

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

JULIO F. PEREZ-HERNANDEZ,	:	APPEAL NO. C-190325
	:	TRIAL NO. A-1706188
VICTOR ESPINOZA,	:	
and	:	<i>JUDGMENT ENTRY.</i>
LA MICHOACANA ICE CREAM AND SANDWICH SHOP, LLC,	:	
Plaintiffs-Appellants,	:	
vs.	:	
LA MICHOACANA PALETERIA, LLC,	:	
and	:	
ESTEBAN NOLASCO GASPAR,	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

This appeal arises after a bench trial on a civil complaint for damages related to the separate business arrangements that plaintiff-appellant Julio F. Perez-Hernandez, and plaintiffs-appellants Victor Espinoza and his Mexican ice cream supply company, La Michoacana Ice Cream and Sandwich Shop, LLC, (“Espinoza”) allegedly had with defendants-appellees Esteban Nolasco Gaspar and his retail ice cream company, Michoacana Paleteria, LLC, (“Gaspar”). The trial court found in favor of Gaspar on all claims.

In the first assignment of error, Perez-Hernandez argues the trial court erred by finding in favor of Gaspar on breach-of-contract and fraud claims. We disagree.

Perez-Hernandez contends the judgment should be reversed on the breach-of-contract claim because the trial court considered parol evidence to contradict the terms of a written profit-sharing agreement and failed to assign proper weight to evidence of damages. But neither assertion is manifested in the record. The trial court enforced the contract as written and assigned appropriate weight to the evidence. *See SST Bearing Corp. v. Twin City Fan Co., Ltd.*, 1st Dist. Hamilton No. C-110611, 2012-Ohio-2490, ¶ 16, citing *Eastley v. Vollman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517. The record does not contain reliable evidence regarding the existence of and amount of earnings, which was necessary to establish damages under the preponderance standard.

Perez-Hernandez argues the judgment should be reversed on the fraud claim because the trial court misapplied the law and the facts when resolving the element of justifiable reliance. The evidence presented on this issue, however, was limited and confusing. Nothing in the record supports the claim that the trial court misapplied the law, *see Berger v. Wade*, 1st Dist. Hamilton No. C-120863, 2014-Ohio-1262, ¶ 19-20, or lost its way when resolving the facts against Perez-Hernandez on this issue. *See SST Bearing* at ¶ 16.

Because Perez-Hernandez has failed to demonstrate that the judgment for Gaspar on the breach-of-contract and fraud claims is contrary to law or against the manifest weight of the evidence, we overrule the first assignment of error.

In the second assignment of error, Espinoza challenges the judgment in favor of Gaspar on his unjust-enrichment claim. Espinoza asserts that the trial court

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erroneously imposed an express-agreement requirement. The record, however, does not support this argument. In its decision accompanying its judgment, the trial court set forth the proper elements of an unjust-enrichment claim, an action that cannot lie when there is an express contract. *See Lehigh Gas-Ohio, LLC v. Cincy Oil Queen City, LLC*, 2016-Ohio-4611, 66 N.E.3d 1226, ¶ 19-20 and 24 (1st Dist.). The court's remaining comments reflect only that the court appropriately tried to consider the terms of an alleged-but-unenforceable agreement when determining if relief was appropriate under an unjust enrichment theory. *See* Restatement of the Law 3d, Restitution and Unjust Enrichment, Section 1 and 31(1)(a) (2011). Consequently, we overrule the second assignment of error.

Accordingly, we affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MYERS, P.J., BERGERON and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on July 31, 2020

per order of the court _____.

Presiding Judge