

STATE OF NORTH CAROLINA  
BLADEN COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
22 CVS 36

RAY REASON; JIMMY F. SILLS; and  
CATHY F. SILLS,

Plaintiffs,

v.

GERALD BARFIELD and MARKET  
CROSSING, LLC,

Defendants.

**ORDER AND OPINION ON  
DEFENDANTS' MOTION FOR  
JUDGMENT ON THE PLEADINGS**

1. Ray Reason, along with his aunt and uncle, decided to go into business with Gerald Barfield, a family friend who was a real estate developer. Although they allegedly agreed to split the anticipated upside of their venture, their agreement was never reduced to writing. Years later, following events that Reason and his family members claim were inconsistent with the original plan, they bring this action against Barfield alleging that that they are entitled to recover their share of the gain that resulted from the business.

2. The case is before the Court on Defendants' Motion for Judgment on the Pleadings ("Motion"), (ECF No. 45), pursuant to Rule 12(c) of the North Carolina Rules of Civil Procedure (the "Rule(s)"). For the following reasons, the Court **DENIES** the Motion.

*Vann Attorneys, PLLC, by J.D. Hensarling and Ian S. Richardson, for  
Plaintiffs Ray Reason, Jimmy F. Sills, and Cathy F. Sills.*

*Ellis & Winters LLP, by Thomas H. Segars, Jeremy M. Falcone, and  
Scottie Forbes Lee, for Defendants Gerald Barfield and Market Crossing,  
LLC.*

Earp, Judge.

## I. FACTUAL BACKGROUND

3. When ruling on a motion pursuant to Rule 12(c), the Court does not make findings of fact but rather recites the facts as alleged. Therefore, the following fact summary is derived from allegations made in the pleadings.

4. Plaintiff Ray Reason (“Reason”) resides in Bladen County, North Carolina. (Amended Complaint, ECF No. 33 [“Am. Compl.”] ¶ 1.) Prior to December 2018, Reason owned several parcels of real property in Bladen County, including 675 Airport Road (“Airport Road Property”), 1793 White Lake Drive (“White Lake Drive Property”), and multiple parcels at 1834 White Lake Drive (“the Motel”) (collectively, “Properties”). (Am. Compl. ¶ 8.)

5. Plaintiffs Jimmy and Cathy Sills, Reason’s aunt and uncle, are married and reside in Orange County, Florida. (Am. Compl. ¶¶ 2–3.)

6. Defendant Barfield (“Barfield”) resides in Pitt County, North Carolina. (Am. Compl. ¶ 4.) Barfield, a long-time friend of Reason’s father, is a knowledgeable business owner and real estate developer, and he is the owner of several companies, including real estate management companies. (Am. Compl. ¶¶ 13–14.) Reason alleges that he believed he could trust Barfield and that Plaintiffs “placed a special trust and confidence in Barfield related to the parties’ business dealings.” (Am. Compl. ¶¶ 13, 17.)

7. Defendant Market Crossing, LLC (“Market Crossing”) is a North Carolina limited liability company owned by Barfield. (Am. Compl. ¶¶ 5, 14.) To Plaintiffs’ knowledge, Barfield was the sole member and manager of this LLC at the time of the alleged events giving rise to the claims. (Am. Compl. ¶ 27.)

8. Reason’s Properties went into foreclosure in late 2018. The Properties were scheduled to be auctioned on 13 December 2018. (Am. Compl. ¶¶ 9–10.) Plaintiffs decided to bid on the Properties, agreed that they would share ownership of any winning bids and properties purchased, and agreed that Jimmy Sills would act on their behalf to submit the bids and deposit the required earnest money. (Am. Compl. ¶ 11.) The auction was later postponed until 30 January 2019. (Am. Compl. ¶ 10.)

9. After the auction was postponed, Plaintiffs’ plans changed. On or about 14 December 2018, Plaintiffs, none of whom is a real estate professional, met with Barfield to discuss the Properties. (Am. Compl. ¶¶ 10, 12.) Plaintiffs allege that during their meeting, Plaintiffs and Barfield orally agreed “to create and operate a business that would purchase, hold, operate, manage, and sell real property, and specifically the Properties.” (Am. Compl. ¶ 18.) They decided to “be partners and joint owners and have interest in the Properties through their ownership of or membership in the joint venture.” (Am. Compl. ¶ 18.)

10. Plaintiffs further allege that the parties agreed that they would form a North Carolina LLC, that each of them would be a member, and that ownership of the LLC would be divided by three, with Reason owning one third, Barfield owning

one third, and the Sills together sharing the final third. They allegedly agreed to “split any profits and share any proceeds” from the LLC based on their respective membership interests. (Am. Compl. ¶ 18.)

11. Plaintiffs allege that their agreement with Barfield was to transfer ownership of successful bids to the LLC, which would then use them to purchase the Properties. Barfield allegedly agreed to “contribute the finances and resources” for the purchases. (Am. Compl. ¶ 23.)

12. In addition, Plaintiffs allege that the parties agreed for the new LLC to purchase and hold both the Airport Road and White Lake Drive properties for one year before selling these two properties to Plaintiffs for the bid price plus an additional five thousand dollars (\$5,000) per property to be paid to Barfield. (Am. Compl ¶ 21.)

13. As for the Motel, in furtherance of their agreement, Plaintiffs allege that they engaged Ken Register of Global Realty, LLC (“Register”) to list it for sale. Register provided an appraisal that Plaintiffs shared with Barfield. (Am. Compl. ¶ 19.) After receiving the appraisal, the parties discussed distributing the anticipated sale proceeds by first paying off the debt incurred to purchase the Motel, then paying Jimmy and Cathy Sills \$250,000, paying Barfield the next \$250,000, and paying Reason any remaining proceeds. (Am. Compl. ¶ 20.)

14. Shortly after these discussions Plaintiffs engaged counsel to organize the new LLC. (Am. Compl. ¶ 22.)

15. On 30 January 2019, Plaintiffs submitted the winning bids for both the Airport Road and White Lake Drive properties. They deposited \$5,000 in earnest money for each piece of property. The money was drawn from the Sills' joint bank account. (Am. Compl. ¶ 25.)

16. Securing the winning bid for the Motel took more effort. Plaintiffs submitted the first bid on 30 January 2019, and on 14 February 2019, they deposited \$27,562.50 in earnest money, again from the Sills' joint bank account. (Am. Compl. ¶ 26.)

17. Around this time, Barfield proposed that the Properties be placed in his existing company, Market Crossing, rather than in a new, yet-to-be-formed LLC, as the parties had originally agreed. (Am. Compl. ¶ 27.) Plaintiffs allege that they repeatedly expressed concern about the change in plan, but Barfield reassured them that their agreement to split profits from the venture would not change. Plaintiffs allege that they relied on Barfield's assurances. (Am. Compl. ¶ 28.)

18. Also at about this time, and without first discussing the idea with Plaintiffs, Barfield approached Aaron "Mack" Baker ("Baker") about financing the purchase of the Properties. (Am. Compl. ¶ 29.) Barfield, Plaintiffs, and Baker subsequently had two meetings during which Baker allegedly indicated that he would finance the venture on behalf of all the parties. (Am. Compl. ¶ 29.)

19. Between 16 February and 28 February 2019, Reason contacted Barfield to express concern about the change in plans. Barfield urged Reason to trust him. (Am. Compl. ¶ 32.)

20. Relying on Barfield's assurances and representations, Plaintiffs transferred the winning bids and earnest money for the Airport Road and White Lake Drive properties to Market Crossing on 28 February 2019. In furtherance of the parties' agreement, Plaintiffs made additional bids on the Motel and deposited another \$9,373.89 in earnest money from the Sills' joint bank account. (Am. Compl. ¶¶ 32, 35–36.)

21. On 21 April 2019, Plaintiffs submitted the winning bid for the Motel, totaling \$738,727.75. Believing what they had been told by Barfield and Baker, and in furtherance of their agreement, Plaintiffs transferred the winning bid and earnest money deposits for the Motel to Market Crossing. (Am. Compl. ¶¶ 37–38.)

22. In all, Plaintiffs deposited over \$50,000 in earnest money for the Properties, all drawn from the Sills' joint bank account. Plaintiffs allege that the Sills have been reimbursed only \$25,000. (Am. Compl. ¶ 39.)

23. Barfield used all three winning bids to purchase the Properties in the name of Market Crossing. (Am. Compl. ¶¶ 40–42.)

24. Just over a year later, in accordance with the parties' agreement, Barfield caused Market Crossing to sell the Airport Road and White Lake Drive Properties to Jimmy and Cathy Sills, each for \$5,000 more than its bid price. (Am. Compl. ¶¶ 43–44.)

25. As for the Motel, however, Plaintiffs allege that things did not go as the parties had agreed. They claim that any suggestion that Baker would finance the purchase of the Motel for all of them was a ruse. Instead, Plaintiffs believe that Baker

and Barfield privately agreed that Baker would finance the deal for Barfield alone, to the exclusion of Plaintiffs. (Am. Compl. ¶¶ 31, 46.)

26. Instead of putting the Motel up for sale as they had allegedly agreed, for a time Barfield and Reason worked together to operate it. Barfield was responsible for keeping track of guest deposits and payments, and Reason was responsible for the upkeep. (Am. Compl. ¶ 48.)

27. But Plaintiffs complain that Barfield ultimately took control of the Motel and refused to list it for sale with Register. Instead, Plaintiffs allege, Barfield covertly engaged in private conversations with third parties about selling the Motel, and he ultimately sold the property to Hospitality Resort Management, LLC on 17 June 2021 for \$1,024,000 without involving Plaintiffs. (Am. Compl. ¶¶ 45, 54–56.)

28. Plaintiffs complain that Barfield has kept for himself and refused to distribute either profits or proceeds from the operation and sale of the Motel. (Am. Compl. ¶¶ 58–60.) They allege that Barfield’s plan all along was not to honor their agreement to divide the profits from their venture and that they were duped into trusting him. (Am. Compl. ¶¶ 46, 49, 54.)

## **II. PROCEDURAL HISTORY**

29. Plaintiffs initiated this action on 25 January 2022. (ECF No. 3.) It was designated to the North Carolina Business Court and assigned to the undersigned on 25 February 2022. (ECF Nos. 1, 2.) On 8 June 2022, Plaintiffs moved to amend their Complaint. (ECF No. 25.) The Court granted the motion by Order entered 13 June 2022, (ECF No. 32), and the First Amended Complaint was filed on 14 June 2022.

30. In their Amended Complaint, Plaintiffs seek a declaration: (1) that the oral agreement between the parties is a valid and enforceable contract for the purpose of carrying on the business of purchasing and selling real estate; (2) that both Plaintiffs and Barfield are owners of, or partners in, the parties' business venture or partnership; (3) that Plaintiffs are entitled to their share of the assets of the business venture or partnership; (4) that the assets of this venture or partnership included the Motel; (5) and that Plaintiffs are entitled to their share of the proceeds from Defendants' sale of the Motel. (Am. Compl. ¶¶ 63–70). In addition, Plaintiffs assert a claim for breach of contract against Barfield resulting from Barfield's operation and sale of the Motel and his refusal to share the profits, (Am. Compl. ¶¶ 71–83), and they assert a claim against both Barfield and Market Crossing for unjust enrichment. (Am. Compl. ¶¶ 84–95.)

31. On 9 November 2022, Defendants filed this Motion seeking judgment on Plaintiffs' claims pursuant to Rule 12(c).<sup>1</sup> The Motion has been fully briefed, and the Court entertained arguments at a hearing held on 7 February 2022, during which all parties were present. (See ECF No. 55.) The Motion is now ripe for disposition.

### III. LEGAL STANDARD

32. On a motion for judgment on the pleadings pursuant to Rule 12(c), the Court must view the facts and permissible inferences in the light most favorable to the nonmoving party. *Ragsdale v. Kennedy*, 286 N.C. 130, 137 (1974). "All well pleaded factual allegations in the nonmoving party's pleadings are taken as true and

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<sup>1</sup> Defendants have not moved for judgment on Jimmy Sills' claim for unjust enrichment. (Mot. J. Pleadings, ECF No. 45.)



all contravening assertions in the movant's pleadings are taken as false." *Id.* (citations omitted). The movant is held to a "strict standard." *Id.* A Rule 12(c) motion should not be granted "unless the movant clearly establishes that no material issue of fact remains to be resolved and that he is entitled to judgment as a matter of law." *Carpenter v. Carpenter*, 189 N.C. App. 755, 761 (2008).

33. Since judgment on the pleadings is a final judgment, the pleadings must be carefully scrutinized so not as to deprive the nonmovant of a "full and fair hearing on the merits." *Ragsdale*, 286 N.C. at 137.

#### IV. ANALYSIS

##### A. Declaratory Judgment

34. The Declaratory Judgment Act, N.C.G.S. § 1-253 *et seq.*, authorizes a court to declare the "rights, status, and other legal relations" of adverse parties when an actual dispute exists. *PHE, Inc. v. Dolinsky*, 2022 NCBC LEXIS 123, at \*\*19 (N.C. Super. Ct. Oct. 19, 2022). If a genuine controversy is adequately pled, the claim for a declaratory judgment may move forward. Indeed, "[t]he question is not whether the plaintiff[s] will prevail on their claim, it is only whether they have identified an actual, genuine controversy." *BIOMILQ, Inc. v. Guiliano*, 2023 NCBC LEXIS 24, at \*\*32 (N.C. Super. Ct. Feb. 10, 2023) (cleaned up). *Cf. Morris v. Plyler Paper Stock Co.*, 89 N.C. App. 555, 557 (1988) ("A motion to dismiss for failure to state a claim is seldom appropriate in actions for declaratory judgments, and will not be allowed simply because the plaintiff may not be able to prevail.").

35. In this case, Defendants argue that Plaintiffs have failed to plead the existence of either a partnership or a joint venture and, therefore, their claim fails as a matter of law. As discussed below, because the Court determines that Plaintiffs have adequately pled the existence of a partnership or joint venture to buy and sell the Properties to survive this Rule 12(c) challenge, Defendants' Motion as to the claim for declaratory judgment shall be **DENIED**.

36. Although they are similar in many respects, a partnership "ordinarily relates to a continuing action," *Pike v. Wachovia Bank & Trust Co.*, 274 N.C. 1, 9 (1968)), whereas a joint venture is usually formed to carry out a single business venture. *Rifenburg Constr., Inc. v. Brier Creek Assocs., L.P.*, 160 N.C. App. 626, 632 (2003). Even so, partnerships and joint ventures are governed by substantially the same rules. *Pike*, 274 N.C. at 9.

37. To form either a partnership or a joint venture, the parties involved must agree to share the financial repercussions of their adventure. The agreement is most often expressed optimistically as one to share profits; however, the reverse is true as well. Partners or co-adventurers must also agree to bear responsibility for any losses the business incurs. See N.C.G.S. § 59-36(a) ("A partnership is an association of two or more persons to carry on as co-owners a business for profit."); N.C.G.S. § 59-37(4) (when determining whether a partnership exists, "[t]he receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business"); *Best Cartage, Inc. v. Stonewall Packaging, LLC*, 219 N.C. App. 429, 438 (2012) (sharing of profits is an indispensable requisite for a

partnership); *Johnson v. Gill*, 235 N.C. 40, 44–45 (1952) (“To make a partnership, two or more persons should combine their property, effects, labor, or skill in a common business or venture, and share the profits and losses in equal or specified proportions[.]”); *Rifenburg*, 160 N.C. App. at 632 (one element of a joint venture is “an agreement, express or implied, to carry out a single business venture with joint sharing of profits[.]”).

38. The second requirement for a partnership is co-ownership of the business. *See, e.g., La Familia Cosmovision, Inc. v. Inspiration Networks*, 2014 NCBC LEXIS 52, at \*16 (N.C. Super. Ct. Oct. 20, 2014); *Wilder v. Hobson*, 101 N.C. App. 199, 202 (1990). Likewise, the second requirement for a joint venture is “an equal right of control of the means employed to carry out the venture.” *Rifenburg Constr., Inc.*, 160 N.C. App. at 632. This means that each partner or co-adventurer is “an agent of the others in matters appertaining to the partnership and within the scope of its business.” *See Johnson*, 235 N.C. at 44 (“[The] Uniform Partnership Act declares that every partner is an agent of the partnership for the purposes of its business, and the act of every partner for apparently carrying on in the usual way the business of the partnership of which he is a member ordinarily binds the partnership, G.S. 59-39[.]”); *DS & T II, Inc. v. D & E Tax & Accounting, Inc.*, 2021 NCBC LEXIS 87, at \*\*15 (N.C. Super. Ct. Oct. 4, 2021) (the parties in a joint venture stand in the relationship of principal and agent to each other).

39. The contributions of each party “need not be equal or of the same character, but there must be some contribution by each co-adventurer of something

promotive of the enterprise.” *Pike*, 274 N.C. at 9 (quoting *In re Simpson*, 222 F. Supp. 904, 909 (M.D.N.C. 1963)).

40. Citing *La Familia*, Defendants argue that because the Amended Complaint does not specifically allege that the parties agreed to share losses, no partnership or joint venture could exist. (Br. Supp. Defs.’ Mot. J. Pleadings, [“Br. Supp. Defs.’ Mot.”] 8–9).

41. The Court disagrees. Here, Plaintiffs allege that they and Barfield “entered into an oral agreement to create and operate a business that would purchase, hold, operate, manage, and sell real property, and specifically the Properties” and that the parties “agreed they would split any profits and share any proceeds from the LLC’s business based on the percentage of their membership interests.” (Am. Compl. ¶ 18.) While it will be important at a later stage for Plaintiffs to present evidence that the parties’ agreement was not limited to sharing only the upside of their venture, the Court determines that, at this early stage of the case, Plaintiffs have adequately met this pleading requirement.<sup>2</sup> See *Surratt v. Brown*, 2016 NCBC LEXIS 27, at \*\*5–7 (N.C. Super. Ct. Apr. 1, 2016) (denying a motion for summary judgment despite agreement mentioning only profit-sharing and not loss-sharing); cf. *Vitaform, Inc. v. Aeroflow, Inc.*, 2020 NCBC LEXIS 132, at \*\*9–12

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<sup>2</sup> The present case is distinguishable from *La Familia*. In that case, the court found that the division of profits described in the parties’ written agreement more closely resembled a “compensation measure” than the sharing of profits by partners. *La Familia Cosmovision, Inc.*, 2014 NCBC LEXIS 52, at \*20–21. And, importantly, a letter of intent between the parties expressly identified the defendant as an independent contractor. *Id.* at \*22.

(dismissing plaintiff's joint venture claim because plaintiff failed to allege joint sharing of profits).

42. Moving to the requirement that Plaintiffs plead that the parties shared control and that each co-adventurer acted as an agent of the others, Plaintiffs allege that they entered into an oral agreement with Barfield to be “partners and joint owners and [to] have [an] interest in the Properties through their ownership of or membership in the joint venture.” (Am. Compl. ¶ 18.) They called their relationship a partnership. (Am. Compl. ¶¶ 33, 59.) In addition, Plaintiffs allege the existence of a division of labor in furtherance of their business plan. While Barfield was to secure financing, (Am. Compl. ¶¶ 12, 23, 74), Plaintiffs were responsible for securing the winning bids, (Am. Compl. ¶¶ 11, 23–26, 34–39, 74). Plaintiffs also engaged an attorney to create the LLC, (Am. Compl. ¶ 22), and they engaged the real estate agent whose appraisal of the Motel they shared with Barfield, (Am. Compl. ¶ 19). In turn, Barfield included Plaintiffs in meetings with the financier, Baker. (Am. Compl. ¶ 29.) These allegations are sufficient, Plaintiffs contend, to satisfy their pleading requirements.

43. But Plaintiffs argue that, when it came to the Motel, they had no equal right of control. They assert that Barfield had “complete legal control” and that he “held all the cards—all the financial and legal power over Plaintiffs with regard to the parties’ business venture and the Langston Motel Property.” (Am. Compl. ¶¶ 52–53.)

44. The Court determines that the allegations at paragraphs 52-53 of the Amended Complaint describe the relationship between the parties as it evolved following Barfield's alleged misrepresentations and breach, not the relationship that Plaintiffs allege the parties agreed to have. Viewing the allegations in the light most favorable to Plaintiffs, the Court determines that Plaintiffs have sufficiently pled that the parties agreed to act as each other's agent and divide responsibilities but to share ownership and control. *See Surratt*, 2015 NCBC LEXIS 75, at \*12 (allegations that one party would finance the venture for a thirty-percent share of profits, while the other party would operate the store for a seventy-percent share, asserted the minimal essential terms for finding an enforceable partnership agreement); *but see Williams v. Hammer*, 2015 NCBC LEXIS 81, at \*\*11–13 (N.C. Super. Ct. Aug. 12, 2015) (where the complaint does not allege that the parties co-owned any interest in a business or property, co-ownership is not adequately alleged); *DS & T II*, 2021 NCBC LEXIS 87, at \*\*15 (dismissing claim because agency relationship not alleged).

45. Because Plaintiffs have adequately alleged the existence of either a partnership or a joint venture, Defendants' Motion for Judgment on the Pleadings with respect to Plaintiffs' First Claim for Relief requesting a declaratory judgment shall be **DENIED**.<sup>3</sup>

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<sup>3</sup> Defendants also argue that Plaintiffs' partnership and joint venture theories fail because no fiduciary relationship existed between the parties. (Br. Supp. Defs.' Mot., 6–8.) However, it is the existence of a partnership or joint venture that creates the fiduciary relationship, not the other way around. *See, e.g.*, N.C.G.S. § 59-51 ("Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him . . ."); *Cutter v. Vojnovic*, 2023 NCBC LEXIS 14, at \*\*12 (N.C. Super. Jan. 24, 2023) (partners owe fiduciary duties to each other); *Zagaroli v. Neill*, 2017 NCBC LEXIS 103, at \*31 (N.C. Super. Ct. Nov. 7, 2017) ("[I]t is elementary that the relationship of partners is fiduciary and imposes on them

## **B. Breach of Contract**

46. To state a claim for breach of contract, Plaintiffs need only allege “(1) existence of a valid contract and (2) breach of the terms of that contract.” *McKee v. James*, 2014 NCBC LEXIS 74, at \*\*14 (N.C. Super. Ct. Dec. 31, 2014) (quoting *Poor v. Hill*, 138 N.C. App. 19, 26 (2000)). “[W]here the complaint alleges each of these elements, it is error to dismiss a breach of contract claim under [Rule 12].” *McLamb v. T.P. Inc.*, 173 N.C. App. 586, 588 (2005).

47. In this case, Plaintiffs allege that the parties originally agreed to form an LLC to “purchase, hold, operate, manage, and sell real property.” (Am. Compl. ¶ 18.) However, they also allege that, after initially expressing reservations, they agreed with Barfield’s later proposal to use his existing LLC instead of forming a new LLC because Barfield assured them that they would share profits as originally planned. (Am. Compl. ¶¶ 27–28.) Plaintiffs contend that Barfield breached their agreement by refusing to put the Motel up for sale as they had agreed and instead engaging in clandestine discussions with Hospitality Resort Management to sell the Motel and keep the profit for himself. They allege that Barfield has refused to distribute any profits or proceeds from the Motel to them. (Am. Compl. ¶¶ 54, 56, 58.)

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the obligation of the utmost good faith in their dealings with one another in respect to partnership affairs”); *Morris Int’l, Inc. v. Packer*, 2021 NCBC LEXIS 16, at \*27 (N.C. Super. Feb. 22, 2021) (holding that a partner’s fiduciary duties continue beyond dissolution and until the partnership has been wound up). *But see Volumetrics Med. Imaging, Inc. v. ATL Ultrasound, Inc.*, 243 F. Supp. 2d 386, 403–04 (M.D.N.C. 2003) (holding that because no fiduciary relationship existed between the parties, the relationship did not “qualify” as a joint venture).

48. Defendants argue that because the oral agreement to form a new LLC and split profits was “superseded” by Plaintiffs’ later agreement to transfer the Properties to Market Crossing, and because Plaintiffs do not plead that they were promised an ownership interest in Market Crossing, their claim fails. (Reply Br. Supp. Defs.’ Mot. J. Pleadings 7, ECF No. 54 [“Reply Br. Supp. Defs.’ Mot.”].) However, the Amended Complaint alleges that Barfield reassured and promised Plaintiffs that “the parties’ agreement had not changed, and that each of them would share the profits and proceeds of the business venture as originally planned and agreed.” (Am. Compl. ¶ 28.) It is this promise that Plaintiffs claim was breached. Nothing more is required to state a claim. Accordingly, Defendants’ Motion for Judgment on the Pleadings with respect to Plaintiffs’ Breach of Contract claim shall be **DENIED**.

### **C. Quantum Meruit/Unjust Enrichment**

49. As an alternative to their breach of contract claim, Plaintiffs assert a claim for unjust enrichment. Even though, given the facts alleged, Plaintiffs would not be able to recover on both theories, “[i]t is well-established that liberal pleading rules permit pleading in the alternative, and that theories may be pursued in the complaint even if plaintiff may not ultimately be able to prevail on both.” *James River Equip., Inc. v. Mecklenburg Utils., Inc.*, 179 N.C. App. 414, 419 (2006) (cleaned up).

50. Unjust enrichment will imply a contract for fair compensation where one party paid expenses for the benefit of another and there was no express contract



for compensation. However, if a contract exists, the contract will govern the claim, and the law will not imply a contract. *Higgins v. Synergy Coverage Sols., LLC*, 2020 NCBC LEXIS 6, at \*\*23 (N.C. Super. Ct. Jan. 15, 2020) (citing *Booe v. Shadrick*, 322 N.C. 567, 570 (1988)).

51. To recover on a claim for unjust enrichment, ultimately Plaintiff must prove: “(1) that it conferred a benefit on another party; (2) that the other party consciously accepted the benefit; and (3) that the benefit was not conferred gratuitously or by an interference in the affairs of the other party.” *Id.* (citing *Islet Scis., Inc. v. Brighthaven Ventures, LLC*, 2017 NCBC LEXIS 4, at \*16 (N.C. Super. Ct. Jan. 12, 2017)). However, in general, at the Rule 12 stage, courts will decline to address unjust enrichment claims if a viable breach of contract claim exists. *See Shelton v. Duke Univ. Health Sys.*, 179 N.C. App. 120, 125, (2006) (stating on Rule 12(b)(6) motion that “[b]ecause we have not held the contract to be unenforceable, we do not address [plaintiff’s unjust enrichment] argument”).

52. As stated above, a viable breach of contract claim exists here. Moreover, Plaintiffs adequately allege that they did not act gratuitously when they secured the bid for the Motel, paid the required earnest money drawn from the Sills’ joint bank account, and then assigned the bids to Market Crossing. Plaintiffs assert that they conferred a “specific and measurable benefit” on Defendants, which Defendants voluntarily accepted, and that Plaintiffs “reasonably expected good and valuable consideration” in return. Plaintiffs claim that Defendants have failed to pay that consideration and that Plaintiffs have been damaged as a result. (Am. Compl. ¶¶ 85–

95.) The allegations are sufficient to state a claim. The Court therefore **DENIES** Defendants' Motion with respect to Plaintiffs' claim for unjust enrichment.

## V. CONCLUSION

53. WHEREFORE, the Court **DENIES** Defendants' Motion for Judgment on the Pleadings.

IT IS SO ORDERED, this the 24th day of March, 2023.

*/s/ Julianna Theall Earp*

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Julianna Theall Earp  
Special Superior Court Judge  
for Complex Business Cases