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IN THE IOWA DISTRICT COURT FOR LINN COUNTY

LORIANN BUSSE and LISA CARPENTIER, ALEXANDRA RENEE CARPENTIER; DEVAN MICHELE CARPENTIER; and MARIE JOSEE CARPENTIER, A Minor Through Her Mother and Next Best Friend LISA CARPENTIER, Plaintiffs, v. JEFFREY BUSSE; LAVERN T. BUSSE; BUSSE FINANCIAL ADVISORS, LLC; BUSSE FAMILY LIMITED PARTNERSHIP; AB BI NOTE LIMITED PARTNERSHIP; LAVERN T. BUSSE AND AUDREY BUSSE FOUNDATION and Nominal Defendants: LTB 2002 IRREVOCABLE TRUST; LTB 2002 IRREVOCABLE TRUST U/D/O DECEMBER 20, 2002 F/B/O LORIANN BUSSE; LTB 2002 IRREVOCABLE TRUST U/D/O DECEMBER 20, 2002 F/B/O ALEXANDRA RENEE CARPENTIER; LTB 2002 IRREVOCABLE TRUST U/D/O DECEMBER 20, 2002 F/B/O DEVAN MICHELE CARPENTIER; and LTB 2002 IRREVOCABLE TRUST U/D/O DECEMBER 20, 2002 F/B/O MARIE-JOSEE CARPENTIER, Defendants.	CIVIL NO. LACV083022 RULING ON PLAINTIFFS'/COUNTERCLAIM DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON DEFENDANTS'/COUNTERCLAIM PLAINTIFFS' COUNTERCLAIM COUNT II

Plaintiffs/Counterclaim Defendants, LoriAnn Busse and Lisa Carpentier (hereinafter collectively referred to as "Plaintiffs[1]") filed a Motion for Summary Judgment on Defendants'/Counterclaim Plaintiffs' Counterclaim-Count II together with a Memorandum and Statement of Undisputed Facts on September 8, 2016. Defendants/Counterclaim Plaintiffs, Jeffrey Busse ("Jeff") and Lavern Busse ("Lavern") (hereinafter collectively referred to as "Defendants") filed a Resistance to Plaintiffs' Motion for Summary Judgment together with a Memorandum and Statement

[1] It is unclear whether Jeff and Lavern intend for the counterclaim Count II to be against Lisa's daughters as well, as Count II does not identify the counterclaim plaintiffs or counterclaim defendants. To the extent Jeff and Lavern intend to sue Lisa's daughters as well, "Plaintiffs" includes Lisa's daughters and Plaintiffs Motion for Summary Judgment was made on their behalf as well.

of Disputed Facts on September 30, 2016.[2] Plaintiffs filed a Reply to Defendants' Resistance on October 11, 2016.

Oral argument on Plaintiffs' Motion for Summary Judgment was held on November 7, 2016. The parties appeared by their attorneys of record. The Court has considered counsels' briefs, the parties' exhibits, and the applicable law, and now makes the following ruling:

Factual Background and Proceedings

Lavern and Audrey Busse ("Audrey") have three children: LoriAnn, Lisa, and Jeff. Lisa has three daughters: Alexandra, Devan, and Marie-Josee. Jeff has three daughters: Monica, Anna, and Grace. LoriAnn is childless.

Lavern formed Busse Investments, Inc. ("BI") in 1989. BI is a highly successful commercial real estate business, and has generated tremendous wealth for the Busse family. Until after initiation of this lawsuit, Jeff managed the day-to-day affairs of BI—initially together with Lavern, but since 2000 increasingly as the primary manager of BI's day-to-day operations. At all times pertinent to this litigation, Plaintiffs have been shareholders and board members of BI.

In 2002 Lavern ceased being a shareholder of BI and transferred his BI stock into seven Grantor Trusts he established—one for LoriAnn and one for each of his six granddaughters.[3] As of Lavern's 2002 BI stock transfer, Jeff was an employee and manager of BI. Since the creation of the Grantor Trusts until the present, Jeff has been the sole trustee for the seven Grantor Trusts. As trustee of the Grantor Trusts, Jeff is entitled to exercise all voting rights with respect to stock and other securities held by the Grantor Trusts. (Def. App. 45, LTB 2002 Irrevocable Trust U/D/O December

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[2] Defendants' Resistance was timely filed pursuant to Court Orders entered on September 22, 2016 and September 26, 2016 that granted the parties' request for an extension of Summary Judgment Resistance Deadlines.

[3] In forming the Grantor Trusts, Lavern retained the following power:

> …Grantor shall have the power in Grantor's individual (nonfiduciary) capacity to reacquire any asset transferred to the Trustee by Grantor or otherwise included within the Trust estate of the Trust or any such separate Trust by substituting other property of an equivalent value for such asset or assets.

(Def. App. 53, LTB 2002 Irrevocable Trust U/D/O December 20, 2001, Art. VI, B). The Grantor Trusts' initial assets consisted of cash and a promissory note. Lavern exercised his retained swap power to substitute his BI stock for the cash and promissory note initially held in the Grantor Trusts.

20, 2001, Art. VI, A.7). Jeff's voting rights as trustee for the Grantor Trusts combined with his personal interests in BI allowed Jeff to exercise majority control over BI while the Grantor Trusts held BI voting stock.[4]

On October 16, 2012, Jeff circulated a Memorandum to Lavern, Lisa, LoriAnn, and Audrey regarding "an issue" he discovered with the Grantor Trusts. (Plfs. App. 479). Jeff informed his family that he discovered a clause in the Grantor Trusts that allows his children, Lisa's children, and LoriAnn to obtain the voting shares of BI stock held in the Grantor Trusts, as beneficiaries of the Grantor Trusts, upon Lavern's death. (Plfs. App. 479). Specifically, the beneficiaries could elect to distribute to themselves the shares of the BI voting stock anytime within sixty days of Lavern's death, or afterwards, they could swap assets of equivalent value into the Grantor Trusts for removal of the BI voting stock. Jeff stated he "missed" this clause in the Grantor Trusts. (*Id.*). Jeff stated further that the clause concerned him in two ways: (1) he was uncertain whether " 'twenty somethings' are capable of making mature, long-term financial decisions that are in their best interests…" and (2) "when something happens to [Lavern], voting control of the company could 'switch over' from those that have built and run the company to the more passive investors (LoriAnn and Lisa)." (*Id.*).

Jeff proposed solutions to his family in that same October 16, 2012 memo. Jeff thought Lavern should write a letter to the grandchildren and the trustees of the Dynasty Trusts, communicating that Lavern did not want the beneficiaries to personally hold BI voting stock and that the assets are more valuable held in Trust and that it was preferred that beneficiaries under age 30 not request significant distributions. Jeff also proposed that he be given a stock option that would grant him two shares of voting stock for every one share that Lisa's children distributed from their respective Grantor Trust. Lavern agreed with Jeff's proposals in the memo. Jeff circulated a proposed Stock Option along with the October 16, 2012 Memo and the Stock Option was approved by LoriAnn and Lisa as board

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[4] For many years, Jeff was the key employee, manager, officer, and director of BI and a key consultant for Lavern and Audrey concerning both business and estate planning matters. Consistent with this position, Lavern and Audrey provided Jeff with majority voting control in BI and appointed him as trustee of various Busse family entities.

members of BI and executed as between Jeff and BI. The relevant material terms of the executed Stock Option were:

- The "purchase price per share…of the Voting Common Stock covered by this Option shall be 50% of the estimated Corporation Net Asset Value Per Share on the last day of the month prior to the Exercise Date….";

- "The Option is exerciseable (sic) only to the extent it is vested. Two shares of the Option shall vest for every share of Corporation Voting Common Stock that is distributed to: a) Alexandra Renee Carpentier, pursuant to Article VI, Paragraph (e) of the LTB 2002 Irrevocable Trust U/D/O December 20, 2002, F/B/O Alexandra Renee Carpentier…"'

- Two subsequent paragraphs, b) and c), follow that are materially identical, except they each name Lisa's other two children, Devan Michal Carpentier (b) and Mare-Josee Carpentier (c). The shares of voting stock held by Jeff's children's Grantor Trusts were not included in the Stock Option Agreement.

Lisa executed her approval of the Stock Option on October 18, 2012. LoriAnn executed her approval of the Stock Option on November 9, 2012. Jeff indicates the distribution of BI voting stock shares from the Grantor Trusts occurred sometime between November 12, 2012 and November 14, 2012. (Jeff Second Declr. ¶¶ 13-14, Def. Supp. App. 6).The distribution of BI voting stock was allegedly back dated out of tax concerns. (Plfs. Reply Brief p. 5 n.5). Plaintiffs acknowledge the BI voting stock was distributed from the Grantor Trusts in November 2012. (Plfs. Reply Brief p. 5 n.5). Jeff informed LoriAnn and Lisa of the distribution on November 14, 2012. (*Id.*) Jeff further informed LoriAnn and Lisa on November 14, 2012, that he made the distribution from the Grantor Trusts for the purpose of preventing any "potential for causing inclusion of the [Grantor] trust assets in Lavern T. Busse's estate." (Plfs. App. 455).

As a consequence of Jeff's distribution of the BI voting stock to the Grantor Trusts' respective beneficiaries, LoriAnn, Lisa, and Lisa's daughters hold enough voting stock that, if voted together, allows for majority control of BI. The executed Stock Option, which would have allowed Jeff to retain majority control of BI, did not vest because Jeff, as trustee of the Grantor Trusts, distributed the BI voting stock to the beneficiaries—the Stock Option only vested if Lisa's children elected to take the BI

voting stock upon Lavern's passing pursuant to Article VI(E) of the Grantor Trust document. Jeff asserts that when he distributed the BI voting stock out of the Grantor Trusts he believed the Stock Option would allow him to retain control of BI and that he would not have distributed the BI voting stock out of the Grantor Trusts had he known the Stock Option would not vest. According to Defendants, the Stock Option's failure to vest was a drafting error in the Stock Option.

At a September 2013 family meeting, Jeff asked LoriAnn and Lisa to approve of a new stock option (Plfs. App. 19) that deleted the language from paragraphs 3(a)-(c) "pursuant to Article VI, Paragraph (E) of" and replaced with "from" so each paragraph then read: "from the LTB 2002 Irrevocable Trust U/D/O December 20, 2002, F/B/O [Lisa's respective child's name]." (*Id.*). The proposed new stock option further provided that "except no shares shall vest until and unless the Busse Investments, Inc. Board of Directors votes on an issue wherein Jeffrey Busse is in the minority." (*Id.*). LoriAnn and Lisa refused to approve of or otherwise execute the new stock option. (Jeff Dep Tr. Vol I 112:24 – 112:1, Plfs. App. 3).

Defendants allege in counterclaim Count II that "LoriAnn, Alexandra, Devan, and Marie-Josee [Lisa's daughters] were unjustly enriched by the receipt of the BI voting shares and by their takeover of control of BI." (Counterclaim ¶ 39). According to Defendants, "[i]t is unjust to allow LoriAnn, Alexandra, Devan, and Marie-Josee to retain the BI voting shares because neither Lavern nor Jeff in his capacity as trustee intended to give LoriAnn, Alexandra, Devan, and Marie-Josee BI voting shares sufficient to extinguish Jeff's majority control of BI voting shares, and, in turn, control of BI." (Counterclaim ¶ 41). Defendants request the Court to "find that Jeffrey Busse and Lavern Busse made a mistake in gifts inter vivios, order that LoriAnn and Lisa execute a corrected stock option that will allow Jeff to continue to exercise control over BI, as originally and at all times intended or, alternatively, order the return of LoriAnn, Alexandra, Devan and Marie Josee's voting shares in BI to their respective grantor trusts." (*Id.*) Plaintiffs move for summary judgment on Defendants' unjust enrichment claim.

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Applicable Law and Analysis

I. Summary Judgment Standard

A motion for summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 1.981(3) (2015). The moving party carries the burden of proving the absence of a fact issue. *McIlravy v. North River Ins. Co.*, 653 N.W.2d 323, 328 (Iowa 2002) (citations omitted). "If reasonable minds could differ on how to resolve an issue, then a genuine issue of material fact exists." *Id.* However, speculation and mere allegations are not material facts. *Hlubek v. Pelecky*, 701 N.W.2d 93, 95-96 (Iowa 2005) (citations omitted).

In ruling on a motion for summary judgment, the court must look at the facts in a light most favorable to the nonmoving party. *Crippen v. City of Cedar Rapids*, 618 N.W.2d 562, 565 (Iowa 2000). The court must also consider on behalf of the nonmoving party every legitimate inference that can be reasonably deduced from the record. *Id.* "An inference is legitimate if it is 'rational, reasonable, and otherwise permissible under the governing substantive law.'" *Smith v. Shagnasty's Inc.*, 688 N.W.2d 67, 71 (Iowa 2004) (quoting *McIlravy*, 653 N.W.2d at 328). But an inference based on "speculation or conjecture" is not to be indulged. *Id.*

If summary judgment cannot be granted with regard to the entire action, the Court may grant partial summary judgment on the material facts that "exist without substantial controversy and [determine] what material facts are actually and in good faith controverted." Iowa R. Civ. P. 1.981(4). The court will deem these material facts that are not controverted as established at trial. *Id.*

II. Unjust Enrichment

The parties' briefs intertwine competing theories of contract law and gift law. In doing so, the parties overcomplicate the doctrine of unjust enrichment, which is admired for both its simplicity and

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breadth. *See Iconco v. Jensen Const. Co.*, 622 F.2d 1291, 1302 (8th Cir. 1980) (quoting *In re Stratman's Estate*, 231 Iowa 480, 488, 1 N.W.2d 636, 642 (1942)) ("We are impressed with the simplicity of the rule echoed by the Iowa unjust-enrichment cases. '(I)t is essential merely to prove that a defendant has received money which in equity and good conscience belongs to plaintiff.' "); *State Dept. of Human Services, ex rel. Palmer v. Unisys Corp.*, 637 N.W.2d 142, 155 (Iowa 2001) ("We recognize unjust enrichment is a broad principle with few limitations.") (citations omitted).

The doctrine of unjust enrichment is an equitable principle that "mandates 'one shall not be permitted to unjustly enrich himself at the expense of another to receive property or benefits without making compensation' for them." *Johnson v. Dodgen*, 451 N.W.2d 168, 175 (Iowa 1990) (quoting *Larsen v. Warrington*, 348 N.W.2d 637, 642-43 (Iowa App. 1984)). The word "benefit," in the context of unjust enrichment, "denotes any form of advantage." *Okoboji Camp Owners Co-op v. Carlson*, 578 N.W.2d 652, 654 (Iowa 1998) (quoting Restatement of Restitution § 1, at 12 (1937)).

Unjust enrichment "may arise from contracts, torts, or other predicate wrongs, or it may also serve as independent grounds for restitution in the absence of mistake, wrongdoing, or breach of contract." *Unisys Corp.*, 637 N.W.2d at 154. "It is a theory to support restitution, with or without the existence of some underlying wrongful conduct." *Id.* at 149-150 (citation omitted). "The doctrine of unjust enrichment is based on the principle that a party should not be permitted to be unjustly enriched at the expense of another or receive property or benefits without paying just compensation." *Id.* "Although it is referred to as a quasi-contract theory, it is equitable in nature, not contractual." *Id.* "Unjust enrichment…is not grounded in contract law but rather is a remedy of restitution." *Iowa Waste Sys., Inc. v. Buchana Cty.*, 617 N.W.2d 23, 29 (Iowa Ct. App. 2000). "As it is not grounded in pure contract law such remedies are often referred to as quasi contracts or implied-in-law contracts." *Id.* "It is contractual only in the sense that it is based on an obligation that the law creates to prevent unjust enrichment." *Unisys Corp.*, 637 N.W.2d at 154.

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"Recovery based on unjust enrichment can be distilled into three basic elements of recovery. They are: (1) defendant was enriched by the receipt of a benefit; (2) the enrichment was at the expense of the plaintiff; and (3) it is unjust to allow the defendant to retain the benefit under the circumstances." *Id.* at 154-55 (citations omitted). The Court will address the parties' arguments relating to the constituent elements of unjust enrichment in turn.

1. Enrichment by receipt of a benefit

First, Plaintiffs contend the 2012 distribution of BI voting stock from the Grantor Trusts was not "enrichment" because it was merely a distribution of a gift they had already received in trust. According to Plaintiffs, the 2012 distribution of BI voting stock from the Grantor Trusts was simply the merging of the trustee's prior bare legal interest in the BI voting stock with the beneficiaries' beneficial interest. As a corollary to this argument, Plaintiffs assert that "control" of BI is not something that can be given independently of BI's voting stock. For reasons that follow, the Court finds Plaintiffs' arguments unpersuasive.

a. Distribution of the BI voting stock

Plaintiffs' contention that the 2012 distribution of BI voting stock from the Grantor Trusts was merely the merging of the trustee's prior bare legal interest in the BI voting stock with the beneficiaries' beneficial interest overlooks that Plaintiffs neither had nor were entitled to receive the voting rights associated with the BI stock held in their respective Grantor Trusts prior to the distribution. Prior to the distribution, Plaintiffs were not entitled to vote the BI stock held in their respective Grantor Trusts because the trustee of the Grantor Trusts, Jeff, is entitled to exercise all voting rights with respect to stock and other securities held by the Grantor Trusts. (Def. App. 45, LTB 2002 Irrevocable Trust U/D/O December 20, 2001, Art. VI, A.7). Furthermore, Plaintiffs were not entitled to receive the voting rights associated with the BI voting stock held in their respective Grantor Trusts because the BI voting shares were subject to Lavern's retained swap power. Plaintiffs

acknowledge the "[g]ifts in trust could be swapped out" but argue "the BI voting stock could only be removed without distribution to the beneficiaries if it was replaced with cash or some other item of equivalent value." (Plfs. Motion for Summary Judgment Brief p. 13). Cash or an "item of equivalent value," however, would not carry BI voting rights. Indeed, Plaintiffs acknowledge that " 'control' of BI is not something that can be given independently of BI's voting stock." (Plfs. Reply to Def. Resistance p. 10).

Because Plaintiffs neither had nor were entitled to receive the voting rights associated with the BI voting stock held in their respective Grantor Trusts prior to the distribution, the 2012 distribution of BI voting stock from the Grantor Trusts was a voluntary, albeit allegedly mistaken, transfer of BI voting rights to the Grantor Trusts' beneficiaries. A voluntary transfer of voting rights constitutes "enrichment." *Okoboji Camp Owners*, 578 N.W.2d at 654 (the word "benefit," in the context of unjust enrichment, "denotes any form of advantage." (quoting Restatement of Restitution § 1, at 12 (1937)). Therefore, Plaintiffs are not entitled to summary judgment on counterclaim Count II on the basis that the 2012 distribution of BI voting stock from the Grantor Trusts was merely the merging of the trustee's prior bare legal interest in the BI voting stock with the beneficiaries' beneficial interest.

b. "Control" of BI and BI voting stock

Next, Plaintiffs contend they are entitled to summary judgment because "Lavern could not give control over BI to any individual Grantor Trust or Grantor Trust beneficiary." (Plfs. Reply Brief. p. 10). To bolster this contention, Plaintiffs note the terms of the Grantor Trusts require that each and every contribution Lavern makes to the seven Grantor Trusts be allocated 1/3 to LoriAnn and 1/9 to each of Lavern's six grandchildren. (Plfs. App. 38). Therefore, "[e]ven if Lavern controlled 100% of BI at the time he made the substitution—and he did not—he could not have given a 'controlling interest' in BI to any one individual, as none would have had a 50% interest in BI." (Plfs. Reply Brief p. 10-11). The Court finds this argument unpersuasive. A gratuitous voluntary transfer of any voting right confers a benefit upon the recipient. Therefore, Plaintiffs are not entitled to summary judgment

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on the basis Lavern "could not have given a 'controlling interest' in BI to any one individual…" (Plfs. Reply Brief p. 11).

Furthermore, Plaintiffs' argument mischaracterizes Defendants' claim for unjust enrichment. Defendants do not allege that over 50% of the BI voting rights were distributed in the 2012 BI voting stock distribution from the Grantor Trusts. Instead, Defendants allege the voting interests that were distributed in the 2012 BI voting stock distribution allowed Plaintiffs to pool their preexisting and newly acquired BI voting rights to collectively exercise control over BI. According to Defendants, but for the existence of the Stock Option, which they mistakenly believed enabled Jeff to retain control of BI, the BI voting shares would not have been distributed to the Grantor Trusts' beneficiaries, and Plaintiffs' have unjustly retained control of BI.

2. Enrichment at the expense of Defendants

Next, Plaintiffs assert they are entitled to summary judgment because "to the extent there was any enrichment by the distribution, it was at the expense of the respective Grantor Trusts, not Jeff individually, which means that Jeff and Lavern also cannot satisfy the second element of an unjust enrichment claim." (Plfs. Motion for Summary Judgment Brief p. 14). The Court finds this argument unpersuasive. It is undisputed that Jeff lost majority control of BI as a result of the 2012 distribution of BI voting stock from the Grantor Trusts. Furthermore, Lavern asserts the BI voting stock was distributed to the Grantor Trusts' beneficiaries because "both Jeff and I mistakenly believed that distribution of the BI voting shares would trigger vesting the Option enabling Jeff to remain in control of BI, in accordance with my intent." (Lavern Second Declr. ¶ 13, Def. Supp. App. 2-3). Because Jeff lost majority control of BI and Lavern's intent was frustrated, the Court is satisfied that there is a genuine issue of material fact as to whether Plaintiffs' enrichment from the receipt of BI voting rights was at the expense of Jeff and Lavern.

3. Equity and retention of the BI voting shares

Next, Plaintiffs assert they are entitled to summary judgment because the circumstances under which LoriAnn and Lisa's children received the BI voting stock do not make it unjust for them to retain the BI voting stock. For reasons that follow, the Court finds there are genuine issues of material fact as to whether the circumstances under which LoriAnn and Lisa's children received the BI voting stock makes it unjust for them to retain the BI voting stock.

Defendants allege the BI voting shares were distributed to the Grantor Trusts' beneficiaries because "[i]n November 2012, an estate tax concern surfaced attributable to the presence of voting shares in the Grantor Trusts, which necessitated their removal." (Def. Resistance Brief p. 6; *see also* Lavern Second Declr. ¶ 12, Def. Supp. App. 2; Jeff Second Declr. ¶ 12, Def. Supp. App. 6). Defendants allege further that Lavern did not exercise his retained swap power to remove the BI voting shares from the Grantor Trusts "because the swap would have required fees necessary for a third-party valuation of the shares and additional estate tax planning to address Lavern's renewed control of BI voting shares." (Def. Resistance Brief p. 6; *see also* Lavern Second Declr. ¶ 17, Def. Supp. App. 3; Jeff Second Declr. ¶ 21, Def. Supp. App. 7). According to Defendants, it is unjust to allow LoriAnn and Lisa's daughters to retain the BI voting shares that were distributed from their respective Grantor Trusts because neither Lavern nor Jeff in his capacity as trustee intended to give LoriAnn and Lisa's daughters voting shares sufficient to extinguish Jeff's majority control over BI. (Counterclaim ¶ 41). Defendants assert, but for the existence of the Stock Option, which they mistakenly believed enabled Jeff to retain control of BI, the BI voting shares would not have been distributed to the Grantor Trusts' beneficiaries. (Lavern Second Declr. ¶¶ 15-16, Def. Supp. App. 3; Jeff Second Declr. ¶¶ 17, 19, Def. Supp. App. 6).

Lavern, in a sworn statement, states "if I had known the Option would not vest to allow Jeff to remain in control, I would have used my retained power to swap assets in the Grantor Trusts to take control of the BI voting shares held by the Grantor Trusts by exchanging assets of equivalent value."

(Lavern Second Declr. ¶ 16, Def. Supp. App. 3). Similarly, Jeff, in a sworn statement, states "Lavern and I would not have allowed the BI voting shares distribution from the Grantor Trust[s] to take place absent the mistake regarding the Option's ability to vest upon distribution of the BI voting shares." (Jeff Second Declr. ¶ 19, Def. Supp. App. 6).

The Court is satisfied this engenders a genuine dispute of material fact as to (1) whether Lavern and Jeff mistakenly believed that distribution of the BI voting shares would trigger vesting of the Stock Option enabling Jeff to remain in control of BI; and (2) whether Lavern would have exercised his retained swap power to remove the BI voting stock from the Grantor Trusts if Jeff and he did not mistakenly believe that distribution of the BI voting shares would trigger vesting of the Stock Option. *Frontier Leasing Corp. v. Links Engineering, LLC*, 781 N.W.2d 772, 775-776 (Iowa 2010) ("In granting summary judgment, the district court is not to make credibility assessments, as such assessments are 'peculiarly the responsibility of the fact finder.' ") (citation omitted). Notably, if Lavern exercised his retained swap power to remove the BI voting stock from the Grantor Trusts, the Grantor Trusts' beneficiaries would not have received the BI voting rights that are the subject of this controversy. Therefore, in the event these fact issues are resolved in Defendants' favor at trial, they would support a finding that control of BI was mistakenly conferred upon Plaintiffs. Similarly, in the event these fact issues are resolved in Defendants' favor at trial, they could support a finding that it is inequitable under the circumstances to allow LoriAnn and Lisa's daughters to retain the BI voting shares that were distributed from their respective Grantor Trusts because neither Lavern nor Jeff intended to give LoriAnn and Lisa's daughters voting shares sufficient to extinguish Jeff's majority control over BI. Accordingly, Plaintiffs are not entitled to summary judgment on the basis that "[t]here are no genuine issues of material fact regarding whether LoriAnn and Lisa's daughters took the BI voting shares in a way that is somehow unjust." (Plf. Motion for Summary Judgment Brief p. 16).

In reaching this conclusion, the Court has considered Plaintiffs' argument that they are not susceptible to an unjust enrichment claim because the 2012 BI voting stock distribution was forced

upon the beneficiaries of the Grantor Trusts. Plaintiffs cite several cases for the proposition that unjust enrichment claims are prohibited when the actor conferring the benefit does so without the request of the party on whom the benefit is conferred. *See Credit Bureau Enterprises, Inc. v. Pelo*, 608 N.W.2d 20, 25 (Iowa 2000) (superseded by statute on other grounds) (finding under certain circumstances, "one will not have to pay for a benefit forced upon one against one's will…or for which one did not request or knowingly accept."); *In re Estate of Hoffman*, No. 05-1692, 2006 WL 1409361, at *2 (Iowa Ct. App. May 24, 2006) (upholding trial court's rejection of unjust enrichment claim when a reasonable fact finder could have found the benefit conferred was gratuitous and given without expectation of compensation); *Youngberg v. Holstrom*, 108 N.W.2d 498, 502 (Iowa 1961) ("Ordinarily there is a presumption that services of a general and unspecified nature rendered between members of a family, such as father and son, are gratuitous.") (citation and internal quotations omitted).

The Court finds there is a genuine issue of material fact as to whether *Pelo*, *Hoffman*, and *Youngberg* are applicable in the present case. For instance, *Pelo*, *Hoffman*, and *Youngberg* involved gratuitous services that were intentionally rendered. In the present case, Defendants are seeking restitution for having allegedly mistakenly conferred control of BI upon Plaintiffs. Therefore, to the extent Defendants are able to prove control of BI was mistakenly conferred upon Plaintiffs, *Pelo*, *Hoffman*, and *Youngberg* do not bar Defendants' unjust enrichment claim.

In reaching this conclusion the Court has also considered Plaintiffs' argument that Defendants are requesting the Court to find that LoriAnn and Lisa's daughters were unjustly enriched by receipt of the BI voting stock based solely on how they subsequently exercised their voting rights. In the event the fact issues discussed in this section are resolved in Defendants' favor at trial, then the alleged inequity is not simply how the Grantor Trusts' beneficiaries exercise their voting rights following the 2012 distribution of BI voting stock from the Grantor Trusts. Instead, the alleged inequity is that, but for the existence of the Stock Option, which Defendants mistakenly believed would allow Jeff to retain control of BI, the Grantor Trusts' beneficiaries would not have been conferred the right to vote the BI

shares that were held in their respective Grantor Trusts, and Plaintiffs would not be able to collectively exercise majority control over BI.

III. Standing

Next, Plaintiffs assert they are entitled to summary judgment on counterclaim Count II because Jeff and Lavern lack standing to bring their unjust enrichment claim. According to Plaintiffs, Defendants lack standing because Jeff's actions as trustee of the Grantor Trusts are the sole legal and factual cause of Defendants' alleged injuries. In addition, Plaintiffs assert that Lavern lacks standing because any outcome contrary to his intent is too vague and specious to constitute a cognizable harm. Finally, Plaintiffs assert that Jeff lacks standing because Defendants' theory is a mistaken inter vivos gift, and Jeff did not give a gift.

To maintain standing in Iowa, plaintiffs "must (1) have a specific personal or legal interest in the litigation and (2) be injuriously affected." *Godfrey v. State*, 752 N.W.2d 413, 418 (Iowa 2008) (citations omitted); *Citizens for Responsible Choices v. City of Shenandoah*, 686 N.W.2d 470, 475 (Iowa 2004). To satisfy the first element, Iowa courts "require the litigant to allege some type of injury different from the population in general." *Godfrey*, 752 N.W.2d at 418. To satisfy the second element, "the injury cannot be 'conjectural' or 'hypothetical,' but must be 'concrete' and 'actual or imminent.' " *Id.* at 423 (citation omitted). "[T]he factual-injury component to support standing could be derived from intangible, noneconomic interests." *Godfrey*, 752 N.W.2d at 420 (citing *Hurd v. Odgaard*, 297 N.W.2d 355, 358 (Iowa 1980)). "This injury component, of course, captures more than economic loss and includes conservational and other intangible interests." *Id.* at 420. For instance, the plaintiffs in *Hurd v. Odgaard* used a county courthouse and therefore had an interest in its maintenance. 297 N.W.2d at 358.

Inquiry as to whether a plaintiff has standing "is separate from, and precedes, the merits of a case." *Horsfield Materials, Inc. v. City of Dyersville*, 834 N.W.2d 444, 452 (Iowa 2013) (citing *Alons v. Iowa Dist. Ct.*, 698 N.W.2d 858, 864 (Iowa 2005) ("Even if the claim could be meritorious, the court will

not hear the claim if the party bringing it lacks standing."). "With state courts, standing is a self-imposed rule of restraint." *Hawkeye Bancorporation v. Iowa Coll. Aid Comm'n*, 360 N.W.2d 798, 802 (Iowa 1985). "Iowa, like many states, essentially follows the federal doctrine on standing," but may carve out exceptions "to resolve certain questions of great public importance and interest in our system of government." *Godfrey*, 752 N.W.2d at 424-25. "Although general factual allegations by the plaintiff of injury resulting from the defendant's conduct may suffice at the pleading stage, the plaintiff can no longer rest on mere allegations in response to a defendant's summary judgment motion." *Brunkhorst v. Iowa Public Employees' Retirement System*, No. 13-0606, 2014 WL 1714457 (Iowa Ct. App. April 30, 2014) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1993)).

a. Causation

First, Plaintiffs contend Defendants lack standing to bring their unjust enrichment claim because Jeff is the factual and legal cause of their alleged injuries. Causation serves a different role in the "self-imposed rule of restraint" in Iowa's standing doctrine than it does in the negligence case law cited by Plaintiffs. *See Thompson v. Kaczinski*, 774 N.W.2d 829, 836 (Iowa 2009) (citing *Faber v. Herman*, 731 N.W.2d 1, 7 (Iowa 2007) ("Causation is an essential element in a cause of action based on negligence.").[5] Causation, in the context of standing, mandates that "the plaintiff must establish 'a causal connection between the injury and the conduct complained of' and that the injury is 'likely,' as opposed to merely 'speculative,' to be 'redressed by a favorable decision.' " *Godfrey*, 752 N.W.2d at 421 (quoting *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 560-61 (1992) (citations omitted)); *see Lujan*, 504 U.S. at 560 ("the injury has to be 'fairly…trace[able] to the challenged action of the defendant, and not…th[e] result [of] the independent action of some third party not before the court.' ") (alterations in original) (citations omitted).

[5] Causation is not an element of a prima facie claim of unjust enrichment. The elements of unjust enrichment "are: (1) defendant was enriched by the receipt of a benefit; (2) the enrichment was at the expense of the plaintiff; and (3) it is unjust to allow the defendant to retain the benefit under the circumstances." *Unisys Corp*, 637 N.W.2d at 154-55 (Iowa 2001).

The Court finds that Jeff's role in distributing the BI voting shares to the Grantor Trusts' beneficiaries may ultimately influence whether "it is unjust to allow the defendant to retain the benefit under the circumstances." *Unisys Corp*., N.W.2d at 155. However, Jeff's role in distributing the BI voting shares to the Grantor Trusts' beneficiaries does not preclude Defendants' standing to challenge LoriAnn and Lisa's daughters' alleged unjust retention of the BI voting shares that were distributed from their respective Grantor Trusts. A party bringing an unjust enrichment claim on the basis of a mistake necessarily contributed in some fashion to the cause of action arising. Plaintiffs' refusal to approve a "revised" stock option satisfies *Lujan*'s requirement that the injury be "fairly traceable" to Plaintiffs' actions. Moreover, the alleged injury could be redressed by returning control of BI Jeff. Therefore, Plaintiffs are not entitled to summary judgment on the basis that "Jeff's actions caused [Defendants'] 'injuries.' "

b. Lavern

Next, Plaintiffs assert that Lavern lacks standing because any outcome contrary to his intent is too vague and specious to constitute a cognizable harm. Under Iowa law, the "injury-in-fact" requirement "captures more than economic loss and includes conservational and other intangible interests." *Godfrey*, 752 N.W.2d at 420. Lavern alleges he suffered harm because Plaintiffs have disrupted his estate plain, which reflects his desire to have Jeff retain control of BI. (*See* Lavern Second Declr. ¶ 3, Def. Supp. App. 1 ("[t]he gift of equity in BI to Plaintiffs and retention of control of BI by Jeff was part of my overall estate plan.")). The Court finds Lavern has standing to challenge an alleged disruption to his estate plan. As the architect of his estate plan, Lavern is an interested party. Further, Lavern's allegation that Plaintiffs have leveraged a drafting error to take more than what he intended to gift alleges harm to an "intangible interest." *Godfrey*, 752 N.W.2d at 420. Finally, although Lavern's estate plan will only come into force after Lavern passes away, Lavern's death is inevitable. Thus, there is a sufficient likelihood of harm and disruption to Lavern's estate plan is not too speculative or hypothetical to confer standing.

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c. Jeff

To have standing under Iowa law, a plaintiff must "must (1) have a specific personal or legal interest in the litigation and (2) be injuriously affected." *Godfrey*, 752 N.W.2d at 418 (citations omitted). As a result of the 2012 BI voting stock distribution from the Grantor Trusts, Jeff lost majority control over BI. This satisfies the "personal interest" element of standing. *See Godfrey*, 752 N.W.2d at 419 ("The first element—the plaintiff has a specific personal or legal interest—is aligned with the general concept of standing that a party who advances a legal claim must have a special interest in the challenged action, 'as distinguished from a general interest.' ") (citation omitted). Furthermore, tangible harm is evident in Jeff's loss of control of BI and ultimate termination from employment by BI. This satisfies the "injuriously affected" element of standing. *See Godfrey*, 752 N.W.2d at 423 (citation omitted) ("the injury cannot be 'conjectural' or 'hypothetical,' but must be 'concrete' and 'actual or imminent.' "); *Id.* at 419 (recognizing that the two elements of standing "have much in common and often are considered together."). Therefore, Jeff has standing to challenge LoriAnn and Lisa's daughters' alleged unjust retention of the BI voting shares that were distributed from their respective Grantor Trusts.

IV. Remedies

Finally, Plaintiffs assert they are entitled to summary judgment because Defendants seek unavailable remedies. Unjust enrichment is an equitable theory of recovery. Suits based in equity allow the Court considerable flexibility in determining the equities between the parties and in framing an appropriate remedy. *Hosteng Concrete & Gravel, Inc. v. Tullar*, 524 N.W.2d 445, 448 (Iowa Ct.App. 1994). "Any situation that is contrary to equitable principles and can be redressed within the scope of judicial action may have a remedy devised to meet it, even though no similar relief has ever been given." *Hosteng*, 524 N.W.2d at 448. Furthermore, "[s]itting in equity a court has the power to grant reformation of an instrument." *Id.*

Therefore, a finding that Plaintiffs were unjustly enriched would authorize the Court to exercise broad equitable powers. The Court concluded above that a genuine issue of material fact remains as to whether the circumstances under which LoriAnn and Lisa's children received the BI voting stock makes it unjust for them to retain the BI voting stock. The Court concludes it would not be prudent to reach a resolution regarding the appropriate remedy for LoriAnn and Lisa's daughters' alleged unjust retention of BI voting stock without having heard the evidence at trial. Accordingly, Plaintiffs are not entitled to summary judgment on the basis that Defendants seek unavailable remedies.

RULING

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiffs/Counterclaim Defendants, LoriAnn Busse and Lisa Carpentier's Motion for Summary Judgment on Defendants'/Counterclaim Plaintiffs' Counterclaim-Count II is DENIED. ALL OF THE ABOVE IS SO ORDERED. The Court directs the clerk to provide copies of this Ruling and Order to the counsel of record.

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State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
LACV083022	(BC)LORIANN BUSSE & LISA CARPENTIER ET AL VS JEFFREY BUSSE

So Ordered