

STATE OF MICHIGAN  
COURT OF APPEALS

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DIETRICH & ASSOCIATES and EDGAR J.  
DIETRICH,

UNPUBLISHED  
March 23, 2006

Plaintiffs-Appellants,

v

ESTATE OF RICHARD MCQUADE, Deceased,  
and DONNA MCQUADE,

No. 258283  
Wayne Circuit Court  
LC No. 03-308188-CK

Defendants-Appellees.

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Before: Owens, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

Plaintiffs appeals as of right from the trial court's order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). We affirm.

Plaintiffs brought this action to collect approximately \$17,000 in legal fees and expenses allegedly arising from their legal representation of the decedent, Richard McQuade, in various legal matters between June 1, 1998 and November 7, 2000. Plaintiffs also sought to collect \$8,000 for a loan that they allegedly made to Richard and Donna McQuade in November 2000. Plaintiffs maintained that the debts for the legal fees and the loan were evidenced by a \$25,000 promissory note that Richard McQuade executed in favor of plaintiffs on November 15, 2000. After Richard McQuade died in October 2001, plaintiffs attempted to collect the alleged debt from Richard's widow, Donna McQuade, then filed this lawsuit. Plaintiffs' complaint alleged separate claims for breach of contract and quantum meruit against both Donna McQuade and the Estate of Richard McQuade. The trial court granted defendant Donna McQuade's motion for summary disposition under MCR 2.116(C)(10), and also dismissed plaintiffs' claims against the Estate of Richard McQuade.

This Court reviews de novo a circuit court's decision with regard to a motion for summary disposition. *Trost v Buckstop Lure Co*, 249 Mich App 580, 583-584; 644 NW2d 54 (2002). A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Lewis v LeGrow*, 258 Mich App 175, 192; 670 NW2d 675 (2003). In reviewing a motion under MCR 2.116(C)(10), this Court "must consider the available pleadings, affidavits, depositions, and other documentary evidence in a light most favorable to the nonmoving party and determine whether the moving party was entitled to judgment as a matter of law." *Michigan Ed*

*Employees Mutual Ins Co v Turow*, 242 Mich App 112, 114-115; 617 NW2d 725 (2000), quoting *Unisys Corp v Comm’r of Ins*, 236 Mich App 686, 689; 601 NW2d 155 (1999).

Initially, with regard to plaintiffs’ claims against the Estate of Richard McQuade, defendant Donna McQuade submitted an affidavit in which she averred that a probate estate was never opened after her husband, Richard McQuade, died. Plaintiffs did not present any contrary evidence.<sup>1</sup> Because the evidence established that a probate estate was never established for Richard McQuade, the trial court properly dismissed plaintiffs’ claims against this nonexistent estate.

The trial court also did not err in granting defendant Donna McQuade’s motion for summary disposition of the claims against her. With respect to plaintiffs’ breach of contract claim, it is well established that a contract cannot arise except on the expressed mutual assent of the parties. *Brown v Considine*, 108 Mich App 504, 507; 310 NW2d 441 (1981). Here, there was no evidence that Donna McQuade contracted with plaintiffs for the provision of legal services. On the contrary, the evidence established that plaintiffs provided legal services pursuant to a written retainer agreement and that only plaintiffs and Richard McQuade were parties to that agreement. Nor is there a viable breach of contract claim for the \$8000 loan. Although plaintiffs maintain that the loan is evidenced by a \$25,000 promissory note, only Richard McQuade signed the promissory note in favor of plaintiffs. There was no other evidence showing an agreement by Donna McQuade to repay this alleged loan,<sup>2</sup> and Donna McQuade may not be held liable for her husband’s contractual obligations. See *North Ottawa Community Hosp v Kieft*, 457 Mich 394; 578 NW2d 267 (1998).

Lastly, we disagree with plaintiffs that they may maintain an action for quantum meruit, i.e., unjust enrichment, against Donna McQuade for the disputed amounts. Unjust enrichment requires a plaintiff to prove (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. *Belle Isle Grill Corp v 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.* But a contract will not be implied under the doctrine of unjust enrichment where an express contract covering the same subject matter is in force. *Id.*, *King v Ford Motor Credit Co*, 257 Mich App 303, 327-328; 668 NW2d 357 (2003). In this case, a retainer agreement between plaintiffs and Richard McQuade covers the subject matter of the attorney fees. Further, plaintiffs maintain that the \$25,000 promissory note executed by Richard McQuade covers the alleged \$8,000 loan and

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<sup>1</sup> In fact, at the hearing regarding the cross motions for summary disposition, plaintiffs’ counsel acknowledged that it was their burden to pursue a claim against the estate in probate court. Plaintiffs may not now harbor error as an appellate parachute. *Marshall Lasser, PC v George*, 252 Mich App 104, 109; 651 NW2d 158 (2002).

<sup>2</sup> Although plaintiffs presented an affidavit from the mortgage broker rendering an opinion regarding the benefit to defendant Donna McQuade and her involvement in the process, we construe the agreement based on the plain language of the document itself. *Bandit Industries, Inc v Hobbs Int’l Inc (After Remand)*, 463 Mich 504, 511; 620 NW2d 531 (2001). The note does not contain any commitment for repayment by Donna McQuade.

the outstanding attorney fees. Because there are express agreements covering the subject matter of the alleged debts, plaintiffs cannot prevail under an unjust enrichment theory against Donna McQuade.

Furthermore, implied contracts will not be employed to substitute one promisor for another. *Cascaden v Magryta*, 247 Mich 267, 270; 225 NW 511 (1929). In this case, even if plaintiffs' actions benefited Donna McQuade, a contract may not be implied because there were express agreements between plaintiffs and Richard McQuade concerning the amounts at issue, and Donna McQuade may not be substituted in as a promisor.

Affirmed.

/s/ Donald S. Owens  
/s/ Kirsten Frank Kelly  
/s/ Karen M. Fort Hood