NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2005 CA 1727

LOUISIANA TANK, INC.

VERSUS

DISHMAN & BENNETT SPECIALTY COMPANY, INC.

Judgment Rendered: SEP 2 0 2006

* * * * * * * * *

On Appeal from the 32nd Judicial District Court
In and For the Parish of Houma, State of Louisiana
Trial Court No.138354, Division "B"

Honorable John R. Walker, Judge Presiding

* * * * * * * * *

Stephen D. Baker
Debra K. Basile
Lafayette, LA

Counsel for Plaintiff/Appellant
Louisiana Tank, Inc.

Eddie N. Pullaro
Houma, LA

Counsel for Defendant/Appellee
Dishman & Bennett Specialty
Company, Inc.

* * * * * * * * *

BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.

HUGHES, J.

This is an appeal by plaintiff, an oil drilling saltwater and mud disposal company, from a judgment in favor of defendant, an oil drilling tool and equipment company. The trial court's judgment denied plaintiff's claims of open account, detrimental reliance, and unjust enrichment. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

During August 2002, Quality Production Services, L.L.C. ("QPS"), operator of the M.W. Richard #1 oil drilling well in Cameron Parish, contacted Louisiana Tank, Inc. ("Louisiana Tank"), a saltwater and mud disposal company, and requested that Louisiana Tank provide disposal services at the Richard Well. The representative or employee of QPS who contacted Louisiana Tank told Louisiana Tank's dispatcher that a third entity, Dishman & Bennett Specialty Co., Inc. ("D&B"), would be responsible for paying Louisiana Tank for the services provided.

Prior to August 2002, D&B, an oil drilling tool and equipment company, had provided its own services to QPS resulting in an outstanding debt of about $450,000.00 owed by QPC to D&B. In order to recoup some of this debt, D&B's co-owner, David Dishman, agreed to an informal arrangement with QPS wherein D&B agreed to take on some of the expenses associated with redirecting the drilling efforts at the well from the unproductive lower zone of the well to an upper zone that might be more productive.

Between August 22, 2002 and October 20, 2002 Louisiana Tank provided the requested services at the well. Louisiana Tank billed these services on a number of invoices dated between August 26, 2002 and October 25, 2002. The invoices listed D&B as the "customer" and were

directed to the attention of Mr. Dishman. Louisiana Tank ceased providing services on October 20, 2002 because none of its invoices had been paid.

Throughout the autumn of 2002, Louisiana Tank attempted to collect from D&B. In December 2002, D&B sent a check signed by Mr. Dishman to Louisiana Tank in the amount of $10,000.00; in January 2003, QPS also sent a check signed by its operations manager and sole owner, Dennis Mhire, in the amount of $10,000.00. After Louisiana Tank accepted these payments, an outstanding balance of $28,248.54 remained due to Louisiana Tank for its services at the well.

Louisiana Tank's counsel sent a written demand to D&B for the amount due on February 18, 2003 and filed suit on April 10, 2003. The petition alleged that Louisiana Tank provided services at the well site on open account for D&B and that the account remained unpaid in the amount of $28,248.54. Louisiana Tank later amended and supplemented its petition to add claims of detrimental reliance and unjust enrichment.

D&B answered that Louisiana Tank's losses were attributable to its own negligence in failing at the outset to determine the proper responsible entity. After a bench trial on January 24, 2005, the court denied each of Louisiana Tank's claims. Judgment was signed on March 23, 2005.

Louisiana Tank appeals, asserting the following assignments of error: the trial court was manifestly erroneous in (1) failing to find that an open account existed between Louisiana Tank and D&B, (2) failing to find that Louisiana Tank should recover based on detrimental reliance, and (3) failing to find that Louisiana Tank should recover based on unjust enrichment.

LAW AND ANALYSIS

In this appeal, Louisiana Tank contends (1) that an open account existed between itself and D&B by way of either direct oral contract, tacit

ratification by Mr. Dishman, or acceptance by Mr. Dishman of a new and independent obligation to pay, (2) that it should recover based on detrimental reliance, and (3) that it should recover based on unjust enrichment.

Open Account

Louisiana Tank asserts that it established an "open account" credit relationship with D&B. Louisiana Revised Statutes 9:2781(D) defines an open account as "any account for which a part or all of the balance is past due, whether or not the account reflects one or more transactions and whether or not at the time of contracting the parties expected future transactions." An action on open account, if successful, enables a claimant to recover attorney fees and costs from the defendant. LSA-R.S. 9:2781(A).

A threshold requirement for an action on an open account is that "there must necessarily be a contract which gave rise to the debt." **Blackie's Rental Tool & Supply Co., Inc. v. Vanway**, 563 So.2d 350, 353 (La. App. 3 Cir. 1990). Louisiana Tank asserts that it had a valid oral contract with D&B and, in the alternative, that if it did not have a valid oral contract with D&B, that D&B remains contractually liable for the monies owed to Louisiana Tank under the theories of either assumption of a new and independent obligation or tacit ratification of the unauthorized statements made to Louisiana Tank by personnel associated with QPS.

An oral contract will be deemed valid as long as it demonstrates the consent of both parties to be so bound; consent is understood as the expression of offer by one party and acceptance by the other party. LSA-C.C. art. 1927. In the instant case, Michelle Guillot, accounts receivable manager for Louisiana Tank, testified at trial that she contacted Mr. Dishman on October 28, 2002 in order to discuss the invoices. Ms. Guillot

testified that Mr. Dishman told her "we would be paid by the end of October." Kevin Corcoran, general manager of Louisiana Tank, also testified that he spoke with Mr. Dishman during December 2002. Mr. Corcoran recalled Mr. Dishman telling him that "he would pay by the end of the week" and that "he would take care of it by the end of the week." Mr. Dishman testified that he did not recall speaking with either Ms. Guillot or Mr. Corcoran, but he asserted at trial that "I disagree with saying that I would pay the debt shortly. It wasn't my debt...If I told her [Ms. Guillot] it would be paid by a certain date, it's because I intended on getting on some[one] else's back about it."

The trial court denied Louisiana Tank's claim of oral contract. It found that the initial "oral references, or representations" made to Louisiana Tank by QPS personnel were not made by a legally authorized representative of D&B. As for any statements Mr. Dishman made to Louisiana Tank personnel in the fall of 2002 after the services were rendered, the trial court concluded that: "It is clear...that Mr. Bennett didn't agree to be responsible for the entirety of this debt." Thus, Louisiana Tank could not clearly demonstrate a showing of consent by Mr. Dishman to bind D&B to the debt owed to Louisiana Tank. This determination by the trial court represents a finding based on a reasonable evaluation of the facts and witnesses' credibility and we will not disturb it.

Louisiana Tank next asserts that even if a bilateral oral contract between itself and D&B cannot be established, D&B assumed contractual responsibility for the debt as a "new and independent obligation" based on D&B's "pecuniary or business motives" in obtaining Louisiana Tank's services. This allegation relies on an exception to Louisiana Civil Code article 1847, which states: "Parol evidence is inadmissible to establish either

a promise to pay the debt of a third person or a promise to pay a debt extinguished by prescription." Louisiana courts have ruled that "[a] well-recognized jurisprudential exception to this rule includes instances wherein an oral promise to pay is prompted by pecuniary or business motivation on the part of the promisor." **Deutsch, Kerrigan & Stiles v. Fagan**, 95-0811, p. 6 (La. App. 1 Cir. 12/15/95), 665 So.2d 1316, 1320, *writ denied*, 96-0194 (La. 3/15/96); 669 So.2d 418. *See also* LSA-C.C. 1847, comment d.

The exception may be invoked, as in the present case, to determine whether a promise amounts to a suretyship, wherein a written proof of contract is required, or an assumption of a new and independent primary obligation, wherein an oral promise will be binding. **Knight v. State**, 98-30,902, p. 7 (La. App. 2 Cir. 9/28/98), 718 So.2d 646, 650. The exception is not, however, without limitations.

The United States Court of Appeals for the Fifth Circuit has stated firmly that "[f]irst, and most basically, to come within the exception there must be an oral agreement." **U.S. for Use and Benefit of Gulf States Enter., Inc. v. R.R. Tway, Inc.**, 938 F.2d 583, 591 (5th Cir. 1991). The trial court in the present matter found, and the record reflects, that no oral agreement existed between Louisiana Tank and D&B at any time, as at no point did Mr. Dishman ever expressly assume responsibility for the debt.

As these determinations were reasonable in light of the trial court's evaluation of the facts, evidence, and witness testimony, we agree that Louisiana Tank has not proven the existence of an oral agreement, a threshold requirement for the exception to be triggered. In fact, as suggested above, this exception has been developed to allow courts to take evidence in deciding what type of oral agreement has been made, not to prove that an oral agreement exists in the first place.

Even had the trial court found a viable oral agreement and allowed Louisiana Tank to present evidence of Mr. Dishman's pecuniary or business motivation, Louisiana Tank would still confront additional jurisprudential refinements to the exception. Louisiana jurisprudence allows that "[s]howing that the promisor had a pecuniary or business motivation may be a fact to be considered, but the mere existence of such motivation is not controlling." **Youngblood v. Pendleton**, 446 So.2d 946, 948 (La. App. 3 Cir. 1984). The United States Court of Appeals for the Fifth Circuit has also made a distinction between "advantages" that a promisor may receive as "incidents or requirements" of a contract and actual consideration that a promisor receives in return for its promise to pay the debts of a third party. **Gulf States Enter.**, 938 F.2d at 591.

Jurisprudence suggests, furthermore, that application of this exception depends on a finding that the pecuniary or business motivations on the part of an alleged promisor must arise from a fairly substantial interest in the business concern in question. In one case, the court applied the exception upon testimony that defendants "had a stake" in the business at issue. **Fontenot v. Miss Cathie's Plantation, Inc.**, 634 So.2d 1380, 1382 (La. App. 3 Cir. 3/2/94). In another case, the court applied the exception when it found that defendant "was rather deeply involved in the third person's business." **Winston Network, Inc. v. TAC Amusement Co.**, 363 So.2d 1283, 1284 (La. App. 4 Cir. 1978); *writ denied*, 366 So.2d 574 (La. 1979).

In the instant case, the trial court did not find that Mr. Dishman's interest in the well operation extended to the point in time when the need arose for Louisiana Tank's services. On this issue, the trial court gave credence to the testimony of Mr. Dishman, Mr. Mhire of QPS, Gary Primeaux of QPS, and Alfred Nasser, the engineer hired by Mr. Dishman to

assist in the second attempt to bring the well to the point of production. Mr. Nasser testified that any engagement Mr. Dishman assumed in this operation ended in July 2002 when the well reached the point of production in the upper zone, roughly one month before personnel at QPS placed orders for work from Louisiana Tank.

Mr. Nasser testified that Mr. Dishman made it clear to him (Mr. Nasser) that he did not desire any future ownership interest in the well and that D&B's financial obligations ceased with the completion of the perforation work that brought the well to the point of production in the upper zone; Mr. Nasser further testified that he attempted to convey this to both QPS and Louisiana Tank. Mr. Primeaux of QPS, Mr. Mhire of QPS, and Mr. Dishman also testified that D&B's financial obligations were never intended to extend beyond the point at which the workover and perforation brought the well to the point of production. The trial court found these witnesses, particularly Mr. Nasser, to be competent, credible, and reliable; we find no manifest error in this conclusion.

Louisiana Tank claims lastly that Mr. Dishman tacitly ratified the assertions of QPS personnel that D&B would be responsible for payment of Louisiana Tank's invoices. Authority for the principle of tacit ratification lies in LSA-C.C. art. 1843: "Ratification is a declaration whereby a person gives his consent to an obligation incurred on his behalf by another without authority....Tacit ratification results when a person, with knowledge of an obligation incurred on his behalf by another, accepts the benefit of that obligation." The trial court's reasons for judgment do not meet this issue squarely, but in its discussion of unjust enrichment, the court expressed doubt that Louisiana Tank had demonstrated any "benefit" received or accepted by D&B beyond a nebulous enhancement of its position vis-à-vis

the well's production after the perforation had been completed and D&B's primary responsibility had concluded.

Furthermore, tacit ratification requires a relationship of agency between the alleged principal (here, D&B) and the promisor (here, QPS); agency cannot be presumed but must be clearly established by the party alleging the relationship. **Fleet Fin., Inc. v. Loan Arranger, Inc.**, 604 So.2d 656, 658, 660 (La. App. 1 Cir. 1992). Here, Louisiana Tank has not established that QPS and D&B maintained any relationship of agency, especially not at the time when QPS retained Louisiana Tank.

Finally, tacit ratification cannot be found unless it is clearly and unequivocably shown in the facts of a matter; it cannot be inferred. In fact, any possible alternative explanation for the defendant's expressions or actions will negate an attempt to show tacit ratification. **N. Am. Specialty Ins. Co. v. Employers Reinsurance Corp.**, 02-2649, p. 5 (La. App. 1 Cir. 9/26/03), 857 So.2d 606, 610, *writ denied*, 03-2977 (La. 1/16/04); 864 So.2d 633. Louisana Tank has not demonstrated that sufficient facts exist in this matter to show any "clear and unequivocal" intent on the part of Mr. Dishman to ratify the statements of QPS.

The principle that appears to apply most closely to this matter is "tacit confirmation" under LSA-C.C. art. 1842: "Confirmation is a declaration whereby a person cures the relative nullity of an obligation....Tacit confirmation may result from voluntary performance of an obligation." Modern case law on tacit confirmation is not extensive, but it appears that, like tacit ratification, tacit confirmation cannot be presumed, must be shown as a clear and unequivocal intent, and will not be found if the action can be "otherwise explained." **Rahier v. Rester**, 11 So.2d 87, 92 (La. App. 1 Cir. 1942). Finally, whereas performance of an *entire* obligation would likely be

considered tacit confirmation, it is not necessarily the case that only *partial* performance of an obligation, without more, can amount to tacit confirmation.

Here, Mr. Dishman's December 2002 issuance of a check in the amount of $10,000.00 might have been subject to analysis as a voluntary performance sufficient to cure the relative nullity caused by QPS personnel's unauthorized assertion of D&B's responsibility for Louisiana Tank's invoices. Louisiana Tank would have had to overcome Mr. Dishman's testimony that he intended the $10,000.00 to be an advance on behalf of QPS for which he expected reimbursement. Similarly, Mr. Mhire of QPS testified quite clearly that he asked Mr. Dishman to make a payment to Louisiana Tank "to get them off our back." Louisiana Tank would also have to refute the testimony of Mr. Primeaux, general manager of QPS, that once he received notice that Mr. Dishman's responsibility ended when the well began producing, he (Mr. Primeaux) contacted Louisiana Tank and advised them to change the billing over to QPS. This testimony is the "alternative explanation" that negates a finding of tacit confirmation in this matter. Louisiana Tank has not shown that Mr. Dishman's voluntary payment of a portion of the debt amounts to an express, clear, and unequivocal confirmation or assumption of the debt on behalf of D&B.

At any rate, the trial court did not view Mr. Dishman's December 2002 payment as voluntary performance and it did not view Mr. Dishman's payment in the same light as that made by QPS. The court seems to have understood Mr. Dishman's payment as an example of *negotiorum gestio*, wherein Mr. Dishman paid part of the sum due as a favor to Mr. Mhire at QPS in light of the financial difficulties QPS was laboring under at the time. *See* LSA-C.C. art. 2292 and comments. Even in this context, however, the

obligation created is between the payor and the person on whose behalf payment is made, here D&B and QPS. The third party creditor receiving the payment, here Louisiana Tank, does not figure in this relationship.

Finally, the conventional code articles on assumption of obligations (LSA-C.C. arts. 1821-24) and on novation, the extinguishment of an existing obligation by the substitution of a new one (LSA-C.C. arts. 1879-87) require either a clear and unequivocal showing of intent, or a writing, to be enforceable by a third person. Louisiana Tank has not demonstrated a showing sufficient to trigger either of these principles.

For the reasons outlined above, we find no error in the trial court's conclusion that Louisiana Tank has not established the necessary contractual relationship between itself and D&B upon which an action on open account can rest.

Detrimental Reliance

Louisiana Tank next asserts that the trial court clearly erred in denying its claim for recovery based on the theory of detrimental reliance. Louisiana Civil Code article 1967 provides the basis for this theory of recovery: "A party may be obligated by a promise when he knew or should have known that the promise would induce the other party to rely on it to his detriment and the other party was reasonable in so relying." In this matter, D&B made no promises upon which Louisiana Tank could reasonably rely.

The inquiry in a detrimental reliance analysis is not the presence, existence, or creation of a valid contract but rather the nature of the promise made by the promisor and the reaction of the promisee. To establish detrimental reliance, a plaintiff must prove three elements by preponderance of evidence: (1) representation by conduct or word of the promisor; (2) justifiable reliance by the promisee; and (3) change in the promisee's

position to promisee's detriment because of reliance. **May v. Harris Mgmt. Corp.**, 04-2657, p. 5 (La. App. 1 Cir. 12/22/05), 928 So.2d 140, 144. Louisiana courts have held that detrimental reliance is not a generally favored form of recovery and, thus, claims must be examined "carefully and strictly." **Id.** at 6, 928 So.2d at 145.

In addition, Louisiana courts have held that detrimental reliance claims must be based on privity of contract between the promisee and promisor. **Magic Moments Pizza, Inc. v. La. Rest. Ass'n**, 02-0160, p. 6 (La. App. 5 Cir. 5/29/02), 819 So.2d 1146, 1149; **Barrie v. V.P. Exterminators, Inc.**, 614 So.2d 295, 296 (La. App. 4 Cir. 1993), *rev'd on other grounds*, 625 So.2d 1007 (La. 1993). Even the Supreme Court of the United States has "warned" in another context that third parties should not assume a right of detrimental reliance. **U.S. v. Mead Corp.**, 533 U.S. 218, 233, 121 S. Ct. 2164, 2174, 150 L. Ed. 2d 292 (2001).

The contexts in Louisiana jurisprudence where a third party plaintiff has been permitted to recover under detrimental reliance are limited. The first occurs in the partnership context when the plaintiff justifiably relies to his or her detriment on a person who holds himself or herself out to be a partner when that person is, in fact, not a partner. The judicial result is to find partnership by estoppel in favor of the plaintiff. **Medline Indus., Inc. v. All-Med Supply & Equip.**, 94-1504, pp. 6-7 (La. App. 1 Cir. 4/7/95), 653 So.2d 830, 834. The second is within the context of the public records doctrine: "the failure to record [an ordinance] in the parish conveyance office may not adversely affect the rights of third parties who rely to their detriment on public records." **Cantrelle v. Gaude**, 97-0020, p. 8 (La. App. 5 Cir. 7/29/97), 700 So.2d 523, 527.

A third context in which detrimental reliance may be extended to a third party plaintiff has some potential bearing on the present case. This application occurs within the context of apparent agency. The Louisiana Supreme Court has ruled that a showing of apparent agency requires "a representation by the principal and detrimental reliance by the third party." **Indep. Fire Ins. Co. v. Able Moving & Storage Co., Inc.**, 94-1982, pp. 7-8 (La. 2/20/95), 650 So.2d 750, 753. The "representation by the principal" must be such that the third party is made to believe that a given person is the principal's agent and is authorized to act on the principal's behalf in a given transaction with the third party. The authority is apparent because the principal has not in fact delegated the authority to the putative agent, but rather has allowed or acted such that, to the reasonable perception of the third party, the agent appears to have the authority at issue. **Guillot v. Blue Cross of La.**, 96-0594, pp. 7-8 (La. App. 3 Cir. 1/29/97) 690 So.2d 91, 99. The third party's detrimental reliance on the apparent authority of the putative agent is a necessary element in the plaintiff's burden of proof.

Here, Louisiana Tank lodges a claim that it relied reasonably and to its detriment on an "expectation" that D&B would pay for its disposal services. (Louisiana Tank brief page 12). The trial court did not find that Louisiana Tank satisfied its burden of proof for a showing of detrimental reliance for the reason that no actions by Mr. Dishman amounted to a "representation" upon which Louisiana Tank could have justifiably relied. As the trial court points out, Louisiana Tank relied to its detriment on assurances *by QPS* that D&B would be responsible for payment. Louisiana Tank's privity relationship was, thus, with QPS and not with D&B.

The "apparent authority" exception to the privity rule for detrimental reliance discussed above would require a showing by Louisiana Tank that

D&B, not QPS, had made some representation or manifestation to Louisiana Tank that QPS had authority to bind D&B. Louisiana Tank, however, acted on nothing but QPS's "word" that D&B would pay. Mr. Dishman made no actions or representations to Louisiana Tank that would lead to a reasonable or justifiable reliance by Louisiana Tank on such an assurance by QPS.

As the trial court's determination that Louisiana Tank did not achieve its burden of proof in showing detrimental reliance was based on a reasonable evaluation of the evidence and testimony before it, and the record does not reflect anything to counter this conclusion, this court will not disturb the trial court's denial of Louisiana Tank's detrimental reliance claim.

Unjust Enrichment

Louisiana Tank alleges finally that the trial court committed manifest error in denying its claim for recovery based on the theory of unjust enrichment as provided in Louisiana Civil Code article 2298:

> A person who has been enriched without cause at the expense of another person is bound to compensate that person. The term 'without cause' is used in this context to exclude cases in which the enrichment results from a valid juridical act or the law. The remedy declared here is subsidiary and shall not be available if the law provides another remedy for the impoverishment or declares a contrary rule.

Unjust enrichment is an alternative and equitable form of recovery available where no contract exists or can be proved by plaintiff. Article 2298 has only been in the Louisiana Civil Code since 1995, but the principle of unjust enrichment had been previously recognized by the Louisiana Supreme Court in **Minyard v. Curtis Prods., Inc.**, 205 So.2d 422 (La. 1967). The standard test for a finding of unjust enrichment requires all of the following to be shown by plaintiff: (1) an enrichment of some value

received by defendant, (2) an impoverishment incurred by plaintiff, (3) a connection between the enrichment and impoverishment, (4) the absence of justification or cause for the enrichment and impoverishment, and (5) the lack of any other remedy at law. **Gulfstream Serv., Inc. v. Hot Energy Serv., Inc.**, 04-1223, p. 6 (La. App. 1 Cir. 3/24/05), 907 So.2d 96, 101, *writ denied*, 05-1064 (La. 6/17/05); 904 So.2d 706.

In the instant case, the trial court considered the "impoverishment" element and allowed that Louisiana Tank may have been impoverished to the extent that it "is out of pocket some money" due to the unpaid invoices. The trial court failed to find, however, as to the "enrichment" element, that D&B received any enrichment under the available facts and evidence: "[D&B] spent almost a half million dollars for which they have recovered zero, so I don't know how we can have an enrichment. That they may have been trying to enhance their position, that may be correct, but that they have been enriched, I don't see where that occurred."

Louisiana Tank argues in its brief that its services did indeed contribute to an enrichment for D&B in that "the services were necessary for attempted completion of the [well] in the upper zone" and that the trial court erred in finding "that Dishman was not enriched because the upper zone did not continue to produce for a long period of time." (Louisiana Tank brief page 14).

While it is not necessary that the enrichment be of a strict pecuniary amount, it must still be "something of value." **McCarty Corp. v. Pullman-Kellogg**, 571 F. Supp. 1341, 1363 (M.D. La.1983), *rev'd in part on other grounds*, 751 F.2d 750 (5th Cir. 1985). This court has defined enrichment as follows: a gain in assets, an economic benefit for which defendant has not fairly paid, or reduction of his liabilities. **Gulfstream**, 04-1223 at 9, 907

So.2d at 102. Mr. Dishman admitted in his testimony that the services provided by Louisiana Tank were at least indirectly necessary for well production. Mr. Dishman also testified that he had at least an indirect financial interest in getting the well to produce (Record 243). When questioned by Louisiana Tank counsel at trial as to the extent of this interest and whether he entertained or expected actual profit, Mr. Dishman remained firm that his aim and hope in agreeing to fund the perforation of the upper zone was to recoup the approximately $450,000.00 in unpaid bills that QPS owed him from the failed efforts in the lower zone: "I just expected to be repaid for my work on it." Mr. Mhire of QPS similarly testified that the goal of the cooperation between QPS and D&B was to "get the well going and repay them what we could."

Louisiana Tank's assertions that D&B received something of value from its services, perhaps the extension of a hope that the well could produce, are more properly laid at the feet of QPS, the well operator responsible for the ongoing costs and expenses of the well once it began producing on or about July 19-22, 2002. D&B terminated its financial responsibility vis-à-vis the well at that point in time and accepted no further responsibility for costs and expenses. As neither the operator nor owner of a working interest, D&B could no more claim any forthcoming benefits from the well operation than any other creditor of QPS. Had the well become a gusher, D&B would be seeking to recover its lost outlay from QPS along with Louisiana Tank and other creditors of QPS. The generic hope of the well's production success, shared by all involved, cannot shift the benefit or enrichment received from QPS to D&B.

This court finds no manifest error in the trial court's finding that D&B enjoyed no enrichment under the facts presented in this matter.

CONCLUSION

For the reasons assigned herein, the judgment of the trial court is affirmed. All costs of this appeal are assessed against appellant Louisiana Tank, Inc.

AFFIRMED.