

STATE OF MICHIGAN
COURT OF APPEALS

MIDWEST BUSINESS SOLUTIONS,

Plaintiff-Appellant,

v

MIDWEST BUSINESS SYSTEMS, INC., and
LUTHER ELLIOTT,

Defendants-Appellees.

UNPUBLISHED

June 26, 2001

No. 221420

Wayne Circuit Court

LC No. 97-713825-CB

Before: Sawyer, P.J., and Griffin and O’Connell, JJ.

PER CURIAM.

Plaintiff Midwest Business Solutions (Solutions) appeals as of right from the trial court’s grant of defendants’ motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff Solutions brought this action to recover settlement funds allegedly owed to plaintiff by defendants Midwest Business Systems (Systems) and Luther Elliott. We affirm.

Plaintiff presents several challenges to the trial court’s grant of summary disposition. A motion under MCR 2.116(C)(10) is appropriate when, except as to the amount of damages, there is no genuine issue regarding any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. MCR 2.116(C)(10). In deciding a motion on these grounds, the trial court considers any pleadings, affidavits, depositions, admissions or other documentary evidence in a light most favorable to the nonmoving party to determine whether a genuine issue of fact exists. MCR 2.116(G)(2); *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999).

First, plaintiff argues on appeal that the trial court erred in determining that plaintiff was improperly attempting to seek relief from the 1994 action in circumvention of MCR 2.612 (C)(2). We find no merit to this characterization. A review of the trial court’s decision reveals that it granted defendants’ motion for summary disposition pursuant to MCR 2.116(C)(10) on the basis of the “clear and unambiguous” provisions of the settlement agreement, not the requirements of either MCR 2.612 or MCR 2.116(C)(7).

The settlement agreement specifically assigned all interest in plaintiff Solutions and in Dearborn Systems and Services, Inc. (DSSI), a/k/a Snapp, to Bhagwan P. Thacker, and required DSSI to make settlement payments, guaranteed by Thacker, to defendants. We agree with the

trial court that all of plaintiff's rights had been assigned to Thacker and that there is no genuine issue of fact regarding whether plaintiff Solutions is entitled to part of the settlement proceeds. There is nothing in the settlement agreement to suggest that the settlement was intended to benefit plaintiff, and we find plaintiff's suggestion to the contrary disingenuous.

Finally, the trial court did not err in rejecting plaintiff's claim of unjust enrichment. The elements of a claim for unjust enrichment are: (1) 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. In such instances, the law operates to imply a contract in order to prevent unjust enrichment. However, a contract will be implied only if there is no express contract covering the same subject matter. *Barber v SMH (US), Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993). As the trial court noted in its decision, defendants did not receive any payment from plaintiff. In addition, because there is a settlement agreement on this issue, no contract will be implied in this case. *Id.*; *Martin v East Lansing School Dist*, 193 Mich App 166, 177; 483 NW2d 656 (1992).

Affirmed.

/s/ David H. Sawyer
/s/ Richard Allen Griffin
/s/ Peter D. O'Connell