STATE OF MICHIGAN

COURT OF APPEALS

AFFINITY RESOURCES, INC, Plaintiff-Appellant,	UNPUBLISHED October 10, 2013
v	No. 308857 Oakland Circuit Court
CHRYSLER GROUP, LLC, Defendant-Appellee.	LC No. 2010-109642-CK

Before: M. J. KELLY, P.J., and WILDER and FORT HOOD, JJ.

PER CURIAM.

In this dispute concerning a consulting agreement, plaintiff Affinity Resources, Inc. appeals of right the trial court's opinion and order dismissing its claims against defendant Chrysler Group, LLC. On appeal, we conclude that the trial court did not err when it determined that Affinity failed to establish that there was a material question of fact as to whether Chrysler had agreed on the essential terms of a consulting agreement with Affinity. We also conclude that the trial court did not err when it determined that Affinity failed to present evidence from which a reasonable jury could conclude that Chrysler's retention of any benefit conferred on it during negotiations was unjust as between Affinity and Chrysler. Because the trial court did not err when it granted Chrysler's motion for summary disposition on these bases, we affirm.

I. BASIC FACTS

Katherine Kudla testified at her deposition that she had in the past worked for companies that provided equipment leasing services. During that time, she became involved with equipment deals and account managing for several Chrysler subsidiaries. In 2005, she started Affinity to provide equipment leasing services.

Kudla stated that Affinity provided services related to equipment financing—primarily third-party equipment financing. In a typical transaction, the company that wished to lease equipment would issue a request that would detail its equipment needs, the supplier, the location for the equipment, and the anticipated lease term. Affinity would then bid for the opportunity to arrange the equipment lease for a fee. If the company that wished to lease the equipment awarded the account to Affinity, Affinity would arrange funding for the leases, prepare all the documentation, coordinate the delivery of the equipment with the suppliers, set up the payment schedules, and work with accounts payable. Kudla stated that she hoped to eventually be able to fund her own deals and wanted to expand to include consulting and managed lease services.

Kudla testified that, during her years working with Chrysler, she observed that Chrysler did not manage its leases well. It would frequently incur additional expenses related to problems with lease renewals, with tax on equipment, and with equipment maintenance. In October 2008, Kudla approached Chrysler with a proposal to have Affinity manage all Chrysler's leases. She eventually began negotiating with Dan Meyers, Ken Augustine, and Larry Walker and, in November 2008, Kudla submitted a proposed agreement, but Chrysler did not sign the agreement.

In addition to her proposal to have Affinity manage Chrysler's leases, Kudla stated that Affinity agreed to handle certain "outstanding cap issues" and "default notices" related to leases after Chrysler went into bankruptcy in 2009. She testified that she handled these issues under a consulting purchase order issued by Chrysler in July 2009.

Kudla also had some dealings with Ford Motor Company during this time. While meeting with Ford, Kudla learned about Ford's program for managing its leases and she shared that information with Chrysler. She stated that Ford gratuitously gave her permission to use its "proprietary" information and even to use its "master lease as [her] own." Kudla agreed that she shared the information with Chrysler because she hoped to get Chrysler's business; the value, she stated, was in getting the agreement for "managed lease services." She spent between 60 and 80 hours gathering this information and sharing it with Chrysler.

Kudla sent a final draft proposal—entitled "Centralized Lease Management Statement of Work"—to Chrysler in December 2009. However, no one from Chrysler signed the proposed agreement. Kudla testified that she knew that Affinity could not manage Chrysler's leases without a specific type of approval: "I knew I needed a purchase order." Kudla stated that she was told that her proposal was the only proposal that Chrysler was considering and that Chrysler wanted to proceed. Chrysler's representatives also told her that they "were working on getting a purchase order, but it would have to wait" until after Chrysler's bankruptcy was complete.

Kudla explained that she knew about Chrysler's internal procedures from experience. She knew that a proposed project had to be written up and then be sent up through the necessary chain of command. If the project was approved, there would be a purchase order. After the purchase order was written, it must still meet further approval requirements. Kudla stated that, despite these requirements, she believed Chrysler had committed to proceeding with her proposed deal: "I asked him [Dan Meyers] specifically the second week of December [2009:] Is this deal moving forward[?]; and he said, yes, we're working on getting the funding and getting the project approved and you'll get a purchase order."

Kudla testified that she thought that she would begin managing Chrysler's leases in the first week of January 2010. However, Chrysler did not contact her after December 2009 and by February 2010 she realized that the deal was not going forward.

Affinity sued Chrysler in April 2010. In its complaint, as amended in November 2010, Affinity alleged that Chrysler was liable for damages under three theories: (1) Chrysler breached its management agreement with Affinity; (2) even if there was no binding contract, Chrysler made promises to Affinity which should be enforced under the doctrine of promissory estoppel;

and, (3) Chrysler was unjustly enriched by the information that Kudla provided to Chrysler about Ford's lease management practices.

In June 2011, Chrysler moved for summary disposition of Affinity's claims under MCR 2.116(C)(10). Chrysler argued that the undisputed evidence showed that Affinity and Chrysler never had a "meeting of the minds" on the essential terms of any contract. Specifically, Chrysler noted that Kudla testified that she knew that she needed a purchase order and various approvals before there could be a binding agreement with Chrysler. She also admitted that the persons with whom Affinity was negotiating at Chrysler never succeeded in obtaining a purchase order or the required approvals. For that reason, Chrysler argued, Affinity could not establish that there was an actual contract.

Chrysler argued that Affinity's claim that it is entitled to damages under a promissory estoppel theory was similarly deficient. It contended that Kudla's admissions concerning the purchase order and required authorizations shows that Chrysler never made a "clear and definite" promise to hire Affinity and, given Kudla's knowledge about Chrysler's procedure's and the clear lack of the necessary approvals, Affinity could not reasonably rely on any statements that Chrysler's agents made regarding whether Chrysler would ultimately issue a purchase order or approve Affinity's proposal. Chrysler stated that the undisputed evidence also showed that Affinity did not suffer any damages in relying on any statements concerning whether Chrysler would approve the proposal. As such, Chrysler maintained, Affinity could not establish its promissory estoppel claim.

Finally, Chrysler argued that any benefit that it received from Affinity concerning the processes that Ford used to manage its leases did not, as a matter of law, amount to an unjust enrichment. It stated that the evidence showed that Kudla did not develop the processes on her own; rather, Ford gratuitously shared with Kudla processes that it developed and Kudla then shared that information with Chrysler. Moreover, Kudla spent the time to learn about and share the information with Chrysler in order in improve her chances of obtaining Chrysler's business. Under these facts, Chrysler argued, any benefit that Chrysler retained could not be inequitable as between Affinity and Chrysler.

In response to Chrysler's motion for summary disposition, Affinity argued that the parties' prior dealings established that Chrysler's agent, Ken Augustine, had the authority to bind and actually bound Chrysler to Affinity's proposal for work. Moreover, the fact that Chrysler never issued a purchase order or funded the agreement was not material to determining whether there was an agreement because such matters were merely internal procedures that Chrysler used to implement agreements. Affinity also continued to assert that the evidence established a question of fact as to whether Chrysler was unjustly enriched by Affinity's efforts to secure information from Ford and share that information with Chrysler. Affinity did not, however, contest Chrysler's motion as to its claim premised on promissory estoppel.

In August 2011, the trial court issued its opinion and order on Chrysler's motion for summary disposition. Because Affinity did not contest Chrysler's motion as to its claim premised on promissory estoppel, the trial court dismissed that claim. However, the trial court concluded that, in light of the parties' prior course of conduct, a reasonable jury could conclude that Affinity did not need a purchase order or express approval from Augustine's superiors

before entering into a binding agreement with Chrysler. As such, it concluded, there was a question of fact as to whether Affinity and Chrysler had entered into a binding agreement. The trial court also determined that the gratuitous provision of services in an effort to obtain business could serve as the basis for a claim of unjust enrichment. Accordingly, it denied Chrysler's motion as to Affinity's remaining claims.

Chrysler moved for reconsideration of the trial court's opinion and order at the end of August 2011. In its motion, Chrysler challenged Affinity's characterization of the evidence and argued that Kudla's affidavit contradicted her deposition testimony. And it again argued that the undisputed evidence showed that Kudla knew that her proposal had to be incorporated into a purchase order and approved before it would be binding. Because there was no evidence that Chrysler issued a purchase order for the proposal, Chrysler reiterated that Affinity could not establish that there was a meeting of the minds on the essential terms. Chrysler also provided additional authority for the proposition that gratuitous services rendered without mistake, coercion, or request to secure business could not be the subject of a claim for unjust enrichment.

The trial court granted Chrysler's motion for reconsideration in November 2011. After reconsidering the evidence, the trial court determined that there was no question of material fact as to whether the parties had reached an agreement on the material terms of an agreement. It also agreed that Kudla's decision to gratuitously provide the information that she obtained from Ford to Chrysler could not serve as the basis for a claim of unjust enrichment. For those reasons, the trial court dismissed Affinity's remaining claims in an opinion and order issued in February 2012.

Affinity now appeals.

II. SUMMARY DISPOSITION

A. STANDARDS OF REVIEW

Affinity argues on appeal that the trial court erred when it dismissed its contract and unjust enrichment claims against Chrysler. This Court reviews de novo a trial court's decision on a motion for summary disposition. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009). This Court also reviews de novo the trial court's application of equitable doctrines. *Knight v Northpointe Bank*, 300 Mich App 109, 113; 832 NW2d 439 (2013).

B. CONTRACT CLAIM

Chrysler moved for summary disposition of Affinity's contract claim on the ground that Affinity could not prove an essential element of that claim: namely, it could not prove that Chrysler assented to Affinity's proposal for work. As the proponent of the contract, Affinity had the burden of showing "the existence of the contract sought to be enforced." *Hammel v Foor*, 359 Mich 392, 400; 102 NW2d 196 (1960). In order for there to be an enforceable contract between two parties, there must be "mutual assent" to be bound—that is, the parties must have a "meeting of the minds" on all the essential elements of the agreement. *Goldman v Century Ins Co*, 354 Mich 528, 535; 93 NW2d 240 (1958) ("To say, as we do, that a contract requires a 'meeting of the minds' is only a figurative way of saying there must be mutual assent."); *Dodge*

v Blood, 307 Mich 169, 176; 11 NW2d 846 (1943) (stating that a contract is not valid unless the parties have a meeting of the minds on all essential points of the agreement). Courts judge whether there was a meeting of the minds from objective evidence: from "the expressed words of the parties and their visible acts." *Goldman*, 354 Mich at 535. Moreover, when negotiating the terms of a contract, the acceptance of the final offer must be substantially as made; if the purported acceptance includes conditions or differing terms, it is not a valid acceptance—it is a counter proposal and will not bind the parties. See *Harper Bldg Co v Kaplan*, 332 Mich 651, 655-656; 52 NW2d 536 (1952). Finally, courts will not presume the existence of an enforceable contract because, "regardless of the equities in a case, the courts cannot make a contract for the parties when none exists." *Hammel*, 359 Mich at 400.

In its motion for summary disposition, Chrysler noted that Affinity—acting through Kudla—submitted proposals to manage Chrysler's leases, but that Chrysler did not accept any of those draft proposals. Indeed, Kudla testified at her deposition that there was no final draft contract because she was "working on it" with Augustine and Meyers and "it kept changing until December" 2009. And Affinity did not dispute that these early drafts did not result in a binding agreement. See *Harper Blg Co*, 332 Mich at 655-656; *Kirchhoff v Morris*, 282 Mich 90, 95; 275 NW 778 (1937) ("Mere discussions and negotiations, or even unaccepted offers . . ., cannot be a substitute for the formal requirements of the contract."). Rather, Affinity's contract claim was premised on the allegation that Chrysler agreed to be bound by the "Centralized Lease Management Statement of Work" (the Statement of Work) that Kudla submitted to Chrysler in December 2009.

With regard to the Statement of Work, Chrysler argued that the evidence showed that the parties understood that any agreement between Affinity and Chrysler was contingent upon the issuance of a purchase order, the securing of funding, and approval by Walker. In support of that contention, Chrysler relied heavily on Kudla's own testimony. Chrysler also presented evidence that it never issued the necessary purchase order, did not secure any funding, and did not finally approve the agreement. Because Chrysler properly supported its motion to dismiss Affinity's contract claim on the ground that there was no evidence that it assented to the Statement of Work, Affinity had the burden to come forward with evidence that established a question of fact on that issue. *Barnard Mfg*, 285 Mich App at 374.

In response to Chrysler's motion, Affinity argued that there was a question of fact as to whether the deal was contingent on the issuance of a purchase order. Affinity claimed that there was no evidence that anyone at Chrysler had informed Kudla that the agreement was contingent on the issuance of a purchase order. It also noted that, on a prior occasion, Chrysler had hired Affinity to perform consulting services without first issuing a purchase order and that this was evidence that the issuance of a purchase order was not a prerequisite to Chrysler entering into a binding agreement. Affinity stated too that Augustine had admitted at his deposition that he worked with Kudla on the Statement of Work and that they had agreed on the "commercial terms." Because Augustine had the actual or apparent authority to bind Chrysler, Affinity maintained that this evidence established—at the very least—a question of fact as to whether Chrysler had agreed to be bound by the Statement of Work. Finally, Affinity argued that Kudla's deposition testimony did not establish that the Statement of Work was contingent on the issuance of a purchase order. Affinity relied on an affidavit that Kudla executed after her

deposition testimony to show that Kudla did not believe that Chrysler's assent to the agreement was contingent on the issuance of a purchase order.

On appeal, Affinity relies on the same evidence that it cited in response to Chrysler's motion for summary disposition to support its argument that the trial court erred when it determined that Affinity failed to establish a question of fact as to whether Chrysler assented to the Statement of Work. Yet, even viewing the evidence in the light most favorable to Affinity, *id.* at 372, it is apparent that Chrysler understood that the Statement of Work was merely a proposal that—even after being approved as to form—had to be accepted through the issuance of a purchase order, which was not done. The evidence presented by the parties showed that they negotiated changes to the proposal that were intended to fit the proposal into Chrysler's system for approving contracts. Moreover, the evidence also showed that Kudla understood this process and agreed that her proposal could not go forward without conforming to Chrysler's practice.

In November 2008, Affinity presented Chrysler with a traditional contract covering the proposed services. Affinity gave it the title: "COOPERATION AND SUPPLY AGREEMENT." This proposed agreement also contained recitals of consideration and a signature block for the persons who would "execute" the agreement on behalf of each party. However, by December 2009, the proposal was no longer explicitly identified as a comprehensive stand-alone agreement. Affinity gave its December 2009 proposal the title "Centralized Lease Management Statement of Work." And, although Affinity did refer to the "agreement" in the Statement of Work, it also described the proposed services in a "Project Overview" with a "Recommendation" and "Project Plan."

Augustine testified at his deposition that he worked with Kudla on the Statement of Work. He explained that he typically reviewed these types of statements from suppliers to include "changes that fit our criteria." He stated that, in a typical transaction, a proposal for work would be negotiated and agreed upon; after the statement was finalized, the service provider would have to sign a master service agreement. Finally, once the supplier agreed to the master service agreement, the statement of work would be incorporated into a purchase order, but the master service agreement would take precedence over any conflicting terms provided in the purchase order.

Although Augustine stated that Affinity's Statement of Work was acceptable and that he agreed with the "commercial terms", he also agreed that there were additional steps that had to be taken after approving the Statement of Work before it could go forward—that is, he essentially testified that it was his opinion that the terms were acceptable, but that he did not have the authority to authorize the agreement on his own. He explained that the approval for funding was a decision "that usually is above me anyways." Finally, he stated that none of his superiors ever told him that the terms in the Statement of Work had been agreed to or that a purchase order or funding had been approved.

Kudla's testimony was consistent with Augustine's testimony and nothing within her testimony suggested that Chrysler had agreed to proceed with the deal outside the framework of a purchase order. Kudla testified that she already knew about Chrysler's approval procedures from her prior experience. She explained that, in order to obtain a deal from Chrysler, a company would have to "write a project for the scope of what they want covered in the purchase

order and it goes up through the necessary chain—chain of command for approvals and then it goes to a purchase order." Indeed, Kudla admitted that Chrysler never intended to sign Affinity's Statement of Work. Rather, because they wanted to avoid sending the agreement to "legal", the people with whom she was negotiating asked that the agreement be in a form that could serve as the "foundation that they were going to write the purchase order against and they were going to scan it [the Statement of Work] into the notes part of the purchase order . . . ." When asked whether a purchase order was "necessary to move forward", she responded: "I knew I needed a purchase order." Moreover, Kudla testified that they tried to ensure that the terms in the Statement of Work were consistent with the terms found in purchase orders to ensure that "there wouldn't be a conflict." She also recognized that "Chrysler could pick and choose what terms and conditions were applicable within the purchase order."

Although Kudla testified that she was led to believe that the deal would go through, her testimony also does not support the conclusion that Chrysler actually assented to the terms stated in Affinity's Statement of Work. In each instance where Kudla testified that someone from Chrysler had told her that the deal was going through or that the purchase order was forthcoming, she also noted that the speaker qualified the statement. For example, Kudla testified that persons at Chrysler assured her that she would get the purchase order, but she also noted that she was getting evasive answers about the purchase order and was told: "We're working on it." Similarly, Kudla testified that Meyers told her that the deal was moving forward, but that he also qualified his statement: "we're working on getting the funding and getting the project approved and you'll get a purchase order." Although these statements suggest that Chrysler's staff was leading Kudla to believe that Chrysler would consummate the deal, the qualified nature of the statements makes it clear that the deal had not yet been approved. Each statement by a Chrysler employee could—at best—give rise to an inference that the employee was *hopeful* or *believed* that the deal would ultimately be approved; the statements did not, however, permit an inference that the deal had been actually and unqualifiedly approved. Indeed, Kudla candidly admitted at her deposition that no one told her that she had received final approval for her proposal.

Kudla's actions after she sent the Statement of Work to Chrysler were also consistent with the understanding that she needed a purchase order to finalize the agreement. Kudla sent an email to Meyers in January 2010 in which she requested "the changes" he wanted for the "Managed Leased Services project" and asked him to let her "know how [he'd] like to proceed with this project." Kudla's reference to the changes that Meyers wanted and her request for guidance on how to proceed are evidence that she understood that Chrysler had not yet assented to the Statement of Work by January 2010.

She also sent an email to Walker later in January 2010 in which she expressed exasperation at Chrysler's failure to write a purchase order for her proposal. Indeed, she specifically asked Walker "where does [Affinity's] proposal stand?" Although this evidence again permits an inference that Kudla was led to believe that she was going to get a finalized agreement, it also clearly shows that she understood that she needed the purchase order before her "proposal" would become a binding agreement.

To the extent that Affinity presented evidence that might permit an inference that Chrysler had in the past entered into agreements without issuing a purchase order, that evidence does not establish a question of fact as to whether Affinity and Chrysler intended to do so with regard to the Statement of Work. Kudla testified that Chrysler wanted the Statement of Work so that it could be incorporated in a purchase order and she likewise testified that she knew that the purchase order would have to be approved. Similarly, Augustine testified that, although he helped Kudla draft the Statement of Work and approved it as to form, the Statement of Work would still have to be approved. Thus, there was uncontroverted evidence that Chrysler and Affinity both understood that the Statement of Work had to be incorporated into a purchase order and approved before it would take effect. Consequently, the fact that the parties utilized a different method for approving a past agreement cannot be used to contradict their expressed understanding to the contrary for the agreement at issue.

We also do not agree that Affinity could create a question of fact through Kudla's affidavit. In her affidavit, Kudla averred that she did not believe that she needed a purchase order to consummate the agreement—she averred that the purchase order would simply memorialize the agreement. She also averred that the deal did not require funding or approval by Walker before it would be binding. To the extent that these averments contradict Kudla's deposition testimony that she needed a purchase order and further approval, they cannot be considered in determining whether there was a question of fact. *Stefan v White*, 76 Mich App 654, 659-660; 257 NW2d 206 (1977) (stating that, when considering a motion for summary disposition, a party's deposition testimony is conclusively binding).

Considering the relevant evidence as a whole, it is clear that both Affinity—through Kudla—and Chrysler understood that the Statement of Work did not constitute the parties' agreement; rather, Kudla acknowledged that the final agreement, if and when approved, would be in the form of a purchase order that incorporated the Statement of Work. Because it is undisputed that Chrysler never authorized or issued a purchase order that incorporated Affinity's Statement of Work, which was a prerequisite to finalizing the agreement, no reasonable jury could conclude that Chrysler agreed to be bound by the Statement of Work.

C. UNJUST ENRICHMENT CLAIM

Affinity also argues that the trial court erred when it dismissed its claim against Chrysler for unjust enrichment. Specifically, it maintains that it would be inequitable to allow Chrysler to retain the benefit of Kudla's information about Ford's lease management practices without paying Affinity for its efforts.

Our Supreme Court "has long recognized the equitable right of restitution when a person has been unjustly enriched at the expense of another." *Michigan Ed Employees Mut Ins Co v Morris*, 460 Mich 180, 198; 596 NW2d 142 (1999). "[U]nder the equitable doctrine of unjust enrichment, '[a] person who has been unjustly enriched at the expense of another is required to make restitution to the other.'" *Kammer Asphalt Paving Co v East China Twp Schools*, 443 Mich 176, 185; 504 NW2d 635 (1993), quoting Restatement Restitution, § 1, p 12. In order to remedy an unjust enrichment, courts will indulge the fiction of a quasi or constructive contract to pay for the benefits received. *Id.* at 185-186. Nevertheless, because this "doctrine vitiates normal contract principles," Michigan courts will employ it with caution. *Id.* at 186.

The elements of a claim for unjust enrichment "are the receipt of a benefit by a defendant from a plaintiff, which benefit it is inequitable that the defendant retain." *Moll v Wayne Co*, 332 Mich 274, 278-279; 50 NW2d 881 (1952) (quotation marks, citation, and emphasis removed), overruled on other grounds in *Brown v Dep't of Military Affairs*, 386 Mich 194, 200-201; 191 NW2d 347 (1971). Courts use the phrase "unjust enrichment" to characterize the result that would follow if a party who obtained property or a benefit from another failed to make restitution. *Buell v Orion State Bank*, 327 Mich 43, 56; 41 NW2d 472 (1950). The key consideration is whether the defendant's retention of the benefit would be unjust as between the parties: *Id.* ("No person is unjustly enriched unless the retention of the benefit would be unjust."). Generally, the test to determine whether the retention of a benefit is unjust as between two parties depends on a reasonable person standard: whether "reasonable men in like situation as those who received and are benefited . . . naturally would and ought to understand and expect compensation was to be paid." *In re Camfield Estate*, 351 Mich 422, 432; 88 NW2d 388 (1958) (quotation marks and citations omitted).

Here, there is evidence that Kudla expended considerable time to obtain information from Ford and present it to Chrysler. Kudla testified that while meeting with representatives from Ford on separate business, she obtained information about the procedures that Ford used to manage its equipment leases. Ford's representatives later volunteered to provide her with more detailed information and she decided to pass that information on to Chrysler after several persons at Chrysler expressed an interest in Ford's lease management methods. Therefore, there is evidence that Affinity provided Chrysler with a benefit for which it received no compensation. Accordingly, the remaining question is whether Affinity provided evidence from which a reasonable jury could conclude that Chrysler's retention of that benefit without compensating Affinity would be inequitable. *Kammer*, 443 Mich at 186 (stating that summary disposition would be inappropriate for an unjust enrichment claim if "reasonable minds could differ" over the legal conclusion).

The mere fact that Chrysler received a benefit from Affinity was not itself sufficient to establish a claim for unjust enrichment. *In re McCallum Estate*, 153 Mich App 328, 335; 395 NW2d 258 (1986). Chrysler would only be liable to Affinity "if the circumstances of its receipt or retention are such that, as between the two [parties], it is unjust for [Affinity] to retain it." *Id.* A party who makes an informed choice to confer an unconditional benefit on another is not entitled to restitution. *Id.*, adopting Restatement Restitution § 112, p 461. "A person who without mistake, coercion or request has unconditionally conferred a benefit upon another is not entitled to restitution, except where the benefit was conferred under circumstances making such action necessary for the protection of the interests of the other or of third persons." Restatement Restitution, § 112, p 461. A person is entitled to restitution for a benefit conferred under the influence of mistake, fraud, coercion, duress, or agreement, but in the absence of such circumstances, "the conferring of a benefit does not ordinarily give rise to a right to restitution." Restatement Restitution, § 112, comment a, p 461-462. Thus, where a party improves the land of another in the *hope* that the landowner will pay for the work, the landowner has no obligation to pay restitution for the improvements. See Restatement Restitution, § 112, illustration 3, p 462. Similarly, where a party supplies a benefit to another *gratis* or out of his or her own self-interest, the beneficiary's retention of the benefit cannot be said to be unjust as between the two parties. *In re Camfield Estate*, 351 Mich at 428-434.

Kudla stated that she did not expect to be directly compensated for her efforts; rather, she believed that her efforts would lead to a deal with Chrysler: "the compensation was going to come from, was the managed lease service contract." She stated that she spent time gathering information from Ford and sharing it with Chrysler as part of her effort to induce it to hire Affinity to manage its leases: "It was my understanding that, you know, we were working on putting the contract together, and that was my main goal, was to get the contract." And, had Affinity gotten the contract with Chrysler, she would not have expected any additional compensation beyond the contract to manage the leases: "In getting the contract, I would have assumed that that was part and parcel of the Ford information." She agreed that the deal with Chrysler would have been reward enough for her efforts; "But", she explained, "I didn't expect that they [Chrysler] were going to take the information and not give me the contract and then use it."

It is evident from Kudla's testimony that she obtained and shared Ford's management practices with Chrysler as part of a strategy to get business from Chrysler—that is, she made an informed choice to gratuitously provide the information to Chrysler in the hope that it would help cement a deal between Affinity and Chrysler. As she explained at her deposition, she only decided that Affinity should be compensated for the efforts that she expended to obtain and share Ford's information after Chrysler chose not to hire Affinity to manage its lease program. But Kudla's disappointment over Chrysler's decision does not make it inequitable for Chrysler to "retain" the benefits that she conferred upon it during negotiations.

Reasonable persons understand that, whenever a business expends money and effort to woo new business, there is a risk that the investment will prove fruitless; and when such is the case, absent exceptional circumstances not present here, equity does not give the suitor the right to turn around and demand compensation for the resources expended on the unsuccessful effort. See *In re Camfield Estate*, 351 Mich at 428-434; *In re McCallum Estate*, 153 Mich App at 335; Restatement Restitution, § 112, p 461-462. Given the undisputed evidence that Affinity provided the information to Chrysler gratis and out of self-interest, no reasonable jury could conclude that Chrysler's retention of the benefit under the circumstances amounted to unjust enrichment. The trial court did not err when it dismissed Affinity's claim for unjust enrichment.

III. CONCLUSION

The trial court did not err when it granted Chrysler's motion for summary disposition and dismissed Affinity's claims.

Affirmed.

/s/ Michael J. Kelly
/s/ Kurtis T. Wilder
/s/ Karen M. Fort Hood