STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	BEFORE THE MASTER-IN-EQUITY
HO DONG LEE, Plaintiff, vs. YONG WOOK PARK and SUNNY KIM PARK, Defendants.	)	Case No.: 2017-CP-10-3705 **ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

This matter came before the Court on a Motion for Summary Judgment filed by Defendants Yong Wook Park ("Park") and Sunny Kim Park ("Ms. Park"). The Motion seeks summary judgment on each claim asserted by Plaintiff Ho Dong Lee ("Plaintiff" or "Lee") in the Complaint, which was initially filed on July 21, 2017. A hearing in the Motion was held May 15, 2019. Also, at Plaintiff's request, the Court allowed and reviewed additional post-hearing submissions by both parties.

After considering the entire record, including pleadings, affidavits and exhibits attached to the Motion and the materials submitted by Plaintiff, as well as the arguments presented by counsel at the hearing, the Court finds that there are no genuine issues of material fact as to any of Plaintiff's claims and Defendants are entitled to judgment as a matter of law. For the reasons set forth more fully below, Defendants' Motion for Summary Judgment is therefore **GRANTED**.

STANDARD OF REVIEW

Rule 56(e), SCRCP provides that an adverse party may not rely on the mere allegations in his pleadings to withstand a summary judgment motion, but must set forth specific facts showing

there is a genuine issue for trial. *Strickland v. Madden*, 323 S.C. 63, 67–68, 448 S.E.2d 581, 584 (Ct. App. 1994). It is established that "[t]he plain language of Rule 56(c) mandates the entry of summary judgment [. . .] against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof." *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 357, 650 S.E.2d 68, 71 (2007). Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. *Cafe Assocs., Ltd. v. Gerngross*, 305 S.C. 6, 9, 406 S.E.2d 162, 164 (1991).

FINDINGS OF FACT

This matter involves a business dispute among family members who immigrated to the United States from South Korea.[1] After Lee and Park purchased several properties and operated several restaurant businesses as co-owners, the decision was made to end the business partnership. To accomplish this goal, each party obtained legal counsel and negotiated a mutually acceptable division of the assets and debts of the businesses. *See, e.g., to Defs. Reply.* at Ex. B.

The intended division was not a mathematical split, as Lee wanted to take full ownership of a single restaurant, Yokoso, Inc., and transfer the others to Park (along with all debts, liabilities, and obligations associated with the other businesses and properties). Park testified as follows regarding how this method of dividing up the business interests came about:

> He told me, hey, Park, let's keep the Yokoso, Inc., only. All the other company, let's foreclose. And I say, no, I can't. I don't want to foreclose all the restaurant. And Mr. Lee request that. Then how about I want to keep Yokoso, Inc. and you keep the other restaurant. And he offer me. I said, okay. That's what started.

See Park Dep. at 43:18-24.

[1] Lee is married to Park's sister.

As noted above, although Park was to receive more than half of the total restaurants/assets, he would also undertake full responsibility for all of the corresponding debts and would be indemnifying Lee from those debts. The parties proceeded accordingly, working with their respective legal counsel to arrive at a final agreement.

On February 27, 2013, when the drafting process and negotiations with certain third-party lenders were concluded, Lee and Park signed an Agreement for Sale and Purchase ("Agreement"), implementing the negotiated terms of the division. *See Pl. Compl.* at Ex. A. In the Agreement, each party agreed that what each received was deemed to be "equal of value" and to be "fair and equitable." *See Agreement* at ¶ 9. The Agreement included an "integration" clause, stipulating that neither party had made representations to the other regarding the transactions other than as stated within the Agreement itself. Specifically, this clause read as follows:

> Each Party acknowledges that neither the other Party, nor any of his agents, employees, or anyone on his behalf, have made any representations, warranties, guaranties or promises with respect to the within transactions, transfers, entities, operations, locations, real property or personal property except as herein expressly set forth, and no rights, privileges, title, ownership or liability is acquired by either Party except as herein expressly set forth.

See Agreement at ¶ 17. Lee confirmed in his deposition that no representations regarding the value of the assets were made by either Defendant. *See Lee Dep.* at 88:14-89:2; 95:7-17; 105:13-19; 110:6-10. However, this admission undermined the primary allegation in Lee's Complaint. *See, e.g., Pl. Compl.* at ¶¶ 8, 11, 12, 13, and 14.

Ultimately, the deal was something that both parties felt would be in the best interests of promoting family harmony. Although English is a second language for both Lee and for Park, each party had ample opportunity to review the Agreement, as the process of negotiating, drafting and

executing it took place over a number of months.[2] Plaintiff testified that he did not read the Agreement prior to signing it but that he "want[ed] to just sign it up fast, and hopefully everything works out well."[3] Prior to signing the Agreement on February 27, 2013, Lee believed that he had legal claims against Park that would support the filing of a lawsuit, but opted to sign the Agreement instead.[4] Lee did not file his Complaint until July 21, 2017, almost 41 months later.

During the course of discovery in this case, Lee also alleged that Park opened three other restaurants that were not addressed in the Agreement. However, as Park explained in an Affidavit signed by Park, the Agreement was limited to businesses that were jointly owned by Lee and Park, and the claims in this lawsuit are based on the Agreement. *See, generally, Pl. Compl.* The record also reflects that Lee owned businesses in which Park was not involved. There is no evidence of an obligation that the parties had some form of exclusive business relationship requiring that they share ownership in all investments and assets that either of them owned. As noted above, Lee's objective in 2013 was to become the owner of a single restaurant, Yokoso, Inc., which he achieved through the Agreement as drafted and signed.

At this time, which is more than six (6) years after the Agreement was signed, Lee has never pled any cause of action for equitable or legal relief seeking to be declared the owner or beneficiary of other assets or businesses other than those addressed within the Agreement. There are also no allegations that Lee did not receive the assets that were contractually assigned to him. He did receive the Yokoso restaurant, but later lost it to foreclosure. Following two years of

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[2] The Agreement also included the following acknowledgment: "24. Right to Review and Legal Counsel. The Parties expressly acknowledge and agree that each has had the opportunity to review the Agreement, and to seek and receive legal advice for the same." *See Agreement* at ¶ 24.

[3] *Lee Dep.* at 107:18-23.

[4] *Lee Dep.* at 69:18-71:23.

litigation and discovery in this case, Defendants' Motion for Summary Judgment is appropriate for review and resolution relating to the claims and defenses that have been asserted in this case.

CONCLUSIONS OF LAW

I. SUMMARY JUDGMENT IS GRANTED TO MS. PARK ON ALL CAUSES OF ACTION

In his Complaint, Lee includes claims against Ms. Park, but the only allegation specific to Ms. Park in the Complaint is that she "is the wife of [Park] and handled all of the financial affairs of the businesses, including but not limited to bookkeeping, accounting and management of business records." *See Pl. Compl.* at ¶¶ 6 and 20. In review of the record, summary judgment is proper in favor of Ms. Park on all claims, as there are no genuine issues of material fact and Ms. Park is entitled to judgment as a matter of law.

First, Ms. Park is not a signatory or party to the Agreement, nor was she a member of any of the limited liability companies involved with the Agreement. This undisputed fact precludes Plaintiff from suing Ms. Park for breach of contract, breach of contract accompanied by fraudulent act, or breach of the implied covenant of good faith and fair dealing, an allegation that is subsumed within Lee's claim for breach of contract.[5] Secondly, Plaintiff has conceded that neither Defendant made any representations to him regarding the value of the assets prior to when the Agreement was signed, which had been the primary allegation in this case. This concession prevents Lee from asserting a claim for negligent misrepresentation. Finally, there can also be no viable claim for unjust enrichment against Ms. Park, as there is no evidence that Lee conveyed a benefit directly to

[5] *See, e.g., RoTec Servs., Inc. v. Encompass Servs., Inc.,* 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004) (concluding that the implied covenant of good faith and fair dealing is not an independent cause of action separate from a claim for breach of contract).

her, as would be required to support this cause of action. The Agreement conveyed assets and debts to Park, not to Ms. Park. *See, e.g., Agreement* at ¶¶ 3, 4, and 5. Even though Park and Ms. Park are married, Plaintiff must still adduce at least a scintilla of evidence of a claim directly against Ms. Park in order to survive summary judgment. On the record before the Court, Plaintiff has failed to make a showing to establish the existence of any claim against Ms. Park. Accordingly, summary judgment is **GRANTED** as to Plaintiff's claims against Ms. Park.

II. SUMMARY JUDGMENT IS ALSO GRANTED IN FAVOR OF PARK ON ALL CAUSES OF ACTION

Upon review of the record, the Court finds that summary judgment is granted in favor of Defendant as to all causes of action asserted by Plaintiff, which include claims for (a) breach of contract/breach of contract accompanied by a fraudulent act; (b) unjust enrichment; (c) negligent misrepresentation; and (d) breach of the covenant of good faith and fair dealing.

a. Plaintiff's Claim for Breach of Contract

There is no question of fact in the record to preclude summary judgment in favor of Defendant on Plaintiff's claim for breach of contract. Plaintiff fails to present any evidence to suggest that a breach of the Agreement occurred. The Agreement indicates that each party was making their own decision to enter the Agreement. There is nothing in the record to suggest that Plaintiff was denied access to any financial information prior to or at the time of the Agreement or, more importantly, that Park failed to perform any duty required by the terms of the Agreement. The parties are bound by the Agreement, which provides that Plaintiff and Park expressly agree and acknowledge that the Agreement contained the complete agreement of the parties. *See Agreement* at ¶ 17. The parties also stipulated that the division of assets was fair and equitable, which remains binding upon Lee even if he later regretted the deal that he struck. On the record

before the Court, there is no genuine issue of material fact suggesting that Park breached the terms of the Agreement in any way.

In addition to failing to present evidence that could indicate a breach, Plaintiff has failed to prove that he was damaged as a proximate result of any alleged breach. *See Fuller v. Eastern Fire & Casualty Ins. Co.*, 240 S.C. 75, 124 S.E.2d 602, 610 (1962) (holding that the burden is on the plaintiff to prove the existence of a binding contract, its breach, and damages suffered by the plaintiff a result of such breach). Taking the facts in the light most favorable to Plaintiff, Plaintiff has failed to identify a breach and, therefore, cannot show any damages arising from a non-existent breach. With regard to the allegation that Park also owned other restaurants, assuming these allegations as true for purposes of the Motion, there is no provision in the Agreement that would have prohibited Lee from opening other restaurants. Additionally, Park provided an affidavit explaining these issues that Lee did not challenge or refute. These facts preclude Lee's claim for breach of contract, as the record lacks evidence that Park ever breached the Agreement.

Although Lee alleges that he did not read or sufficiently understand the Agreement, this does not mean that Park has breached the Agreement. Lee did not assert a claim for rescission or mistake, but even if he had, the Court will not be at liberty in this case to rewrite the contract. *See Ellis v. Taylor*, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994) (stating that "[t]he court's duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully.") Furthermore, it is well-recognized in South Carolina that every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it. *See J.B. Colt Co. v. Britt*, 129 S.C. 226, 123 S.E. 845 (1924). To the extent that Lee now wishes he had reviewed the Agreement more closely, this does not present any basis for a breach of contract claim against

Park. The Agreement follows the terms and conditions outlined by Plaintiff's counsel in a letter from his attorney. In light of the record, Plaintiff cannot prove the required element of damages. Summary judgment is hereby **GRANTED** in favor of Defendants as to Plaintiff's claim for breach of contract.

b. Plaintiff's Claim for Breach of Contract Accompanied by Fraudulent Act

Defendant is entitled to summary judgment as to Plaintiff's claims for breach of contract and breach of contract accompanied by fraudulent act. Plaintiff failed to submit proof of damages sustained as a result of any breach of contract. Therefore, the Court finds that Plaintiff has failed to demonstrate that a breach of contract has occurred or that Plaintiff was damaged as a proximate result of any alleged breach. As noted above, Lee has admitted that Park did not make misrepresentations regarding the value of the assets. Furthermore, there is no evidence in the record that provides any support for the allegation that Park committed any fraudulent act.

For the reasons that Plaintiff's claim for breach of contract fails as a matter of law, Plaintiff also fails to establish a claim for breach of contract accompanied by fraudulent act. *See RoTec Servs., Inc. v. Encompass Servs., Inc.*, 359 S.C. 467, 470, 597 S.E.2d 881, 883 (Ct. App. 2004) ("To maintain an action for breach of contract accompanied by a fraudulent act, a plaintiff must prove three elements: (1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach."). Plaintiff failed to present evidence of financial records or expert testimony to create a question of fact as to the existence or amount of damages. *See, e.g., Gauld v. O'Shaugnessy Realty Co.*, 380 S.C. 548, 561, 671 S.E.2d 79, 86 (Ct. App. 2008) (affirming summary judgment in favor of defendant on breach of contract accompanied by fraudulent act claim where plaintiff failed to present evidence of existence or amount of damages). There is no proof of damages sustained by

Plaintiff other than Plaintiff's speculation. On this basis, summary judgment is hereby **GRANTED** in favor of Defendant as to the causes of action for breach of contract and breach of contract accompanied by fraudulent act.

c. Unjust Enrichment Claim

Defendants are entitled to summary judgment as to Plaintiff's claim for unjust enrichment. Plaintiff failed to demonstrate a question of fact as to the elements of a claim for unjust enrichment. Absent an express contract, recovery under quantum meruit is based on quasi-contract, the elements of which are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value. *See Columbia Wholesale Co. v. Scudder May N.V.*, 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994). There is no dispute as to the existence of the express contract addressing the division of assets and debts. The cause of action is not pled in the alternative, but rather alleges that the express contract has resulted in unjust enrichment. Under South Carolina law, Plaintiff cannot recover under an implied contract theory where Plaintiff and Park each performed under the express contract which has not been abandoned or rescinded. It is not unjust for Park to retain the very benefit that Lee promised and agreed that Park would retain. *See Gibson v. Epting*, 426 S.C. 346, 356, 827 S.E.2d 178, 183 (Ct. App. 2019) ("A party cannot disavow a binding contract and pursue quantum meruit, no matter how green the grass of equity may seem), *citing Swanson v. Stratos*, 350 S.C. 116, 122, 564 S.E.2d 117, 120 (Ct. App. 2002). For these reasons, summary judgment is hereby **GRANTED** in favor of Defendant as to Plaintiff's claim for unjust enrichment.

d. Negligent Misrepresentation Claim

Summary judgment is also proper as to Plaintiff's claim for negligent misrepresentation. In his deposition, Plaintiff conceded that Park made no representations regarding the value of the assets prior to signing the Agreement, after having repeatedly alleged in the Complaint and in discovery responses that Park had made such representations.[6] This admission entitles Defendant to summary judgment as to the negligent misrepresentation claim. A plaintiff in a negligent misrepresentation action must prove that a defendant made a false representation, which Lee has not done here. *See Brown v. Stewart*, 348 S.C. 33, 42, 557 S.E.2d 676, 681 (Ct. App. 2001). In addition to the undisputed fact that Defendant made no representation to Plaintiff regarding the value of the assets, Plaintiff also fails to establish the other elements necessary to a negligent misrepresentation claim. The facts in this case demonstrate that Plaintiff was represented by legal counsel during the negotiation of the Agreement. Also, Plaintiff cannot have relied to his detriment on an alleged misrepresentation that he ultimately admits was never made. Accordingly, summary judgment is hereby **GRANTED** as to Plaintiff's claim for negligent misrepresentation.

e. Breach of the Covenant of Good Faith and Fair Dealing Claim[7]

Plaintiff failed to demonstrate any conduct by Defendant that would violate the covenant of good faith and fair dealing. Factually, Plaintiff's contention is that his inability to read, speak, and understand the English language is at the heart of the fairness argument.[8] Plaintiff testified that he did not read the Agreement prior to signing it. The Court finds, however, that Plaintiff was

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[6] *Lee Dep.* at 88:14-89:2; 95:7-17; 105:13-19; 110:6-10.

[7] Although this cause of action is not actually independent from the cause of action for breach of contract, the Court addresses it separately in order to track Plaintiff's allegations and claims in the same manner as they are set forth in the Complaint.

[8] *Lee Dep. at 107:9-23.*

represented by counsel during negotiation of the agreement and had the services of an interpreter during these negotiations.

The contract largely splits up the debt between the two parties. Paragraph 24 of the Agreement includes a reference to each party having had the "opportunity to review the Agreement, and to seek and receive legal advice" before signing the contract. Paragraph 9 of the Agreement states that the parties expressly agree that the division of the assets is fair and equal. Paragraph 26 of the Agreement reflects the parties' agreement that Park shall be responsible for seventy percent (70%) of the costs and expenses and that Lee shall be responsible for thirty percent (30%) of the costs and expenses.

The evidence supports the fact that Plaintiff received Yokoso, Inc., a performing asset (restaurant), with about $800,000 in debt. Defendant received more than half of the assets and approximately $3,800,000 of the debts. The Court finds that while Defendant received five times the assets, he also received five times as much debt and liabilities. Park performed his obligations relating to the transaction in a manner that was consistent with the intent of the parties and the terms and conditions of the Agreement. *Adams v. G.J. Creel & Sons, Inc.*, 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995) ("There is no breach of an implied covenant of good faith where a party to a contract has done what provisions of the contract expressly gave him the right to do."). Summary judgment is hereby **GRANTED** in favor of Defendant as to Plaintiff's claim for breach of the covenant of good faith and fair dealing.

III. SUMMARY JUDGMENT IS ALSO PROPER FOR BOTH DEFENDANTS ON THE BASIS OF THE STATUTE OF LIMITATIONS

Defendants, in their Amended Answer, have raised the statute of limitations as a defense to Plaintiff's claims.[9] The Court concludes that is a meritorious defense and, therefore, grants summary judgment to both Defendants on this additional ground. The courts of South Carolina recognize that statutes of limitations are fundamental to our judicial system. *See, e.g., Carolina Marina Handling, Inc. v. Lasch*, 363 S.C. 169, 175-76, 609 S.E.2d 548 (Ct. App. 2005). Based on admissions made by Plaintiff during his deposition, the statute of limitations has run on each of the claims asserted.

The statute of limitations applicable to the claims in this case is three (3) years. *See* S.C. Code Ann. § 15-3-530(1) (breach of contract, including any claim based on the implied covenant of good faith and fair dealing, and breach of contract accompanied by fraudulent act); S.C. Code Ann. § 15-3-530(5) (negligent misrepresentation and unjust enrichment). An action for unjust enrichment is also governed by the three-year statute of limitations. *Id.* The statute of limitations is triggered not just by knowledge of an injury but by knowledge of facts, diligently acquired, sufficient to put an injured person on notice of the existence of a cause of action against another. *See Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 329, 534 S.E.2d 672, 676 (2000). Also, there is no basis for tolling the statute of limitations under these circumstances. *See McConnell v. Burry*, 2006 WL 7286747, at *3 (S.C. Ct. App. Aug. 18, 2006) ("One who has knowledge of the truth or the means by which he could acquire such knowledge with reasonable diligence cannot claim to have been misled.").

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[9] Although the statute of limitations was not asserted in the original Answer, Defendants filed a Motion to Amend Answer, which the Court granted on September 11, 2019. Therefore, the affirmative defense of the statute of limitations is appropriate for consideration by the Court on Defendants' Motion for Summary Judgment.

Although Plaintiff previously alleged that Defendants misrepresented the value of the assets at the time that the Agreement was negotiated and signed, he abandoned this allegation in his deposition. Taken as a whole, there is no evidence in the record of an act or event arising after July 21, 2014 (which is three years prior to the date the Complaint was filed) that would support any of the causes of action asserted. Furthermore, to whatever extent Plaintiff believed that he was aggrieved, he testified that he considered filing suit prior to signing the Agreement, but opted to sign the Agreement instead. *Lee Dep.* at 69:18-71:23. Viewing the record in the light most favorable to Plaintiff, as the non-moving party, the only available inference is that Plaintiff knew of alleged claims against Defendants at the time that he signed the Agreement, which was February 27, 2013. This lawsuit was filed more than four years later and is time-barred. Accordingly, Defendants are entitled to summary judgment.

IV. CONCLUSION

Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Defendants' Motion for Summary Judgment is GRANTED and that summary judgment is entered in favor of Defendants as to each of Plaintiff's claims. As an additional matter, the Agreement includes a provision allowing for an award to the prevailing party of expenses, fees and costs incurred in the action, including reasonable attorney's fees and costs. *See Agreement,* at ¶ 11.[10] Should Defendant Park, as the prevailing party under the Agreement, wish to file a motion seeking an award of attorney's fees and expenses, Park is directed to do so within fifteen (15) days from

[10] Specifically, the attorney fee provision states as follows: "If suit shall be brought (by arbitration or in a court of competent jurisdiction) or claim shall be made (whether or not suit is commenced or judgment entered), because of the breach of any covenant herein; arising out of or related to the enforcement of the Agreement, and/or the recovery of money damages or equitable relief arising out of or related to the Agreement, the non-prevailing party shall pay to the prevailing party, in addition to all other sums and relief available to the prevailing party, all expenses, fees and costs incurred therefor including reasonable attorney's fees and costs." *See Agreement* at § 11.

the date of this Order. Lee, as the non-prevailing party under the Agreement, shall be allowed fifteen (15) days from the date Park files his motion, as applicable, to file any materials in opposition to the motion. The Court shall conduct a hearing on the motion and then issue an order resolving the motion.

AND IT IS SO ORDERED.

The Honorable Mikell R. Scarborough
Master-in-Equity for Charleston County

_____, 2019

Charleston, South Carolina

Charleston Common Pleas

Case Caption: Ho Dong Lee VS Yong Wook Park , defendant, et al

Case Number: 2017CP1003705

Type: Order/Summary Judgment

So Ordered

s/Mikell R. Scarborough 3062