IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

LASZLO TROMLER	)	**CASE NO. CV 16 865096**
	)	
Plaintiff,	)	**JUDGE JOHN P. O'DONNELL**
	)	
vs	)	**JUDGMENT ENTRY AFTER A BENCH TRIAL**
	)	
BUCKEYE BREWING CO., INC., *et al.*	)	
	)	
Defendants.	)	

John P. O'Donnell, J.:

This case is about two longtime friends who tried to become business partners and ended up as neither.

The complaint

Plaintiff Laszlo Tromler filed a complaint on June 22, 2016 that includes causes of action for breach of contract, an accounting, quantum meruit and unjust enrichment. The essence of the lawsuit is that Tromler and defendants Garin and Robert Wright, the owners of defendant Buckeye Brewing Co., Inc., entered into a contract whereby Tromler would become a partner in the business by providing an infusion of capital to buy new equipment. Tromler eventually paid Buckeye Brewing Co. approximately $70,000 but the project fizzled out and he never got an equity interest in the company so he sued to recover his money.

The defendants filed an answer denying the complaint's allegations and the case proceeded to a bench trial on March 22 and 23, 2017. This judgment follows.

The facts

Tromler and Garin Wright became friends growing up near each other in Independence. Around 1994 Garin Wright got into the business of brewing beer by founding, with his father, Buckeye Brewing Co., Inc. Garin and Robert Wright are the sole shareholders of the company. They started out with a facility on Miles Road in Bedford known as the Brewkeeper. There the company produced beer for sale to bars, restaurants and retail outlets but it was also a place where customers could brew their own beer under Garin Wright's supervision. The Bedford location was closed circa 2006 and the brewing equipment was moved to an industrial building on Walford Road in Cleveland. The "brew your own" feature of the Brewkeeper did not continue at the Walford Road facility.

At that point the company used what is known as a three-barrel system. With that system only a maximum of three barrels of beer (equal to six standard kegs) can be produced in any one batch because of the size of the two vessels which comprise the brewhouse, where water is turned into beer through the addition of grains and hops in the first vessel and then yeast in the second tank. The three-barrel brewhouse limited Buckeye Brewing's maximum annual production to about 250 barrels of beer.

About this same time the Wrights formed defendant Buckeye Team, LLC to open a restaurant in Lakewood known as the Buckeye Beer Engine. The Wrights are the sole members of Buckeye Team, LLC and although the restaurant buys beer from Buckeye Brewing Co., Inc. the two entities are separate and do not share financing, accounting and other back office functions, overhead and other costs, or profits and losses.

Around 2007 the Wrights sought to increase Buckeye Brewing Co., Inc.'s production capacity by increasing the size of the brewhouse to a 15-barrel system and acquiring other

necessary equipment including a boiler, chiller and bottler. In considering possible sources of new capital to get the equipment Garin Wright thought of his childhood friend Tromler, who by 2007 was the chief executive and a partner in a successful business known as Bearing Technologies, Ltd. The Wrights acquainted Tromler and Jeff Hrehocik – Bearing's chief financial officer who Tromler relied on to help manage Tromler's personal financial affairs – with the brewery operation and their vision for an expanded business. Tromler was interested and, on November 13, 2007, the parties prepared and signed a memorandum of understanding.

The MOU was admitted at trial as Plaintiff's Exhibit 1 and serves as the basis for the breach of contract cause of action. The MOU was meant to "memorialize the intentions" of the Wrights and Tromler to undertake a recapitalization of Buckeye Brewing Co, Inc.[1] Under the memorandum, the parties planned to create a new legal entity – apparently a limited liability company, based on the references in paragraph 2 to a board of managers and in paragraph 7 to an operating agreement – of which the Wrights would own half and Tromler – plus any other investors he brought in – would own the other half. The new company would have a four-person board of managers consisting of the Wrights and two people designated by Tromler and any other investors.

Tromler "plus select investors to be determined in the future" are referred to in the memorandum as a consortium. The consortium was expected to contribute initial funding of $100,000 by January 15, 2008. The Wrights' contribution to the new entity would be Buckeye Brewing Co. Inc.'s assets. Under a timeline attached as an exhibit to the MOU the parties

[1] The MOU was prepared without the assistance of counsel and refers to the parties to the agreement as "Robert and Garin Wright, DBA Buckeye Brewing" and Tromler. That connotes a sole proprietorship but the evidence is undisputed that Buckeye Brewing Co., Inc. is an Ohio corporation. The MOU also refers to the "recapitalization plan for Buckeye Brewing" and the creation of a new limited liability company to which Buckeye Brewing Co., Inc. would contribute all of its assets and Tromler would contribute cash. That plan does not describe "recapitalization" of the existing company. These drafting deficiencies do not ultimately affect the outcome of the lawsuit but they do demonstrate the potential hazards of brewing one's own contracts.

anticipated establishing the new legal entity by January 4, 2008 and buying the new capital equipment by February 5, 2008.[2] Finally, the memorandum provides that:

> The above conditions shall be subject to ordinary due diligence, the successful execution of a Purchase and Contribution Agreement, and execution of an Operating Agreement.[3]

With the exception of some action by Tromler and Hrehocik to conduct due diligence none of these things were accomplished.

But beginning on February 5, 2008 Tromler did begin to infuse cash into Buckeye Brewing Co., Inc. On that date he authorized a check for $6,600 payable directly to County Line Specialties for the purchase of a brew system. On March 7 he paid $33,027.13 to cover various expenses of Buckeye Brewing Co., Inc. including just over $21,000 to buy hops. On May 23 Tromler wrote a check for $18,335.56 for business expenses including part of the new brewhouse and its control panel. He sent his last check to Buckeye Brewing on June 17 for $11,494.98 to pay for or acquire new equipment.

The first check was payable directly to a vendor, County Line, for equipment bought and used by Buckeye Brewing Co., Inc. Each of the other three checks was payable to Buckeye Brewing Co., Inc. and were recorded in the company's books as loans. All four checks were drawn on a Bearing Technologies, Ltd. checking account but the amounts were debited from Tromler's capital account at Bearing. Hrehocik testified that this was for convenience in lieu of Tromler writing a check to Buckeye Brewing Co., Inc. and then Bearing writing a check to him for the same amount.

The four checks amount to $69,457.67.

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[2] In another example of unedited drafting, these dates are actually shown on the timeline as being in 2007, which was impossible since the MOU was signed in November 2007. Obviously, 2008 was intended.

[3] Plaintiff's trial Exhibit 1, MOU, ¶7.

By the time the last check was written there was no or little progress toward the other goals expressed in the MOU: creating a new legal entity and its governing documents, identifying other investors, obtaining bank financing and improving the leased premises. Tromler and Hrehocik were frustrated by the Wrights' ever-changing "strategic direction" and thought that Tromler's money – for example, $21,000 for hops, a perishable commodity – was being spent on the wrong things, or at least in the wrong order, since the first priority was getting and installing the new equipment to increase production capacity. After Robert Wright sent an email status report on July 1, 2008 communication broke down and Hrehocik ignored requests for more money in July and August.[4] After that the parties were not talking and over two years later, on September 29, 2010, Hrehocik sent Garin Wright an email saying that he has "tried to reach out to your dad and Kathy a few times to discuss the money that was loaned/invested"[5] and asking for a phone call to discuss a possible resolution. More than two years after that the parties met in Tromler's lawyer's office and still could not resolve their differences and this lawsuit was eventually filed.

LAW AND ANALYSIS

Breach of contract

Tromler's first cause of action is for breach of contract. The contract he alleges the defendants breached is the November 13, 2007 memorandum of understanding. To prove a breach of contract a plaintiff must demonstrate by a preponderance of the evidence (1) that a contract existed, (2) that the plaintiff fulfilled his obligations, (3) that the defendants failed to fulfill their obligations, and (4) that damages resulted from this failure. *Telxon Corp. v. Smart Media of Del., Inc.*, 9th Dist. Summit Nos. 22098 & 22099, 2005-Ohio-4931, ¶53.

[4] Defendant's trial Exhibits G and H.
[5] Plaintiff's trial Exhibit 4.

The MOU includes specific conditions on the parties' obligations, namely "the successful execution of a Purchase and Contribution Agreement and execution of an Operating Agreement."[6] A condition precedent is an event, not certain to occur, which must occur before performance under a contract becomes due. *Little v. Real Living HER*, 10th Dist. No. 13AP-924, 2014-Ohio-5664, ¶12. Nonoccurrence of a condition precedent discharges all duty to perform under the contract. *Id.* Consequently, the general rule is that, without the occurrence of conditions precedent, a promisor has no liability for breach of contract. *Id.*

Here, the conditions precedent were never performed and Tromler cannot prove the first, and foundational, element of a breach of contract claim: the existence of enforceable contractual obligations. The MOU is simply not a contract binding on the parties. It is, instead, an unenforceable agreement to agree, and the defendants' oral motion at trial under Rule 41(B)(2) of The Ohio Rules of Civil Procedure to dismiss the breach of contract cause of action was granted.

Quantum meruit

Quantum meruit is a Latin phrase meaning "what one has earned" or "as much as deserved." It is an equitable claim made pursuant to a quasi contract. A quasi contract is an obligation imposed by law whereby civil liability arises against one who has received benefits which he is not justly entitled to retain. *Hughes v. Oberholtzer*, 162 Ohio St. 330, 334 (1954). This cause of action in Tromler's complaint has elements in common with his cause of action for unjust enrichment. Both claims exist only when the parties' relationship is not controlled by an enforceable contract, and the real distinction between them is the nature of the benefit conferred on the defendant. An action for quantum meruit exists when one party confers some benefit upon another without receiving just compensation for the reasonable value of *services* rendered.

[6] Plaintiff's trial Exhibit 1, ¶7.

Beckler v. Bacon, 170 Ohio App. 3d 612, 617, 2007-Ohio-1319, ¶13 (1st Dist.). By contrast, a claim for unjust enrichment is a claim for the value of any benefit conferred. The quantum meruit claim to recover the value of services rendered is basically a subset of an unjust enrichment claim. For the purposes of this case the two causes of action are redundant, and since the benefit allegedly conferred was money and not services, the unjust enrichment claim is more suitable. Accordingly, I will consider the quantum meruit claim as extraneous and will address only the merits of the unjust enrichment claim.

Accounting

Tromler lists as count two of his complaint a cause of action for an accounting "of the entity described in"[7] the MOU because he is a member of that entity. A claim for an accounting is not really a cause of action in itself: it is a remedy concomitant to another cause of action, usually some variety of shareholder oppression. But whether it is viewed as a separate cause of action or a remedy, an accounting is not merited under the facts of this case.

Section 1705.22 of The Ohio Revised Code entitles a member of a limited liability company to true and full information regarding the status of the business and the financial condition of the company, its tax returns, and other information regarding the affairs of the company. An accounting would encompass all of this information, and maybe more, but an entity has to exist before an accounting of that entity can be ordered. Here the limited liability company was never formed so Tromler cannot force the defendants to provide him with an accounting of its affairs.

As to Buckeye Brewing Co., Inc. – an existing entity to which Tromler actually gave the money – the plaintiff would arguably be entitled to an accounting of its financial affairs if he prevailed on his breach of contract action and demanded as a remedy an ownership interest in

[7] Complaint, ¶22.

Buckeye Brewing Co., Inc. But he has not prevailed on his contract claim nor has he demanded as a remedy for the equitable claim a share of ownership in the corporation. Accordingly, Tromler is not entitled to an accounting.

Unjust enrichment

Tromler's final cause of action is for unjust enrichment. The elements of unjust enrichment are: (1) a benefit conferred by a plaintiff upon a defendant; (2) knowledge by the defendant of the benefit; and (3) retention of the benefit by the defendant under circumstances where it would be unjust to do so without payment (i.e., the 'unjust enrichment' element). *Advantage Renovations, Inc. v. Maui Sands Resort, Co., LLC*, 6th Dist. Erie No. E-11-040, 2012-Ohio-1866, ¶33. Ohio law does not require that the benefitted party act improperly in some fashion before an unjust enrichment claim can be upheld. *Id.* Unjust enrichment is a claim in equity, not law, and exists only to prevent an unjust result where a legal claim under a contract is not possible. Tromler must show that under the circumstances he has a superior equity so that it would be unconscionable for the defendants to retain the benefit. *United States Health Practices v. Blake*, 10th Dist. No. 00AP-1002, 2001 Ohio App. LEXIS 1291, *6 (Mar. 22, 2001).

The defendants' first argument for a judgment in their favor is that the unjust enrichment claim is barred by the statute of limitations. A claim for unjust enrichment is barred if it is not brought within six years of the date the cause of action accrued. R.C. 2305.07; *Bank of Am., N.A. v. Darkadakis*, 7th Dist. Mahoning No. 14 MA 0076, 2016-Ohio-7694, ¶41. A cause of action for unjust enrichment accrues on the date that money is retained under circumstances where it would be unjust to do so. *Palm Beach Co. v. Dun & Bradstreet*, 106 Ohio App. 3d 167, 175 (1st Dist. 1995).

According to the defendants, the latest date the unjust enrichment could have accrued was the last date a benefit was conferred: on June 17, 2008 when Tromler wrote the last check and began to think the defendants weren't living up to their end of the bargain. The first lawsuit – this case is a refiling under the savings statute – was not filed until more than six years later on November 24, 2014. But here the date the benefit was conferred and the date it was unjust to keep it are not coextensive because the parties were still taking steps, however slow, to comport with the original agreement. It is worth remembering that Tromler made his first payment in March, long after every milestone date on the project timeline had passed, but both parties were still acting as if the project was on, albeit delayed: Tromler was making payments and Buckeye Brewing Co., Inc., through the Wrights, was still searching for and acquiring equipment. Although Tromler had his doubts about the strategic direction the Wrights were taking, it was by no means clear as of June 17 – or any other exact date, for that matter – that one side or the other was backing out of the deal, and it is only once the deal was dead that it would be unjust for the defendants to retain the benefit. I cannot determine that exact date from the evidence, but it is after September 29, 2010 when the Wrights' failure to reply to Hrehocik's email of that date unmistakably implied that the deal was off. Since that was within six years of the lawsuit's filing the unjust enrichment claim is not barred by the statute of limitations.

The defendants alternatively argued that the plaintiff did not demonstrate that a benefit was ever conferred on the defendant Buckeye Team, LLC (also sued as a named defendant under the trade name of Buckeye Beer Engine). That position is supported by the evidence at trial, which is devoid of any suggestion that the money was used for Buckeye Team, LLC's benefit and the defendants' oral Civil Rule 41(B)(2) motion at trial for a dismissal of the complaint against Buckeye Team, LLC (and Buckeye Beer Engine) was granted at the close of evidence,

leaving only the Wrights and Buckeye Brewing Co., Inc. as defendants on the unjust enrichment claim.

The defendants' next argument against liability to Tromler is that the money was paid by Bearing Technologies, Ltd. so Tromler is not a real party in interest and therefore lacks standing to bring any claim for the money. Civil Rule 17(A) provides that every action shall be prosecuted in the name of the real party in interest. A "real party in interest" has been defined as one who has a real interest in the subject matter of the litigation, and not merely an interest in the action itself, i.e., one who is directly benefitted or injured by the outcome of the case. *Plant v. Edwards*, 8th Dist. No. 49488, 1985 Ohio App. LEXIS 9052, *7-8 (Oct. 24, 1985). The purpose behind the real party in interest rule is to enable the defendants to avail themselves of evidence and defenses that they have against the real party in interest and to assure finality of a judgment so they are not subjected to another suit brought by the real party in interest on the same matter. *Shealy v. Campbell*, 20 Ohio St. 3d 23, 24-25 (1985).

The evidence shows that it was Tromler's $69,457.67 that went to Buckeye Brewing Co., Inc. and its vendor, County Line Specialties. His capital account at Bearing Technologies, Ltd. was reduced by the amount of the four checks and this is not merely a paper loss as argued by the defendants: Tromler's asset – his membership interest in Bearing – was reduced by the amount of the payments regardless of whether he intended to liquidate that interest in June 2008, today or never. In any event, he has an interest in the lawsuit because he gave away something that he had and he stands to get it back if he prevails.

Having overcome the statute of limitations and demonstrated standing to bring the lawsuit, Tromler must prove the elements of unjust enrichment by a preponderance of the evidence. *San Allen v. Buehrer*, 8th Dist. No. 99786, 2014-Ohio-2071, ¶115. The first element is

the conferring of a benefit on a defendant. The defendants have raised two arguments on this element: first, no benefit was conferred, and second, even if it was, it went to the corporate defendant Buckeye Brewing Co., Inc. only and not to the Wrights individually.

To support the claim that the receipt of nearly $70,000 did not constitute a benefit, Robert Wright testified that by giving only $70,000 and not the full $100,000 contemplated by the MOU Tromler left them in a worse position than if they had received nothing and actually set the brewery's expansion back by three years. Garin Wright expanded on this reasoning by describing Tromler's money as an "investment" in a project that did not get completed so it was not worth anything to the recipients of the money. The defendants' position is not supported by the evidence, not to mention common sense and reason.

As for the evidence, it demonstrates that about $45,000 of the money went to purchase equipment that is still in use by Buckeye Brewing Co., Inc. The evidence also shows it was Garin Wright's decision to use a large portion of the money to buy perishable hops when the MOU – not an enforceable contract but the only tangible evidence of the parties' intentions – provides that 86% of the recapitalization was intended for capital equipment, improvements to the building, paying off existing debt, and marketing and promotion, while only 14% was meant for operating expenses. Moreover, the hops weren't even an operating expense: Garin Wright bought them in the hopes of stockpiling them until the brewery expansion was complete so they would be assured of having a ready supply of an important ingredient. In addition, all of the hops were ordered after the start of February, by which time all of the deadlines in the MOU except for the rebranding campaign had passed, making it clear to the Wrights that the continued dealings with the plaintiff were not governed by any written contract. Finally, the evidence shows that the defendants did nothing to try to bring about the other events contemplated by the

MOU: incorporating a new entity, preparing an operating agreement, drafting a purchase and contribution agreement, and raising $400,000 through lenders. Most of that was supposed to be done before Tromler and the consortium contributed $100,000 on January 15, 2008, so the Wrights can hardly complain that Tromler's failure to contribute another $30,000 caused the whole project to collapse.

As for logic and common sense, $70,000 has intrinsic value whether it is put to a good use or not. For unjust enrichment generally the amount of the benefit in question may be judged by its ultimate benefit to the conferee – imagine driving lessons for a blind man – but where money is given its value is fixed at the time of the transfer and how the conferee disposes of it doesn't matter. It's a brash thing to say to a man that the $70,000 he gave you was worthless because you wasted it.

Undoubtedly a benefit was conferred in this case and its value is $69,457.67.

But upon whom was the benefit conferred? Three of the checks were payable directly to Buckeye Brewing Co., Inc. and the funds from those checks went to pay bills owed by the company or, in the case of the hops, commodities used in the production of beer. The fourth check – to County Line Specialties – went to pay a bill owed by Buckeye Brewing Co., Inc. for equipment. Much of the equipment bought with the money is still in use by Buckeye Brewing Co., Inc. and there is no evidence that either of the Wrights used any of the equipment for their personal benefit. The company tracked the money in its accounting system and there is no evidence of distributions to shareholders, i.e. the Wrights. And while it is true that the Wrights are the only owners of Buckeye Brewing Co., Inc. and thus stand to profit if it benefits, the corporation is a separate legal entity and there is no evidence – much less an allegation – that the corporation was simply the alter ego of its owners and its corporate veil should be pierced. All

of this compels the conclusion that the only recipient of a benefit was the defendant Buckeye Brewing Co., Inc.

The next element of an unjust enrichment claim is knowledge by a defendant of the receipt of the benefit. Not much has to be said about this. The four checks were sent in response to specific requests for the money. Buckeye Brewing Co., Inc. knew that it got the money and it used the money for its own benefit.

The final element is a defendant's retention of a benefit under circumstances that would be unjust. The defendants claim there would be no injustice here because Tromler made an investment that was entirely at risk. That may have been true if the parties had taken the steps contemplated by the MOU and Tromler put money into a new company in exchange for ownership of up to half of it. Had that occurred then at least he would have an ownership interest in the brewery even if it was a business that, according to Garin Wright's testimony, is getting lost in a crowded market. But of course that didn't happen. Instead, Tromler shoveled money into the existing company and got literally nothing in return: no ownership in a new company, no shares in the old company, not even a promissory note. Because Tromler got nothing it would be unjust for Buckeye Brewing Co., Inc. to retain his money.

CONCLUSION

For all of the reasons given in this opinion, judgment is entered in favor of the defendants Garin Wright, Michael Wright and Buckeye Team, LLC on the all of the claims in the complaint, and judgment in all of the defendants' favor is entered on the claims for breach of contract, quantum meruit and an accounting. A judgment on the unjust enrichment claim in the amount of $69,457.67 is entered in favor of plaintiff Laszlo Tromler and against defendant Buckeye Brewing Co., Inc., with interest at the statutory rate beginning on the date of this judgment plus court costs.

IT IS SO ORDERED:

Judge John P. O'Donnell

April 28, 2017
Date

SERVICE

A copy of this journal entry was sent by email on April 28, 2017 to the following:

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