MEMORANDUM DECISION

ATTORNEYS FOR APPELLANT

Curtis T. Jones
Gregory F. Hahn
Wandini B. Riggins
Bose McKinney & Evans LLP
Indianapolis, Indiana

ATTORNEY FOR APPELLEE

Scott E. Shockley
DeFur Voran LLP
Muncie, Indiana

IN THE COURT OF APPEALS OF INDIANA

John Zanetis,

Appellant,

v.

Michael Bradburn and Tyler Randolph,

Appellees.

December 21, 2022

Court of Appeals Case No. 22A-PL-1520

Appeal from the Marion Superior Commercial Court

The Honorable Heather A. Welch, Judge

Trial Court Cause No. 49D01-1911-PL-48005

Bailey, Judge.

Case Summary

[1] John Zanetis ("Zanetis") sued his business associates, defendants Michael Bradburn ("Bradburn") and Tyler Randolph ("Randolph"), for breach of contract, constructive fraud, and recovery on the basis of quantum meruit. Zanetis now appeals the trial court's judgment in favor of Bradburn and Randolph and its denial of Zanetis's motion to correct error. We affirm.

Issues

[2] Zanetis raises the following three restated issues:

I. Whether the trial court erred when it ruled Zanetis failed to meet his burden of proof on his constructive fraud claim.

II. Whether the trial court erred when it ruled there was no enforceable contract between the parties.

III. Whether the trial court erred when it ruled that Zanetis failed to meet his burden of establishing a quantum meruit claim.

Facts and Procedural History

[3] Zanetis is a retired attorney whose previous practice included a mix of civil and criminal law cases before he moved his practice into estate planning and small business organization. Zanetis practiced law for over forty years. Bradburn, who was previously employed by Merrill Lynch, was a friend of Zanetis's, and

the two had occasionally done business together. Randolph previously worked in the insurance industry and has a finance degree from the school of business at Indiana University.

[4] In 2010, Zanetis, Bradburn, and Randolph together created a company that conducted business in the senior life settlement industry and eventually became known as Capstone Capital Consulting, LLC ("CCC"). Each of the three men owned a thirty-three percent membership interest in the company, and CCC was governed by an Operating Agreement ("CCC OA"). Zanetis and Bradburn were co-managers of CCC.

[5] In order to successfully conduct business in the senior life settlement industry, CCC needed access to certain intellectual property consisting of a proprietary premium optimization algorithm and other know-how necessary to compete. Randolph knew a Texas businessman, Chris Streib ("Streib"), who owned a business named Avidity Capital Partners ("Avidity"). Avidity owned the intellectual property—including the algorithm—that CCC needed to compete and be successful.

[6] In 2015, Avidity and CCC formed a limited liability company called Alternative Solutions Group ("ASG") of which Avidity and CCC each owned fifty percent. Under the ASG business model, CCC purchased life insurance policies from seniors and resold them to individual investment advisors who bundled the policies into an investment vehicle for their individual investors. CCC withheld part of the proceeds from the sales for various necessary

functions, such as paying future premiums on policies. Upon the deaths of the insured, investors would receive a share of the death benefit from the policies, thus earning a return on their investments. The roles of the CCC partners were that Randolph was responsible for financial matters and using the algorithm, Bradburn was responsible for marketing and sales, and Zanetis was in-house counsel.

[7] CCC formed other LLCs to manage the obligation to pay premiums on the policies sold. Part of the funds received by CCC from the sale of policies was deposited with Capstone Capital Management, LLC ("CCM") which managed them in a premium reserve. Capstone Capital South Dakota, LLC ("CCSD"), was the grantor of the life insurance policies. The members of CCM were Zanetis, Bradburn, Randolph, Streib, and Rob Duff ("Duff"). The members of CCSD were Zanetis, Bradburn, Randolph, and Streib. CCC, CCM, and CCSD are collectively referred to as the "Capstone Companies." CCC and Avidity also jointly owned membership shares of Capstone Capital PR ("CCPR"), a company operating under Puerto Rican law and, in late 2018 and early 2019, holding the assets of ASG.

[8] In conjunction with the formation of ASG, on January 1, 2015, Avidity entered into a Licensing Agreement under which Avidity licensed to CCC the use of Avidity's intellectual property which included the algorithm. The Licensing Agreement, which was signed by Streib for Avidity and by Bradburn and Zanetis as managers of CCC, made it possible for CCC to operate its business. The Licensing Agreement stated that it "may be terminated by either party by

providing 30 days written notice to the other party." Appellant's App. v. III at 129. ASG was successful, earning Avidity approximately $600,000 annually, and earning CCC approximately the same amount, the latter of which was split equally between Zanetis, Bradburn, and Randolph.

[9] Over time, friction developed between Zanetis and Streib. On October 23, 2018, Streib and Zanetis had an exchange via text message in which Streib described his anger at Zanetis going "over their heads" by contacting a securities attorney about an issue on which the attorney was assisting the Capstone Companies. Appellant's App. v. IV at 32. The securities attorney had been engaged to help manage compliance by CCC and ASG with federal securities laws that could have application to their business if not managed correctly. Streib believed that Zanetis had provided the securities attorney with incorrect information that had to be corrected, reflecting poorly on the Capstone Companies. Streib wrote: "It is not the incorrectness of your answers that has us furious. It is the fact that you did something that none of us would or have ever done to each other in blatantly disregarding the relationship we have had since day one and its [sic] an offense. I am hard to offend. But here we are." *Id*. Streib finished his text by telling Zanetis "I'm not your partner. Have someone explain that to you if necessary. I'm done with you. I will not ignore what you did and again, how you did it." *Id*.

[10] In this same time frame in October 2018, Zanetis had planned a trip with his family to New York City to attend a memorial service for his deceased son, Tripp. Zanetis's plans for his trip conflicted with a plan Streib had for a

business meeting in Indianapolis, and Streib insisted that Zanetis change his plans for the New York trip so that he could attend the meeting. Zanetis refused and kept his plans to travel to New York. On October 25, 2018, two days after the text messages between Zanetis and Streib, Zanetis posted a public message to his Facebook page in which he called Streib insensitive and disrespectful toward a parent suffering the loss of a child. Zanetis's Facebook post also stated, "To place one's ego and self-righteousness above a parent's suffering is the height of conceit. Chris Streib. Never to be forgotten." Appellant's App. v. III at 203. Zanetis admitted that the purpose of publicly posting the Facebook message about Streib was to "shame" Streib. Tr. at 96.[1]

[11] Streib was angry with Zanetis and determined that, by revoking Avidity's Licensing Agreement with CCC, Streib could sever his relationship with Zanetis. In a letter dated December 1, 2018, Streib informed CCC that Avidity was terminating the Licensing Agreement with CCC effective December 31, 2018. The letter was e-mailed directly to Bradburn and Randolph at their CCC e-mail addresses, and it was also hand-delivered and sent by U.S. mail to CCC at its business address.

[12] Streib's revocation of the Licensing Agreement with CCC meant that, effective January 1, 2019, CCC would no longer be able to do the business it had been doing. According to Jerry Lewis ("Lewis"), the Chief Financial Officer for the

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[1] We note there are discrepancies between the transcript page numbers cited by the parties and the trial court and the page numbers of the transcript filed on appeal. Citations in this opinion are to latter.

Capstone Companies, the revocation of the license meant that CCC, ASG, and CCPR ceased to be "going concerns" as of January 1, 2019. Appellee's App. v. II at 22 ("Technically, there is no current or terminal value for CCC, ASG, or CCPR after January 2019. This is because … Avidity ha[s] terminated all of the license agreements which provide the know-how, processes, and technology that enable them to generate revenue.").

[13] Streib's intent in revoking the license was to disassociate himself from Zanetis. However, Streib did not wish to disassociate himself from Bradburn or Randolph. Instead, he extended to them independent contractor agreements, effective January 1, 2019, under which Bradburn and Randolph were employed as independent contractors with Streib's company, "AltVest Capital." Appellant's App. v. III at 133, 140. In the independent contractor agreements, Bradburn and Randolph represented that they were "free to enter into [the a]greement[s]," and the agreements stated that Bradburn and Randolph were "expressly free to perform services for other Parties while performing services for AltVest Capital." *Id*. at 134.

[14] Bradburn felt loyalty to Zanetis as a friend and because Zanetis introduced Bradburn to the senior life insurance settlements business. CCC had experienced problems in the past with Zanetis "inserting himself someplace where he was not supposed to be," as Zanetis had with the securities attorney. Tr. at 138. However, Bradburn was concerned about the financial impact Streib's actions would have on Zanetis because the termination of the licensing agreement had rendered CCC "valueless" and "non-viable." *Id*. at 98. Out of

"friendship and loyalty," Bradburn decided to try to get a loan so that he and Randolph could "buy out" Zanetis's interest in CCC. *Id*. at 143. To that end, Bradburn asked Lewis to calculate the net present value of CCC, ASG, and CCPR "as if [they] were to still be in business [in the future] and generating profits [w]hen in fact they [would] not be." Appellee's App. v. II at 22. In January of 2019, Lewis determined that the "net present values [sic] of the business [was] $6,254,507," based on a "hypothetical cash flow," and that Zanetis's portion of that would be $1,042,626. Appellant's App. v. III at 173.

[15] On or about January 9 or 10 of 2019, Bradburn visited Zanetis and his wife at their rental house in Sarasota, Florida. During the visit, Bradburn informed Zanetis for the first time that Streib had terminated the Licensing Agreement with CCC effective January 1, 2019, effectively rendering CCC without value. Zanetis knew of no reason why Streib would withdraw the license other than Zanetis's October 23, 2018, Facebook post about Streib. Bradburn agreed that Streib terminated the Licensing Agreement because of Zanetis's Facebook post and other management issues involving Zanetis. Bradburn informed Zanetis that, because CCC was now unable to conduct its business, Bradburn and Randolph no longer had income from CCC and had both agreed to work as independent contractors with Streib.

[16] Bradburn also informed Zanetis that he and the other members of CCC had unanimously voted Zanetis out of his management positions effective January

1, 2019, for cause, per the companies' operating agreements.[2] Under those operating agreements, a manager could be removed from management positions for cause by a unanimous vote of the other members. Zanetis informed Bradburn that Zanetis would prefer to resign from his management positions "for health reasons" rather than be removed for cause. Zanetis's removal had not been finalized at that point as two members still had not yet signed the "Unanimous Written Consent" document. Ex. v. I at 214. Bradburn agreed that Zanetis could resign instead of being removed and stated that he would have documents to that effect drafted and sent to Zanetis for his signature. None of the positions from which Zanetis would retire provided any compensation or benefits, and Zanetis agreed that he was not "harmed" or "damaged" by retiring from those positions. Appellant's App. v. III at 17.

[17] At this time, Bradburn also informed Zanetis that Bradburn and Randolph wished to purchase Zanetis's membership interest in CCC[3] for $1,042,646, which is the amount that Lewis had calculated to be Zanetis's portion of the net present value of CCC if CCC had been a "going concern," which it was not. Appellee App. v. II at 22. Bradburn informed Zanetis that the purchase of Zanetis's interest was "entirely contingent upon" Bradburn obtaining a loan.

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[2] The relevant provisions of the operating agreements of CCC, CCSD, and CCM are the same in all respects pertinent to this appeal.

[3] The parties determined that, by selling his interests in CCC, Zanetis would also have no further interest in any of the subsidiary or related companies—i.e., the Capstone Companies, CCPR, and ASG. *See* Appellant's App. v. II at 131.

Tr. at 180. However, Bradburn was confident at that time that he could obtain such a loan. Bradburn and Zanetis agreed that Bradburn and Randolph would send Zanetis a draft purchase agreement for Zanetis's review.

[18] The next day, Randolph e-mailed forms to Zanetis which documented Zanetis's voluntary resignation from the offices he held with the Capstone Companies. Randolph also sent Zanetis a draft Membership Interest Purchase Agreement ("PA") under which Bradburn and Randolph would purchase Zanetis's membership interest in CCC for the price of $1,042,626. The PA stated that the "closing" of the deal would take place "on the Effective Date." Appellant's App. v. II at 32. The PA stated that it "shall become effective when one or more counterparts [of the PA] have been executed by each of the parties hereto and delivered to the other." *Id*. at 37. The PA also contained non-compete, confidentiality, and non-disclosure provisions that would relate to Zanetis. The PA draft Randolph sent to Zanetis contained a blank signature line for Zanetis as Seller, and blank signature lines for Bradburn and Randolph as Purchasers. Per Zanetis's request, Randolph e-mailed the documents to Zanetis in Word format "so that [Zanetis could] amend them and make whatever changes he deemed necessary." *Id*. at 204.

[19] On January 22, 2019, Zanetis e-mailed Lewis with some questions about the value of Zanetis's interest in CCC. In a January 24 e-mail to Zanetis, Lewis informed Zanetis that the valuation of his interest in CCC was "hypothetical" "because CCC had no assets or business as a result of Avidity revoking the licensing agreement that provided the know-how, processes, and technology

that enabled them to generate revenue." Appellee's App. v. II at 22. Lewis further advised that "[t]o come up with the amount for your buyout, [Bradburn] and [Randolph] chose to look forward as if CCC, ASG, and CCPR were still to be in business and generating profits. When in fact they won't be." *Id.* Lewis concluded by observing that neither CCC, ASG, nor CCPR were "going concerns," and that "[n]one of the companies have assets of any meaningful value." *Id.*

[20] On January 30, 2019, Zanetis emailed Bradburn non-substantive changes to the PA. After receiving no response by February 19, 2019, Zanetis e-mailed Bradburn to inquire "about the closing and the status of the deal." Appellant's App. v. II at 61. On February 19, Bradburn responded, "I am proposing to go in debt to make sure you and [your wife] are okay. I'm not obligated to do so. But I am out of friendship and loyalty." Appellant's App. v. III at 181. The next day, Bradburn wrote, "I'm trying to close a loan in my name only to pay you." *Id.* at 180.

[21] Zanetis signed the PA and the resignation documents on February 22, 2019, and e-mailed a copy of the documents to Bradburn on February 23. Zanetis knew at the time he signed the PA that Bradburn and Randolph "needed a loan to close the deal." *Id.* at 10. Weeks passed in which Bradburn and Zanetis exchanged e-mails in which the subject of the loan was a frequent topic. On July 8, 2019, Zanetis sent Bradburn an e-mail which stated, "Two things: (1) Do you have any news pertaining to the funding necessary for closing? (2) Would you please send me a copy of all the **countersigned documents** that

were presented to me and signed/executed by me?" Appellee's App. v. II at 21 (emphasis in original).

[22] Ultimately, Bradburn failed to obtain the loan he had been trying to get. Neither Bradburn nor Randolph ever signed the PA or made any payments to Zanetis for his membership interest in CCC. Zanetis still owns his membership interest in CCC and continues to acknowledge that interest for tax purposes. However, CCC no longer conducts any business and has not paid out any income to any of its members since January 1, 2019.

[23] On November 15, 2019, Zanetis filed a complaint against Bradburn and Randolph in which he sought damages for an alleged breach of contract. Specifically, Zanetis alleged that Bradburn and Randolph had breached the PA by failing to pay Zanetis for his membership interest in CCC. Zanetis did not allege any breach of any operating agreements. On May 18, 2020, Zanetis's amended complaint was deemed filed; that document added claims for constructive fraud and quantum meruit. On November 1, 2021, the trial court held a bench trial at which Zanetis and Bradburn testified. The parties also entered exhibits into evidence, which included the deposition transcripts of Zanetis, Bradburn, and Randolph. The trial court ordered the parties to submit proposed findings of fact and conclusions thereon. On March 17, 2022, the trial court entered findings of fact, conclusions thereon, and a judgment order in favor of Bradburn and Randolph.

[24] On April 18, Zanetis filed a motion to correct error. Zanetis requested that, if his motion was denied, the trial court issue an order "deem[ing] invalid the Non-compete and Confidentiality provisions of the Purchase Agreement, as well as the Resignation Consents." Appellant's App. v. II at 95. In an order dated June 1, 2022, the trial court incorporated by reference its findings of fact and conclusions thereon in its March 17 order and denied the motion to correct error. In so ruling, the court noted that Zanetis "is not bound by Non-compete or Non-solicitation provisions in the Purchase Agreement which he had been voluntarily following since his resignation from the Capstone entities." Appealed Order at 10. This appeal ensued.

Discussion and Decision

Standard of Review

[25] We review the trial court's decision on a motion to correct error for abuse of discretion. *See, e.g.*, *Bruder v. Seneca Mortg. Serv., LLC*, 188 N.E.3d 469, 471 (Ind. 2022). An abuse of discretion will be found when the trial court's action is against the logic and effect of the facts and circumstances before it and the inferences that may be drawn therefrom. *Id*. An abuse of discretion also results from a trial court's decision that is without reason or is based upon impermissible reasons or considerations. *Id*.

[26] We also consider the standard of review for the underlying ruling, *see Shane v. Home Depot USA, Inc.*, 869 N.E.2d 1232, 1234 (Ind. Ct. App. 2007), which in this case was a judgment following a bench trial. "On appeal of claims tried by

the court without a jury or with an advisory jury, at law or in equity, the court on appeal shall not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Trial Rule 52(A). Where the trial court issues findings of fact and conclusions thereon sua sponte, as it did here,

> the findings control our review and the judgment only as to the issues those specific findings cover. Where there are no specific findings, a general judgment standard applies and we may affirm on any legal theory supported by the evidence adduced at trial.
>
> We apply a two-tier standard of review to the sua sponte findings and conclusions. First, we determine whether the evidence supports the findings and second, whether the findings support the judgment. We will set aside findings and conclusions only if they are clearly erroneous, that is, when the record contains no facts or inferences supporting them. In conducting our review, we consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom. We do not reweigh the evidence nor do we assess witness credibility.

Estate of Henry v. Woods, 77 N.E.3d 1200, 1204 (Ind. Ct. App. 2017) (quotations and citations omitted).

Constructive Fraud Claim

[27] Zanetis asserts that the trial court erred in ruling that he failed to carry his burden of proving Bradburn and Randolph were liable to him for committing constructive fraud. "[C]onstructive fraud arises by operation of law from a course of conduct which, if sanctioned by law, would secure an unconscionable

advantage, irrespective of the existence or evidence of actual intent to defraud." *Bloom Bank v. United Fidelity Bank F.S.B.*, 113 N.E.3d 708, 722 (Ind. Ct. App. 2018) (quoting *Rapkin Group, Inc. v. Cardinal Ventures, Inc.*, 29 N.E.3d 752, 759 (Ind. Ct. App. 2015), *trans. denied*), *trans. denied*. There are five elements of a constructive fraud claim: (i) a duty owed by the party to be charged to the complaining party due to their relationship; (ii) violation of that duty by the making of deceptive material misrepresentations of past or existing facts or remaining silent when a duty to speak exists; (iii) reliance thereon by the complaining party; (iv) injury to the complaining party as a proximate result thereof; and (v) the gaining of an advantage by the party to be charged at the expense of the complaining party. *Id.* "A plaintiff alleging the existence of constructive fraud has the burden of proving the first and last of these elements." *Rapkin*, 29 N.E.3d at 759. If the plaintiff satisfies this burden, the burden then shifts to the defendant to disprove at least one of the remaining three elements—i.e., elements two, three, or four—by clear and unequivocal proof. *Id.*

[28] The trial court found that Zanetis proved the first element of constructive fraud—a duty owed him—and we agree. "[C]ommon law fiduciary duties, similar to the ones imposed on partnerships and closely-held corporations, are applicable to Indiana LLCs." *Abdalla v. Qadorh-Zidan*, 913 N.E.2d 280, 285 (Ind. Ct. App. 2009) (quotations and citation omitted), *trans. denied*. General partners owe fiduciary duties to each other and the partnership until final termination of the partnership. *In re Rueth Devel. Co.*, 976 N.E.2d 42, 53 (Ind.

Ct. App. 2012), *trans. denied*. "This fiduciary relationship between partners requires each partner to exercise good faith and fair dealing in partnership transactions and toward co-partners." *Id*. Because Bradburn, Randolph, and Zanetis are members of an LLC, they owe each other a fiduciary duty of fair dealing.

[29] However, the trial court found that Zanetis failed to prove the fifth element of constructive fraud—the gaining of an advantage by Bradburn and Randolph at the expense of Zanetis—and, again, we agree. First and foremost, it is important to note that Zanetis has not transferred his membership interest in CCC to Bradburn and Randolph or anyone else. Zanetis still owns that interest. Second, there is no evidence that Bradburn and Randolph gained any advantage by waiting until January of 2019 to inform Zanetis that the license had been revoked.[4] Rather, the revocation rendered all CCC members' CCC interests valueless as of January 1, 2019, regardless of when Zanetis became aware of that fact.[5]

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[4] Moreover, it is not clear from the record that Zanetis could only have learned of the license revocation from Bradburn or Randolph; the December 1, 2018, notice of termination of the Licensing Agreement was mailed to the business address of CCC, and Zanetis was co-manager of CCC at that time.

[5] Zanetis alleges that, had he known about the revocation sooner, he could have quickly sold his CCC interest before it became valueless. However, pursuant to the CCC OA, Zanetis could only have sold his interest with the unanimous approval of all other CCC members, all of whom were aware that the licensing agreement had been revoked. Ex. v. I at 53-55. There is no evidence that the other CCC members would have approved such a sale, nor is there any evidence that anyone other than Bradburn and Randolph would have bought Zanetis's CCC interest in December of 2018 when they were aware that the shares had no future value.

[30] Third, Bradburn and Randolph's independent contractor jobs with Streib were not gained at any expense to Zanetis. Contrary to Zanetis's claims, there is no evidence at all that Bradburn's and Randolph's independent contractor jobs were in any way dependent on Zanetis resigning his management positions or selling his interests in CCC to Bradburn and Randolph.[6] In fact, Bradburn and Randolph's "Independent Consultant Agreement[s]" with Streib specifically noted they are "expressly free to perform services for other Parties while performing services for AltVest Capital." Appellant's App. v. III at 133, 134, 140, 141.

[31] And, finally, Zanetis's resignation from his management positions was not a benefit to Bradburn and Randolph but to Zanetis. Zanetis had already been unanimously voted out of those positions, with only the formality of Duff's and Bradburn's signatures on the removal document remaining. Thus, neither Bradburn nor Randolph ever requested that Zanetis resign; rather, Bradburn simply informed Zanetis that he had already been voted out for cause. It was Zanetis who requested that he be allowed to resign instead of being removed, and it was Zanetis alone who benefited from CCC granting that request.

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[6] Although Randolph stated in a February 19, 2021, email to Bradburn that they needed to "closeout" ASG and CCC "in order … to form a partnership with" AltVest, Randolph and Bradburn never formed such a partnership. Instead, they entered into independent contractor agreements that were in no way dependent upon CCC being "closed out" at all, much less on Zanetis resigning his management positions and/or selling his CCC interests. Appellant's App. v. III at 179.

[32] Zanetis has failed to show that Bradburn and Randolph gained any advantage at Zanetis's expense; rather, the evidence shows that all the CCC members lost any value in their CCC interests at least in part due to Zanetis's actions toward Streib. Zanetis's contentions to the contrary are requests that we reweigh the evidence and judge witness credibility, which we may not do. *See Woods*, 77 N.E.3d at 1204. Because Zanetis failed to prove the fifth element of constructive fraud, the trial court did not err in denying his claim without addressing elements two, three, and four. *See Rapkin*, 29 N.E.3d at 759.

Breach of Contract Claim

[33] Next, Zanetis asserts that the PA was a contract[7] and that Bradburn and Randolph are liable to him for breaching that contract. The existence of a contract is a question of law. *Morris v. Cain*, 969 N.E.2d 119, 123 (Ind. Ct. App. 2012). The basic requirements are offer, acceptance, consideration, and a meeting of the minds of the contracting parties. *Id*. However, the intention of the parties to a contract is a factual matter which must be determined from all the circumstances. *Id*. The party relying on the validity of a contract "bears the onus of proving its existence." *Perrill v. Perrill*, 126 N.E.3d 834, 840 (Ind. Ct. App. 2019), *trans. denied*.

[34] Indiana courts "firmly defend parties' freedom to contract by enforcing their chosen terms." *Hartman v. BigInch Fabricators & Constr. Holding Co., Inc.*, 161

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[7] We note that Zanetis did not file a complaint regarding the CCC OA or any document other than the PA.

N.E.3d 1218, 1220 (Ind. 2021) (quotation and citation omitted). Therefore, "when construing an agreement, we focus on the words that the parties agreed to, giving clear and unambiguous language its ordinary meaning." *Id*. The "validity of a contract is not dependent upon the signature of the parties, *unless such is made a condition of the agreement*." *Nationwide Ins. Co. v. Heck*, 873 N.E.2d 190, 196 (Ind. Ct. App. 2007) (emphasis added); *see also, e.g.*, *Downs v. Radentz*, 132 N.E.3d 58, 63 (Ind. Ct. App. 2019) (quotations and citation omitted) (holding, in "situations where fewer than all the proposed parties execute a document[,] we look to the intent of the parties as determined by the language of the contract to determine who may be liable under the agreement").

[35] Here, the clear and unambiguous language of the PA states, in relevant part, that the "closing" of the deal would take place "on the Effective Date," Appellant's App. v. II at 32, and further states: "This Agreement … shall become effective when one or more counterparts have been executed by *each* of the parties hereto and delivered to the other," *id*. at 37 (emphasis added). The plain meaning of the term "executed" in this context is "signed"—as Zanetis himself clearly believed as shown by his July 8, 2019, e-mail to Bradburn in which Zanetis asked Bradburn to send Zanetis a copy of the "countersigned documents" that were "signed/executed[8] by [Zanetis]." Appellee's App. v. II at 21; *see also Execute*, Black's Law Dictionary (11th ed. 2019) (defining

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[8] By using the language "signed/executed," Zanetis clearly indicated that he equated the two words in the context of the PA. Furthermore, Zanetis testified that, in his many years as a lawyer who drafted documents, those documents had to be signed by all the parties in order "to be effective against them." Tr. at 102.

"execute" as it relates to a document to mean "[t]o make (a legal document) valid by signing"). Furthermore, Zanetis's e-mail shows that he clearly did not believe the deal had been closed yet, as he inquired about "any news pertaining to the funds necessary for closing." Appellee's App. v. II at 21.

[36] The plain language of the PA makes it clear that the agreement was not valid unless and until all parties signed it; that is, the parties made the signatures of each of them a condition of the agreement. However, only Zanetis signed the PA.[9] Therefore, the trial court did not clearly err when it ruled that the PA was not a valid, enforceable contract[10] because it had not been signed by all parties.

Quantum Meruit Claim

[37] Finally, Zanetis challenges the trial court's ruling that Zanetis failed to prove his quantum meruit claim. A claim of quantum meruit—sometimes also called "unjust enrichment" or a "quasi-contact"—"is a legal fiction invented by the common-law courts in order to permit a recovery where, in fact, there is no

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[9] Zanetis contends that Bradburn and Randolph "waived" the signature requirement by their "subsequent actions" of obtaining "favorable contracts with AltVest and Streib that were predicated upon effecting Zanetis'[s] ouster" from CCC. Appellant's Br. at 33. Not only does Zanetis fail to cite adequate supporting authority for such a claim but, as we noted above, the evidence establishes that Bradburn and Randolph's contacts with Streib were not in any way predicated on Zanetis's "ouster" from CCC.

[10] Nor did the trial court err when it ruled the PA was not a "unilateral contact" as argued by Zanetis. A unilateral contract is one where there is no bargaining process or exchanges of promises by the parties. *Kelly v. Levandoski*, 825 N.E.2d 850, 861 (Ind. Ct. App. 2005), *trans. denied*. Rather, in a unilateral contact, "'[o]nly one party makes an offer (or promise) which invites performance by another, and the performance constitutes both the acceptance of that offer and the consideration.'" *Id*. (quoting *Orr v. Westminster Village North, Inc.*, 689 N.E.2d 712, 719 n.11 (Ind. 1997)). Here, the plain language of the PA makes it clear that there was an exchange of promises, i.e., Bradburn and Randolph promised to pay Zanetis a sum of money in exchange for Zanetis's promise to sell his CCC interest to them.

contract, but where the circumstances are such that under the law of natural and immutable justice there should be a recovery as though there had been a promise." *Bayh v. Sonnenburg*, 573 N.E.2d 398, 408 (Ind. 1991) (quotations and citation omitted). To recover under such a claim, "a plaintiff must generally show that he rendered a benefit to the defendant at the defendant's express or implied request, that the plaintiff expected payment from the defendant, and that allowing the defendant to retain the benefit without restitution would be unjust." *Reed v. Reid*, 980 N.E.2d 277, 296 (Ind. 2012).

[38] As noted above, the trial court correctly concluded that Zanetis conferred no benefit upon Bradburn and Randolph. Zanetis never transferred his CCC membership interest to Bradburn and Randolph. Moreover, even had he done so, there was no longer any value to that interest. Furthermore, there was no evidence that Bradburn and Randolph needed to buy out Zanetis's membership interest or secure his resignation from his management positions in order to enter into independent contractor agreements with Streib. In fact, neither Bradburn nor Randolph even requested—expressly or impliedly—that Zanetis resign his management positions. Rather, Bradburn informed Zanetis that he had already been unanimously voted out of his management positions, with only the formality of two signatures needed to finalize the removal. It was Zanetis who expressly requested that Bradburn allow Zanetis to retire from his management positions rather than being removed. By granting that request, it was Bradburn/CCC who bestowed a benefit upon Zanetis, not the other way around.

[39] The trial court did not err when it ruled that Zanetis failed to prove his quantum meruit claim—i.e., that Bradburn and Randolph were unjustly enriched.

Conclusion

[40] Zanetis has failed to carry his burden of proving that Bradburn and Randolph gained an advantage at his expense or otherwise benefited from Zanetis's actions, as required to prove his constructive fraud and quantum merit claims. In addition, the trial court did not err in finding that the PA was not a valid, enforceable contract because it was not signed by all parties, as clearly required by the plain language of the PA itself.

[41] Affirmed.

Bradford, C.J., and Pyle, J., concur.