UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SUMMIT TRANSPORT CORP., *Plaintiff*, v. HESS ENERGY MARKETING, LLC, ET AL., *Defendants*.	:	CIVIL ACTION NO. 2:14-cv-05119-FSH-JBC

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(6)

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PRELIMINARY STATEMENT

Plaintiff Summit Transport Corp. ("Summit") submits this memorandum of law in opposition to the joint motion by defendants Hess Corporation ("Hess") and Hess Energy Marketing, LLC ("HEM" and, together with Hess, "defendants") to dismiss Summit's complaint (the "Complaint") pursuant to Fed. R. Civ. P. 12(b)(6) (ECF No. 15, the "Motion"). Stripped of its rhetoric, the Motion premises dismissal on two simple grounds: That Summit failed to adequately plead the elements of a joint venture, rendering each and every one of Summit's claims legally deficient; and that the provisions of the New Jersey Statute of Frauds as of when the joint venture was formed in 1985 bar Summit from relief for lack of a writing signed by the party to be bound.

As shown below, however, defendants' motion does not meet the standards set by Rule 12(b)(6) for a dismissal for failure to state a claim. By and large, their strategy in this motion is to point to the allegations by Summit describing defendants' breaches of the joint venture between Hess and Summit as proof that Summit did not really have joint venturer status and is not entitled to relief – for if Summit really were a joint venturer, it would never have let these things happen!

Defendants pretend, in other words, not to know that this lawsuit is, in fact, Summit's last resort – after being deceived and bullied into surrendering more and more control over what Hess led it to believe was a mutually-beneficial, long-term

arrangement – for asserting its rights and recovering the losses incurred as a result of Hess's faithlessness. Defendants assert confidently that they "can prove that Summit's story is an entire fabrication" (defendants' Br., p. 2). This Court, it is submitted, should take them up on their offer, because defendants' facile legal arguments are simply insufficient grounds for dismissal under Rule 12(b)(6).

STATEMENT OF FACTS

For present purposes, defendants' brief accurately sets forth the pertinent facts in the Complaint. Summit will not burden the Court with repetition of the same.

LEGAL ARGUMENT

I. SUMMIT HAS ADEQUATELY PLED THE EXISTENCE OF AN ENFORCEABLE JOINT VENTURE AGREEMENT.

Under Fed. R. Civ. P. 12(b)(6), a "defendant bears the burden of showing that no claim has been presented." *Hedges v. United States*, 404 F.3d 744, 750 (3d Cir. 2005). When reviewing a motion to dismiss under Fed. R. Civ. P. 12(b)(6), a court merely seeks a short and plain statement of the claim showing that the pleader is entitled to relief. *See* Fed. R. Civ. P. 8(a); *Rowen Petroleum Properties, LLC v. Hollywood Tanning Systems, Inc.*, Civ. No. 08-4764 (NLH), 2009 WL 1085737 at *2 (D.N.J. Apr. 20, 2009). A complaint needs only contain sufficient factual matter to "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In determining the sufficiency of a

complaint, the Court must accept as true all of a plaintiff's well-pled factual allegations and construe the complaint in the light most favorable to the plaintiff. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210–11 (3d Cir. 2009).

Finally, the Court must limit its consideration of the factual sufficiency of the pleadings to the pleadings themselves and any documents specifically referred to therein. *Gonzalez v. King Soopers/Kroger Inc. #76*, No. 14-CV-00773-KMT, 2014 WL 2862262 (D. Colo. June 24, 2014) ("In considering a motion to dismiss pursuant to rule 12(b)(6), it is improper for the court to consider materials from outside of the pleadings"); *see also In re Total Containment, Inc*., 335 B.R. 589, 607 (Bankr. E.D. Pa. 2005) (refusing to consider annual report appended to brief in support of Rule 12(b)(6) motion where the complaint "makes no reference to this annual report" and is not "central" to its claims). "The Court may simply deny a Rule 12(b)(6) motion to dismiss which relies on facts asserted outside the pleadings." *Hilton Hotels Corp. Texas Occupational Injury Ben. Plan v. Jurss*, CIV.A. H-07-3104, 2007 WL 2987977 (S.D. Tex. Oct. 10, 2007). On this basis the Court should consider dismissing defendants' motion due to the improper footnote on page 1 of their brief asserting facts not alleged or referred to in the pleading, not authenticated and not made available to Summit.

A. The Complaint alleges sufficient mutuality of management in the joint venture.

Defendants' first proffered ground for dismissal is that the Complaint fails to adequately plead the existence of a joint venture, partially on the ground that Summit was not, per the allegations, a truly "joint" manager of the enterprise. Defendants are mistaken, however, both because the law is highly flexible regarding this aspect of joint ventures and because the allegations do in fact demonstrate mutuality of responsibilities despite the division of labor that was the logical premise of the joint venture.

Under New Jersey law, a joint venture is a "special combination of two or more persons where in some specific venture, a profit is jointly sought without any actual partnership or corporate designation." *Wittner v. Metzger*, 72 N.J. Super. 438, 444 (App. Div. 1962). It has also been described as "an undertaking usually in a single instance to engage in a transaction of profit where the parties agree to share profits and losses." *Id*. This formulation is critical to this litigation because among Summit's claims is that, despite the existence of such an agreement, defendants[1] breached its terms by their refusal to share losses as well as profits with Summit.

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[1] To the extent defendants assert that HEM cannot be held liable to Summit because Summit did not plead the existence of a joint venture agreement between it and HEM (defendants' Br., p. 9), their argument is of no consequence to this motion. It also ignores the fact that the Complaint alleges that HEM is

While a joint venture is like any business combination in that its terms are predicated on an agreement between the parties, *Sullivan v. Jefferson, Jefferson & Vaida*, 167 N.J. Super. 282, 289 (App. Div. 1979), the joint venture relationship may be less formal. *Hellenic Lines, Ltd. v. Commodities Bagging & Shipping, Process Supply Co.*, 611 F. Supp. 665, 679 (D.N.J. 1985). A joint venture may be implied wholly or in part from the acts and conduct of the parties. *Id.* Even where there is an explicit agreement, it "need contain no particular form of expression, nor is formality of execution necessary" to its terms to be enforceable. *Wittner*, 72 N.J. Super. at 444. A joint venture enterprise will contain some or all of the following elements:

> (A) A contribution by the parties of money, property, effort, knowledge, skill or other asset to a common undertaking;
>
> (B) A joint property interest in the subject matter of the venture;
>
> (C) A right of mutual control or management of the enterprise;

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contractually liable for Hess's obligations and liabilities with respect to the business it purchased from Hess (Complaint, ¶¶ 10-11) and that HEM is "in every material respect identical to or a continuation of the New York City Energy Marketing business of Hess" including its physical and management resources (¶ 12-13). These factual allegations, eminently plausible, must be treated by the Court as true. As pled, therefore, HEM may be liable as Hess's under the "mere continuation" exception to successor non-liability under New Jersey law. *See*, e.g., *Jurista v. Amerinox Processing, Inc.*, 492 B.R. 707, 766 (D.N.J. 2013).

> (D) Expectation of profit, or the presence of "adventure," as it is sometimes called;
>
> (E) A right to participate in the profits;
>
> (F) Most usually, limitation of the objective to a single undertaking or *ad hoc* enterprise.

Id., *quoting* 4 Samuel Williston, *Williston on Contracts*, § 318A, at pp. 563–65 (4th ed. 1990). "Between the parties to a joint venture, a common element is a fiduciary relationship." *Id.*

Seizing on this enumeration of features typically found in a joint venture, defendants assert that the Complaint fails because it does not allege that Summit retained a sufficient share of control over the fuel oil accounts serviced by Hess so as to constitute "mutual control or management of the enterprise." Defendants, however, are mistaken regarding the legal standard for pleading a joint venture. As the language of *Wittner* makes clear, a court examining a complaint to determine if a joint venture has been adequately pled does not strictly test for the presence of each "element" where a joint venture is alleged. Repeating the words of the Appellate Division in *Wittner*, "There is substantial agreement that **some or all** of the following elements . . . must be present." 72 N.J. Super. at 444; *see also Rainbow Apparel, Inc. v. KCC Trading, Inc.*, Case No. 9-CV-05319 (DMC-MF), 2010 WL 2179146 at *11 (D.N.J. May 26, 2010 (recognizing oral joint venture contract based upon "some or all" of the listed elements).

Thus it is not enough merely for a defendant to assert that absent one specific component of the joint venture "concept," a pleading cannot be said to have made out a claim premised on the existence of a joint venture. Rather, the Court must consider the facts alleged and determine whether a joint venture was formed being guided, as its primary consideration, by the intention of the parties. *Weichert Co. Realtors v. Ryan*, 128 N.J. 427, 435 (1992). Looked at differently, the leading cases are clear that the "element" of mutual control, even if viewed as a but-for component for finding a joint venture, is itself defined broadly and pragmatically. As this Court explained in *Hellenic Lines*, *supra*:

> Although a joint venture is not present absent a *right* of mutual control, mutual control over every aspect of the venture need not be actual. "A joint adventurer may entrust actual control of the operation to his co-adventurer and it still remains a joint venture." *Wittner,* 178 A.2d at 676. Similarly, joint venturers may agree that responsibility for particular tasks shall reside with less than all the venturers.

611 F. Supp. at 679. Unsurprisingly, defendants' brief ignores the *Hellenic Lines* decision, presumably because the quoted language is favorable to plaintiff. Indeed, consonant with the formula of divided responsibilities described in *Hellenic Lines* and *Wittner*, Summit had longstanding relationships with fuel oil customers in the New York market (¶ 23). Summit did "place" the servicing of these accounts "in Hess's hands" pursuant to the joint venture agreement (¶ 46); that was the point of the enterprise or, more accurately, that was half the point. But the Complaint cannot be construed, as defendants suggest, as alleging something

so illogical as a relationship where Summit ceased to do anything to contribute to the joint venture other than collect commissions. Defendants' argument that according to the Complaint, Summit simply ceased to be involved in the joint venture after "handing over" account servicing to Hess is not only an implausible inference in light of the length of the relationship. It is also impossible to square with the allegations that a condition of Summit's continued participation in the Hess Energy Marketing joint venture was that Summit was to continue to develop the customer base in the market (¶ 21), that Summit's revenue would be tied to such customer development (¶ 22) and that Summit did in fact continue to "develop" the customer base in the joint interest of the enterprise (¶¶ 23 and 39).

Moreover, while the allegations describe a situation in which Hess came to desire, would eventually demand and ultimately grabbed disproportionate power over the joint venture, they also describe an ongoing give-and-take process between the venturers. The allegations are that Summit continued to maintain its relationships with customers; that Summit was cognizant of revenues arising from the accounts; that Summit knew when customers were making changes in their energy profiles, i.e., from oil to gas (¶¶ 25-31).

Taken in context of the entire narrative, the allegations that defendants eventually "shut out" Summit from meaningful participation in management of the enterprise, revenues and customer relationships do not, as defendants claim, allege

a lack of mutual control pursuant to the **terms** of the joint venture. Instead, they allege a **breach** of those terms and the reason for this lawsuit. For this reason, defendants are not entitled to dismissal of the Complaint on the ground that it fails adequately to allege the necessary mutual management of the joint venture.

B. The Complaint adequately alleges a meeting of the minds as well as a joint property interest in the enterprise.

Next, defendants argue that any joint venture agreement that has been described would still be unenforceable because the Complaint does not set forth a "meeting of the minds" as to the amount of Summit's share of the profits and other compensation (defendants' Br., p. 11). The Complaint, however, does allege that there was such a meeting of the minds – not in conclusory fashion, but specifying that "Hess paid Summit a share of profits purportedly based on a percentage of revenue generated by sales to Summit's fuel oil customers serviced by Hess" (Complaint, ¶ 20) and that "[t]o the extent Summit succeeded in bringing more accounts into the Hess Energy Marketing joint venture, the parties agreed that Summit would be paid concomitant additional compensation by Hess to reflect the additional revenue realized by Hess as a result of Summit's efforts" (¶ 22).

Defendants nonetheless urge that the Complaint should be dismissed on the ground that unless a pleading specifies the precise financial terms of an agreement, it has not alleged a meeting of the minds concerning an essential payment term. For this point defendants cite only one decision – an Eisenhower-era case called

Kahn v. Massler, 140 F. Supp. 629 (D.N.J.), *aff'd,* 241 F.2d 47 (3d Cir. 1957). But Kahn is not even a Rule 12(b)(6) case. It arose on a motion for dismissal, essentially a directed verdict under Fed. R. Civ. P. 41(b), made after presentation of plaintiff's **evidence** at a bench trial. *Kahn v. Massler* does not support defendants' assertion that, at the pleading stage, a complaint premised on the existence of a joint venture must allege the precise terms of the agreement. There is no such rule.

In short, defendants have, in discussing the "payment terms" issue – as they did regarding the "mutual control" issue – conflated the Complaint's allegations concerning what the joint venture was **supposed** to be with allegations of defendants' **failure** to remain true to those commitments, which is the gravamen of the Complaint. Defendants do more or less the same thing when they claim that Summit fails to plead a joint property interest in the subject matter of the venture (defendants' Br., p. 11). This is impossible to square with Summit's description of the enterprise in the Complaint, including the allegation in ¶ 23 that Summit "expend[ed] effort and funds to continue building **the joint Hess-Summit fuel oil business**, resulting in tens of millions of dollars in revenue to Hess" (emphasis added).

Similarly, defendants point to the fact that "according to Summit's own allegations, [Hess] was able, among other things, to dispose of the business . . . and

keep all the proceeds for itself" (defendants' Br., p. 12) as if that were "a feature, not a bug" – i.e., ignoring the fact, eminently clear to anyone reading the Complaint objectively, that Summit is now seeking relief for just that conduct. Here, too, defendants have failed to demonstrate entitlement to dismissal under Fed. R. Civ. P. 12(b)(6).

Additionally, because defendants have failed to demonstrate that the Complaint fails to make out a claim based on a joint venture agreement, the third cause of action alleging breach of the fiduciary duties imposed on joint venturers should survive this motion as well. And because defendants offer no independent basis for dismissal of the first and second causes of action besides their position that absent a joint venture agreement there could be no breach of contract or breach of the covenant of good faith and fair dealing inherent in that contract (defendants' Br., pp. 13-14), these claims must survive this motion too.

II. SUMMIT'S CLAIM FOR ESTOPPEL IS ADEQUATELY PLED AND SHOULD NOT BE DISMISSED FOR FAILURE TO STATE A CLAIM.

There are two types of estoppel: "promissory" and "equitable." Promissory estoppel consists of (1) a clear and definite promise, (2) made with the expectation that the promisee will rely thereon, (3) and on which the promisee reasonably does, (4) resulting in a definite and substantial detriment incurred in that reliance. Equitable estoppel is essentially the same but also requires a detrimental change in

position based on reasonable reliance; concomitantly, the party asserting equitable estoppel need not prove a promise, but may base its claim on conduct, inaction, or representation by the plaintiff that was intentional or which, under the circumstances, should have been expected to induce action. *See Miller v. Miller*, 97 N.J. 154 (1984); *Carlsen v. Masters, Mates etc.*, 80 N.J. 334, 339–42 (1979).

In their argument seeking dismissal of Summit's estoppel claim, defendants do everything but acknowledge the straightforward allegations in the Complaint on which Summit's equitable estoppel claim is based. Those allegations are that Hess's representations and behavior led Summit reasonably to believe that Hess was entering into a joint venture with it and would share all the venture's profits from the New York City fuel oil market with Summit in exchange for access to Summit's most valuable accounts – and that, in reliance on Hess's words and actions, Summit did as Hess hoped it would, turning its valuable accounts over to Hess as part of the joint venture (Complaint, ¶ 19), continuing to bring new accounts to the joint venture (¶¶ 21-22) and eventually losing control over those customers with inadequate, and eventually no, compensation to show for it (¶ 27).

Contrary to defendants' argument, Summit has, as demonstrated above, made out a *prima facie* cause of action for equitable estoppel, and defendants' motion to dismiss this claim should be denied.

III. SUMMIT'S CLAIM FOR UNJUST ENRICHMENT IS ADEQUATELY PLED AND SHOULD NOT BE DISMISSED FOR FAILURE TO STATE A CLAIM.

The two basic elements of a claim for unjust enrichment are the defendant's receipt of a benefit and the unjustness that would result if plaintiff were not compensated for that benefit to the defendant. *MK Strategies, LLC v. Ann Taylor Stores Corp.*, 567 F. Supp.2d 729, 733 (D.N.J. 2008). A plaintiff must also show "that it expected remuneration from the defendant at the time it performed or conferred a benefit on defendant and that the failure of remuneration enriched defendant beyond its contractual rights." *VRG Corp. v. GKN Realty Corp.*, 135 N.J. 539, 554 (1994). Given the factual allegations underlying Summit's claim, unjust enrichment is an obvious and straightforward cause of action for the plaintiff to include as an alternative basis of relief against defendants.[2]

Defendants nonetheless argue that Summit's unjust enrichment claim should be dismissed, firstly because Summit, they say, merely alleges that it "should have been paid more than what it allegedly got paid" (defendants' Br., p. 17). In other

[2] On this point, defendants throw a footnote into their brief (n. 9 at defendants' Br., p. 14), formulaically reciting that Summit's unjust enrichment cause of action is inconsistent with Summit's contractual causes of action arising out of the joint venture agreement. Obviously, a plaintiff is permitted to plead alternative theories of recovery. *See In re K–Dur Antitrust Litigation*, 338 F. Supp.2d 517, 544 (D.N.J. 2004) (denying motion to dismiss claims of unjust enrichment on ground that breach of contract was also pled, noting that plaintiffs "are clearly permitted to plead alternative theories of recovery").

words, defendants assert that a plaintiff can only plead unjust enrichment if the plaintiff has not been paid at all. This is nonsense bordering on the frivolous. If the law were as defendants say, every unjust enrichment claim could be eliminated by mailing a check for one dollar to the claimant. But in fact courts routinely sustain unjust enrichment allegations when the defendant has paid some amounts claimed due in full, some partially, and some not at all. *See*, e.g., *Henkels & McCoy, Inc. v. Adochio*, 138 F.3d 491, 495 (3d Cir. 1998) (unjust enrichment claim based upon plaintiff receiving partial payment on one invoice and no payments on others).

Equally astounding is defendants' assertion that Summit could only be entitled to remuneration reflecting the value it surrendered at some theoretical single moment at which, by defendants' conception, Summit turned over its customer accounts to the joint venture (defendants' Br., p. 18). Defendants can only take this position by ignoring the allegations of the Complaint which state, repeatedly, that the acts performed by Summit to benefit the joint venture were continuous, regular and ongoing through the decades the joint venture was in place. So, too, do defendants wish away the facts alleged in the Complaint when they state that "Summit's own pleading" fails to support its claim that it ever performed in the expectation of receiving a share in the proceeds of Hess's sale of the joint venture's assets to HEM (defendants' Br., p. 18). The Complaint actually says the exact opposite: That Summit learned of Hess's intention to sell the

business (¶¶ 40-42); that it confronted Hess with this knowledge and sought reassurance that its continued performance would not merely result in greater enrichment to Hess upon such a sale (¶ 43); that "Hess would fully compensate Summit for its share in the joint venture in the event of a sale" or at least in the ongoing revenue from fuel oil sales through the new owner (¶ 44).

Defendants' argument for dismissal of Summit's unjust enrichment claim suffers merely for the fact that it completely misstates the facts alleged in the Complaint. But that is all the failure needed for the Court to deny defendants' motion on this claim of the Complaint as well.

IV. THE STATUTE OF FRAUDS DOES NOT BAR SUMMIT'S COMPLAINT

The Third Circuit has cautioned against too readily granting a motion to dismiss under Rule 12(b)(6) in cases, such as this one, centering on agreements whose terms are likely to be proved by oral testimony. The unfairness arises from exempting the defendant from having to answer allegations that a contract was formed which, if admitted, would – notwithstanding the lack of a writing – validate those allegations. Dismissal in such situations could unfairly "derail the plaintiff's case pre-pleading and allow the defendant to defeat a cause of action on an oral contract before the plaintiff has any opportunity to seek an admission that a contract existed." *ALA Inc. v. CCAIR, Inc.*, 29 F.3d 855, 862 (3d Cir. 1994). Additionally, a motion to dismiss based upon New Jersey's Statute of Frauds,

N.J.S.A. 25:1-5(e), may be granted only if it is clear from the face of the complaint or the documents attached thereto that the statute of frauds presents an insurmountable bar to plaintiff's cause of action. *Coastal Group, Inc. v. Westholme Partners*, Case No. Civ.A. 94-3010(MTB), 1996 WL 33545605 at *4 (D.N.J. October 3, 1996). Here, that conclusion is far from certain, and dismissal at the pleading stage is inappropriate.

Defendants cite *Annunziata v. Miller*, 241 N.J. Super. 275 (Ch. Div. 1990), as saying that courts invalidate oral agreements pursuant to the pre-amendment Statute of Frauds "where it was clear from the parties' claims and allegations that the agreement was to stay in effect more than a year, notwithstanding that no specific duration for the agreement was pled" (defendants' Br., p. 20). But *Annunziata* says no such thing – and is wildly inapposite to the allegations here, being better known as the case that stands for the proposition that "[t]here is a firm public policy against judicially-created rights in strangers to the ownership by way of easement or of restrictive covenants running with the land." *T-Red Properties, Inc. v. Bautista*, 2006 WL 1519575 at *6 (Ch. Div. 2006).

In *Annunziata*, the plaintiff was the named member of a class who sought an injunction to keep her dead pet "undisturbed, forever" in an *ad hoc* pet cemetery despite the absence of any written agreement and having paid no consideration for the maintenance or upkeep of the purported plot. *Annunziata*, 241 N.J. at 285. The

court found it "clear" that the pet cemetery "simply evolved with no formality… A service was rendered for a fee... There was nothing more." *Id.* at 286. Most significantly as regards the case at bar, the *Annunziata* plaintiffs conceded "that there was absolutely no proof of any agreement with regard to them." *Id.* at 288.

Here, however, Summit alleges that the parties had an oral joint venture agreement, the part performance of which will be demonstrated at trial; and while the Complaint does allege that Hess promised Summit – repeatedly, year after year – that the joint venture would be a "'perpetual' or long-term partnership" (Complaint, ¶ 48), nothing in the Complaint suggests that the joint venture agreement **could not** have been performed within a year. Summit could have provided Hess with its customer accounts for Hess to enter the New York City fuel oil market and Hess could have found within six months that, even with Summit's accounts, the New York City market was too competitive. Hess may have concluded, alternatively, that it did not like the weather in the Bronx. Hess may have fully performed but learned that it could get a better deal with another local partner.

Accordingly, the joint venture could have been performed within one year of its formation, and on a motion to dismiss, that inference must be decided in Summit's favor. Indeed, courts have so ruled when considering similar allegations. *See*, e.g., *Nawyn v. Kuchkuda*, 43 N.J. Super. 95, 105, 127 A.2d 897 (App. Div.

1956) (oral agreement that did not contain fixed time for performance found capable of performance within one year).

No less importantly, an oral contract or agreement which might otherwise be barred by the Statute of Frauds may nonetheless be enforced where, as here, there has been performance by one party and to do otherwise would work an inequity on the party who has performed. In *Graziano v. Grant*, 326 N.J. Super. 328 (App. Div. 1999), for example, the court found that the plaintiff, the remaining physician in a medical practice, had fully performed under the terms of a withdrawal agreement by paying $72,000 to the defendant withdrawing physician. Under those circumstances, the court rejected the defendant's statute of frauds argument on equitable grounds:

> It would be unjust and inequitable to permit [defendant] to retain the funds and not require him to perform his obligations. The Statute of Frauds cannot be invoked to work an injustice. [Defendant's] conduct in accepting the benefits of the agreement precludes him from denying the existence of an agreement merely because it is oral. The Statute of Frauds is designed to prevent fraud and, therefore, a court of equity may not permit it to be used to accomplish a fraud.

Graziano, 326 N.J. Super. at 341 (internal citations omitted). *See also Thompson v. Van Hise*, 133 N.J.L. 524, 527, 45 A.2d 182 (1946) (statute of frauds does not apply where there has been an entire performance by one of the parties); *Hoblin v. Wyckoff General Supply Co., Inc.*, 42 N.J. Super. 364, 126 A.2d 365 (App. Div. 1956) (declining to apply Statute of Frauds to oral agreement where plaintiff had

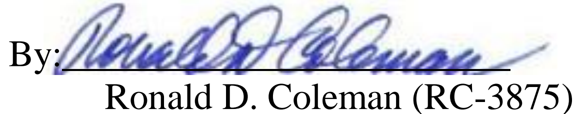
fully and completely performed, leaving only unilateral promise of defendant to remunerate plaintiff).

Here, Summit alleges that it fully performed under the terms of the oral joint venture agreement by providing its customer list to the joint venture and continuing to build the Hess-Summit oil business by bringing additional customers to the joint venture once it was under way. Even if the oral joint venture agreement were unenforceable under the Statute of Frauds (which is denied), the statute does not prevent Summit as a party to the contract from securing quasi-contractual relief.

CONCLUSION

For all the foregoing reasons, plaintiff Summit respectfully prays that this Court deny defendants' Motion to Dismiss in its entirety.

GOETZ FITZPATRICK LLP

By: 
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