

Sean Boylan appeals from the trial court's order granting summary judgment in favor of Horvath Communications, Inc. (HCI) and Jacqueline L. Horvath in Boylan's action against HCI and Horvath alleging breach of contract, promissory estoppel, and unjust enrichment. Boylan presents the following restated issue for our review: Did the trial court err by granting summary judgment?

We affirm.

The facts most favorable to Boylan, the non-movant, are that Boylan began working as an independent contractor for Horvath, HCI's President, in April 2004. HCI develops cell towers for wireless telecommunication providers such as Verizon and U.S. Cellular. Boylan was hired to work in IT and site acquisitions. In January 2005, Boylan moved to the position of Director of Operations and was hired as an at-will employee of HCI in 2006. Boylan received a salary and benefits as compensation for his employment. As Director of Operations Boylan was responsible for developing customer relationships with telecommunication providers and finding tower sites for those customers, hiring contractors, obtaining construction permits and zoning approvals, and overseeing tower construction.

Beginning in mid-to-late 2005, Boylan and Horvath began negotiating the terms of an agreement whereby Boylan would receive an equity stake in some wireless communications towers, less construction costs and financing charges. The oral negotiations were ongoing until December 2006 when Horvath told Boylan that she would have HCI's attorney draft a written contract. Boylan drafted a letter of intent outlining his understanding of the terms of the agreement and sent it to Horvath. A draft of the proposed written contract was prepared

by HCI's attorney, but Horvath expressly rejected the terms of the contract claiming that they were too favorable to Boylan and Boylan did not sign it.

Boylan received a second draft of the proposed written contract from HCI's attorney sometime in 2008, but neither party executed the contract. This draft contained a two-year non-competition clause. Boylan stated in a deposition that a non-competition clause was not discussed during negotiations and was not included in the first draft. He objected to that term of the contract. Horvath claimed that a non-competition clause was an essential term of any agreement with Boylan and that she would not have signed a bonus agreement that did not include that term. Boylan's employment with HCI was terminated in December 2008.

Boylan filed a complaint and demand for a jury trial against HCI and Horvath on October 9, 2009 in which he alleged breach of contract, promissory estoppel, and unjust enrichment arising out of HCI's failure to provide him with an equity stake in wireless towers pursuant to an oral agreement Boylan claimed was reached in December 2006. HCI and Horvath filed a motion for summary judgment, which the trial court granted after hearing oral argument. Boylan now appeals.

Our standard of review of a summary judgment order is well-settled: summary judgment is appropriate if the "designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Ind. Trial Rule 56(C). Relying on specifically designated evidence, the moving party bears the burden of making a prima facie showing that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. *I/N Tek v. Hitachi Ltd.*, 734 N.E.2d 584 (Ind. Ct. App. 2000). If the moving party meets these two

requirements, the burden shifts to the nonmovant to set forth specifically designated facts showing that there is a genuine issue for trial. *Id.* A genuine issue of material fact exists where facts concerning an issue that would dispose of the litigation are in dispute or where the undisputed material facts are capable of supporting conflicting inferences on such an issue. *Gilman v. Hohman*, 725 N.E.2d 425 (Ind. Ct. App. 2000). Even if the facts are undisputed, summary judgment is inappropriate where the record reveals an incorrect application of the law to the facts. *Id.*

A trial court's grant of summary judgment is clothed with a presumption of validity, and the party that lost in the trial court has the burden of demonstrating that the grant of summary judgment was erroneous. *City of Indianapolis v. Byrns*, 745 N.E.2d 312 (Ind. Ct. App. 2001). On appeal, we are bound by the same standard as the trial court, and we consider only those matters that were designated at the summary judgment stage. *Interstate Cold Storage v. Gen. Motors Corp.*, 720 N.E.2d 727 (Ind. Ct. App. 1999). We do not reweigh the evidence, but we liberally construe all designated evidentiary material in the light most favorable to the nonmoving party to determine whether there is a genuine issue of material fact for trial. *Estate of Hofgesang v. Hansford*, 714 N.E.2d 1213 (Ind. Ct. App. 1999). A grant of summary judgment may be affirmed upon any theory supported by the designated materials. *Bernstein v. Glavin*, 725 N.E.2d 455 (Ind. Ct. App. 2000).

The trial court granted HCI and Horvath's motion for summary judgment as to Boylan's breach of contract claim. The elements of a breach of contract action are the existence of a contract, the defendant's breach thereof, and damages. *Gatto v. St. Richard Sch., Inc.*, 774 N.E.2d 914 (Ind. Ct. App. 2002). The question of whether a certain or

undisputed set of facts establishes a contract is a question of law for the trial court. *Keating v. Burton*, 617 N.E.2d 588 (Ind. Ct. App. 1993). For a contract to exist there must be an offer and an acceptance of the offer that meets the terms of the offer in every respect. *Id.* A completed oral contract exists where the parties agree to all terms of the contract. *Id.*

It is undisputed that no written contract regarding the equity interest or bonus agreement was executed. Further, the evidence shows that the result of the final oral negotiation in December 2006 was that Horvath would have HCI's attorney prepare a written contract. Both parties rejected that draft and the second draft was never executed. The trial court correctly found as a matter of law that a completed oral contract did not exist as the parties did not agree to all terms of the contract. The difficulties the parties encountered in trying to reduce the terms of an equity interest agreement to a written contract is evidence that the parties did not have a completed oral contract. Summary judgment was properly entered in favor of HCI and Horvath on Boylan's breach of contract claim.

The trial court entered summary judgment in HCI and Horvath's favor on Boylan's promissory estoppel claim. "The estoppel doctrine is based on the rationale that a person whose conduct has induced another to act in a certain manner should not be permitted to adopt a position inconsistent with such conduct so as to cause injury to the other." *Spring Hill Developers, Inc. v. Arthur*, 879 N.E.2d 1095, 1100 (Ind. Ct. App. 2008) (citing 31 C.J.S. Estoppel and Waiver § 2 (1996)). "The doctrine of promissory estoppel encompasses the following elements: (1) a promise by the promisor (2) made with the expectation that the promisee will rely thereon (3) which induces reasonable reliance by the promisee (4) of a definite and substantial nature and (5) injustice can be avoided only by enforcement of the

promise.” *First Nat’l Bank of Logansport v. Logan Mfg. Co., Inc.*, 577 N.E.2d 949, 954 (Ind. 1991). A plaintiff may recover on a promissory estoppel theory even in the absence of a contract. *First Nat’l Bank of Logansport v. Logan Mfg. Co., Inc.*, 577 N.E.2d 949. Further, promissory estoppel is an exception to the general rule that estoppel is not available in cases involving promises to be performed in the future. *Id.* The proponent of the promissory estoppel claim bears the burden to establish all facts necessary to support its application. *Id.*

Boylan contends that the record supports his promissory estoppel claim. HCI and Horvath claim that none of the elements of promissory estoppel are supported in the record. The facts most favorable to Boylan show that the only promise Horvath and HCI made was that a written contract for a bonus agreement would be drafted, and that promise was kept. Further, Boylan has not shown that he had to forego other job opportunities in order to continue his employment with HCI based on the promise of a bonus agreement. Boylan was compensated under his employment contract for the work he performed while the additional bonus agreement was being negotiated, thus he has not established that he has suffered an injustice that could only be remedied by enforcement of a bonus agreement.

Last, to the extent that Boylan relies upon allegations made in his complaint to support his promissory estoppel claim, this too fails. Ind. Trial Rule 56(E) makes clear that an adverse party may not rest on the allegations of his complaint to survive summary judgment, but must come forward with factual allegations to establish the existence of genuine issues. The trial court did not err by granting summary judgment in favor of HCI and Horvath on Boylan’s promissory estoppel claim.

Boylan also advanced an unjust enrichment argument that was rejected by the trial court at the summary judgment stage. A claim for unjust enrichment “is a legal fiction invented by common law courts in order to permit a recovery . . . where the circumstances are such that under the law of natural and immutable justice there should be a recovery” *Bayh v. Sonnenburg*, 573 N.E.2d 398, 408 (Ind. 1991) (citation omitted). “A person who has been unjustly enriched at the expense of another is required to make restitution to the other.” Restatement of Restitution § 1 (1937). “To prevail on a claim of unjust enrichment, a claimant must establish that a measurable benefit has been conferred on the defendant under such circumstances that the defendant’s retention of the benefit without payment would be unjust.” *Zoeller v. East Chicago Second Century, Inc.*, 904 N.E.2d 213, 220 (Ind. 2009).

Boylan argues that Horvath and HCI were unjustly enriched by Boylan’s continued employment with them for two years after the December 2006 conversation about the equity interest or bonus agreement. Boylan did not establish, however, that he engaged in any business activities above and beyond that which he was required to do and was compensated for as director of operations at HCI. Where there is an express employment contract between the parties, the breach of which is not alleged, there can be no viable claim for unjust enrichment or quantum meruit because Boylan was compensated under that employment contract and no final agreement had been reached regarding additional compensation for additional work. *See Engelbrecht v. Prop. Developers, Inc.*, 296 N.E.2d 798 (Ind. Ct. App. 1973) (there is no valid claim to additional compensation under quantum meruit theory where salaried employee was paid under that express contract and negotiations for additional compensation did not result in a final agreement).

Judgment affirmed.

BAILEY, J., and BROWN, J., concur.