STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

WILLIAM NOFAR, individually and as representative of a class of similarly-situated persons and entities,

Plaintiff,

-v-

Case Number: **2020-183155-CZ**
Honorable Nanci J. Grant

CITY OF NOVI, MICHIGAN,
a municipal corporation,

Defendant,
_____/

ORDER AND OPINION

At a session of said Court, held in the Courthouse in the City of Pontiac, County of Oakland, State of Michigan on the 21st day of January, 2022,

PRESENT: HONORABLE NANCI J. GRANT, CIRCUIT JUDGE

This matter is before the Court on Defendant City of Novi's (herein the "City") Motion for Summary Disposition pursuant to MCR 2.116(C)(8). This is a class action lawsuit wherein Plaintiff alleges that since 2015, the City has set its water and sewer rates at a level that far exceeds what was necessary to finance the actual costs of providing water and sewage disposal services. Plaintiff alleges that these unreasonably high rates have left the City with a surplus of funds, and that the rates far exceed established water and sewer rate-setting methodologies. Therefore, Plaintiff alleges that the City should be required to "disgorge the amounts" or Plaintiff should "recover the amounts" that the City allegedly has collected in excess of the amounts it was "entitled" to collect.

Plaintiff alleges that these rate overcharges are unlawful taxes in violation of the Prohibited Taxes by Cities and Villages Act, MCL 141.91; that the rates are unreasonable under the common law because they generate revenue far in excess of the City's actual cost of providing water and sewer service; and that the rates violate the City's Charter, Section 13.3, because they are not "just and reasonable." Plaintiff's Complaint consists of six counts: three counts for "unjust enrichment" and three counts for "assumpsit." The City argues that all of Plaintiff's claims fail as a matter of law. After hearing oral argument, the Court took the matter under advisement and rules as follows:

The City's Authority to Collect Utility Fees and Plaintiff's Claims

As a matter of legal background, the City is required to charge and collect the public water and sanity sewer fees under State statutes, the City Charter, and the City Code. The Michigan Legislature mandates that the City establish rates to support its Utility Systems under Section 21(1) of the Revenue Bond Act (herein "RBA"). The RBA states as follows:

> (1) Rates for services furnished by a public improvement shall be fixed before the issuance of the bonds. The rates shall be sufficient to provide for all the following:
>
> > (a) The payment of the expenses of administration and operation and the expenses for the maintenance of the public improvement as may be necessary to preserve the public improvement in good repair and working order.
> >
> > (b) The payment of the interest on and the principal of bonds payable from the public improvements when the bonds become due and payable.
> >
> > (c) The creation of any reserve for the bonds as required in the ordinance.
> >
> > (d) Other expenditures and funds for the public improvement as the ordinance may require. [MCL 141.121(1)].

Consistent with MCL 141.121(1), Section 13.3 of the City Charter states, as a general authorization that:

> The Council shall have the power to fix, from time to time, such just and reasonable rates as may be deemed advisable for supplying inhabitants of the City and others with such public-utility services as the City may provide. There shall be no discrimination in such rates within any classification of users thereof nor shall free service be permitted, but higher rates may be charged for services outside the City limits.

Sections 34-145(b), 34-17, and 34-19 of the City Code further provide more specific legal authority for the City to establish sewer and water rates, as follows:

Section 34-145(b):

> (b) The rates and charges established pursuant to subsection (a) shall be based upon a methodology which complies with applicable federal and state statutes and regulations. The amount of the rates and charges shall be sufficient to provide for debt service and for the expenses of operation, maintenance and replacement of the system as necessary to preserve the same in good repair and working order. The amount of the rates and charges shall be reviewed annually and revised when necessary to ensure system expenses are met and that all users pay their proportionate share of operation, maintenance and equipment replacement expenses.

Section 34-17:

> The water system shall be operated on a public utility rate basis, pursuant to the provisions of Act No. 94 of the Public Acts of Michigan of 1933 (MCL 141.101 et seq.), as amended. The system shall be operated under the management and direction of the city manager, subject to the overall general supervision and control of the council, and/or as a division of the sewer and water department as the council shall direct.

Section 34-19:

> The rates to be charged by the water system shall be established and charged in accordance with the schedule of rates set by resolution of the council.

The City argues that it has the authority to set water and sewer rates, as well as the authority to take any surplus rates and transfer them to another fund pursuant to the Michigan Department of Treasury's Uniform Charts of Accounts, which states that regarding water and sewer funds, "money that accumulates as unrestricted net position of this fund may be transferred to another fund if authorized by the governing body." See Michigan Department of Treasury's Uniform Charts of Account, pg. 117, 130-132.

As stated above, Plaintiff brings six (6) Counts, all based on unjust enrichment and assumpsit. Specifically, Plaintiff's claims allege that the City was unjustly enriched by its violation of MCL 141.91, which prohibits a municipality from charging fees disguised as taxes, as well as by violating Section 13.3 of the Charter, cited above. Plaintiff has not sought redress directly under MCL 141.91 or Section 13.3 of the Charter; rather, Plaintiff claims that the City was unjustly enriched by the funds collected in violation of those statutes.

The City's Arguments for Summary Disposition

The City's Motion for Summary Disposition makes five arguments. First, it argues that it is entitled to judgment as a matter of law on all counts because Plaintiff's claims are "equitable causes of action that constitute an attempt to 'dodge the bar' established by law for causes of action under [the Headlee Amendment]." See the City's Brief at 6. Second, it argues that it is entitled to judgment as a matter of law on all counts because "the City…collected and expended the subject charges by lawful statutory, charter, ordinance, and Michigan Department of Treasury requirements and not by unjust or inequitable means, or through malicious intent, capricious action, or corrupt conduct." See the City's Brief at 8. Third, it argues that it is entitled to summary disposition on all counts because "…each count alleges a contract claim that is necessarily based on the City allegedly exceeding its legal authority, which claims are prohibited as a matter of law." See the City's Brief at 12.

Fourth, it argues that Counts II, III, IV and V should be dismissed because Plaintiff does not have a private right of action against the City to enforce its Charter and because MCL 141.91 does not provide a private right of action. Finally, it argues that Counts IV, V, and VI should be dismissed because assumpsit has been abolished in Michigan as a cause of action.

1. Whether Plaintiff's claims are Improper Equitable Claims Plead Only to Dodge the One-Year Statute of Limitations for Headlee Amendment claims.

Plaintiff's Complaint makes numerous allegations that the City's water and sewer rates are "excessive," "unreasonable," "overcharges," "revenue raising," and "disproportionate," essentially claiming that the water and sewer rates are "disguised taxes." The City characterizes these claims as "fee vs tax cases" which involve a violation of the Headlee Amendment, Article 9, Section 31 of the Michigan Constitution. See *Bolt v City of Lansing*, 459 Mich 152 (1998). The City claims that Plaintiff is attempting to disguise Headlee Amendment claims as equitable causes of action for unjust enrichment and assumpsit to avoid the one-year statute of limitations on Headlee Amendment claims and invalidly achieve six years of damages instead of one.

The Michigan Supreme Court held that statute of limitations periods should apply to "analogous equitable suits" so that "a plaintiff [cannot] dodge the bar set up by a limitations

statute simply by resorting to an alternate form of relief provided by equity." *Taxpayers Allied for Constitutional Taxation v Wayne County*, 450 Mich 119, 127 n 9 (1995)(internal citations omitted). Further, in *Taxpayers Allied*, the Supreme Court determined that the one-year period for Headlee claims is "a reasonable restriction designed to protect the fiscal integrity of governmental units who might otherwise face the prospect of losing several years' revenue from a tax that had previously been thought to comply with Headlee restrictions." *Id* at 124-26.

The City relies on a very recent Michigan Supreme Court decision, *Gottesman v City of Harper Woods*, ____ Mich ____ (September 29, 2021). In *Gottesman*, the Michigan Supreme Court applied the decision in *Taxpayers Allied*, supra, to a class action complaint challenging municipal utility fees on equitable unjust enrichment and assumpsit grounds, similar to what Plaintiff is attempting to do in this case. The Court held, "the Court of Appeals erred by holding that plaintiff's equitable claims could afford additional relief because 'plaintiff would be entitled to recover for several more years under [his equitable claims] than under [the Headlee Amendment.]'" *Id*. quoting from *Gottesman v Harper Woods*, Unpublished Per Curiam Opinion of the Court of Appeals, December 3, 2019 (Docket No. 344568)(brackets in original). Interestingly, the Michigan Supreme Court remanded the case back to the Court of Appeals to determine "whether plaintiff may seek equitable remedies for the alleged violation of MCL 141.91 beyond the one-year limitations period governing the Headlee Amendment claim." *Id*.

The Court finds that the holding in *Gottesman* does not go as far as the City would like. During oral argument, the City admitted that *Gottesman* provides this Court with a "roadmap" to conclude that such claims would be barred by the one-year statute of limitations; however, a "roadmap" is not binding precedent. The *Gottesman* Court did not make a ruling that equitable claims for an alleged violation of MCL 141.91 are always limited to the one-year limitations period of Headlee Amendment claims. Rather, it merely pointed out that a plaintiff is not automatically guaranteed the benefit of the six-year statute of limitations for equitable claims which are "analogous" to Headlee Amendment claims.

The Court finds that City is not entitled to summary disposition pursuant to *Gottesman*.

2. Whether the City Lawfully Collected and Expended the Subject Water and Sewer Rates and Whether its Actions were Reasonable.

The City next argues that it is entitled to summary disposition because it lawfully collected the water and sewer rates at issue, not by "unjust or inequitable means, or through

malicious intent, capricious action, or corrupt conduct." See the City's Brief at 8. Regarding similar claims related to the unreasonableness of municipal utility rates, the Michigan Court of Appeals has held, "[t]he burden of proof is on the plaintiff to show that any given rate or ratemaking practice is unreasonable." *Trahey v City of Inkster*, 311 Mich App 582, 594 (2015). The *Trahey* Court further stated, "absent clear evidence of illegal or improper expenses included in a municipal utility's rates, a court has no authority to disregard the presumption that the rate is reasonable." *Id.* at 595.

The Michigan Supreme Court held, "[c]ourts of law are ill equipped to deal with the complex, technical processes required to evaluate the various cost factors and various methods of weighing those factors required in rate-making." *City of Novi v Detroit*, 433 Mich 414, 430 (1989). The Court held, "the rate-making authority of a municipal entity is expressly reserved to the legislative body given the power to set rates under the municipal charter." *Id.* at 429.

The City argues that because Plaintiff has made only equitable claims (i.e., unjust enrichment and assumpsit), that Plaintiff must plead allegations necessary to establish malicious intent, capricious action, or corrupt conduct. "In order to warrant the interposition of a court of equity in municipal affairs, there must be malicious intent, capricious action, or corrupt conduct, something which shows the action of the body whose acts are complained of did not arise from an exercise of judgment and discretion vested by law in them." *Wolgamood v Village of Constatine*, 302 Mich 384, 395 (1942) citing *Veldman v City of Grand Rapids*, 275 MIch 100, 113 (1936).

In his Response, Plaintiff cites to *Youmans v Bloomfield Township*, _____ Mich App ____ (January 7, 2021), which held that a plaintiff claiming that water and sewer rates are excessive via an unjust enrichment claim (like the case at bar) must prove more than just a problem with the municipality's ratemaking method. Specifically, the *Youmans* Court held, "[w]hether [the municipality] would receive an unjust benefit from retaining the disputed rate charges…depends on whether the water and sewer rates, viewed as a whole, were unreasonable inasmuch as they were 'excessive,' not on whether some aspect of the Township's ratemaking methodology was improper." *Id.* The *Youmans* Court reversed the judgment of the trial court, which ordered the defendant township to reimburse the taxpayer more than $9 million, holding that the plaintiff had failed to demonstrate that the township "would be excessively (and thus unjustly) enriched by the retention of such funds." *Id.* at 23.

Youmans is the most recent precedent for this type of case. Consequently, the Court fails to see to see how the City is entitled to summary disposition based on the Plaintiff's failure to

plead allegations of "malicious intent, capricious action, or corrupt conduct." The *Youmans* Court made it clear that to bring a successful unjust enrichment claim in this circumstance, a class of plaintiffs must prove only that the municipal entity was "excessively (and thus unjustly) enriched." *Id.* The Court finds that Plaintiff's failure to plead that the City acted with "malicious intent, etc.," is not grounds for summary disposition.

Next, the City argues that Plaintiff's equitable claims (unjust enrichment and assumpsit) fail regardless of whether Plaintiff pleads "malicious intent, etc.," because the City acted lawfully in collecting water and sewer rates and was not unjustly enriched because the Plaintiff actually benefited from the City's collection and "investment" of the water and sewer rates.

Unjust enrichment claims require, "1) the receipt of a benefit by the defendant from the plaintiff and 2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant…in other words, the law will imply a contract to prevent unjust enrichment only if the defendant has been unjustly or inequitably enriched at the plaintiff's expense." *Morris Pumps v Centerline Piping, Inc.*, 273 Mich App 187, 195 (2006). Assumpsit is a remedy "sounding in unjust enrichment." *Woods v Ayres*, 39 Mich 345, 348-49 (1878). Like unjust enrichment, assumpsit involves the recovery of money invalidly collected. *Bond v Pub Sch of Ann Arbor Sch Dist*, 383 Mich 693, 704 (1970).

Plaintiff's Complaint specifically alleges that the City was unjustly enriched by the water and sewer rates because there were transfers of funds from the Water and Sewer Fund to the Capital Improvements Fund. In other words, Plaintiff's Complaint alleges that the City was unjustly enriched because it was able to transfer excess money out of the Water and Sewer Fund and use it to finance other, unrelated City projects. The City cites MCL 141.121(1), Section 13.3 of the City Charter, and Sections 34-145(b), 34-17, and 34-19 of the City Code, arguing that it collected the rates in a lawful manner, and notes that any alleged improper transfers of funds from the Water and Sewer Fund to other projects was done according to a City Council Resolution adopted on June 19, 2017 (herein the "2017 Resolution"). The 2017 Resolution mandated the repayment of any monies advanced by the City from the Water and Sewer Fund with interest monthly and full repayment within 90 days, if needed for any utility system improvement projects, emergencies, etc. In other words, the City was loaning other City departments money from the Water and Sewer Fund, to be repaid to the Water and Sewer Fund, with interest, and requiring full repayment within 90 days in the event that there was a water and sewer emergency.

The City argues that it was not "unjustly enriched" by the transfers because it had to repay the transfers to itself with interest, pointing to the 2017 Resolution. The City also cites to the Michigan Department of Treasury, which specifically authorizes such transfers by a City Utility System "enterprise fund." The Michigan Department of Treasury Uniform Charts of Accounts states as follows, "Money that accumulates as unrestricted net position of this fund may be transferred to another fund if authorized by the governing body." MCL 123.391 also allows municipalities owning a public utility to make "contributions from the operating revenues of the utility in such amounts and for such purposes as shall be determined by the governing body of the public utility to be in the public interest, subject to the approval of the legislative body of the municipality."

The City argues that pursuant to the Michigan Department of Treasury guidelines as well as MCL 123.391, the transfers from the water and sewer fund into other funds were lawful and could not have unjustly enriched the City to Plaintiff's detriment because the borrowed funds were to be repaid with interest. The City argues that these transfers were an "investment" that actually benefited the Plaintiff class. Therefore, the City argues that Plaintiff's claims for assumpsit and unjust enrichment fail as a matter of law.

The Court is unconvinced this argument wins the day by way of a (C)(8)[1] Motion. Essentially, the City is claiming that because its process of borrowing money from the Water and Sewer Fund and using it for other City projects is lawful, it absolutely cannot be unjustly enriched. Again, the *Youmans* Court held that the plaintiff class must prove that the defendant municipality was "excessively (and thus unjustly) enriched" by this process. The *Youmans* Court did not foreclose the possibility of unjust enrichment claims based on a lawful collection process. Whether the City was "excessively (and thus unjustly)" enriched cannot be determined on the pleadings alone. Therefore, summary disposition on this basis is denied.

3. Whether Plaintiff's Claims Fail because they are Contract Claims Necessarily Based on the City Exceeding its Legal Authority.

[1] "A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim based on the factual allegations in the complaint. *El-Khalil v Oakwood Healthcare, Inc.*, 504 Mich 152, 159-60 (2019). When considering such a motion, a trial court must accept all factual allegations as true, deciding the motion on the pleadings alone. *Bailey v Schaaf*, 494 Mich 595, 603 (2013).

Next, the City argues it is entitled to summary disposition because each of Plaintiff's claims "alleges a contract claim that is necessarily based on the City allegedly exceeding its legal authority, which claims are prohibited as a matter of law." See the City's Brief at 12. The City cites *AFT Mich v State*, 202 Mich App 651, 677 (2014), which held that unjust enrichment is merely "the equitable counterpart to a claim for breach of contract…occurring when a person has or maintains money or benefits which in justice and equity belong to another." Moreover, "[a]ssumpsit may be upon an express contract or promise, or for nonperformance of an oral or simple written contract, or it may be a general assumpsit upon a promise or contract implied by law." *Kristoffy v Iwanski*, 255 Mich 25, 28 (1931).

Based on these legal principals regarding unjust enrichment and assumpsit, the City argues that these claims are assertions that the City's water and sewer rates are unjust and inequitable because the City charged and received an amount beyond the amount it was entitled to by law. Therefore, the City argues that Plaintiff's claims are based in an implied contract that arises out of the authority granted under state and local laws, outlined above, requiring the City to charge water and sewer fees.

The City argues this Court should consider Plaintiff's claims as implied contract claims and apply the holding in *Studier v Michigan Pub Sch Employees Ret Bd*, 472 Mich 642, 661 (2005) applies. In *Studier*, the Michigan Supreme Court held that due to limitations on legislative power, the law necessarily provides for a "strong presumption that statutes do not create contractual rights." *Id.* at 661. Therefore, "in order for a statute to form the basis of a contract, the statutory language 'must be plain and susceptible of no other reasonable construction than that the Legislature intended to be bound to a contract." *Id.* at 662. Unless there is an expression of an actual intent of the government to bind itself through legislation, "courts should not construe laws declaring a scheme of public regulation as also creating private contracts" to which the government is a party. *Id.*

The City relies on *In re Certified Question (Fun 'N Sun RV, Inc v Michigan)*, 447 Mich 765, 777-778 (1994). The Court in *Sun RV* addressed the issue of whether policyholders who paid premiums into a State of Michigan accident fund were entitled to reserve funds in excess of what was needed to cover liabilities. The plaintiffs argued that they were entitled to such excess amounts under an implied contract theory based on the applicable statutes governing the state accident fund. *Id.* at 776. The Court ultimately found that because there was no provision in those laws indicating that the policyholders were promised or entitled to the excess funds, the plaintiffs

had no contract rights to make a claim for a distribution of said excess funds to them. *Id.* at 777-785.

Based on the foregoing, the City argues that Plaintiff has not identified any provision in the law that would demonstrate a legislative intent to create or imply a contract between the class members and the City that would allow them to bring claims that sound in contract, like assumpsit or unjust enrichment.

In his Response, Plaintiff argues that none of this applies because he is not seeking contractual damages, merely restitution. Plaintiff cites *Logan v Charter Township of West Bloomfield*, Unpublished Opinion of the Court of Appeals, February 18, 2020 (Docket No. 333452). In *Logan*, the plaintiff challenged certain fees imposed by the defendant municipality's building division that were allegedly excessive and imposed in violation of the statute Construction Code Act (herein, "CCA"). The plaintiff brought statutory claims under the CCA, violation of the Headlee Amendment, as well as unjust enrichment premised on the municipality's violation of the CCA. This is similar to the case at bar, wherein Plaintiff alleges unjust enrichment based on a violation of MCL 141.91 and Section 13.3 of the City Charter.

The Court of Appeals in *Logan* ultimately held that the remedy that the plaintiffs sought via unjust enrichment was "…not meant as compensation. Rather, plaintiffs in this action … seek the return of monies paid over to defendant that should not have been charged in the first instance and therefore was unjustly held by defendant. Requesting the return of the funds was not a tort or contract action, but an action to divest the township of benefits unjustly retained." *Id.* The *Logan* Court overturned the decision of the trial court granting the defendant municipality summary disposition on this issue.

The Court finds that *Sun RV*, supra, does not entitle the City to summary disposition. The facts in *Sun RV* are entirely different than what is presented here. In *Sun RV*, the plaintiffs alleged that they had an actual contractual right to the excess monies placed into the accident fund by the State, and that the Legislature was unconstitutionally impairing their rights to those funds by enacting a statute which allowed the State to sell the rights and liabilities of the accident fund to an insurance company. See *Sun RV*, supra, at 775-776. The *Sun RV* plaintiffs did not bring an unjust enrichment claim, but claimed that their contractual right to the proceeds would be "unconstitutionally impaired" if the State were permitted to transfer the excess monies in the accident fund. The *Sun RV* plaintiffs' claims arose from Article 1, Section 10 of the Michigan Constitution which provides, "no bill of attainder, ex post facto law or law impairing the

obligation of contract shall be enacted." *Id.* at 776-777. Therefore, any analysis of contractual claims in relation to statutes at issue in *Sun RV* does not apply here.

The Court finds that summary disposition is inappropriate on this basis.

4. Whether Counts II, III, IV, and V Should be Dismissed because there is no Private Right of Action contained in the City Charter or in MCL 141.91.

Counts II, III, IV, and V of Plaintiff's Complaint allege unjust enrichment and assumpsit based on the City's violation of the City Charter, Section 13.3, and MCL 141.91, for allegedly assessing unreasonable water and sewer rates. As held in *Logan*, supra, the Court of Appeals held that even though the plaintiff did not have a private right of action under the CCA, he could still seek a refund of the excessive fees under the equitable doctrine of unjust enrichment. The City did not attempt to explain why *Logan*, despite that it is unpublished, is not persuasive authority.

In his Response, Plaintiff cites to *Kincaid v City of Flint*, Unpublished Opinion of the Court of Appeals, April 16, 2020 (Docket No. 337972; 337976). *Kincaid* is yet another case in which a class of plaintiffs challenged a municipality's water and sewer rates, claiming the defendant city was unjustly enriched by its unreasonably high water and sewer rates. The Court of Appeals in *Kincaid* held that the plaintiff's breach of implied contract claims failed as a matter of law because an implied contract claim cannot stand based on the violation of a statute or ordinance. However, the Court held that the plaintiff's unjust enrichment claims should stand because "…it is plain that plaintiffs cannot maintain a cause of action for money damages based on defendant's mere violation of a city ordinance, but it is equally clear that plaintiffs may maintain a cause of action for a refund of an unlawful exaction." *Id.*

Despite that there is no private right of action in any of the above-cited statutes or ordinances granting the City authority to assess taxes for a water and sewer fund, the Plaintiff brought equitable claims for a refund/return of monies paid to the City as water and sewer fees, which the Court of Appeals has recently and repeatedly upheld in multiple cases. Therefore, summary disposition on this basis—in all of its iterations in the City's brief—is inappropriate.

5. Whether Summary Disposition should be granted as to Counts IV, V, and VI because Michigan has Abolished Assumpsit as a Cause of Action.

Finally, the City argues that all of Plaintiff's assumpsit claims fail because Michigan has abolished assumpsit as a cause of action. Assumpsit is like unjust enrichment and is defined as "an express or implied promise, not under seal, by which one person undertakes to do some act or pay something to another." *Fisher Sand & Gravel Co v Neal A Sweebe, Inc*, 494 Mich 543, 564 (2013). In *Fisher Sand*, supra, the Michigan Supreme Court held that "assumpsit as a form of action was abolished" with the passage of the General Court Rules in 1963. However, the City conveniently leaves out a majority of the *Fisher* opinion in its brief. *Fisher* actually says, "with the adoption of the General Court Rules in 1963, assumpsit as a form of action was abolished. But notwithstanding the abolition of assumpsit, the substantive remedies traditionally available under assumpsit were preserved." *Id.*

A recent Court of Appeals decision addressed the City's argument. In *Woodland Condos Homeonwers Ass'n v Fannie Mae*, Unpublished Opinion of the Court of Appeals, February 28 2019 (Docket No. 339850), the Court of Appeals held as follows:

> Defendants argue that they were entitled to summary disposition of plaintiff's claims for assumpsit because assumpsit has been abolished as a form of action. In *Fisher*, [supra], our Supreme Court recognized that assumpsit was abolished...with the adoption of the General Court Rules...however...the substantive remedies traditionally available under assumpsit were preserved. Consequently, plaintiff's use of the term 'assumpsit' in labeling its claim does not warrant dismissal if plaintiff otherwise substantively pleaded a valid claim. [*Id.* citing *Fisher*, supra].

The use of the word "assumpsit" does not necessarily preclude these claims. Here, the Plaintiff's allegations clearly seek the substantive remedy available under assumpsit, i.e., a return of monies allegedly unlawfully collected by the City in excess of what the City was permitted to collect. Summary disposition on this basis is inappropriate.

Conclusion

Summary disposition based on MCL 2.116(C)(8) is not appropriate. While the Court appreciates that the City may have an argument as to whether it was actually unjustly enriched based on an alleged benefit to this class of Plaintiffs, such an argument may only prevail by looking outside the pleadings.

Defendant's Motion is denied.

IT IS SO ORDERED.

Nanci J. Grant

NANCI J. GRANT, Circuit Court Judge SL