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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 Opinion Number: _____

Court of Appeals of New Mexico
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4 **No. A-1-CA-40263**



Mark Reynolds

5 **BLAIR BATTISHILL,**

6 Plaintiff/Counterdefendant-Appellant,

7 v.

8 **PHILLIP INGRAM,**

9 Defendant/Counterplaintiff-Appellee.

10 **APPEAL FROM THE DISTRICT COURT OF LEA COUNTY**

11 **Lee A. Kirksey, District Court Judge**

12 Fargason, Booth, St. Clair, Richards & Wilkins, LLP

13 Damon Richards

14 Lubbock, TX

15 Gary C. Mitchell, LLC

16 Gary C. Mitchell

17 Ruidoso, NM

18 for Appellant

19 Kraft Law LLP

20 Richard L. Kraft

21 Roswell, NM

22 for Appellee

1 **OPINION**

2 **BOGARDUS, Judge.**

3 {1} Plaintiff Blair Battishill appeals the district court’s grant of summary
4 judgment in favor of Defendant Philip Ingram. The district court granted
5 Defendant’s motion pursuant to *Merrill v. Davis*, 1983-NMSC-070, ¶¶ 6-9, 100
6 N.M. 552, 673 P.2d 1285, where our Supreme Court held that unmarried, cohabiting
7 adults cannot enter into an implied agreement to pool earnings and share
8 accumulations acquired during cohabitation. Plaintiff argues that the district court
9 “immediately viewed this case [as] a common law marriage matter . . . rather than
10 [considering] the business arrangements of the parties” and therefore erred in failing
11 to consider “the substantive law governing each [sic] cause of action.” We affirm
12 summary judgment for all claims except unjust enrichment, which we reverse in
13 part.

14 **BACKGROUND**

15 {2} The parties lived together as an unmarried couple from 2005 to 2015.
16 Defendant financially provided for the parties, and Plaintiff performed homemaking
17 services such as cleaning, cooking, and caring for Defendant’s two children. In 2012,
18 Defendant left his job and formed Ingram Professional Services, Inc. and IPS Energy
19 (collectively, IPS). The parties provide contradicting accounts regarding Plaintiff’s
20 role in starting IPS. Plaintiff claims that the parties agreed to start the business

1 together, and that, in exchange for half-ownership of IPS, she performed
2 administrative duties and provided homemaking services for Defendant. Defendant
3 denies that the parties agreed to share ownership of the business, characterizes
4 Plaintiff’s contributions to IPS as “minimal actions,” and asserts that Plaintiff was
5 only an IPS employee for less than a year. Plaintiff received compensation from IPS
6 in 2014 and 2015. The parties separated in late 2015, and Plaintiff filed suit against
7 Defendant for breach of contract, unjust enrichment, promissory estoppel, common
8 law fraud, constructive fraud, conversion, negligent representation, breach of
9 implied covenant of good faith and fair dealing, and prima facie tort. Defendant filed
10 a motion for summary judgment. At the motion hearing, the district court orally
11 granted Defendant’s motion for summary judgment, ruling that Plaintiff failed to
12 provide material issues of fact pursuant to *Merrill*, 1983-NMSC-070, ¶¶ 6-9.
13 Plaintiff appeals the district court’s grant of summary judgment.¹

¹Plaintiff presents three additional unavailing issues on appeal. First, Plaintiff contends that the district court erred in allowing the parties to testify at a hearing on a motion to compel. Plaintiff cites no authority to support her argument. Thus, we do not review it. *See In re Adoption of Doe*, 1984-NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329 (“Issues raised in appellate briefs which are unsupported by cited authority will not be reviewed by us on appeal.”). Second, Plaintiff argues for the case to be certified to our Supreme Court because the district court treated her as a member of a suspect class by denying trial. Third, Plaintiff “seeks reversal of the [o]rder denying her [m]otion to [r]econsider” a motion to compel. Plaintiff fails to develop arguments regarding these issues and therefore we do not consider them. *See Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 15, 137 N.M. 339, 110 P.3d 1076 (explaining that the appellate courts do not review unclear or undeveloped arguments).

1 **DISCUSSION**

2 {3} This case requires us to consider the application of *Merrill*, 1983-NMSC-070,
3 ¶¶ 6-9, to civil claims between unmarried cohabitants disputing ownership of a
4 business. In *Merrill*, our Supreme Court clarified that the prohibition against
5 common-law marriage preempts unmarried cohabitants from entering into an
6 implied agreement to jointly own property. *Id.* The parties in *Merrill* lived together
7 unmarried for approximately five years. *Id.* ¶ 2. During this period, the petitioner
8 purchased and managed a business, and invested \$18,000 toward the construction of
9 a house on land that the parties owned as tenants in common. *See id.* ¶¶ 3-4. After
10 the parties separated, the respondent filed suit and argued that the parties’ conduct
11 created “an implied agreement to pool earnings and share accumulations acquired
12 during cohabitation.” *Id.* ¶ 5. Therefore, the respondent concluded, she owned one-
13 half property interest in the business and the co-owned land should be void of an
14 \$18,000 property lien. *Id.* Our Supreme Court rejected the respondent’s conclusion,
15 holding that an implied agreement does not grant the respondent an interest in the
16 property. *Id.* ¶ 6. The Court reasoned that allowing a party to gain property rights by
17 the “implications that flow from cohabitation” would circumvent New Mexico’s
18 prohibition against common-law marriage. *Id.* ¶ 9. Accordingly, *Merrill* stands for
19 the proposition that unmarried cohabitants must enter into an express agreement to
20 jointly own property. *See id.*

1 **I. Standard of Review**

2 {4} We review summary judgment de novo. *Juneau v. Intel Corp.*, 2006-NMSC-
3 002, ¶ 8, 139 N.M. 12, 127 P.3d 548. “[S]ummary judgment is appropriate where
4 ‘the pleadings, depositions, answers to interrogatories and admissions on file,
5 together with the affidavits, if any, show that there is no genuine issue as to any
6 material fact and that the moving party is entitled to a judgment as a matter of law.’”
7 *Guest v. Berardinelli*, 2008-NMCA-144, ¶ 6, 145 N.M. 186, 195 P.3d 353 (quoting
8 Rule 1-056(C) NMRA). “In determining which issues of fact are material facts for
9 purposes of Rule 1-056(C), we look to the substantive law governing the dispute.”
10 *Farmington Police Officers Ass’n Commc’n Workers of Am. Local 7911 v. City of*
11 *Farmington*, 2006-NMCA-077, ¶ 17, 139 N.M. 750, 137 P.3d 1204. Thus, we
12 examine the substantive law of Plaintiff’s claims to determine whether she provides
13 reasonable factual inferences to justify a trial on the issues. *See Romero v. Philip*
14 *Morris Inc.*, 2010-NMSC-035, ¶ 10, 148 N.M. 713, 242 P.3d 280 (explaining that
15 the party opposing the summary judgment motion must adduce evidence that results
16 in reasonable inferences that justify a trial on the issues).

17 **II. Breach of Contract**

18 {5} Plaintiff argues that the district court erred in granting summary judgment on
19 her breach of contract claim because the parties presented conflicting evidence
20 regarding the existence of the contract, and therefore New Mexico law requires a

1 jury to determine whether a contract existed. Defendant responds that “[i]t is
2 undisputed that there was never any written contract,” that “there is no evidence of
3 a verbal contract between the parties,” and, therefore, “[n]o fact issue exists to
4 submit the issue of a contract to a jury.” We agree with Defendant and explain.

5 {6} “For a contract to be legally valid and enforceable, it must be factually
6 supported by an offer, an acceptance, consideration, and mutual assent.” *Flemma v.*
7 *Halliburton Energy Sers., Inc.*, 2013-NMSC-022, ¶ 28, 303 P.3d 814 (internal
8 quotation marks and citation omitted). “When the existence of a contract is at issue
9 and the evidence is conflicting or permits more than one inference, it is for the finder
10 of fact to determine whether the contract did in fact exist.” *Talbott v. Roswell Hosp.*
11 *Corp.*, 2005-NMCA-109, ¶ 12, 138 N.M. 189, 118 P.3d 194 (alteration, internal
12 quotation marks, and citation omitted). Cohabiting adults are “as competent as any
13 other persons to contract”; however, they are required to enter into an express
14 contract to jointly own property. *Dominguez v. Cruz*, 1980-NMCA-132, ¶ 4, 95 N.M.
15 1, 617 P.2d 1322; *see Merrill*, 1983-NMSC-070, ¶¶ 6-9.

16 {7} Pursuant to *Merrill*, Plaintiff had the burden to provide evidence resulting in
17 reasonable inferences that the parties entered into an *express* agreement to share
18 ownership of the business. *See Romero*, 2010-NMSC-035, ¶ 10. Plaintiff, however,
19 only presents evidence that supports an inference that the parties may have entered
20 into an *implied* agreement. *See Orion Tech. Res., LLC v. Los Alamos Nat’l Sec., LLC*,

1 2012-NMCA-097, ¶ 9, 287 P.3d 967 (providing that the difference between an
2 express and implied contract is that in an implied contract, the meeting of minds is
3 inferred from the conduct of the parties rather than an express oral or written mutual
4 assent). This evidence includes assertions that Plaintiff performed administrative
5 services for IPS and that the parties worked “toward being successful by pooling
6 [their] resources.” Plaintiff also points to romantic statements made by Defendant
7 such as Defendant promising to take care of her for “the rest of [her] life” and the
8 parties agreeing that “what was his was [hers] and what was [hers] was his.”

9 {8} Noticeably absent is any evidence that could lead to the reasonable inference
10 that there was an offer, an acceptance, or mutual assent to share ownership of IPS
11 expressed in an oral or written manner. *See id.* To the contrary, Plaintiff fails to
12 present evidence that she had any property rights to IPS; all IPS assets are titled
13 exclusively in Defendant’s name, and Defendant raised all initial capital to start the
14 business.

15 {9} Furthermore, Plaintiff’s statements asserting that the parties were equal
16 partners in IPS are insufficient to overcome summary judgment. Plaintiff claims that
17 the parties “decided to start the business together” and that they “are 50/50 partners
18 in IPS.” These statements, however, are merely general assertions that a contract
19 existed. This Court has established that “[g]eneral assertions of the existence of a
20 triable issue are insufficient to overcome summary judgment on appeal.” *Guest,*

1 2008-NMCA-144, ¶ 35. Plaintiff must provide evidence explaining why summary
2 judgment was improper beyond her general version of the facts. *See id.* (explaining
3 that the nonmoving party failed to survive summary judgment because they provided
4 their version of the facts without explaining why summary judgment was improper).
5 Here, Plaintiff fails to do so, and argues that she presents “at a minimum an inference
6 that a contract was entered into and existed.” An inference based on the parties’
7 conduct that a contract existed, however, is an implied contract, *see Orion Tech.*
8 *Res., LLC*, 2012-NMCA-097, ¶ 9, which is insufficient to raise a genuine issue of
9 fact regarding whether two cohabitating parties entered an agreement to jointly own
10 property, *see Merrill*, 1983-NMSC-070, ¶¶ 6-9. Therefore, Plaintiff is entitled to a
11 judgment as a matter of law and the district court did not err in granting summary
12 judgment in the breach of contract claim.

13 **III. Unjust Enrichment**

14 {10} To establish unjust enrichment, Plaintiff must demonstrate a genuine issue of
15 fact regarding whether Defendant knowingly benefitted at Plaintiff’s expense in such
16 a manner that allowing Defendant to retain the benefit would be unjust. *See*
17 *Ontiveros Insulation Co. v. Sanchez*, 2000-NMCA-051, ¶ 11, 129 N.M. 200, 3 P.3d
18 695. Unjust enrichment “provide[s] relief where, in the absence of privity, a party
19 cannot claim relief in contract and instead must seek refuge in equity.” *Id.* Plaintiff
20 argues that Defendant knowingly benefitted from Plaintiff’s professional services

1 for IPS and the homemaking services she performed while Defendant expanded IPS.
2 Defendant responds that no issue of fact exists because the district court determined
3 that this was a domestic relationship and not a business relationship. We agree with
4 Plaintiff in part and Defendant in part.

5 {11} Plaintiff presents evidence that creates an issue of fact regarding the
6 professional benefits she provided to Defendant. Plaintiff argues that she worked at
7 IPS from 2012 to 2014, but received compensation for only ten months. In Plaintiff's
8 affidavit, she asserts that she started performing services for IPS at the moment of
9 its incorporation. The record contains text messages and deposition transcripts
10 indicating that Plaintiff performed services for IPS until 2015. This includes
11 deposition statements confirming that Plaintiff would bind IPS to vehicle insurance
12 policies "back in 2014 and [20]15." Further deposition statements maintain that
13 Plaintiff trained an employee regarding IPS invoicing in 2015, leading to a
14 reasonable inference that Plaintiff had performed the service up to that point. *See*
15 *Romero*, 2010-NMSC-035, ¶ 10. Moreover, evidence suggests that Plaintiff only
16 received compensation for part of 2014 and 2015, which supports her contention that
17 she "work[ed] at IPS without compensation for at least two years." Consequently,
18 we conclude that Plaintiff presented sufficient evidence to allow reasonable minds
19 to differ on whether Defendant received unjust benefits from Plaintiff's professional
20 services.

1 {12} Next, we consider Plaintiff’s argument that Defendant unjustly benefitted
2 from her homemaking services. We recognize that the value provided by
3 homemaking efforts must be considered when cohabitating parties enter an express
4 agreement for mutual support, joint purchase of personal property, and distribution
5 of incomes. *See Dominguez*, 1980-NMCA-132, ¶ 4 (establishing that unmarried,
6 cohabitating parties can enter into an oral agreement for mutual support, joint
7 purchase of personal property, and distribution of incomes). As we explained above,
8 however, summary judgment was properly granted on the issue of an express
9 agreement. Accordingly, we must consider whether a party can bring a claim for
10 unjust enrichment based on homemaking services provided to a cohabitating partner
11 if the parties did not enter an express agreement to pool earnings and share
12 accumulations.

13 {13} Generally, a party may invoke unjust enrichment as an equitable claim in the
14 absence of a contract. *See Ontiveros Insulation Co.*, 2000-NMCA-051, ¶ 11; *see also*
15 *Arena Res., Inc. v. Obo, Inc.*, 2010-NMCA-061, ¶ 14, 148 N.M. 483, 238 P.3d 357
16 (explaining that unjust enrichment is an “implied obligation[] where, on the basis of
17 justice and equity, the law will impose a contractual relationship between parties,
18 regardless of their assent thereto” (emphasis, internal quotation marks, and citation
19 omitted)). In *Merrill*, 1983-NMSC-070, ¶ 9, our Supreme Court rejected an implied
20 obligation for cohabiting, unmarried individuals to jointly own property. As the

1 *Merrill* Court stated, “If we were to say that the same rights that cannot be gained
2 by common-law marriage may be gained by the implications that flow from
3 cohabitation, then we have circumvented the prohibition of common-law marriage.”
4 *Id.* We similarly refuse to circumvent the prohibition of common-law marriage by
5 allowing a claim for unjust enrichment based on implied obligations.

6 {14} As a result, we reverse and remand Plaintiff’s claim for unjust enrichment
7 based solely on any uncompensated administrative services Plaintiff provided to IPS
8 between 2012 and 2015.

9 **IV. Promissory Estoppel**

10 {15} Plaintiff argues that the district court inappropriately granted summary
11 judgment on her promissory estoppel claim because “[t]he reasonable inferences and
12 material facts are that [Defendant] made a promise to start a business together and
13 share ownership 50/50,” and that Plaintiff performed professional and homemaking
14 services in reliance of that promise. “[T]he essential elements of promissory estoppel
15 are: (1) [a]n actual promise must have been made which in fact induced the
16 promisee’s action or forbearance; (2) [t]he promisee’s reliance on the promise must
17 have been reasonable; (3) [t]he promisee’s action or forbearance must have
18 amounted to a substantial change in position; (4) [t]he promisee’s action or
19 forbearance must have been actually foreseen or reasonably foreseeable to the
20 promisor when making the promise; and (5) enforcement of the promise is required

1 to prevent injustice.” *Strata Prod. Co. v. Mercury Expl. Co.*, 1996-NMSC-016, ¶ 20,
2 121 N.M. 622, 916 P.2d 822.

3 {16} Plaintiff relies on the homemaking services she provided as evidence that
4 leads to the reasonable inference that Defendant made a promise to share ownership
5 of IPS. Homemaking services provided in the context of the romantic relationship,
6 however, do not lead to a reasonable inference that Defendant promised half
7 ownership of IPS. *See Romero*, 2010-NMSC-035, ¶ 10 (asserting that the party
8 opposing summary judgment “may not simply argue that such evidentiary facts
9 might exist, nor may it rest upon the allegations of the complaint” (alteration, internal
10 quotation marks, and citation omitted)). Plaintiff fails to present any further evidence
11 that would raise a question of fact as to whether Defendant promised half ownership
12 of IPS.²

13 {17} Furthermore, relief is inappropriate under principles of promissory estoppel
14 where an implied agreement is insufficient to enter into a contract to jointly own
15 property. *Cf. Chavez v. Manville Prods. Corp.*, 1989-NMSC-050, ¶ 15, 108 N.M.
16 643, 777 P.2d 371 (holding that relief under principles of promissory estoppel is

² Plaintiff does not argue that Defendant’s generic romantic statement constitute evidence that Defendant made a promise to share ownership of IPS, thus we do not consider the argument. *See Pirtle v. Legis. Council Comm’n. of N.M. Legislature*, 2021-NMSC-026, ¶ 58, 492 P.3d 586 (“As a general rule, appellate courts rely on adversarial briefing to decide legal issues and avoid reaching out to construct legal arguments that the parties, intentionally or otherwise, have not presented.”).

1 inappropriate when oral representations are insufficient to amend an express
2 agreement). Allowing Plaintiff to recover half-ownership of Defendant's property
3 based on homemaking services provided in the context of a romantic relationship
4 and on the parties' shared lifestyle would circumvent the prohibition against
5 common law marriage. *See Merrill*, 1983-NMSC-070, ¶ 9.

6 **V. Negligent Misrepresentation**

7 {18} "The law of negligent misrepresentation is governed by negligence principles.
8 Thus, the person providing the information must have a duty to provide the
9 information, and the person relying on it must have a right to do so." *Nance v. L.J.*
10 *Dolloff Assocs., Inc.*, 2006-NMCA-012, ¶ 15, 138 N.M. 851, 126 P.3d 1215. For
11 Plaintiff's negligent representation claim to survive a motion for summary judgment,
12 Plaintiff must raise issues of fact regarding: "(1) [D]efendant made a material
13 representation to [P]laintiff, (2) [P]laintiff relied upon the representation, (3)
14 [D]efendant knew the representation was false or made it recklessly, and (4)
15 [D]efendant intended to induce reliance by [P]laintiff." *Robey v. Parnell*, 2017-
16 NMCA-038, ¶ 31, 392 P.3d 642.

17 {19} Plaintiff fails to present a genuine issue of material fact as to the first, third,
18 and fourth elements of her claim. Plaintiff asserts that Defendant's statement that the
19 parties "would start the business together and own it 50/50," and the generic
20 romantic statements he made in the context of their relationship create an issue of

1 fact sufficient to support a negligent misrepresentation claim. Plaintiff argues that
2 Defendant knew that his representations to Plaintiff were false or made them
3 recklessly and that Defendant “owed a duty to disclose the truth to [Plaintiff].” As
4 previously discussed, however, Plaintiff fails to provide any evidence that Defendant
5 made an express representation to Plaintiff that the parties jointly own IPS.
6 Plaintiff’s affidavit only includes conclusory statements and generic romantic
7 statements. Conclusory statements are insufficient to survive summary judgment,
8 *see Guest*, 2008-NMCA-144, ¶ 35, and romantic statements made between
9 cohabitating parties cannot provide the same rights that cannot be gained by
10 common-law marriage, *see Merrill*, 1983-NMSC-070, ¶¶ 6-9. Therefore, we
11 conclude that Plaintiff provides no evidence that would lead to a reasonable
12 inference that Defendant knew any representation made was false or made
13 recklessly, or that Defendant intended reliance by Plaintiff.

14 **VI. Common Law Fraud**

15 {20} “The elements of common-law fraud are: ([1]) a misrepresentation of fact,
16 ([2]) known by the maker to be false, ([3]) made with the intent to deceive and to
17 induce the other party to act in reliance, and ([4]) actually relied on by the other party
18 to his or her detriment.” *Lotspeich v. Golden Oil Co.*, ¶ 9, 1998-NMCA-101, 125
19 N.M. 365, 961 P.2d 790 (internal quotation marks and citation omitted). Similar to
20 the negligent misrepresentation analysis, Plaintiff fails to provide any evidence that

1 Defendant made a representation that he knew to be false with the intent to deceive
2 and to induce her to act in reliance. Defendant’s romantic statements coupled with
3 Plaintiff’s administrative and homemaking services are insufficient for a reasonable
4 reliance that Defendant knowingly made a false representation to induce Plaintiff to
5 perform the services. *See Romero*, 2010-NMSC-035, ¶ 10.

6 **VII. Constructive Fraud**

7 {21} “Constructive fraud is a breach of a legal or equitable duty irrespective of the
8 moral guilt of the fraud feisor, and it is not necessary that actual dishonesty of
9 purpose nor intent to deceive exist.” *Gabriele v. Gabriele*, 2018-NMCA-042, ¶ 13
10 n.4, 421 P.3d 828 (internal quotation marks and citation omitted). “An action for
11 constructive fraud is maintainable where there is a nondisclosure of material facts
12 and the person charged with the constructive fraud had a duty to speak under existing
13 circumstances.” *Barber’s Super Mkts., Inc. v. Stryker*, 1972-NMCA-089, ¶ 42, 84
14 N.M. 181, 500 P.2d 1304.

15 {22} Plaintiff claims Defendant “had a duty to speak up due to his business
16 association with [Plaintiff], especially considering that they were supposed to be
17 partners in IPS.” As discussed above, however, any business association between
18 the parties required an express agreement, *see Merrill*, 1983-NMSC-070, ¶¶ 6-9, and
19 Plaintiff fails to provide any evidence of an express agreement to share ownership
20 of the business. Further, New Mexico courts have established a duty between

1 spouses as a basis for constructive fraud only when “one spouse receives grossly
2 inadequate consideration for forfeiting his or her interest in community property.”
3 *Gabriele*, 2018-NMCA-042, ¶ 13. This duty, however, is based on the fiduciary
4 relationship created by marriage. *Primus v. Clark*, 1944-NMSC-030, ¶¶ 13-15, 48
5 N.M. 240, 149 P.2d 535. In this case, the parties did not marry, thus, there is no
6 fiduciary relationship. Moreover, Plaintiff fails to cite authority to support any
7 additional duty between the parties. *See In re Adoption of Doe*, 1984-NMSC-024,
8 ¶ 2, 100 N.M. 764, 676 P.2d 1329 (“Issues raised in appellate briefs which are
9 unsupported by cited authority will not be reviewed by us on appeal.”). Accordingly,
10 there is no evidence that Defendant owed Plaintiff a duty to speak under the
11 circumstances.

12 **VIII. Conversion by Demand and Refusal**

13 {23} We understand Plaintiff’s argument to be that there are material facts that
14 demonstrate she had ownership and right to possession of one-half interest of IPS
15 because she formed a partnership with Defendant. And thus, Plaintiff maintains,
16 Defendant is liable of conversion by demand and refusal because he “engaged in
17 deceptive practices, in order to have the corporation established without granting 50
18 [percent] of the stock in the corporation to” Plaintiff.

19 {24} Conversion is “the unlawful exercise of dominion and control over property
20 belonging to another in defiance of the owner’s rights, or acts constituting an

1 unauthorized and injurious use of another’s property, or a wrongful detention after
2 demand has been made.” *In re Yalkut*, 2008-NMSC-009, ¶ 25, 143 N.M. 387, 176
3 P.3d 1119 (internal quotation marks and citation omitted). “The elements of the tort
4 of conversion by demand and refusal are: (1) that the plaintiff had the right of
5 possession of personal property; (2) that the plaintiff demanded that the defendant
6 return the property to [the] plaintiff; and (3) that the defendant refused to return the
7 property to [the] plaintiff.” *Nosker v. Trinity Land Co.*, 1988-NMCA-035, ¶ 15, 107
8 N.M. 333, 757 P.2d 803.

9 {25} Plaintiff fails to establish a question of material fact regarding her right of
10 possession of personal property. As we have discussed, a partnership between the
11 parties requires an express contract. *See Merrill*, 1983-NMSC-070, ¶¶ 6-9. Plaintiff
12 presents no evidence of such a contract. Moreover, it is undisputed that IPS is titled
13 in Defendant’s name. Accordingly, the district court did not err in granting summary
14 judgment on Plaintiff’s conversion claim.

15 **IX. Prima Facie Tort**

16 {26} Plaintiff contends that Defendant “failed to deliver what he promised and
17 represented” and “from his failure to comply with the promises, there is a reasonable
18 inference that he intended to injure” Plaintiff. “The elements of a prima facie tort are
19 (1) an intentional, lawful act, (2) committed with the intent to injure the plaintiff, (3)
20 causing injury to the plaintiff, and (4) the absence of justification for the injurious

1 act.” *Vigil v. Pub. Serv. Co. of N.M.*, 2004-NMCA-085, ¶ 10, 136 N.M. 70, 94 P.3d
2 813 (text only) (citation omitted).

3 {27} In this case, the alleged injurious act is Defendant’s failure to convey half the
4 interest of IPS to Plaintiff. Plaintiff, however, fails to raise a material issue of fact as
5 to the absence of justification for the alleged injurious act. *Merrill*, 1983-NMSC-
6 070, ¶¶ 6-9, requires the parties to enter into an express agreement to jointly own
7 IPS. Plaintiff fails to provide any evidence that leads to a reasonable inference that
8 the parties entered into the required agreement. *See Romero*, 2010-NMSC-035, ¶ 10.
9 Accordingly, Defendant is justified in not conveying any IPS interest to Plaintiff.
10 Furthermore, as explained above, the unfulfilled romantic statements are insufficient
11 to establish a question of fact regarding an intent to injure the party. Consequently,
12 Plaintiff failed to meet her standard of raising a genuine question of fact as to her
13 prima facie tort claim.

14 **X. Covenant of Good Faith and Fair Dealing**

15 {28} “The concept of the implied covenant of good faith and fair dealing requires
16 that neither party do anything that will injure the rights of the other to receive the
17 benefit of their agreement.” *Ruegsegger v. W. N.M. Univ. Bd. of Regents*, 2007-
18 NMCA-030, ¶ 39, 141 N.M. 306, 154 P.3d 681 (internal quotation marks and
19 citation omitted). The parties’ cohabitating romantic relationship requires them to
20 enter into an express agreement to jointly own property. *See Merrill*, 1983-NMSC-

1 070, ¶¶ 6-9. Plaintiff fails to provide evidence of an express agreement. Therefore,
2 there is no agreement and no implied covenant of good faith and fair dealing.
3 Defendant is entitled to judgment as a matter of law.

4 **CONCLUSION**

5 {29} For the foregoing reasons, we reverse for limited review of Plaintiff's unjust
6 enrichment claim and affirm summary judgment for the rest of the claims.

7 {30} **IT IS SO ORDERED.**

8 
9 **KRISTINA BOCARDUS, Judge**

10 **WE CONCUR:**

11 
12 **JACQUELINE R. MEDINA, Judge**

13 
14 **JANE B. YOHALEM, Judge**