IN THE COURT OF APPEALS OF IOWA

No. 3-1058 / 13-0297
Filed January 9, 2014

NORTHEAST IOWA CO-OP., n/k/a VIAFIELD,
Plaintiff-Appellant,

vs.

JOEL LINDAMAN, Individually
JOEL LINDAMAN d/b/a HP FARMS,
Defendants-Appellees.

Appeal from the Iowa District Court for Bremer County, Rustin Davenport, Judge.

The Northeast Iowa Co-op appeals the district court's ruling in favor of the farmers. **AFFIRMED.**

Roger L. Sutton of Sutton Law Office, Charles City, for appellant.

Corey R. Lorenzen of Beecher, Field, Walker, Morris, Hoffman & Johnson, P.C., Waterloo, for appellees.

Heard by Doyle, P.J., and Tabor and Bower, JJ.

TABOR, J.

Jamie Fettkether and Joel Lindaman created a joint farming operation and obtained limited liability status for HP Farms, LLC. Fettkether opened and used a credit account for the new business at the Northeast Iowa Co-op (the Co-op). After reaching a settlement with Fettkether, the Co-op now seeks to recover its unpaid debt from Lindaman. In response, Lindaman claims he has no individual liability for the debt of the limited liability company.

Because the Co-op failed to show the exceptional circumstances necessary for piercing the corporate veil and also failed to prove fraud in the inception of the credit account, we affirm the district court's ruling in favor of the defendants. We also agree the doctrine of unjust enrichment does not apply under these facts.

I. Background Facts and Proceedings

Fettkether has been farming since 1991. In 2004 Fettkether and Lindaman agreed to form a joint farming operation and worked with an attorney to set up a limited liability company. On November 1, 2004, Fettkether signed "Articles of Organization of HP Farms, LLC." Under the articles, Fettkether is the company's registered agent. The articles provide the new company's "existence shall commence upon the acceptance" of the articles by the Iowa Secretary of State. This filing occurred on November 4, 2004.[1]

Also on November 4, 2004, Fettkether and Lindaman signed the "Operating Agreement among the Members of HP Farms, LLC" as the sole

[1] Later, on August 6, 2010, certificate for the dissolution of HP Farms, LLC was filed.

members of the organization. The operating agreement lists Fettkether's Aurora, Iowa address as the company's principal address and provides: "The Limited Liability Company shall be managed by Jamie Fettkether and Joel Lindaman." The managers were thereafter obligated to "use their best efforts to maintain" the "limited liability company" status. Fettkether was appointed "Tax Matter Partner." Most of the day-to-day work for the crop operation was performed by Fettkether but Lindaman also worked in the fields.

During its existence, HP Farms, LLC purchased farm land[2] and equipment. Equipment individually owned by Fettkether and Lindaman was also used to support the operation. Fettkether does not recall putting any cash into HP Farms, LLC, and testified he and Lindaman only did cash flow projections when meeting with the banker at Farmers Savings Bank (FSB) to create financial statements.

While Fettkether had a twenty-year customer relationship with the Co-op, Lindaman had not been a customer. Before the November 4 LLC filing, on October 25, 2004, Fettkether purchased HP Farms' supplies on credit from the Co-op's Arlington, Iowa branch.[3] In October 2004 the Co-op would not extend credit to Fettkether as an individual, he was considered a cash-only customer.

Monty Burns[4] was the Arlington manager and also sold farm supplies to some producers, but he did not sell to Fettkether. Burns believed Fettkether

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[2] We note the 2007 tax return of HP Farms, LLC identifies a $104,000 gain on its April 2007 sale of the farmland the LLC acquired in March 2005.
[3] In 2004, the Co-op had nine locations.
[4] At the end of the trial, the Co-op offered the depositions of Monty Burns and Randy Evans into evidence. Defense counsel stipulated to their admission subject to hearsay,

probably worked exclusively with Kurt Peyton—"our agronomy sales guy"—and Burns understood Fettkether and Peyton had an earlier working relationship. Fettkether testified he worked with agronomist Peyton but did not remember what person he approached about opening up the company's credit account. Burns stated Fettkether did not approach him about opening the credit account, and he did not know the arrangement between Fettkether and Lindaman.[5] Burns was not aware of Lindaman making any purchases at the Co-op on behalf of HP Farms.

Burns explained the general process for opening an account at the Co-op. An account application would be filled out and then mailed or dropped off at the Clermont, Iowa main office. The application would be reviewed by either Kent Appler or Fred Schneider for approval or denial. For credit accounts, the Clermont office would generate billing statements and send the statements to the Arlington office for mailing.[6]

Fettkether testified he opened the credit account at the Co-op and went there "on behalf of the LLC to ask them to sell us product." Fettkether did not fill out a credit application. Fettkether also testified he does not remember if he said

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relevancy, and settlement negotiation objections. Kurt Peyton was also deposed but his deposition was not offered into evidence.

[5] Burns also testified he did not have any conversations with Fettkether or Lindaman regarding whether HP Farms was a LLC or a partnership. Burns had no reason to have that conversation. To the best of Burns' knowledge, Fettkether had an individual account and a HP Farms account.

Burns remembered talking with Lindaman on one occasion—when Lindaman was at the Co-op to weigh horses. Lindaman explained the meaning of HP on the truck's logo to Burns—"Higher Power."

[6] Burns *speculated* the Co-op extended credit to HP Farms because of Fettkether's relationship with Lindaman, and stated his speculation was based on the Co-op's general policies and procedures.

"HP Farms, LLC or just HP Farms. I don't recall . . . if I put the LLC behind it or not," because it had been six or seven years. Fettkether agreed it is possible he indicated the LLC status. Fettkether was in other LLCs and was aware disclosure of LLC status was required to maintain the limited liability shield.[7] Fettkether stated that at no point was he attempting to deceive the Co-op as to the company's LLC status. Fettkether did not sign a personal guarantee for the Co-op.

The Co-op's general manager, Kent Appler, was responsible for the Co-op's day-to-day operations. Appler also testified to the Co-op's general process for opening credit accounts. The Co-op has individuals and LLCs complete the same credit application but the credit check process and the required signatures are not the same. If an individual applies for credit, the Co-op requires the individual's signature. Then Randy Evans would pull the applicant's credit scores. If a LLC applies for credit, then "it's going to be more based on what the bank says and what other suppliers have done." Appler explained that if a LLC with two partners submitted a credit application, the Co-op would ask both partners to sign a personal guarantee. Appler summarized the process:

> Basically, any account that is opened, whether it's a new account or someone who is adding a second account to their own account, the procedure . . . is a credit application has to be filled out and put on file. From the credit application—the information off that credit application then is inputted into our computer system. Once the credit application has been approved . . . then the farmer is notified that he has an open account with our organization.

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[7] Fettkether testified he is a part of Fettkether Farms, LLC and those bills go to his parents.

Appler testified the Co-op issues its billing statements in the name of the account applicant.

Appler did not rely upon any representation from Lindaman before the Co-op opened the HP Farms account—"Mr. Lindaman did not tell me anything about his relationship with Jamie Fettkether . . . or HP Farms." Instead, Appler relied on Randy Evans, the Co-op's "credit side" employee, because the "credit application is where we find out whether somebody has an LLC or not. It's not individual conversations between people."

Appler also explained that after the credit application goes to Randy Evans and through the credit process, the application "then goes back to the location where it came from . . . and is put [in a physical] file at that location." Appler acknowledged the Co-op had a file for HP Farms at the Arlington location but the Co-op "did not find any HP Farms credit application," or any credit application from Fettkether or Lindaman related to HP Farms. Appler also testified: "It's my position that someone [but Appler did not know who] signed a credit application to be able to open up [the Co-op's] HP Farms account."

Randy Evans testified, in general, for a company credit check he would use trade references and contact the banks and vendors doing business with the applicant company. But Evans did not review the HP Farms credit application when it "went through." Rather, Evans's first exposure to that account was when he sent letters to Fettkether about the account's past due status. Evans did not have any conversations with Lindaman or Fettkether regarding the status of HP Farms as an LLC or a partnership.

At trial the Co-op failed to produce any records regarding its decision to extend credit to HP Farms in October 2004. The district court found: "While it is unclear why the Co-op decided to extend credit . . . it is clear that [the Co-op] began providing products to HP Farms in care of Jamie Fettkether on a credit basis."

HP Farms, LLC opened a separate checking account at FSB. HP Farms, LLC paid the Co-op's monthly billing statements with checks drawn on the HP Farms, LLC checking account. Fettkether testified the account was separate from any individual accounts. By the end of October 2004, HP Farms had a $14,495 balance on its Co-op credit account. This balance was reduced to zero.

HP Farms, LLC hired an accountant and filed federal tax returns for "HP Farms, LLC" in 2005, 2006, and 2007. In every tax year the company depreciated LLC property. HP Farms, LLC did not hold meetings or create minutes of meetings. Fettkether did not recall receiving any profits from HP Farms, LLC but if he did, any profit was less than $1000.

FSB entered into a January 4, 2005 security agreement with HP Farms, LLC. At trial, Fettkether testified FSB "had first lien" and there would have been zero to very little equity in the HP Farms, LLC assets at its 2010 dissolution. The district court found FSB "filed UCC financing statements securing all assets of HP Farms, LLC."

In 2005 the Co-op continued to extend credit to HP Farms, and the farming operation reduced its March 2005 credit balance to zero with a check

from HP Farms, LLC. At trial, Appler admitted any debt still owed was incurred *after* HP Farms, LLC filed with the Iowa Secretary of State.

On July 8, 2005, FSB loaned $20,000 to "HP Farms" (not LLC) for construction of a grain bin. The note is signed: "HP Farms, Jamie Fettkether, Partner, Joel Lindaman, Partner."[8] The note states it is secured by a separate January 4, 2005 security agreement. In August 2005, the Co-op received a $52,800 payment from HP Farms, LLC's FSB account, reducing the balance to $14,800.

On November 10, 2005, HP Farms (not LLC) provided information for FSB's form entitled: "Farmers Savings Bank of Colesburg, Iowa, Agricultural Financial Statement." Fettkether testified the financial statement was submitted to seek additional financing for HP Farms, LLC. In addition to listing equipment and real estate jointly purchased by HP Farms, LLC, the financial statement lists assets[9] individually owned by Fettkether and Lindaman.[10] Fettkether testified both LLC and individual equipment was listed because they "were offering equipment owned outside of the LLC as collateral for the LLC to obtain financing."

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[8] The July 8 note is stamped: "This Note Cancelled by Renewal, Date 9/26/05." The July 8, 2005 FSB "Errors and Omissions Agreement" likewise lists "HP Farms" as the borrower, not HP Farms, LLC, and is signed identically to the note.

[9] The November 10, 2005 FSB financial statement shows assets over $2 million (equipment, crops, feed on hand, and land), a net worth of $522,300, and working capital of $102,556. Co-op manager Appler testified that prior to December 2006, the Co-op did not inquire about HP Farms' working capital, and the Co-op does not ask that information about "any of our accounts."

[10] We note one intermediate asset listed is "Joel [Lindaman] Loan $68,000."

Fettkether acknowledged the FSB statement does not specify the equipment's ownership but asserted it was prepared solely for FSB and was not submitted to the Co-op or other third parties. The Co-op's witnesses admitted the Co-op never requested a financial statement from Lindaman, or Fettkether, or from their joint farming operation. Fettkether testified the Co-op, to his recollection, never asked for tax returns, a financial statement, meeting minutes, or copies of the notes for FSB's loans.

HP Farms, LLC obtained operating loans from FSB. Twenty days after the financial statement was compiled, on November 30, 2005, FSB loaned $25,000 to HP Farms, LLC. A week later, on December 7, 2005, FSB loaned $200,000 to HP Farms, LLC. One month later, on January 6, 2006, FSB loaned $200,000 to HP Farms, LLC. All three notes are signed: "HP Farms, LLC, Jamie Fettkether, Partner, [and] Joel Lindaman, Partner." All three notes reference a separate January 4, 2005 security agreement.[11] Fettkether testified the LLC sold off the land it owned to pay the majority of the LLC's debt.

On December 31, 2005, the farming operation's account balance at the Co-op was more than $104,700. In January 2006 HP Farms, LLC paid $52,400 and reduced its Co-op debt to $62,000.

HP Farms, LLC also financed seed purchases on credit from PHI Financial Services, Inc. (PHI). In January 2006 HP Farms, LLC provided a security interest to PHI in crops (beans and corn—crop year 2006) and farmland. In July 2006 PHI sent, and the Co-op received, notice of PHI's security interest in

[11] All three notes are stamped: "This Note Cancelled by Renewal, Date: 1-31-06 #22596."

"HP Farms LLC, Jamie Fettkether / Joel Lindaman." Fettkether testified PHI was not completely paid off at the end of the crop year. Co-op manager Appler testified the PHI notice would not be received by the part of the Co-op extending credit. The district court found: "All the other creditors had security agreements which put them in a better position than the Co-op."

In the summer of 2006, Appler first became aware the HP Farms account was delinquent. At the end of July 2006, the credit balance was approximately $114,500. In late July or early August 2006, Appler met with Fettkether and Lindaman to try to reach a resolution regarding the debt. Appler was told the Co-op would be paid off after the fall 2006 harvest.

On December 8, 2006, Appler and Evens met with Fettkether and Lindaman. Appler testified the meeting was again intended to reach a resolution regarding the debt because "they hadn't followed through [on] what they told me in the earlier meeting." Appler stated: "Q. Did Mr. Lindaman at that time explicitly state he was liable for the debt? A. He said he would give us ten cents on the dollar. Q. As a settlement? A. As a settlement."

Fettkether did not recall stating at the meeting that the business was operating as a LLC but testified he and Lindaman attended "on behalf of the LLC, HP Farms, LLC" in an attempt to resolve the $200,000 debt to the Co-op. Appler believed Randy Evans asked Fettkether and Lindaman to execute personal guarantees to the Co-op during the December meeting or shortly thereafter.

According to Evans, the purpose of the December meeting was to discuss a settlement and the entire meeting was focused around settlement talks. After

some initial discussion, Evans and Appler left to talk privately. They agreed the Co-op could extend more credit but also agreed to make a confession of judgment a condition of additional credit.

Evans and Appler returned to the meeting and proposed Fettkether and Lindaman execute confessions of judgment in exchange for the Co-op continuing to provide credit. Evans testified Fettkether agreed to the confession of judgment but Lindaman was offended, did not agree, and offered ten cents on the dollar. Evans did not recall Lindaman asserting he had no personal liability because HP Farms was a limited liability company. The Co-op did not accept Lindaman's offer. On December 31, 2006, HP Farms' credit balance was more than $204,000 and the Co-op refused to extend additional credit.

On March 29, 2007, Jamie and Jenal Fettkether signed a deferred payment agreement for weekly payments on "my/our account indebtedness of $226,996.19 (Principal Balance)" to the Co-op. More than a year later, in April 2008 they filed a confession of judgment.

Three years later, in September 2011 the Fettkethers and the Co-op filed a "Settlement Agreement." The Co-op agreed to accept $100,000 as "full satisfaction" of the Fettkethers' 2008 judgment. The Fettkethers agreed, under penalty of contempt, to "[c]ooperate and further commit to the [Co-op's] lawsuit to be filed against Joel Lindaman." The settlement agreement also provided:

> Under the LLC documents . . . the obligations and debt structure of Jamie Fettkether and Joel Lindaman would be divided in accordance with their liabilities. Jamie K. Fettkether has agreed as a part of this settlement agreement that he will testify concerning the structured financial obligation of the LLC as to settlement

> negotiations between himself and Randy L. Evans, who was [a Co-op representative].

On September 29, 2011, the Co-op sued Lindaman individually and doing business as HP Farms, alleging at "the initiation of credit until default, the [Co-op] knew only of HP Farms. [The Co-op] was not aware that Defendants were operating as an LLC as all billings were to HP Farms in care of Jamie K. Fettkether." Count II alleged Fettkether bound Lindaman "to the obligation of the indebtedness individually." The Co-op sought damages allegedly incurred as "the direct liability of Joel Lindaman and Jamie Fettkether under written and oral agreements and in particular based on Jamie K. Fettkether's representations that he was doing business as HP Farms with Joel Lindaman."

Before trial the defendants filed a motion in limine to exclude any offers of settlement. In response, the Co-op argued Lindaman's offer to compromise at the December meeting constituted an admission against interest and an admission of his liability. The Co-op also sought to use Fettkether's individual confession of judgment to show he did not claim HP Farms operated as an LLC. The court ruled the evidence would be received subject to objection.

In October 2012 two witnesses testified at the bench trial, Fettkether and Appler. In addition to the testimony detailed above, Appler explained the Co-op's position: Lindaman and Fettkether are each responsible for the entire debt of HP Farms as a partnership account. Further:

> Q. You testified that there was no notice given of the status of HP Farms as a LLC . . . . Is that based upon the fact that there was no notice found in the file? A. That's based on the fact that . . . our [billing] statements basically say HP Farms on it. It doesn't

> state HP Farms LLC . . . . So that's my basis of why I don't believe we were ever notified that it was an LLC.
>
> Q. Because it wasn't in the application. A. It wasn't in the application and it's not on the [billing] statements.
>
> Q. The application that has not been produced. A. Correct.

Appler admitted it was possible for an employee "to make a mistake when plugging in the information into the computer system." Finally, Appler testified: "Q. Did anyone at any point in time ever tell you that HP Farms, LLC was not a limited liability company? A. No."

In January 2013 the court ruled against the Co-op. The court found Lindaman's statements in the December 2006 meeting to be inadmissible under Iowa Rule of Evidence 5.408 (evidence of offers to compromise are not admissible to prove liability). The court also found Fettkether's "decision to enter into a confession of judgment and decision not to rely upon a defense of protection from personal liability . . . has a limited relevancy as to Joel Lindaman's position." The court ruled the Co-op failed to show the exceptional circumstances necessary for piercing the corporate veil; there was no evidence Lindaman agreed to be bound individually for the Co-op debt; and the doctrine of unjust enrichment was inapplicable.

The Co-op now appeals.

II. Scope and Standards of Review

We review for corrections of errors at law. Iowa R. App. P. 6.907. The district court's findings of fact are binding on us if supported by substantial evidence. Iowa R. App. P. 6.904(3)(a).

We view the evidence in the light most favorable to the judgment.[12] *Fischer v. City of Sioux City*, 695 N.W.2d 31, 33 (Iowa 2005). "When a reasonable mind would accept the evidence as adequate to reach a conclusion, the evidence is substantial." *Raper v. State*, 688 N.W.2d 29, 36 (Iowa 2004). "Evidence is not insubstantial merely because we may draw different conclusions from it; the ultimate question is whether it supports the finding actually made, not whether the evidence would support a different finding." *Id*. We are not bound by a district court's conclusions of law or application of legal conclusions. *Id*.

We review the district court's decision whether to admit evidence challenged under rule 5.408 for an abuse of discretion. *Gail v. Clark*, 410 N.W.2d 662, 671 (Iowa 1987).

III. Analysis

A. The district court properly excluded Lindaman's statements made during the December 2006 meeting with the Co-op's representatives.

The Co-op asserts the intent of the December meeting was not to reach a compromise or settlement agreement. According to the Co-op, it called Lindaman in "to discuss how he would pay his debt obligation."

This assertion is without merit. Co-op employee Evans testified the purpose of the December meeting was to discuss a settlement and the entire meeting involved discussion of a settlement. Co-op manager Appler testified Lindaman's ten cents on the dollar statement was made "[a]s a settlement." Accordingly, substantial evidence supports the district court's ruling excluding

[12] We reject the Co-op's assertion we "should consider the evidence in a light most favorable to the Co-op."

Lindaman's statements. *See* Iowa R. of Evid. 5.408[13] (providing offers to compromise a claim are not admissible to prove liability); *Yeager v. Durflinger*, 280 N.W.2d 1, 6 (Iowa 1979). We find no abuse of discretion in the evidentiary ruling.

B. Fettkether's confession of judgment had limited relevance to Lindaman's individual liability.

The Co-op asserts Fettkether's confession of judgment is relevant to show that [Fettkether] "did not claim that HP Farms operated as a limited liability company" and "was offered for the sole purpose to show that [Fettkether] understood his individual liability." The Co-op also contends Fettkether's confession of judgment is an admission that Fettkether "understood that he was personally responsible based on how the indebtedness was created."

The district court determined Fettkether's decision not to assert a defense of the lack of personal liability "has limited relevance" to Lindaman's position on the debt. The court noted by the time Fettkether agreed to confess judgment in the December meeting, most of the debt owed to the Co-op had been incurred.

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[13] Iowa Rule of Evidence 5.408 states:

> Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Also, no evidence showed the Co-op acted in reliance on Fettkether's statements to put itself in a worse position after this meeting.

No evidence ties Fettkether's agreement to confess judgment to an acknowledgment by Fettkether of "individual liability based on statements he made." A person can settle a claim for a myriad of reasons—to avoid the costs of litigation, to avoid embarrassment, or to accede to family pressures to end the litigation. The district court found Fettkether's decision to confess judgment "probably arose from the fact that [Fettkether] was the active participant" in the company.

We additionally note Fettkether's agreement to confess judgment occurred at the December settlement meeting, making his confession inadmissible under rule 5.408.

C. The Co-op failed to show the exceptional circumstances necessary to pierce the corporate veil of HP Farms, LLC.

The Co-op contends the district court erred in failing to pierce the corporate veil and hold Lindaman personally liable for the HP Farms debt. The Co-op argues HP Farms, LLC "was a mere shell and was used by [Lindaman] to commit fraud and promote injustice." The Co-op also asserts the "initial credit application created a partnership for credit," the "credit application is prima facie evidence of a partnership interest," and the Co-op was not given "subsequent notice of [LLC] business status."

It is undisputed a "limited liability company is an entity distinct from its members." Iowa Code § 489.104 (2011). The separate LLC entity enables LLC

members to limit their personal liability. *See id*. § 489.304.[14] But the company's corporate veil may be pierced when exceptional circumstances exist—for example, the company "is a mere shell, serving no legitimate purpose, and used primarily as an intermediary to perpetuate fraud or promote injustice." *Briggs Transp. Co., Inc. v. Starr Sales Co., Inc.*, 262 N.W.2d 805, 810 (Iowa 1978); *see also Cemen Tech. Inc. v. Three D Indus. LLC,* 753 N.W.2d 1, 6 (Iowa 2008) (applying corporate veil-piercing analysis in limited liability company context).[15] Iowa courts may disregard a corporation's existence if (1) it is undercapitalized, (2) it is without separate books, (3) its finances are not separated from individual finances, (4) it pays an individual's obligations, (5) it is used to promote fraud or illegality, or (6) it is merely a sham. *Briggs*, 262 N.W.2d at 810.

In analyzing the first factor, the district court relied on HP Farms, LLC's tax returns and the fact it purchased land and equipment. The court determined the company was not undercapitalized. The Co-op admits a "review of capital contribution is deceiving as no dollar amount was put in" evidence.

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[14] In 2008 the legislature enacted the Revised Uniform Limited Liability Act. 2008 Acts, ch. 1162, §§ 30, 155. The new act provided for a staggered implantation of its provisions but states: "[O]n and after January 1, 2011, this chapter governs all limited liability companies." Iowa Code § 489.1304(2). The Co-op filed its petition in September 2011.

[15] Iowa Code section 489.304 provides:

> 1. For debts . . . of a limited liability company, whether arising in contract, tort, or otherwise all of the following apply:
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> a. They are solely the debts . . . of the company.
>
> b. They do not become the debts . . . of a member or manager solely by reason of the member acting as a member or manager acting as a manager.
>
> 2. The failure of a limited liability company to observe any particular formalities relating to the exercise of its powers or management of its activities is not a ground for imposing liability on the members or managers for the debts . . . of the company.

The court considered the next three factors, separate books, separate finances, and corporate payment of individual debts, together. The court determined that as of November 4, HP Farms, LLC was a valid corporate entity under Iowa's requirements. Also, HP Farms, LLC kept separate books and filed its own tax returns. HP Farms, LLC opened a separate checking account at FSB and obtained numerous loans from FSB in the name HP Farms, LLC. Finally, "[t]here was no evidence that assets were improperly diverted from the company for the benefit of the members."

The Co-op argues HP Farms, LLC did not hold meetings and no minutes exist. Because the statute specifically provides the failure to "observe any particular formalities is not a ground for imposing liability on the members" for company debts, we are not persuaded. *See* Iowa Code § 489.304(2). The fact PHI made loans to HP Farms, LLC also provides support under the "separate finances" factor.

The district court addressed the final two factors, using an entity to promote fraud/illegality and corporate sham, together and ruled HP Farms, LLC "attempted to succeed, but ultimately failed." In support, the court listed the LLC's land and equipment purchases and the fact it raised crops and made debt payments, including reducing the Co-op account balance to zero twice. Also, other creditors knew the company was a limited liability company, and the Co-op "appears to be the only entity that was mistaken."

The court rejected the Co-op's assertion Fettkether had to have made a false representation when he opened the account, noting the Co-op did not

present any evidence regarding "what happened that led to [its] decision to extend credit."[16] The court concluded "the evidence best supports a conclusion that the Co-op failed to follow its own procedures for checking on whether credit should be extended." We agree. Fettkether testified he could not remember what was said when the account was opened, he did not fill out an application, and he was not hiding the company's status as a limited liability company. General manager Appler testified Randy Evans would review applications for credit, but Evans testified he did not review the disputed application. Location manager Burns and Fettkether both testified Fettkether dealt with agronomist Kurt Peyton. The Co-op did not present any testimony from Peyton. The Co-op did not produce an application, and Appler admitted an error could be made regarding LLC status when a Co-op employee enters a credit application into the Co-op's computer system.

Accordingly, all six factors weigh in favor of recognizing the farming operation's status as a limited liability company, and substantial evidence supports the district court's ruling.

D. The Co-op failed to prove fraud occurred at the inception of the credit agreement.

The Co-op argues Fettkether "had a duty to disclose the LLC status he was seeking after creating credit with the Co-op. [Fettkether] knew when he signed the credit application an LLC status was being sought." This argument

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[16] The district court determined even if the Co-op had a valid claim for credit extended prior to November 4, this debt was completely extinguished.

does not survive the Co-op's failure to produce a credit application signed by Fettkether. Fettkether testified he did not complete an application.

At the time the Co-op initially extended credit in 2004, it is undisputed the Co-op did not have any contact with Lindaman and did not receive any assurances from Lindaman. At no point did the Co-op rely on or ask for a financial statement for the account it named HP Farms. No Co-op employee testified (1) he or she talked with Fettkether and agreed to extend credit in October 2004, or (2) he or she reviewed a HP Farms credit application. The record supports the district court's finding of no evidence Lindaman agreed to be bound individually for the Co-op debt. Lindaman, as an individual, was not a party to any contract to extend credit in October 2004.

Likewise, the record supports the district court's finding: "While the evidence suggests [Fettkether] may not have been clear that HP Farms was a limited liability company when the Co-op first extended credit . . . there is no evidence [Lindaman] somehow permitted himself to be personally obligated to the Co-op for the credit [it] extended." We conclude substantial evidence supports the district court's determination Lindaman was not individually liable for the debt to the Co-op based on fraud in the inception.

E. The Co-op failed to prove Lindaman was unjustly enriched.

The Co-op argues the debt "incurred was pursuant to a credit application which caused statements to be issued to HP Farms as a partnership." Also, it takes the position there "was a clear contract implied at law that when you benefit from acts which are fraudulent, Lindaman should not be excused from payment

of his indebtedness." The Co-op asserts implied contract recovery is based on the following facts: (1) Lindaman was enriched by receiving a benefit obtained by fraud—"Lindaman was able to walk away from this indebtedness and retain all of the pledged assets he had placed in the LLC to create credit"; (2) Lindaman's enrichment deprived the Co-op of the opportunity to collect against the assets of the LLC; and (3) Lindaman was allowed to retain the benefits against the rights of the Co-op and also against the rights of Fettkether.

The doctrine of unjust enrichment "is not grounded in contract law but rather is a remedy of restitution." *Iowa Waste Sys., Inc. v. Buchanan Cnty*, 617 N.W.2d 23, 29 (Iowa Ct. App. 2000). The doctrine applies where no promise exists but justice requires the imposition of "a judicially-created fictional promise." *Id*. at 28. Where an express contract exists on a subject matter, the law will not imply a contract under the doctrine of unjust enrichment. *Smith v. Stowell*, 125 N.W.2d 795, 800 (Iowa 1964).

The district court found the doctrine did not apply because the Co-op's extension of credit and HP Farms, LLC's subsequent debt "resulted from an oral contract with [Fettkether] who acted on behalf of" HP Farms, LLC. Also, "any enrichment was received by [HP Farms, LLC] and not [Lindaman]. There is little evidence that [Lindaman] received any benefits, as the assets of [HP Farms, LLC] went to pay the company's debt."

The parties do no dispute that a contract for credit and debt repayment existed. The only question was whether the credit agreement was governed by an oral contract or a written contract based on a written application the Co-op

could not produce. Because a contract existed, the doctrine of unjust enrichment does not apply to these circumstances.

Finally, we have already concluded the Co-op failed to prove fraud in the inception, accordingly, even if the unjust enrichment doctrine could apply, the Co-op has failed to establish the first element. Also, the Co-op produced no evidence the land and equipment purchased by HP Farms, LLC or the proceeds from crops harvested by HP Farms, LLC did not pay off senior, secured debt. Fettkether testified he received zero to, at most, less than $1000 of profit from the LLC operation. It is undisputed that HP Farms, LLC was obligated to use company assets to pay secured creditors before paying its unsecured creditors, i.e., the Co-op. The Co-op has failed to prove Lindaman, as an individual, unfairly benefitted.

AFFIRMED.