



## CIRCUIT COURT OF THE STATE OF OREGON

FOURTH JUDICIAL DISTRICT  
MULTNOMAH COUNTY COURTHOUSE  
1021 S.W. FOURTH AVENUE  
PORTLAND, OR 97204-1123

RICHARD C. BALDWIN  
JUDGE

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May 29, 2007

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Re: Great Earth Chemical, LLC v. Reen Chyun (Randy) Liu, et al  
Case 0507-07069  
Letter Opinion Re Unjust Enrichment Counterclaim

Dear Counsel,

This matter was tried to the Court during the week of May 7, 2007. The Court made a number of adverse rulings relating to defendants' counterclaims during the trial. The only remaining issue for determination is the viability of defendants' counterclaim for unjust enrichment on the merits.

The Court concludes that defendants did not meet their burden of proof on the unjust enrichment counterclaim. Defendants' unjust enrichment claim is essentially based on financial losses incurred after defendants assumed responsibility for risks inherent in the purchase of large containers of ascorbic acid intended for resale in the food ingredients industry. Defendants alleged that "[b]y purchasing the fourteen containers, UFI conferred a benefit upon Great Earth chemical by relieving Great Earth Chemical's contractual obligation to purchase the containers". Para. 22 of Defendant's First Amended Counterclaims. Defendants also alleged "it would be unjust to allow Great Earth to retain the benefit of UFI purchasing the containers without requiring Great Earth to pay for the benefit". Para 23.

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After a careful review of the evidence, the Court finds that the assumption of risk and financial loss by defendants in this case was based primarily on a business decision by defendants 1) to preserve the assets and goodwill of Great Earth during a period of negotiation between the parties where defendants sought to purchase plaintiff's business, and 2) to preserve defendant Liu's long term business relationship with the suppliers of the ascorbic acid. The evidence did not demonstrate assurances by plaintiffs that plaintiffs would make defendants whole in the event of a financial loss or that defendants otherwise had a reasonable expectation they would be made whole. Defendants' contention that plaintiffs agreed to transfer sales orders to defendants to reduce or eliminate the risk was not proven.

Under these circumstances, the court concludes that unjust enrichment is not available to defendants as an equitable remedy. Here, it would not be appropriate for the Court to shift the cost of a business loss from defendants to plaintiff. It is not unjust to allow plaintiff to avoid the business loss without making defendants whole. See *Jacua v. Nike, Inc.* 125 Or App 294 (1993); see also *Robinowitz v. Pozzi*, 127 Or App 464 (1994) (plaintiff had no intention to benefit another and had no reasonable expectation to share in benefit).

While it is not necessary for the Court to reach plaintiff's defense of unclean hands based on the contention that defendant Liu created the risk of loss when he was employed by plaintiff as its general manager, a comment is in order. As the Court indicated at trial, plaintiff did not in the Court's judgment, prove this contention. To the contrary, the record shows that plaintiff would not have had a going business concern but for Mr. Liu's substantial contributions to plaintiff's business operations.

Counsel for plaintiff should prepare an appropriate form of Order consistent with this opinion.

Sincerely,



RICHARD C. BALDWIN  
Circuit Court Judge