

STATE OF MICHIGAN
COURT OF APPEALS

NEW DIMENSION DEVELOPMENT, INC.,
CRYSTAL POND, INC., and R.P. GEORGE,
LTD.,

UNPUBLISHED
October 27, 2005

Plaintiffs-Appellants/Cross-
Appellees,

v

ORCHARD, HILTZ & MCCLIMENT, INC.,

Defendant-Appellee/Cross-
Appellant.

No. 262565
Washtenaw Circuit Court
LC No. 03-001154-CB

Before: Bandstra, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's denial of their motion for summary disposition and grant of summary disposition in favor of defendant on their negligent misrepresentation, fraud, and negligence and claims. Defendant cross-appeals the trial court's denial of its motion for summary disposition under MCR 2.116(C)(10) as to plaintiffs' claim of unjust enrichment, as well as the trial court's denial of its motion for summary disposition under MCR 2.116(C)(7) as to plaintiffs' claims of negligent misrepresentation and negligence on the basis of governmental immunity. We affirm in part, reverse in part, and remand for proceedings consistent with this opinion.

I. Procedural History and Background Facts

Plaintiffs New Dimension Development, Inc., Crystal Pond, Inc., and R.P. George, Ltd. are development companies that entered into an agreement in May 2000 with the Charter Township of Ypsilanti and the Ypsilanti Community Utilities Association (YCUA) to develop a residential condominium community. As part of the agreement, plaintiffs were required to install sanitary and storm water sewer systems. The township and YCUA then hired defendant Orchard Hiltz & McCliment, Inc. to ensure plaintiffs' compliance with construction plans and specifications. Specifically, defendant was required to inspect and verify that the sanitary and storm water sewer systems were properly constructed and installed. Defendant was paid from funds deposited by plaintiffs with YCUA.

In June 2000, plaintiffs hired Stokes Construction, Inc. to construct the sanitary and storm water sewer systems. However, Stokes improperly constructed the systems, and, as a result, the sewer system leaked and did not flow properly. The leaks were primarily the result of broken pipes or joints which were not properly sealed, in addition to other construction defects. During this time, defendant inspected Stokes' construction, apparently finding no defects. In November 2000, plaintiffs inspected Stokes' construction and informed defendant about numerous defects it had discovered. Following another inspection, defendant determined that the sewers needed repair and/or replacement before construction could continue. Defendant charged the township and YCUA for its initial inspection of the sewer systems, its inspection after being informed of the defects, its attendance at numerous meetings to determine a course of action to remedy the defects, and its subsequent inspection of the sewer systems after the defects were repaired.

In September 2004, plaintiffs brought suit claiming that because defendant failed to initially identify various defects in its construction activities, it was liable to plaintiffs under theories of negligent misrepresentation, innocent misrepresentation, fraud, negligence, and unjust enrichment.

Plaintiffs moved for summary disposition under MCR 2.116(C)(10) on their claims of negligent misrepresentation and negligence. Defendant also moved for summary disposition under MCR 2.116(C)(7), (8), and (10). Specifically, defendant argued that it was entitled to summary disposition as to plaintiffs' claims under MCR 2.116(C)(8) and (10) because it did not owe plaintiffs a duty of care; that it was entitled to summary disposition as to plaintiffs' negligent misrepresentation and negligence claims under MCR 2.116(C)(7) because it was governmentally immune from liability; that it was entitled to summary disposition as to plaintiffs' innocent misrepresentation claim under MCR 2.116(C)(10) because no privity of contract existed between the parties; that it was entitled to summary disposition as to plaintiffs' fraud claim under MCR 2.116(C)(10) because it did not intentionally make false representations to plaintiffs with the intent to induce reliance, or, if it did, plaintiffs were not justified in relying on such representations; and that it was entitled to summary disposition as to plaintiffs' unjust enrichment claim because express contracts covered the subject matter at issue.

Plaintiffs then moved for summary disposition on defendant's affirmative defense of governmental immunity under MCR 2.116(C)(8) and (10), arguing that defendant was not a governmental agency, but rather a private corporation. Defendant then moved for summary disposition under 2.116(I)(2) ("the opposing party, rather than the moving party, is entitled to judgment"), arguing that it was entitled to summary disposition under MCR 2.116(C)(7) where plaintiffs' claims of negligent misrepresentation and negligence were time barred by the three year statute of limitations set out in MCL 600.5805(10), where the alleged negligence transpired from June to August 2000, and plaintiffs New Dimension Development, Inc. and Crystal Pond, Inc. did not file suit until October 2003 and plaintiff R.P. George, Ltd. did not file suit until October 2004.

The trial court denied plaintiffs' motion for summary disposition under MCR 2.116(C)(10) as to their claims of negligent misrepresentation and negligence; denied defendant's counter-motion for summary disposition under MCR 2.116(C)(7) and MCR 2.116(I)(2) on the basis of the statute of limitations as to plaintiffs' claims of negligent misrepresentation and negligence; denied defendant's motion for summary disposition under MCR 2.116(C)(7) on the basis of governmental immunity as to plaintiffs' claims of negligent

misrepresentation and negligence; denied defendant's motion for summary disposition under MCR 2.116(C)(10) as to plaintiffs' claim of unjust enrichment; and granted defendant's motion for summary disposition under MCR 2.116(C)(8) and (10) as to plaintiffs' claims of negligent misrepresentation, innocent misrepresentation, fraud, and negligence, dismissing those claims with prejudice. The trial court then, without ruling on defendant's motion for summary disposition as to plaintiffs' claim of unjust enrichment, dismissed the claim without prejudice, thereby disposing of all pending claims and closing the case so it could proceed to appeal.

Plaintiffs appeal as of right the trial court's denial of their motion for summary disposition and grant of summary disposition in favor of defendant on their negligent misrepresentation, fraud, and negligence claims. Plaintiffs do not appeal the trial court's denial of their motion for summary disposition and grant of summary disposition in favor of defendant on their innocent misrepresentation claim. Defendant cross-appeals the trial court's denial of its motion for summary disposition under MCR 2.116(C)(7) as to plaintiffs' claims of negligent misrepresentation and negligence on the basis of governmental immunity, as well as the trial court's denial of its motion for summary disposition under MCR 2.116(C)(10) as to plaintiffs' claim of unjust enrichment.

II. Plaintiffs' Issues on Appeal

A. Negligent Misrepresentation and Fraud Claims

Plaintiffs first argue that the trial court erred in granting summary disposition in favor of defendant on their claims of negligent misrepresentation and fraud. We disagree. We review de novo the grant or denial of a motion for summary disposition to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. *Id.* at 119. All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the non-moving party. *Id.* "A motion under MCR 2.116(C)(8) 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.*, quoting *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992). When deciding a motion brought under MCR 2.116(C)(8), we consider only the pleadings. *Maiden, supra* at 119-120; MCR 2.116(G)(5).

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden, supra* at 120. When deciding a motion brought under MCR 2.116(C)(10), we consider affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the non-moving party. *Id.*; MCR 2.116(G)(5). Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Maiden, supra* at 120. Additionally, whether a duty exists is question of law, which we review de novo. *Harts v Farmers Ins Exch*, 461 Mich 1, 6; 597 NW2d 47 (1999); *Beaudrie v Henderson*, 465 Mich 124, 130; 631 NW2d 308 (2001).

To establish a claim of negligent misrepresentation, plaintiffs were required to prove that they "justifiably relied to [their] detriment on information prepared without reasonable care by one who owed the relying part[ies] a duty of care." *Mable Cleary Trust v Edward-Marlah*

Muzyl Trust, 262 Mich App 485, 502; 686 NW2d 770 (2004), quoting *Law Offices of Lawrence J Stockler, PC v Rose*, 174 Mich App 14, 30; 436 NW2d 70 (1989).

To establish a claim of fraudulent misrepresentation, plaintiffs were required to prove that: (1) defendant made a material representation; (2) the representation was false; (3) defendant knew, or should have known, that the representation was false when making it; (4) defendant made the representation with the intent that plaintiffs rely on it; and (5) plaintiffs acted on the representation, incurring damages as a result. *Foreman v Foreman*, 266 Mich App 132, 141; 701 NW2d 167 (2005). Additionally, plaintiffs had to show that any reliance on defendant's representation was reasonable. *Id.* at 141-142. Stated another way, plaintiffs who "unreasonably rel[y] on false statements should not be entitled to damages for misrepresentation." *Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 690; 599 NW2d 546 (1999) (emphasis in original).

Here, the trial court properly granted summary disposition in favor of defendant on plaintiffs' claims of negligent misrepresentation and fraud under MCR 2.116(C)(8) and (10). Plaintiffs failed to state a claim upon which relief could be granted and no genuine issue of material fact existed where defendant simply did not owe a duty of care to plaintiffs and plaintiffs could not justifiably or reasonably rely on defendant's statements or actions because defendant was hired by the township and YCUA, which had interests adverse to those of plaintiffs regarding the propriety of construction activities. *Mable Cleary Trust, supra* at 502; *Foreman, supra* at 141-142.

Contrary to plaintiffs' argument on appeal, they failed to state a claim upon which relief could be granted. Specifically, as to their negligent misrepresentation claim, plaintiffs failed to prove that defendant owed them a duty of care. "[D]uty is a question of whether the defendant is under any obligation for the benefit of the particular plaintiff." Prosser & Keeton, *Torts* (5th ed), § 53, p 356. "In determining whether a duty exists, courts examine a wide variety of factors, including the relationship of the parties and the foreseeability and nature of the risk." *Schultz v Consumers Power Co*, 443 Mich 445, 450; 506 NW2d 175 (1993). "Most importantly, for a duty to arise there must exist a sufficient relationship between the plaintiff and defendant." *Id.* Here, plaintiffs failed to provide any authority to support their apparent argument that a relationship sufficient to create a duty arose by virtue of defendant's tenuous connection to plaintiffs as independent contractors both hired by the township/YCUA. And a party may not leave it to this Court to search for authority to sustain or reject its position. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

Thus, despite plaintiffs' reliance on case law that "a plaintiff may maintain an action in tort where he is injured by the defendant's negligent performance of contract even where there is no privity between the parties," *Nat'l Sand, Inc v Nagel Constr, Inc*, 182 Mich App 327, 331; 451 NW2d 618 (1990); see also *Williams v Polgar*, 391 Mich 6; 215 NW2d 149 (1974), "this theory has no independent significance here . . . [where] [t]he Court in *Williams* expressly recognized that the existence of a duty of care was a prerequisite for such an action." *Clark v Grover*, 132 Mich App 476, 484; 347 NW2d 748 (1984).

As to their fraud claim, although plaintiffs pleaded each element of a claim of fraudulent misrepresentation in their complaint, they failed to show that their reliance on any representations made by defendant was reasonable. *Foreman, supra* at 141-142. As noted by

the trial court, “there was no justifiable reliance on inspection reports or inspection data that [wa]s intended to assist only the township and YCUA here in determining whether they should accept the project as developed.”

Plaintiffs argue that summary disposition was inappropriate because whether their reliance was reasonable constitutes a question of fact that should go to a jury. However, a threshold inquiry into the circumstances surrounding the reasonableness of a party’s reliance constitutes a question of law, whereas the existence and scope of a party’s reliance constitutes a question of fact. See *State Bank of Standish v Curry*, 442 Mich 76, 84; 500 NW2d 104 (1993); *Bergen v Baker*, 264 Mich App 376, 388-389; 691 NW2d 770 (2004).

Thus, even viewing the evidence in the light most favorable to plaintiffs, there is no genuine issue of material fact that any reliance on defendant’s statements or actions was unreasonable as a matter of law where defendant’s interests were adverse to those of plaintiffs regarding the propriety of the construction activities. Because no reasonable juror could have concluded that plaintiffs’ reliance on defendant’s statements or actions was reasonable in light of their adverse interests, the trial court properly granted summary disposition in favor of defendant on plaintiffs’ fraud claim.

B. Negligence Claim

Plaintiffs next argue that the trial court erred in granting summary disposition in favor of defendant on their negligence claim. We disagree. Again, we review de novo the grant or denial of a motion for summary disposition to determine if the moving party is entitled to judgment as a matter of law. *Maiden, supra* at 118. Additionally, whether defendant owed a duty to plaintiffs is a question of law, which we review de novo. *Fultz v Union-Commerce Assoc*, 470 Mich 460, 463; 683 NW2d 587 (2004).

“It is well-established that a prima facie case of negligence requires a plaintiff to prove four elements: duty, breach of that duty, causation, and damages.” *Id.* “The threshold question in a negligence action is whether the defendant owed a duty to the plaintiff,” and “[i]t is axiomatic that there can be no tort liability unless [the] defendant[] owed a duty to [the] plaintiff.” *Id.*, quoting *Beaty v Hertzberg & Golden, PC*, 456 Mich 247, 262; 571 NW2d 716 (1997).

Here, even assuming defendant negligently performed its function of inspecting the premises by stating that the sewer was being properly constructed when that was not the case, any duty in that regard ran to the township and YCUA and not to plaintiffs, who were not a party to the contract. Our Supreme Court has defined “a tort action stemming from misfeasance of a contractual obligation” as the “violation of a legal duty separate and distinct from the contractual obligation.” *Fultz, supra* at 467, quoting *Rinaldo’s Constr Corp v Michigan Bell Tel Co*, 454 Mich 65, 84; 559 NW2d 647 (1997). The Court noted that this definition “offers . . . guidance in determining whether a negligence action brought by a third party to that contract may lie because it focuses on the threshold question of duty in a negligence claim.” *Fultz, supra* at 467.

Plaintiffs failed to demonstrate that defendant violated a legal duty separate and distinct from its contractual obligation to the township and YCUA. Because defendant did not owe an

independent duty to plaintiffs that was separate and distinct from its contractual obligations to the township and YCUA, “no tort action based on a contract will lie.” *Id.* Therefore, the trial court properly granted summary disposition in favor of defendant on plaintiffs’ negligence claim.

III. Defendant’s Issues on Appeal

A. Unjust Enrichment Claim

Defendant first argues that the trial court erred in denying its motion for summary disposition on plaintiffs’ claim of unjust enrichment. We agree.¹ Again, we review de novo a trial court’s grant or denial of a motion for summary disposition. *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2d 633 (2003).

In order to sustain a claim of unjust enrichment, a plaintiff must establish (1) the receipt of a benefit by defendant from plaintiff, and (2) an inequity resulting to plaintiff because of the retention of the benefit by defendant. *Belle Isle Grill Corp v City of Detroit*, 256 Mich App 463, 478; 666 NW2d 271 (2003). “If this is established, the law will imply a contract in order to prevent unjust enrichment.” *Id.* “However, a contract will be implied only if there is no express contract covering the same subject matter.” *Id.*

In denying defendant’s motion for summary disposition on plaintiffs’ claim of unjust enrichment, the trial court noted its belief that “the township’s insistence that the developer pay for the cost of—that it had to pay to the defendant in this case for that inspection does create a justifiable claim outside the terms of that contract for the developer to claim that the fees which were paid unjustly enriched the defendant in this case on the theory that the inspections that it is required to pay for as a result of the township’s actions were not performed properly; and to the extent that the complaint says here, in fact, that they had to pay twice for the same inspection.”

¹ To the extent plaintiffs argue that defendant is not an “aggrieved party” entitled to appeal under MCR 7.203(A) because it entered into a consent agreement to dismiss plaintiffs’ claim of unjust enrichment, their argument is wholly without merit. The final order of dismissal in this case was issued under MCR 2.504(A)(1)(b) (voluntary dismissal of actions by stipulation of all parties to the case), so that plaintiffs could appeal as of right the trial court order granting summary disposition in favor of defendant on plaintiffs’ claims of negligent misrepresentation, fraud, and negligence. Under MCR 7.207, defendant was entitled to cross-appeal any ruling by the trial court adverse to the cross-appellant, i.e., the trial court’s denial of its motion for summary disposition on plaintiffs’ claim of unjust enrichment.

Plaintiffs’ argument that defendant was not aggrieved by the trial court order because defendant “got what it wanted since the count against it was dismissed” fails to consider the fact that the consent order was entered without prejudice, thereby allowing plaintiffs to re-file an unjust enrichment claim against defendant at some time in the future. Defendant was prejudiced by the trial court’s failure to summarily dismiss the claim, defendant was entitled to cross-appeal to contest the portions of the order being appealed by plaintiffs that were adverse to it, and this Court has jurisdiction over the cross-appeal under MCR 7.207.

However, plaintiffs admitted having no evidence of duplicative billings by defendant for engineering services that were actually provided; indeed, while the owner of plaintiffs' companies felt defendant "overcharged" the township and YCUA, he was unable to point to any specific billing errors or fraud. Moreover, plaintiffs' supervisor who was in charge of all finances admitted that he was unable to find discrepancies between inspector time sheets and actual project inspections. Based on plaintiffs' admissions as well as other evidence, plaintiffs' claimed damages for "additional" engineering/inspection fees were necessitated by the correction of defective infrastructure construction caused exclusively by the subcontractor hired by plaintiffs.

Additionally, the trial court's incorrect characterization of the payment structure contradicts the undisputed fact that defendant never received payments directly from plaintiffs; instead, defendant's engineering fees were billed to and paid by the township and YCUA. Therefore, at most, any indirect benefit defendant derived from plaintiffs was too attenuated to warrant imposing the equitable doctrine of unjust enrichment, which must be "employ[ed] . . . with caution," because it "vitiates normal contract principles." *Kammer Asphalt Paving Co, Inc v East China Twp Schools*, 443 Mich 176, 186; 504 NW2d 635 (1993). As in *Kammer*, "[a]lthough plaintiff[s] indirectly provided defendant a benefit, [their] contract was with [the township and YCUA], and the benefit [they] provided was in exchange for compensation." *Id.* at 187.

Further, both the development agreement entered into between plaintiffs and the township and the construction agreement entered into between plaintiffs and YCUA constituted express contracts covering the subject matter at issue here, i.e., the responsibilities of plaintiffs concerning payment of engineering fees incurred by the township and YCUA to inspect plaintiffs' construction. Because express contracts already addressed the pertinent subject matter, a contract cannot be implied and plaintiffs are unable to sustain their claim of unjust enrichment. *Liggett, supra* at 137.

There was no genuine issue of material fact that defendant never received payments directly from plaintiff and that express contracts covered the subject matter under which plaintiffs claimed defendant was unjustly enriched. Therefore, the trial court improperly denied defendant's motion for summary disposition, and remand is necessary for entry of an order granting summary disposition in favor of defendant on plaintiffs' claim of unjust enrichment.

B. Governmental Immunity Defense

Defendant next argues that the trial court erred in denying its motion for summary disposition on plaintiffs' claims of negligent misrepresentation and negligence under MCR 2.116(C)(7) on the basis that it was entitled to governmental immunity. We disagree.

"Governmental immunity is a question of law that is reviewed de novo." *Pierce v City of Lansing*, 265 Mich App 174, 176; 694 NW2d 65 (2005). Additionally, we review de novo a trial court's grant or denial of a motion for summary disposition under MCR 2.116(C)(7) to determine whether the moving party was entitled to judgment as a matter of law. *Watts v Polaczyk*, 242 Mich App 600, 603; 619 NW2d 714 (2000). In reviewing a motion under MCR 2.116(C)(7), we accept as true the plaintiffs' well-pleaded allegations and construe them in the plaintiffs' favor. *Id.* Further, we consider the pleadings, affidavits, depositions, admissions, and documentary evidence filed or submitted by the parties to determine whether they indicate that

defendant is entitled to immunity. *Tarlea v Crabtree*, 263 Mich App 80, 87; 687 NW2d 333 (2004). “If no facts are in dispute, or if reasonable minds could not differ regarding the legal effect of the facts, the question whether the claim is barred by governmental immunity is an issue of law.” *Pierce, supra* at 177.

MCL 691.1407 provides in part:

(1) . . . [A] governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function.

(2) . . . [E]ach officer and employee of a governmental agency, each volunteer acting on behalf of a governmental agency, and each member of a board . . . of a governmental agency is immune from tort liability for an injury to a person or damage to property caused by the officer, employee, or member while in the course of employment or service or caused by the volunteer while acting on behalf of a governmental agency if all of the following are met:

(a) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.

(b) The governmental agency is engaged in the exercise or discharge of a governmental function.

(c) The officer’s, employee’s, member’s, or volunteer’s conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

(4) This act does not grant immunity to a governmental agency or an employee or agent of a governmental agency with respect to providing medical care or treatment to a patient

In denying defendant’s motion for summary disposition under MCR 2.116(C)(7) for plaintiffs’ claims of negligent misrepresentation and negligence, the trial court noted defendant’s argument “seek[ing] to place a hired agent in the same statutory-protected position as a governmental agency or governmental employee.” However, the trial court declined defendant’s invitation to do so, ruling that “clearly this private entity defendant is not in the same shoes as a government agency or a government employee for purposes of governmental immunity.”

The trial court properly denied defendant’s motion for summary disposition based on governmental immunity where no facts are in dispute that defendant was merely a private corporation hired by the township and YCUA, and was not a governmental employee entitled to immunity from tort liability under MCL 691.1407(2). Defendant argues that it was entitled to governmental immunity as a governmental “agent.” However, defendant was not an agent of the township and YCUA, because it admittedly did not have express or implied authority to represent or act on behalf of the township and YCUA. See *Hayes v Emerick*, 164 Mich App 138,

140-141; 416 NW2d 350 (1987). Further, “[a] private entity’s performance of a governmental function does not confer governmental agency status on that entity,” *Jackson v New Ctr Community Mental Health Services*, 158 Mich App 25, 34; 404 NW2d 688 (1987), and there is “no reason to extend the protection of governmental immunity to a private entity merely because it contracts with the government.” *Roberts v City of Pontiac*, 176 Mich App 572, 578; 440 NW2d 55 (1989).

Further, even if defendant was an agent of the township and YCUA, it still would not fall under the categories of persons entitled to governmental immunity under MCL 691.1407. When faced with questions of statutory interpretation, our obligation is to discern and give effect to the Legislature’s intent as expressed in the words of the statute. *Pohutski v City of Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002). We give the words of a statute their plain and ordinary meaning, and only look outside the statute to ascertain the Legislature’s intent if the statutory language is ambiguous. *Id.* Where the language is unambiguous, we presume that the Legislature intended the meaning clearly expressed, and no further judicial construction is required or permitted. *Id.* Further, we presume every word is used for a purpose, and may not assume that the Legislature inadvertently made use of one word or phrase instead of another. *Id.* at 683-684.

Here, the plain language of MCL 691.1407(2) only provides immunity to officers, employees, members, or volunteers of governmental agencies, and not to agents of governmental agencies. Further, defendant’s argument that agents of governmental agencies are entitled to immunity under MCL 691.1407(4) is inapplicable here, because that subsection applies only to an “agent of a governmental agency with respect to providing medical care or treatment to a patient. . . .” Finally, defendant’s reliance on *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 633; 363 NW2d 641 (1984), which held that “. . . agents are immune from tort liability” under certain circumstances, is misplaced as *Ross* did not construe the statute at issue here; in fact, the Legislature enacted MCL 691.1407, the statute at issue here, in response to *Ross*.

The trial court properly denied defendant’s motion for summary disposition under MCR 2.116(C)(7) on plaintiffs’ claims of negligent misrepresentation and negligence, because defendant was not entitled to governmental immunity from tort liability. However, as noted above, the trial court’s grant of summary disposition in favor of defendant on those claims under MCR 2.116(C)(8) and (10) was proper, and we affirm on those grounds.

IV. Conclusion

We affirm the trial court’s grant of summary disposition in favor of defendant on plaintiffs’ claims of negligent misrepresentation, fraud, and negligence. We also affirm the trial court’s denial of summary disposition in favor of defendant on its claim of governmental immunity. However, we reverse the trial court’s denial of defendant’s motion for summary disposition on plaintiffs’ claim of unjust enrichment, and remand for entry of an order to that effect. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Janet T. Neff
/s/ Pat M. Donofrio