

STATE OF MICHIGAN
COURT OF APPEALS

JOHN F. SZCZUBELEK,

Plaintiff-Appellant,

v

DEPARTMENT OF ATTORNEY GENERAL,

Defendant-Appellee.

UNPUBLISHED

March 15, 2002

No. 227733

Court of Claims

LC No. 99-017513-CM

Before: Sawyer, P.J., and Murphy and Hoekstra, JJ.

PER CURIAM.

In this contract dispute, plaintiff appeals by right from the judgment of the Court of Claims granting defendant's motion for summary disposition. This case concerns an alleged promise of a promotion made to plaintiff during his employment with the Department of Attorney General. The trial court determined that the agreement was rendered unenforceable by the enactment of MCL 169.257. We affirm.

Plaintiff first asserts that the trial court improperly dismissed his breach of contract claim, arguing that even if the contract between the parties was rendered illegal, restitution is appropriate. We disagree.

A grant or denial of summary disposition based upon a failure to state a claim is reviewed de novo on appeal. *Beaty v Hertzberg & Golden, PC*, 456 Mich 247, 253; 571 NW2d 716 (1997). A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). All factual allegations in support of the claim are accepted as true, and construed in the light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

We initially note that plaintiff's first issue regarding restitution is premised on a theory of unjust enrichment. Michigan courts have "long recognized the equitable right of restitution when a person has been unjustly enriched at the expense of another." *Michigan Educational Employees Mutual Ins Co v Morris*, 460 Mich 180, 198; 596 NW2d 142 (1999). Plaintiff's complaint does not specifically state a cause of action based on unjust enrichment, nor does the complaint make a request for equitable relief. Regardless, plaintiff's claim for restitution fails as a matter of law.

Courts will generally refuse to enforce illegal contracts, or grant relief thereunder. *Kukla v Perry*, 361 Mich 311, 324-325; 105 NW2d 176 (1960). In this case, the trial court ruled that MCL 169.257¹ rendered the alleged contract illegal. Plaintiff does not challenge that ruling on appeal.

The trial court relied on our Supreme Court's decision in *Grand Rapids & I R Co v Cobbs & Mitchell*, 203 Mich 133, 142; 168 NW 961 (1918), for the proposition that where a contract is legal when made, a subsequent change in the law which makes performance illegal excuses that performance and extinguishes a right to recoup damages for the nonperformance of that unenforceable contract. We agree with the trial court's interpretation of the case.

However, plaintiff argues that even if the contract was rendered illegal, restitution is appropriate. Plaintiff's argument lacks merit. We do not dispute that there are circumstances in which restitution would be appropriate; however, under the circumstances of this case, the trial court did not err in rejecting plaintiff's restitution claim. If defendant were ordered to provide restitution to plaintiff for any benefit received, defendant would, in effect, be retroactively contributing to a campaign in violation of MCL 169.257. The taint of illegality that would exist in allowing plaintiff to sue for legal damages based on breach of contract would not be avoided by allowing plaintiff to recover restitution for unjust enrichment.² In *Cashin v Pliter*, 168 Mich 386, 390-391; 134 NW 482 (1912), our Supreme Court indicated that when considering whether to permit an exception to the general rule that an illegal contract cannot be enforced, a court "should carefully scrutinize the particular statute under advisement, for the purpose of ascertaining, from the subject-matter and language used, the object for which it was enacted and the intent of its makers, to the end that such intent may be rendered effectual and the indicated purpose accomplished." Here, allowing restitution would necessarily conflict with the Legislature's compelling interest in promoting fairness and accountability in campaign financing. We note that MCL 169.257(2) provides for criminal penalties for violating the statute.

Moreover, restitution is not appropriate under general principles of unjust enrichment. Unjust enrichment requires "an inequity resulting to the plaintiff because of the retention of the benefit by the defendant." *Barber v SMH (US), Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993). In the present case, plaintiff was in fact compensated for his services. Equity does not demand that defendant be ordered to provide restitution.

Plaintiff's second assertion is that the trial court erred in granting defendant's motion for summary disposition as to plaintiff's promissory estoppel claim. Again we disagree.

¹ MCL 169.257(1) provides that "[a] public body or an individual acting for a public body shall not use or authorize the use of funds, personnel, office space, property, stationary, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure or provide volunteer personal services"

² In many circumstances, the act of providing restitution would not result in an illegality, e.g., where a party seeks return of monies paid under a contract for goods, and where the goods no longer can be delivered because of an intervening change in law barring the sale.

“Generally speaking, estoppel cannot be used to enforce an illegal contract or allow its rescission if the contract offends a public policy embodied in a statute.” *William’s Delight Corp v Harris*, 87 Mich App 202, 208; 273 NW2d 911 (1978), citing *Leland v Ford*, 245 Mich 599, 609-610; 223 NW 218 (1929). The only exception to this rule regards situations where other policy considerations are present, and warrant an application of promissory estoppel. *Leland, supra* at 609. Enforcement of the contract would clearly violate strong public policies associated with the act and circumvent the apparent purpose of MCL 169.257.

Finally, plaintiff argues that the trial court erred in granting defendant’s motion for summary disposition, on governmental immunity grounds, as to plaintiff’s claim of fraud in the inducement. We disagree.

We find it unnecessary to address the governmental immunity issue because plaintiff’s claim fails for the same reasons the restitution and promissory estoppel arguments failed. We shall affirm the trial court’s ruling because it reached the right result, although for different reasons. *Griffey v Prestige Stamping, Inc*, 189 Mich App 665, 669; 473 NW2d 790 (1991). “Fraud in the inducement occurs where a party materially misrepresents future conduct under circumstances in which the assertions may reasonably be expected to be relied upon and are relied upon.” *Samuel D Begola Services, Inc v Wild Brothers*, 210 Mich App 636, 639; 534 NW2d 217 (1995). “Fraud in the inducement to enter a contract renders the contract voidable at the option of the defrauded party.” *Id.* at 640.³ Here, plaintiff is not seeking to void this contract, but instead seeks to enforce the contract or promise. This Court examines the gravamen of a complaint, looking beyond the labels used by a plaintiff. *Teadt v Lutheran Church Missouri Synod*, 237 Mich App 567, 576-577; 603 NW2d 816 (1999). Plaintiff is essentially restating his breach of contract and promissory estoppel claims, whereby he requests a court to enforce an illegal performance. We decline to do so for the reasons stated above.

Affirmed.

/s/ David H. Sawyer
/s/ William B. Murphy
/s/ Joel P. Hoekstra

³ Plaintiff’s fraud claim was premised on the promise of a promotion; however, this promise was more than an inducement to enter into the contract, it actually formed a term of the alleged contract. This further supports our opinion that contract principles, as opposed to tort principles, apply here.