NOT FOR OFFICIAL PUBLICATION
See Okla.Sup.Ct.R. 1.200 before citing.

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

COMMUNITY STRATEGIES—CA, INC.,

Plaintiff/Appellant,

vs.

COMMUNITY STRATEGIES, INC., d/b/a EPIC ONE-ON-ONE CHARTER SCHOOL AND EPIC BLENDED LEARNING CHARTER SCHOOL,

Defendant/Appellee.

Case No. 122,449

APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE DON ANDREWS, TRIAL JUDGE

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS

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OPINION BY JANE P. WISEMAN, PRESIDING JUDGE:

Plaintiff Community Strategies—CA, Inc., appeals the trial court's entry of summary judgment in favor of Defendant Community Strategies Inc., d/b/a Epic One-On-One Charter School and Epic Blended Learning Charter School. This appeal is assigned to the accelerated docket pursuant to Oklahoma Supreme Court Rule 1.36, 12 O.S.2021, ch. 15, app. 1, and stands submitted without additional briefing. The issue presented is whether the trial court erred in finding that no material undisputed fact questions remain and that Defendant is entitled to judgment as a matter of law. After review, we conclude material facts remain in dispute precluding summary judgment, and we reverse and remand for further proceedings.

FACTS AND PROCEDURAL HISTORY

Plaintiff Community Strategies—CA, Inc. (CS-CA) brought suit against Community Strategies, Inc., d/b/a Epic One-On-One Charter School and Epic Blended Learning Charter School (CSI) stating claims for breach of contract and quantum meruit/unjust enrichment. CSI filed an answer admitting some allegations, denying others, and asserting affirmative defenses.

CSI filed a motion for summary judgment presenting 15 facts as material and undisputed. We quote and summarize these 15 facts below and follow with CS-CA's initial response.

1) CSI, an Oklahoma not-for-profit corporation, has its principal place of business in Oklahoma City. (Undisputed.)

2) On November 25, 2015, CS-CA "was formed as a domestic limited liability company and wholly-owned subsidiary of CSI." (Undisputed.)

3) "In April 2016, CS-CA entered into a Charter School Operating Agreement with Next Generation Education ("NGE"), a California nonprofit public benefit corporation, to provide management and operational services to NGE, doing business as EPIC Charter School in California ("Epic California"), including the administration and supervision of EPIC California (i.e., NGE) personnel." (Undisputed.)

4) CS-CA and CSI entered into an Intercompany Agreement on or about April 19, 2016, which defined CSI as a parent and CS-CA as a subsidiary. Pursuant to the Intercompany Agreement, CSI and CS-CA agreed to the following:

> 1) PARENT accepts and acknowledges the subcontract of some or all of SUBSIDIARY'S obligations under the CHARTER SCHOOL OPERATING AGREEMENT.
>
> 2) SUBSIDIARY shall reimburse PARENT for the Administrative Overhead Cost in the amount that is provided by the CHARTER SCHOOL OPERATING AGREEMENT.

(Undisputed.)

5) CS-CA seeks to recover from CSI "$430,573.11 in salary expenses it alleges non-party NGE incurred for five Epic California (i.e., NGE) employees who [CS-CA] claims provided services to, and for the benefit of, CSI during school years 2019 to 2020 and 2020 to 2021, and for which CS-CA allegedly reimbursed NGE." (Undisputed.)

6) Of the amounts sought by CS-CA, $179,794.97 is for the 2019-2020 school year, and the remainder ($250,778.14) is for the 2020-2021 school year. (Undisputed.)

7) CS-CA had no employees before July 1, 2021. (Undisputed.)

8) "Prior to July 1, 2021, CS-CA was a single-member, not-for-profit Oklahoma limited liability company that was a wholly-owned subsidiary of CSI, CS-CA's sole member, and had no members, managers, directors, officers, shareholders, or owners other than CSI." (Undisputed.)

9) CSI never reimbursed CS-CA for payments it made to NGE for services NGE performed for CSI. (Undisputed.)

10) CS-CA and NGE are not "registered vendors in CSI's internal accounting system." ("Unable to characterize as disputed or undisputed . . . .")

11) CSI never made an agreement for NGE to perform any services for it. (Denied.)

12) CSI did not agree to reimburse CS-CA for payments it made to NGE. (Disputed.)

13) CS-CA requests attorney fees in its lawsuit against CSI. (Undisputed.)

14) July 1 marks the beginning of CSI's fiscal year and June 30 marks its end. ("Unable to characterize as disputed or undisputed . . . .")

15) The school year for CSI begins in August each year and ends in June. (Undisputed.)

Based on these facts, CSI claims CS-CA cannot establish a breach of the Intercompany Agreement because the Agreement unambiguously provides CS-CA "would pay CSI for services CSI provided to NGE on [CS-CA's] behalf, not vice versa." (Emphasis omitted.) It contends the Agreement did not require "NGE to provide services for CSI;" nor require CS-CA "to pay NGE for services (allegedly)

provided to CSI;" nor for "CSI to reimburse [CS-CA] for payments made by [CS-CA] to NGE for services NGE provided to CSI." CSI maintains CS-CA could not show that the contract was modified by the parties' conduct because there is no evidence CSI had ever reimbursed CS-CA for payments CS-CA made to NGE for services it allegedly provided to, or for the benefit of, CSI. CSI also contends CS-CA is not entitled to relief on its equitable claims or its request for attorney fees.

In response, CS-CA asserts it is not claiming a breach of the Intercompany Agreement but "is alleging the Parties' conduct created an implied in fact contract requiring CSI to reimburse CS-CA for the NGE salary expenses." It further asserts that it has a valid unjust enrichment claim because, if it had failed to pay NGE for the services, CSI would have been "under a clear obligation to do so."

A hearing on CSI's motion for summary judgment was held on December 14, 2023. After hearing argument from counsel, the trial court continued the hearing until April 4, 2024, to allow CS-CA additional time for discovery.

An agreed protective order regarding discovery had been entered on June 20, 2023. The summary judgment hearing was not held on April 4, 2024, but an "Addendum to Agreed Protective Order" was filed that day to further clarify the treatment of confidential information.

After CSI responded to discovery, CS-CA filed a supplemental response to CSI's motion for summary judgment in which it changed some of its responses to CSI's statements of undisputed facts. Regarding CSI's Fact No. 9, which states that CSI never reimbursed CS-CA for its payments to NGE for services NGE performed for CSI, CS-CA changed its response from "Undisputed" to "Undisputed to the extent Fact No. 9 relates to the employee services at issue in this litigation." It continues, "Disputed to the extent Fact No. 9 claims that reimbursements never flowed from Oklahoma to California." CS-CA references an exhibit that contains email correspondence showing "Oklahoma reimbursing California for employee expenses."

In Fact No. 10, CSI claimed CS-CA and NGE are not "registered vendors in CSI's internal accounting system." CS-CA changed its previous response to "Undisputed, but immaterial."

CS-CA changed its response to Fact No. 11—that CSI never made an agreement for NGE to perform any services for it—from denied to disputed. CS-CA explained: "CSI agreed that Teri Lyles, Robin Decker, Enrique Arriola, Leida Ipatzi, and Holly Wade [collectively, the NGE employees] would perform services for Oklahoma and created the employment structure that allowed them to do so." (Footnote omitted). CS-CA maintains CSI intended for the NGE employees to be Oklahoma employees who would be

paid by Oklahoma payroll, but "CSI could not formally employ the individuals through Oklahoma, and determined the employees would work for Oklahoma but be paid through the California (*i.e.*, NGE) payroll." (Footnote omitted). CS-CA submitted 35 pages of emails which it claims shows that NGE employees were "working for Oklahoma" and they were not doing so covertly or without CSI's approval or knowledge. CS-CA claims that "for all practical purposes, CSI, NGE, and CS-CA regarded the NGE Employees as Oklahoma employees." It further asserts, "NGE did not maintain compensation plans for some of these individuals and CSI determined their bonuses."

CS-CA continued to dispute CSI's claim in Fact No. 12 that it did not agree to reimburse CS-CA for payments it made to NGE. It asserts CSI made multiple attempts to employ the NGE employees through CSI's payroll but was unable to do so because of insurance regulations and the fact that the employees were California residents. It maintains, "CSI management determined that the employees would be paid from the California (*i.e.*, NGE) payroll, but work for CSI's Oklahoma school." It asserts:

> In connection with this solution, CSI reviewed the Intercompany Agreement between CSI and CS-CA and agreed to reimburse CS-CA for the services provided to Oklahoma by California. Article I of the Intercompany Agreement provided "[CSI] accepts and acknowledges the subcontract of some or all of [CS-CA's] obligations

> under the CHARTER SCHOOL OPERATING AGREEMENT." The Charter School Operating Agreement obligated CS-CA to pay the salary and benefit expenses for all employees on NGE's payroll, including the Five Employees serving CSI's Oklahoma school.

(Citations to record omitted.)

CS-CA alleged as an additional material fact precluding summary judgment that it reimbursed NGE the salary and benefits at issue during the 2019-2020 and 2020-2021 school years. After payments owed to the employees were invoiced, "CS-CA typically paid NGE within one week" with the "expectation and understanding that CSI would reimburse CS-CA for these payments." It claims that CSI, however, "will not pay for the services it accepted from the NGE Employees."

CS-CA asserts the existence of an implied contract is in dispute as well as the meaning of the contract's terms. It maintains the Intercompany Agreement between CS-CA and CSI was entered contemporaneously with a Charter School Operating Agreement between CS-CA and NGE. CS-CA states, "The Operating Agreement tasks CS-CA with running day-to-day operations of the school and renders CS-CA responsible for the 'Payment of Charter School Operating Expenses.'" According to CS-CA, the Operating Agreement provides:

> [NGE] shall cause the Revenues to be deposited within three (3) business days of receipt thereof into a Charter School Operating Account established by [CS-CA] for

> the purpose of paying the Operating Expenses of the Charter School (the "Charter School Operating Account") consistent with the annual Budget and this Agreement. As used in this Agreement, the term "Operating Expenses" shall mean the foregoing: Charter School Facility payments; equipment lease payments; payroll processing expenses; *personnel salaries and benefits expenses*; cost of assessment materials; cost of furniture, fixtures, equipment, technology, textbooks, and other materials and supplies . . . .

CS-CA asserts that, when the Intercompany Agreement and the Operating Agreement are read together, "CSI agreed to accept personnel expenses for the NGE Employees who performed services for Oklahoma."

In support of its opposition to the entry of summary judgment, CS-CA submitted the affidavit of Ingrid Joshua, NGE's senior director of business operations, who states, "There was confusion among CSI and CS-CA's management for how to classify and account for the California employees who worked on CSI's Oklahoma school." She continues, "Attempts were made to formally re-employ[] these individuals through Oklahoma and to pay them through the Oklahoma payroll system." When the change could not be made, the employees stayed on NGE's payroll. She states, "After the employees could not be formally re-employed through Oklahoma, there was uncertainty as to how to account for reimbursement that CSI would owe CS-CA for the work the California employees were performing." She adds, "The Intercompany Agreement was

reviewed and it was determined the agreement permitted California employees to work for CSI and for CSI to reimburse CS-CA whenever that happened."

CS-CA additionally submitted emails from Epic Charter School employees and others regarding CSI's attempts to move the California employees to the Oklahoma payroll and subsequent instructions to have them placed back as California employees. CS-CA included with their supplemental response the invoices for these employees from the 2019-2020 and 2020-2021 school years, payroll information for those employees, emails showing the employees worked on Oklahoma content, the Intercompany Agreement, and the Charter School Operating Agreement.

CSI submitted a supplemental brief in support of its motion for summary judgment asserting, "In the over *two years* since [CS-CA] filed this case, it has not produced any evidence of an agreement made by [CSI] to reimburse [CS-CA] for voluntary payments [CS-CA] made to non-parties." CSI asserts it produced over 50,000 documents but CS-CA did not show any agreement or document showing CSI agreed to reimburse CS-CA for the amounts paid to the NGE employees.

The trial court granted summary judgment in favor of CSI, and CS-CA appeals.

STANDARD OF REVIEW

"The appellate standard of review of a summary judgment is de novo." *Tiger v. Verdigris Valley Elec. Coop.*, 2016 OK 74, ¶ 13, 410 P.3d 1007. We will examine the evidentiary materials "to determine what facts are material and whether there is a substantial controversy as to any material fact." *Id.* "All inferences and conclusions to be drawn from the materials must be viewed in a light most favorable to the nonmoving party." *Marshall v. City of Tulsa*, 2024 OK 78, ¶ 8, 558 P.3d 1220. "Because the district court has the limited role of determining whether there are such issues of fact, it may not determine fact issues on a motion for summary judgment nor may it weigh the evidence." *Id.* ¶ 9.

ANALYSIS

On appeal, CS-CA asserts the trial court erred in granting summary judgment because material facts remain in dispute. CS-CA further contends that if no contract existed, the trial court erred by concluding CS-CA could not proceed on its claim of unjust enrichment. We conclude that material issues of fact remain in dispute regarding whether the parties agreed that CSI would reimburse CS-CA for the funds paid to NGE employees working for the benefit of CSI, and therefore, we must reverse the trial court's entry of summary judgment.

In its response to the motion for summary judgment, CS-CA acknowledged it is not alleging a breach of the Intercompany Agreement but that "the Parties' conduct created an implied in fact contract requiring CSI to reimburse CS-CA for the NGE salary expenses." In its supplemental response to CSI's motion for summary judgment, CS-CA additionally asserts that when the Intercompany Agreement is read in conjunction with the Charter School Operating Agreement, "CSI agreed to accept personnel expenses for the NGE Employees who performed services for Oklahoma."

CS-CA's opposition to summary judgment centers on its contention that material facts remain in dispute. Specifically, CS-CA presents the following material facts as disputed: (1) CSI "agreed to accept the contested employee services"; (2) "the parties' existing contracts allowed CS-CA to seek reimbursement from [CSI]"; and (3) CSI "breached its contract with CS-CA by refusing to reimburse CS-CA for the employee services [CSI] received at CS-CA's expense."

"The elements of a breach of contract action are: (1) formation of a contract; (2) breach of the contract; and (3) damages as a result of that breach." *Morgan v.*

State Farm Mut. Auto. Ins. Co., 2021 OK 27, ¶ 21, 488 P.3d 743. The central issue is whether a contract was formed between CSI and CS-CA regarding who is responsible for paying the NGE employees performing work for CSI.

"A contract is either express or implied." 15 O.S.2021 § 131. "An express contract is one, the terms of which are stated in words." 15 O.S.2021 § 132. "An implied contract is one, the existence and terms of which are manifested by conduct." 15 O.S.2021 § 133. Although the parties have an express contract, CS-CA asserts that there was an implied contract requiring CSI to pay it for the salaries CS-CA paid to NGE employees for work done for the Oklahoma school. CS-CA and CSI have a written contract, the Intercompany Agreement, signed on April 19, 2016. The Charter School Operating Agreement, signed on April 13, 2016, is between CS-CA and NGE.

CSI asserts the whole of the parties' agreement is contained in the Intercompany Agreement which states the following in its entirety:

> Intercompany Agreement
>
> This Intercompany Agreement (hereinafter referred to as the "Intercompany Agreement") is made and entered into as of the ____ day of ____, 2015, by and between Community Strategies-CA, LLC, ("SUBSIDIARY"), a[n] Oklahoma not-for-profit limited

liability corporation and Community Strategies, Inc., an Oklahoma not-for-profit corporation (the "PARENT") for [*sic*]

RECITALS

SUBSIDIARY is a subsidiary of PARENT, which operates Epic One-On-One Charter Schools in Oklahoma. SUBSIDIARY is wholly owned by PARENT.

SUBSIDIARY has entered into an agreement (CHARTER SCHOOL OPERATING AGREEMENT) with Next Generations Education, Inc., a California not-for-profit corporation (California Charter) which operates a California Charter School, for the performance of some management and administrative duties of the charter school.

To facilitate performance of SUBSIDIARY'S duties under the CHARTER SCHOOL OPERATING AGREEMENT, SUBSIDIARY shall subcontract some or all of its obligations under the CHARTER SCHOOL OPERATING AGREEMENT to PARENT.

Therefore, it is mutually agreed as follows:

ARTICLE I

1) PARENT accepts and acknowledges the subcontract of some or all of SUBSIDIARY'S obligations under the CHARTER SCHOOL OPERATING AGREEMENT.

2) SUBSIDIARY shall reimburse PARENT for the Administrative Overhead Cost in the amount that is provided by the CHARTER SCHOOL OPERATING AGREEMENT.

3) PARENT shall not be required to perform any action that would be inconsistent with PARENT'S not-for-profit tax status.

4) PARENT shall have the option to terminate this Agreement at any time.

Representatives of CS-CA and CSI signed the Intercompany Agreement. By CSI's account, the Agreement embodies the parties' entire agreement, perspicuously encompassing all duties and responsibilities. The Agreement, however, clearly recognizes the existence of the Charter School Operating Agreement between CS-CA and NGE. The Intercompany Agreement accepts and acknowledges the subcontracting of some or all of "[SUBSIDIARY'S] obligations under the CHARTER SCHOOL OPERATING AGREEMENT." Without question, CSI assumed responsibilities outside those explicitly set forth in the Intercompany Agreement. The Charter School Operating Agreement specifically provides CSI "will subcontract the performance of some administrative duties contained in this Agreement to Epic One-On-One Charter Schools" which is operated by CSI.

CS-CA recognizes the Intercompany Agreement requires CS-CA to reimburse CSI only for administrative overhead costs but it also asserts an implied-in-fact contract between the parties requiring CSI to reimburse CS-CA for the salary expenses it paid for NGE employees who were doing work for CSI's

Oklahoma school. We conclude the Intercompany Agreement on its face does not fully and exclusively govern CSI's and CS-CA's rights and responsibilities.

"When determining whether an implied contract exists, the Court will consider (a) the parties' acts, conduct and statements as a whole, (b) whether there was a meeting of the minds on the agreement's essential elements, (c) the parties' intent to enter into a contract upon defined terms, and (d) whether one of the parties has relied in good faith upon the alleged contract." *Dixon v. Bhuiyan*, 2000 OK 56, ¶ 10, 10 P.3d 888.

CSI asserts there is no evidence that it breached the Intercompany Agreement or that the parties' conduct modified that Agreement. It claims that no written agreement exists requiring it to reimburse CS-CA for the funds it paid to NGE employees. However, both the Intercompany Agreement and the Charter School Operating Agreement recognize CSI has obligations, at least administrative obligations, regarding the operation of the California charter school, because both agreements specifically recognize CSI will subcontract some of CS-CA's duties under the Charter School Operating Agreement.

CS-CA produced evidence supporting its claim that CSI attempted to switch the employment of the employees in question to CSI and wanted CSI to provide the salaries for these employees performing work for the Oklahoma charter school,

but it was unable to do so and then determined the salaries should be paid through NGE's payroll.

"Implied contracts exist where the intention of the parties is not expressed, but the agreement creating the obligation is implied or presumed from their acts, where there are circumstances that show a mutual intent to contract." *Jones v. University of Cent. Oklahoma*, 1995 OK 138, ¶ 7, 910 P.2d 987. CS-CA asserts that it was implied that CSI would reimburse CS-CA for the salaries because the work was done for CSI's benefit. The absence of a written agreement does not automatically excuse CSI from any obligation for such reimbursement.

"The distinction between implied and express contracts rests in the mode of proof, but both are founded upon the mutual agreement of the parties." *Id.* "An express contract is proved by direct evidence of an actual agreement. With an implied contract, the conduct of the parties suggests the agreement that, in fairness, they ought to have made." *Id.*

We conclude material disputed issues of fact remain regarding whether there was an agreement by CSI to pay the salaries of the California employees. CS-CA presented evidence that the NGE employees were performing work for CSI, that CSI agreed to employee the NGE employees, but later determined it could not do so through Oklahoma payroll and transferred the requirement to pay the employees back to NGE, and ultimately to CS-CA.

To avoid summary judgment in CSI's favor, CS-CA was not required to prove its whole case. And, we must view "[a]ll inferences and conclusions to be drawn from the materials . . . in a light most favorable" to CS-CA. *Tiger v. Verdigris Valley Elec. Coop.*, 2016 OK 74, ¶ 13, 410 P.3d 1007. "'An 'implied' contract is an implication of fact.'" *Texas Co. v. Forson*, 1946 OK 104, ¶ 15, 167 P.2d 877 (quoted citation omitted). When we view all inferences and conclusions to be drawn from the evidence presented in favor of CS-CA, we conclude that CS-CA produced sufficient evidence to show there is a dispute as to whether CSI and CS-CA formed a contract requiring CSI to repay CS-CA for the salaries CS-CA paid for work performed for CSI.

CONCLUSION

Material issues of fact remain in dispute which preclude judgment as a matter of law in favor of CSI. Accordingly, we reverse this summary judgment and remand for further proceedings.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

FISCHER, J., concurs, and BLACKWELL, J., dissents.

BLACKWELL, J., dissenting:

I respectfully dissent. The parties had a written contract that contemplated payments from the defendant to the plaintiff, not vice versa. As such the plaintiff

seeks reimbursement under an implied contract theory, which the majority endorses. But the plaintiff's own conduct (or lack thereof), suggests that not even it believed it had a right to repayment until *after* the relationship between the parties was severed. If the plaintiff believed it had a right to reimbursement for the payment of the salaries at issue here, surely it would have sought such reimbursement contemporaneous with the payment of those salaries, which appears to have been on at least a monthly basis. Rather, the plaintiff waited to seek any reimbursement in a lump sum after parties' relationship ended and their interests were suddenly adverse. On these facts, which are not disputed, the trial court correctly entered summary judgment for the defendant. I would affirm.

March 12, 2025