Quantum Meruit

[To know it Is to love it]

COUNSEL'S CORNER

Quantum meruit is of course a Latin phrase. It means "what one has earned." In the context of contract law, it used something like "reasonable value of services."

Northeast Independent School District (San Antonio) hired STR Constructors to renovate a middle school. In turn, STR engaged Newman Tile as a subcontractor, to install about 3500 square feet of tile in the kitchen.

Problems arose between STR and Newman right away. STR demanded that Newman use epoxy grout to install the quarry tile. Newman insisted that its bid excluded epoxy grout. Under protest and claiming that epoxy grout and the added labor necessary to use it were unnecessary, Newman complied with STR's instructions.

And then Newman submitted a change order seeking recovery of its added costs.

And then STR refused to pay it.

And then Newman sued STR for quantum meruit and breach of contract. Newman won in trial court; STR appealed.

We don't get many cases involving quantum meruit, probably because appellate courts have told us for years that the remedy of being paid "the value of your services" is inapplicable when the parties have signed a contract. As STR and Newman did in this case.

Regardless, Newman claimed that it was entitled to quantum meruit damages – the value of its services – because STR and ultimately Northeast ISD accepted and retained the benefits of Newman's work.

The evidence submitted by Newman was that it provided labor and materials for STR's benefit, including additional mortar bed on the kitchen floor, blue bullnose tile as a finishing trim on a tile wall, epoxy grout, restocking fees, and weekend and overtime work. Newman submitted five Change Orders and Payment Requests aggregating approximately $25,000 for such labor and materials.

The Appeals Court determined that, if the trial court judgment is not upheld, STR would be unjustly enriched while Newman would be unfairly penalized. The Court then reviewed the [relatively] small claims submitted by Newman and compared to the overall contract price of $5.2 million paid by Northeast ISD.

And just to seal the deal, the Court concluded with "STR now seeks to escape liability on a contract it drafted by claiming that its behavior should be ignored because a strict construction of the contract imposes no liability on it." In English I read that to mean that "*STR had an airtight contract which Newman breached, but we are not going to let STR beat up a small subcontractor*."

The Appeals Court then ends with "STR, by [its] course of conduct, has violated the reasonable expectations and values that permeate business transactions." Yes that is exactly what it says on the 8th page. *Serious*.

Newman wins, again. STR loses, again. And good news for us lawyers – we have a new case on quantum meruit!

See *STR Constructors Ltd v. Newman Tile, Inc.;* 08-10-00210-CV; Texas Court of Appeals 8th District, El Paso; February 20, 2013.

Lessons learned:

1. The theory of "*quantum meruit*" still lives in Texas.

2. Although not part of this case, you should know that TREC laws and rules prohibit real estate commission claims based on quantum meruit. In Texas you need a written commission agreement to be lawfully entitled to receive payment.

3. Little guys confronting "The Machine" don't always get beat up in Court. Thankfully.

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