise unless the home equity loan was agreed to be paid off by the Defendants. To do equity and prevent unjust enrichment, the proceeds from the subsequent sale of the franchise to Stan Worth of D.A.A.L., Inc. should be placed in a constructive trust for the benefit of the Paternosters.

* * *

A constructive trust should be imposed on the proceeds from the subsequent sale of the franchise to Stan Worth of D.A.A.L., Inc., to do equity and prevent unjust enrichment. Since the Defendants obtained the franchise by fraud, it would be unconscionable for them to retain the benefit from the franchise to the detriment of the Paternosters.