S T A T E   O F   M I C H I G A N

C O U R T   O F   A P P E A L S

TITLE RESOURCES GUARANTY COMPANY, Plaintiff-Appellant,	UNPUBLISHED August 18, 2026 10:52 AM
v	No. 375599 St. Clair Circuit Court
THOMAS FRANCIS and MELISSA FRANCIS, Defendants-Appellees.	LC No. 25-000365-CH

Before: CAMERON, P.J., and MALDONADO and WALLACE, JJ.

PER CURIAM.

Plaintiff, Title Resources Guaranty Company, is the title insurance underwriter that insured title to a home that was being sold by the Curtisses in Fort Gratiot, Michigan. Liberty Title Agency (Liberty Title), a policy issuing agent of plaintiff, handled the closing of the sale. University Bank was supposed to issue a payoff statement for the mortgage on the property, but it mistakenly provided a payoff statement for the mortgage of defendants Thomas Francis and Melissa Francis, instead of the Curtiss mortgage. The Curtisses' mortgage on their home was to be paid off and discharged as part of the transaction for its sale, but Liberty Title erroneously paid off the mortgage on the home of the defendants instead.

As detailed later in this opinion, defendants alerted Liberty Title about the issue, negotiated with Liberty Title and University Bank, and ultimately offered to give a private note or mortgage that would place defendants in the same position they occupied before their mortgage was paid off, but that offer was refused. Plaintiff, who had no relationship or interaction with defendants to that point, then placed a notice of lis pendens on defendants' home and sued them for imposition of an equitable mortgage and unjust enrichment, despite the fact that plaintiff had not paid off the mortgage of its insureds. Summary disposition of that lawsuit was granted on defendants' motion pursuant to MCR 2.116(C)(8). Only then did plaintiff incur the cost of paying off the Curtiss mortgage on the home that was sold, as was its contractual obligation as the title insurer for the purchaser, after which it moved for reconsideration of the order granting summary disposition to defendants. The trial court denied the motion for reconsideration and plaintiff filed this timely claim of appeal. We affirm.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

In light of this being an appeal from a grant of summary disposition pursuant to MCR 2.116(C)(8), the underlying facts are not in dispute and are taken as alleged in plaintiff's complaint.

Defendants own a home in Fort Gratiot, Michigan. In exchange for the purchase money loan defendants obtained from University Lending Group, LLC (University Lending), their home was encumbered by a purchase money mortgage given to Mortgage Electronic Registration Systems, Inc. (MERS), as University Lending Group's nominee.

The Curtisses owned a home down the street from the defendants. Likewise in exchange for a purchase money loan the Curtisses obtained from University Lending, their home was also encumbered by a purchase money mortgage given to MERS, as University Lending's nominee.

The Curtisses entered into a purchase agreement with an individual named Burkhardt for his purchase of their home. A policy issuing agent of plaintiff, Liberty Title Agency, handled the closing of the sale. Liberty Title contacted Midwest Loan Services, a division of University Bank, to obtain a payoff statement for the mortgage on the Curtisses' home. Apparently erroneously, University Bank provided Liberty Title with a payoff statement for the mortgage on the Francis property. Liberty Title failed to notice that they had been provided a payoff statement for a different property on the same street as the Curtiss property, and then erroneously used this incorrect information to calculate the amount purportedly needed to pay off and discharge the Curtiss mortgage.

In connection with the closing on Burkhardt's purchase of the Curtiss property, plaintiff issued Burkhardt a policy of title insurance guaranteeing that he was purchasing the Curtiss property free and clear of any encumbrances. Following the closing, Liberty Title wired the funds intended to pay off the Curtiss mortgage to University Bank, which funds were erroneously based on the information contained in the payoff statement for the Francis mortgage. University Bank, in turn, erroneously applied those funds to pay off the defendants' mortgage, executed a discharge of that mortgage, and submitted that discharge for recording.

Thomas Francis thereafter discovered that a mistake had been made with regard to his and his wife's mortgage being paid off and discharged, so he contacted Liberty Title to advise them of this issue. Additionally, the Curtiss mortgage was not discharged after the closing and continued to encumber the property despite Burkhardt having purchased it. Liberty Title endeavored to remediate the foregoing errors, but was informed by University Bank that the payoff funds erroneously applied to pay off the mortgage on the defendants' property could not be returned and neither could the discharge of that mortgage be reversed.

Liberty Title and University Bank negotiated an arrangement between them whereby, at no cost or liability to defendants, University Bank would issue a new loan to defendants and Liberty Title would make a payment of its own funds to University Bank so that the terms of the new loan would allegedly be identical that of the mortgage on the Francis property that was erroneously paid off and discharged. Further, as part of this arrangement, plaintiff, Liberty Title, and University Bank agreed to provide a release to defendant. However, defendants would be required to submit a loan application, including providing financial disclosures and their credit report. It was contemplated that the proceeds of the proposed new loan were to be used to pay off the Curtiss mortgage that now encumbered the title on the property Burkhardt purchased from the Curtisses.

Defendants responded to Liberty Title and University Bank's overture by declining any arrangement whereby they would be obliged to apply for a new loan requiring them to provide credit reports and other financial disclosures that could in turn affect rates for loans that they would need to apply for that year and for the next several years. Defendants proposed an alternative arrangement whereby "[t]he loan proposed could be accomplished with a private note/mortgage, which do not require" them to "apply for a new loan or have the credit pull associated with it." According to defendants, such an arrangement would place them in the exact position they occupied before Liberty Title and University Bank's errors. Liberty Title and University Bank declined any arrangement that did not involve defendants applying for a new loan, requiring them to provide credit reports and other disclosures. There is no indication that plaintiff had any involvement in these discussions with defendants.

Plaintiff acknowledges that, under the policy of title insurance it issued to Burkhardt, guaranteeing that he was purchasing the Curtiss property free and clear of any encumbrances, it was contractually obligated to pay off the Curtisses' mortgage encumbering Burkhardt's title. However, rather than doing so, after defendants and Liberty Title and University Bank were unable to come to a mutually agreeable arrangement to return defendants to their original position with regard to their now paid off mortgage, plaintiff filed a notice of lis pendens[1] on defendants' home and sued them for imposition of an equitable mortgage and unjust enrichment.

In lieu of answering this complaint, defendants filed a motion for summary disposition pursuant to MCR 2.116(C)(8) (failure to state a claim on which relief can be granted). Following briefing and oral argument on this motion, the trial court granted summary disposition to defendants and discharged the notice of lis pendens in an oral ruling. It entered a written order memorializing that ruling, and indicating that the summary disposition was granted with prejudice, the same day. In its oral ruling, the trial court, pushed back on plaintiff's counsel's argument that defendants had a duty to cooperate with the arrangement proposed by Liberty Title and University Bank and noted that defendants had received no "unjust benefit" from plaintiff.

> You can go and pay off the [Curtiss] mortgage that you should have paid off before. And then you may have claims against somebody else for some type of a reimbursement, but you haven't done any of those things. Instead, you and Liberty [Title] and University [Bank] are trying to hatch some kind of a deal to make everybody happy without actually doing anything and then forcing the Francis[es] to do something that they have no obligation to do.

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[1] "Lis pendens" is "A notice, recorded in the chain of title to real property, required or permitted in some jurisdictions to warn all persons that certain property is the subject matter of litigation, and that any interests acquired during the pendency of the suit are subject to its outcome." *Black's Law Dictionary* (12th ed).

In response to plaintiff's counsel's argument that they "essentially are stepping into the shoes of our insured, Mr. Burkhardt, whose money was used to pay . . . the Francis mortgage," the trial court stated:

> Then do that. You don't just assume that you're doing it. Take care of Burkhardt like you're supposed to and then maybe you . . . might have a claim. Against somebody. I don't think you have a claim against the Francises, but you might have a claim against somebody.
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> * * *
>
> And then you can start the process all over. Your lawsuit makes no sense to me. But go ahead. I'll listen.

Plaintiff's counsel then indicated they were requesting equitable relief from the court "because the Francises have gotten a benefit here and it was . . . an unequitable benefit. They weren't entitled to it."

The trial court responded that the Francises did not get a benefit from plaintiff, they got a benefit from University Bank because University Bank and Liberty Title "screwed up":

> Your client should pay off their mortgage, incur the liability, and then take whatever legal steps you feel you need to take to try to get yourself back to whole. But that's not what you're doing. What you're trying to do is manipulate the, the whole circumstance to get the Francises to sign a new loan agreement, to engage in, in credit checks and do a variety of other things that they're under no obligation to do so that University [Bank] ends up giving you the money that, that, that you will then use to satisfy or partially satisfy . . . the Burkhardt mortgage. Instead of you just doing it the way you should; which is pursuant to your contractual obligation, meaning your client, not you. That's what, in my view, needs to happen.

The trial court continued:

> Mr. Francis's suggestion in his email chain makes perfect sense to me. University [Bank], they were the first to screw up. And then Liberty [Title] compounded that by their error. But University [Bank] is the one I think that needs to do what Mr. Francis suggested. And that is, take this mortgage off the, the typical lane of federal approval and being able to sell it on the open market, I think University [Bank] has to make a side deal. They have to have a private note and they put together some form of a security agreement with the Francises. If that's something that they're willing to do. And maybe their security can be reinstated and the train can be put back on the tracks. But we're not there yet. But to require them to go through a formal reloan or reapplication process just so University [Bank] can sell the mortgage on the open market is a crazy solution.
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> * * *

> So that's what needs to be done. And it's been done before. I've known of title companies locally and bankers locally that have been in a situation similar to this where they had no choice but to make a side deal in order to protect everybody's rights and interests. And at this point, University [Bank] is not willing to do that. But maybe they will after my ruling, because I intend to grant the motion.
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> * * *
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> There's no basis for an . . . equitable mortgage based upon the Complaint. There's no basis for unjust enrichment. There's been no benefit conferred by the Plaintiff to the Francises. There's just no claim that has been stated according to Michigan law. I'm going to grant the motion.

Following this ruling and entry of the order granting summary disposition with prejudice on March 24, 2025, plaintiff filed a timely motion for reconsideration. That motion asserted that Plaintiff paid off the Curtiss mortgage on April 9, 2025 and attached a screenshot purportedly confirming that pay off, consistent with its contractual obligations as the insurer of Burkhardt's title. Based on this action, the motion sought to have the trial court reconsider its grant of summary disposition, allow it to amend its complaint and pursue its equitable mortgage and unjust enrichment claims against defendants.

The trial court did not request a response from defendants and entered an opinion and order denying the motion for reconsideration. The court found that the fact that plaintiff had now paid off the Curtiss mortgage did not provide a basis for it to reconsider its ruling. The opinion and order noted that plaintiff had no relationship with defendants, and that defendants are "total innocent parties" to what has transpired, which was the result of "a calamity of errors committed by corporate entities that are not parties to the instant action." It further held:

> At the hearing on the motion [for summary disposition] the Court noted Plaintiff had not suffered any loss because of [University Bank[2]]'s error and Liberty [Title]'s subsequent error and that if Plaintiff or Liberty [Title] satisfied the [Curtiss] mortgage, as they were contractually obligated to do, they likely had recourse against [University Bank] for [its] role in the fiasco. Plaintiff has since paid off the [Curtiss] mortgage . . . . Plaintiff believes this new fact changes the entire landscape and entitles Plaintiff to relief against the Defendants as requested in its complaint. It does not. Plaintiff's theories of equitable mortgage and unjust enrichment are not applicable to Defendants for the reasons stated at the [summary

[2] The trial court's opinion and order denying the motion reconsideration references "Midwest," as in "Midwest Loan Services," a division of University Bank that Liberty Title contacted to obtain a payoff statement for the Curtiss mortgage. However, plaintiff's complaint references "University Bank" as the entity that provided the erroneous payoff statement containing information pertaining to defendants' mortgage, and with Liberty Title, came up with the proposed loan arrangement to resolve their errors, which defendants rejected. Likewise, the trial court in granting defendants' motion for summary disposition only referenced University Bank. We accordingly substitute "University Bank" for "Midwest" for purposes of consistency.

> disposition] hearing. Nothing new has been advanced by Plaintiff on its legal theories. MCR 2.119(F)(3). Plaintiff is still pleading with this Court to exercise its broad equitable powers and force the Liberty [Title]/ [University Bank] loan agreement and loan terms upon Defendants, which Defendants refused to accept, under the guise of an equitable mortgage or a claim of unjust enrichment. Neither theory is tenable.
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> At this point [University Bank] has no skin in the game even though it appears [to have] some culpability. [University Bank] had two mortgages satisfied when it should have been only one. Plaintiff needs to make a claim against [University Bank] to get its insurance payment back and any excess proceeds collected from Burkhardt to pay[ ]off the Francis mortgage . . . . [University Bank] can then make a claim against Defendants regarding the erroneous payoff and discharge of their mortgage and seek to restore some form of a secured loan obligation from Defendants.
>
> This Court expresses no opinion regarding the legal theories that could be argued in [pursuit] of such claims or their likelihood of success . . . .
>
> Plaintiff's motion for reconsideration is denied.

Plaintiff then filed a timely claim of appeal from the denial of its motion for reconsideration.

II. STANDARD OF REVIEW

A trial court's decision on a motion for summary disposition is reviewed de novo. *El-Khalil v Oakwood Healthcare Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019).

> A trial court's decision on a motion for summary disposition is reviewed de novo. A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim based on the factual allegations in the complaint. All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. [*Schafer v Kent Co*, 515 Mich 1, 19-20; 29 NW3d 25 (2024) (quotation marks and citations omitted).]

"Summary disposition on the basis of subrule (C)(8) should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery." *Dalley v Dykema Gossett PLLC*, 287 Mich App 296, 305; 788 NW2d 679 (2010) (quotation marks and citation omitted).

"[T]his Court reviews equitable actions de novo." *Burkhardt v Bailey*, 260 Mich App 636, 646; 680 NW2d 453 (2004).

III. ISSUES RAISED FOR THE FIRST TIME ON RECONSIDERATION; FAILURE TO RAISE ISSUES ON APPEAL IN AN APPELLANT'S STATEMENT OF QUESTIONS PRESENTED

In their brief on appeal, defendants accurately note that plaintiff did not pay off the Curtiss mortgage, and accordingly did not have any damages to pursue in their litigation, until *after* the trial court granted defendants summary disposition with prejudice pursuant to MCR 2.116(C)(8). Accordingly, this postjudgment change in factual circumstances has no effect upon the basis for the trial court's grant of summary disposition.

Additionally, plaintiff raised the issue of it having paid off the Curtiss mortgage as giving its equitably claims viability for the first time in its motion for reconsideration. Issues first raised in a motion for reconsideration are not properly preserved for appeal, although "[t]his Court *may* review an unpreserved issue if it is an issue of law for which all relevant facts are available." *Vushaj v Farm Bureau Gen Ins Co*, 284 Mich App 513, 519; 773 NW2d 758 (2009) (emphasis added).

Plaintiff also fails to raise the issue of the trial court's purported abuse of discretion in denying reconsideration in the statement of questions presented in its brief on appeal.[3] An appellant's failure to present an argument on appeal in their statement of questions presented pursuant to MCR 7.212(C)(5) constitutes abandonment of the issue. See *Busch v Holmes*, 256 Mich App 4, 12; 662 NW2d 64 (2003); *Cadwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000) ("[D]efendant has waived this issue by not including it as an issue in his statement of questions presented.").

We accordingly decline to consider the issue of the effect of plaintiff having subsequently paid off the Curtiss mortgage because that had not occurred when the trial court determined defendants were entitled summary disposition with prejudice pursuant to MCR 2.116(C)(8), it is not properly preserved for our review, and it was likewise abandoned on appeal based upon plaintiff failure to address it in its statement of questions presented.[4]

Next, we turn to the trial court's grant of summary disposition of the causes of action asserted in plaintiff's complaint.

IV. CLAIM FOR EQUITABLE MORTGAGE

Equitable mortgages have long been recognized in Michigan jurisprudence. *Eastbrook Homes, Inc v Dep't of Treasury*, 296 Mich App 336, 351; 820 NW2d 242 (2012) (discussing an 1849 Michigan Supreme Court case recognizing the creation of an equitable mortgage as an

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[3] "We review a trial court's decision on a motion for reconsideration for an abuse of discretion." *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 629; 750 NW2d 228 (2008).

[4] That said, even if plaintiff had properly preserved this issue and brought it forward on appeal, we would nonetheless affirm the trial court for the reasons delineated below.

equitable remedy when the parties' written agreement to create a lien on real estate for the payment of a debt was legally defective).

> A court of equity may impose and foreclose an equitable mortgage on a parcel of real property when no valid mortgage exists but some sort of lien is required *by the facts and circumstances of the parties' relationship*. Generally an equitable mortgage will be imposed if it is shown that there was an intention to place a lien on the real estate or a promise that the real estate would be used as security but for some reason the intended purpose was not accomplished. . . . For example, a defective mortgage may have been executed. [*Id*. at 352 (emphasis added), quoting 1 Cameron, Michigan Real Property Law (3d ed), Mortgages, §18.5, pp 681-682.]

Equitable mortgages are designed to place the substance of the party's intent over the form. *Burkhardt v Bailey*, 260 Mich App 636, 659; 680 NW2d 453 (2004). "Generally, an equitable lien arises from an agreement that both identifies property and shows an intention that the property will be security for an obligation." *In re Estate of Moukalled*, 269 Mich App 708, 719; 714 NW2d 400 (2006). "In the absence of a written contract, an equitable lien will be established only where, *through the relations of the parties*, there is a clear intent to use an identifiable piece of property as security for a debt." *Id*. (quotation marks and citation omitted) (emphasis added). "An equitable lien cannot be imposed, however, if the proponent has an adequate remedy at law." *Id*.

A court acting in equity "looks at the whole situation and grants or withholds relief as good conscience dictates." *Michigan Nat'l Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992), quoting *Hunter v Slater*, 331 Mich 1, 7; 49 NW2d 33 (1951). "A party seeking the aid of equity must come in with clean hands." *McFerren v B & B Investment Group*, 253 Mich App 517, 522-523; 655 NW2d 779 (2022). "The clean hands maxim is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant." *Id*. (quotation marks and citations omitted).

Further, the availability of an equitable mortgage as a remedy requires consideration of the relative good faith of the parties involved. See *Schanhite v Plymouth United Savings Bank*, 277 Mich 33, 39-40; 268 NW 801 (1936) (finding in the context of whether to impose an equitable mortgage that "[e]quity should lend an attentive ear to those . . . acting in good faith" and without "culpable negligence"); *Fair v Moody*, unpublished opinion of the Court of Appeals, issued December 23, 2008 (Docket No. 278906), p 14 (finding no equitable mortgage could be awarded where bank "was not a good faith purchaser or assignee, nor a holder in due course" when it took an assigned mortgage after a lawsuit was filed with full knowledge of forgery claims asserted therein).[5]

Plaintiff's complaint contends plaintiff is entitled to an equitable mortgage because "[d]efendants' refusal to cooperate with the Arrangement [proposed by Liberty Title and

[5] Although unpublished opinions are not binding precedent, consideration of their instructive or persuasive value may well be appropriate. *Cox v Hartman*, 322 Mich App 292, 307; 911 NW2d 219 (2017), citing MCR 7.215(C)(1).

University Bank] and provide the Credit Information in light of the facts and circumstances is inequitable." However, that contention is clearly contradicted elsewhere in the complaint, where it is established that defendants discovered and alerted non-party Liberty Title of the issue regarding their mortgage. Further, defendants repeatedly indicated their concerns about having to go through a loan application process that would include them making financial disclosures and credit reports being "pulled" and offered to resolve the issue of their mortgage having been erroneously paid off and discharged through no fault of their own by way of a private note or mortgage. University Bank acknowledged that defendants' concerns were valid, and not trivial. Yet despite these concerns, Liberty Title and University Bank declined to pursue defendants' proposed resolution and instead insisted that they would have to go through a loan application process that would include them making financial disclosures and credit reports being "pulled." Rather than defendants' actions being inequitable, it appears that defendants were generously offering a viable means of addressing the problem they found themselves in through no fault of their own, and Liberty Title and University Bank were trying to strong-arm them into an arrangement with which they had good reason to be uncomfortable. " 'Where a mortgage has been discharged from the record through mistake, it may be restored in equity, and given its original priority as a lien, when the rights of innocent third parties will not be affected.' " *Schanhite*, 277 Mich at 40, quoting *Ferguson v Glassford*, 68 Mich 36; 35 NW 820 (1888). Defendants here are innocent third parties to the errors of University Bank and Liberty Bank resulting in their mortgage being discharged and should not be made to suffer penalty in equity as a result. Additionally, plaintiff did not merely propose *restoring* the mortgage in equity, presumably because it never held a mortgage on the property. Rather, in its complaint, plaintiff sought entry of a new equitable mortgage, as well as the entry of a money judgment against defendants for unjust enrichment (and plaintiff also requested that the judgment include costs).

Furthermore, it is unclear how this asserted inequity has anything to do with plaintiff's claims. There is no question of material fact that plaintiff:

- had no relationship or contact with defendants prior to plaintiff filing a notice of lis pendens on their property and suing them;

- had suffered no damages or harm at the time it filed the notice of lis pendens and lawsuit against defendants, or at the time the trial court granted summary disposition of its claims; and

- only suffered damages when it finally met its contractual obligation as the title insurer for Burkhardt's purchase of the Curtisses' property and paid off the Curtiss mortgage *after* the order granting summary disposition was entered and before it sought reconsideration.

Like the trial court, we find on these facts that the remedy of an equitable mortgage is unavailable to plaintiff. While the case law consistently indicates that the relationship of the parties is a key factor in evaluating whether an equitable mortgage is to be imposed, here plaintiff had no relationship whatsoever with the defendants (and defendants had no duty or obligation to plaintiff) before plaintiff filed a notice of lis pendens on their property and sued them. Rather, they were innocent third parties to the errors of University Bank and Liberty Title.

Because plaintiff filed a notice of lis pendens on defendants' property and sued defendants *before* it actually suffered any damages in this matter, it cannot be said that plaintiff came into this civil action with clean hands, and this "closes the door" of equity to it. *McFerren*, 253 Mich App at 522. On the other hand, defendants at all times acted in good faith and found themselves in this predicament through no fault of their own. Given these circumstances plaintiff is not entitled to the imposition of an equitable mortgage. "Equity, to paraphrase, regards that as seen which ought to be seen, and, having so seen, as done that which ought to be done." *Bazzi v Sentinel Ins Co*, 502 Mich 390, 428 n 9; 919 NW2d 20 (2018) (quotation marks and citation omitted). "One who seeks equity must do equity." *Id*. (brackets, quotation marks and citation omitted).

Furthermore, as the trial court noted, upon plaintiff paying off the Curtiss mortgage, it appears that plaintiff may have a potential legal remedy by way of civil claims against: University Bank, for its actions in apparently erroneously providing Liberty Title with the payoff statement for the Francises' mortgage, rather than the Curtisses' mortgage; and/or Liberty Title, for its actions in failing to notice that it had been provided the payoff statement for the wrong property and paying off and discharging the mortgage on the wrong property.[6] See *Estate of Moukalled*, 269 Mich App at 719 ("An equitable lien cannot be imposed, however, if the proponent has an adequate remedy at law.").

V. UNJUST ENRICHMENT

A claim for unjust enrichment likewise sounds in equity. See *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 193, 729 NW2d 898 (2006) (Michigan courts have long recognized the equitable right of restitution based on unjust enrichment). "A claim of unjust enrichment requires the complaining party to establish (1) the receipt of a benefit by the other party from the complaining party and (2) an inequity resulting to the complaining party because of the retention of the benefit by the other party." *Karaus v Bank of New York Mellon*, 300 Mich App 9, 22-23; 831 NW2d 897 (2012). If the plaintiff in this case can establish that defendants have been unjustly or inequitably enriched at its expense, the law will imply a contract to prevent such unjust enrichment. *Charter Twp of Pittsfield v Washtenaw Co Treasurer*, 338 Mich App 440, 459; 980 NW2d 119 (2021).

In support of its unjust enrichment claim, plaintiff's complaint alleges that "[d]efendants received a benefit by virtue of the accidental pay off of the Francis Mortgage in that their debt to University Bank . . . was mistakenly satisfied by payment of the Payoff Funds and they have not had to make a mortgage payment for at least six months"; and defendants' retention "of the benefit of the discharge of the Francis Mortgage and the lack of mortgage payments would result in an inequity to TRG because, among other things, TRG will be forced to use its own funds to satisfy the Curtiss Mortgage and suffer damages in excess of $25,000."

First of all, the funds employed to pay off the defendants' mortgage were not provided by plaintiff to the defendants, but rather were provided by Liberty Title to University Bank following the closing on the Burkhardt's purchase of the Curtisses' home, whereupon University Bank paid off and discharged the defendants' mortgage without defendants' knowledge (at least initially).

[6] To be clear, this Court takes no position as to the viability of those potential claims.

Plaintiff's complaint alleges no benefit that it provided or will provide to defendants by which they have been or will be unjustly enriched. Even plaintiff's action in paying off the Curtiss mortgage subsequent to the grant of summary disposition in this case, if considered, would not demonstrate any benefit flowing from plaintiff to defendants. For this reason, plaintiff fails to meet the first element of a prima facie claim of unjust enrichment as a matter of law.

Additionally, as with plaintiff's equitable mortgage claim, here plaintiff:

- had no damages and had suffered no harm at the time it filed the notice of lis pendens and lawsuit against defendants, or at the time the trial court granted summary disposition of its claims; and

- only suffered damages when it finally met its contractual obligation as the title insurer for Burkhardt's purchase of the Curtisses' property and paid off the Curtiss mortgage *after* the order granting summary disposition was entered and before it sought reconsideration.

Accordingly, defendants had not been "unjustly or inequitably enriched at [plaintiff's] expense," at the time plaintiff filed this lawsuit or at the time the trial court granted summary disposition, because at those times plaintiff had incurred no damages or harm, and plaintiff additionally fails to state a claim for unjust enrichment on this basis. *Charter Twp of Pittsfield*, 338 Mich App at 459-460.

Additionally, as with plaintiff's equitable mortgage claim, here plaintiff has an adequate legal remedy such that is improper to resort to equity. *Estate of Moukalled*, 269 Mich App at 719.

Finally, as indicated previously, "[a] party seeking the aid of equity must come in with clean hands," *McFerren*, 253 Mich App at 522, and we have already determined that plaintiff cannot demonstrate that it came into this case with clean hands. Thus, even without the other bases articulated above, plaintiff's claim for unjust enrichment would fail. As the prevailing parties, defendants-appellees are entitled to tax costs. MCR 7.219.

Affirmed.

/s/ Thomas C. Cameron
/s/ Allie Greenleaf Maldonado
/s/ Randy J. Wallace