

MICHAEL T. KEARNS

v.

DAVID J. GOULD

Submitted on Briefs March 1, 2012

Decided March 13, 2012

Panel: ALEXANDER, LEVY, MEAD, GORMAN, and JABAR, JJ.

#### MEMORANDUM OF DECISION

David J. Gould appeals from a judgment entered in the Business and Consumer Docket (*Nivison, J.*) finding him personally liable to Michael T. Kearns in the amount of \$97,000, plus interest and costs, based on the existence of an oral loan agreement and on a theory of unjust enrichment. Contrary to Gould's contentions, the court did not err by crediting witness testimony and concluding that a binding oral contract existed between Kearns and Gould personally. *See Pelletier v. Pelletier*, 2012 ME 15, ¶ 13, --- A.3d ---. Nor did the court err in declining to apply the statute of frauds because the statute is inapplicable to the personal oral agreement found to exist, which was not a guaranty of corporate debt. *See* 33 M.R.S. § 51(2) (2011). Likewise, the written purchase and sale agreement between Kearns and the corporation, Dave Gould Ford, did not modify Kearns's oral agreement with Gould personally, and the court's finding that the lease agreement was not intended to be satisfied is not clearly erroneous. *See Pelletier*, 2012 ME 15, ¶ 13, --- A.3d ---; *Kondaur Capital Corp. v. Hankins*, 2011 ME 82, ¶ 19, 25 A.3d 960 ("We review the meaning of a contract de novo and interpret an unambiguous provision according to the plain meaning of its terms."). The court therefore did not err in declining to address the written agreements or by determining that Gould is personally responsible pursuant to a binding oral contract with Kearns. *See Rulon-Miller v. Carhart*, 544 A.2d 340, 341 (Me. 1988) (noting that whether the parties have made an oral contract is a question of intent, which is an issue of fact).

Further, there is competent evidence in the record to support the court's findings with respect to each element of unjust enrichment, including that Gould benefited personally and directly from the loan agreement by avoiding potential civil and criminal liability and maintaining his capacity to operate his business. *See Estate of Anderson*, 2010 ME 10, ¶ 10, 988 A.2d 977; *Me. Eye Care Assocs. P.A. v. Gorman*, 2008 ME 36, ¶ 17, 942 A.2d 707; *Graybar Electric Co. v. Sawyer*, 485 A.2d 1384, 1390 (Me. 1985); *see also* 36 M.R.S. § 177(1) (2011). The court's alternative conclusion that Gould is liable to Kearns based on the theory of unjust enrichment is therefore not in error.

The entry is:

Judgment affirmed.

---

**On the briefs:**

Daniel A. Pileggi, Esq., Roy, Beardsley, Williams & Granger, LLC,  
Ellsworth, for appellant David J. Gould

Valerie C. Chiasson, Esq., Giunta & Chiasson, LLC, Ellsworth, for appellee  
Michael T. Kearns