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Proffet v. Dinsdale Instruments, Inc

February 2000

RESTATEMENT, RESTITUTION

Section 1. Unjust Enrichment

A person who has been unjustly enriched at the expense of another is required to make restitution to the other.

Comment:

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c. Unjust retention of benefit. Even where a person has received a benefit from another, he is liable to pay therefor only if the circumstances of its receipt or retention are such that, as between the two persons, it is unjust for him to retain it. The mere fact that a person benefits another is not of itself sufficient to require the other to make restitution therefor.

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d. Where the benefit and loss do not coincide. In [some] situations, a benefit has been received by the defendant but plaintiff has not suffered a corresponding loss or, in some cases, any loss, but nevertheless the enrichment of the defendant would be unjust. In such cases, the defendant may be under a duty to give the plaintiff the amount by which he has been enriched. [For example], where a person in a fiduciary relation to another makes a profit in connection with transactions conducted by him as fiduciary, he is ordinarily accountable to his beneficiary for the profit, although the beneficiary suffered no loss....

* * *

Section 107. Effect of Existence of Bargain upon Right to Restitution.

(1) A person of full capacity who, pursuant to a contract with another, has performed services or transferred property to the other or otherwise has conferred a benefit upon him, is not entitled to compensation therefor other than in accordance with the terms of such bargain, unless the transaction is rescinded for fraud, mistake, duress, undue influence or illegality, or unless the other has failed to perform his part of the bargain.

(2) In the absence of circumstances indicating otherwise, it is inferred that a person who requests another to perform services for him or to transfer property to him thereby bargains to pay therefor.

Comment on Subsection (1):

* * *

b. ... If the suit is for breach of contract the disappointed promisee is entitled to the value of what he was promised. In cases in which he seeks restitution on the ground of unjust enrichment he is entitled to no more than the value of the benefit which he has conferred upon the other party.

Rosener.v. First Financial Mortgage, Inc.
Franklin Court of Appeal (1996)

Robert Resener and First Financial Mortgage, Inc. entered into a letter agreement under which Rosener undertook to introduce First Financial to potential mortgage purchasers. The agreement provided that: "This agreement will govern the amount of compensation paid to Rosener in the event successful mortgage transactions are initiated through firms introduced to First Financial by Rosener." The letter goes on to state that First Financial will pay Rosener a fixed percentage commission on "the principal balance of all mortgages sold to or through firms introduced by Rosener for a period of 10 years."

In short order, Rosener began to "register" names of financial institutions by sending frequent letters to First Financial listing the names of the various firms. About five months later, Rosener wrote to First Financial stating that he had "introduced First Financial to nearly every competitive buyer of mortgages in the United States," and that although he might later make additional "introductions," he had fulfilled his agreement by "introducing" First Financial to the listed parties and that he expected to be paid his commission for every transaction consummated between First Financial and any one of the financial institutions he had "registered."

First Financial wrote back telling Rosener it was not the understanding that the mere "registering" of names would lock Rosener into a commission for the next 10 years. At this point, dealings between First Financial and Rosener ceased.

First Financial retained another financial adviser and entered into an agreement with her that provided for the payment of commissions for every <u>completed</u> mortgage transaction procured by her. In 1993 and 1994, the new adviser, completely independently of Rosener's activities and "registrations," procured a number of completed transactions with financial institutions that had earlier been "registered" by Rosener and was paid her commissions. When Rosener learned of this, he sued for breach of contract.

The court below, properly concluding that the letter agreement between Rosener and First Financial was not an integrated agreement, received parol evidence to explain the meaning of the contract. The court found, and we agree, that there was indeed a contract which, because of customary business practices, required as a precondition to Rosener's right to receive a commission that he be the procuring cause of any completed transaction. Accordingly, First Financial had not breached the agreement.

Then, *sua sponte* and inexplicably, the court declared the contract "rescinded" on the ground of mistake and awarded Rosener a quantum meruit recovery for the reasonable value of the services performed. This was error.

A quantum meruit or quasi-contractual recovery rests upon the equitable theory that a contract to pay for services rendered is implied by law for reasons of justice. However, it is well settled that there is no equitable basis for an implied-in-law promise to pay reasonable value when the parties have an actual agreement covering compensation. Quantum meruit is an equitable theory that supplies, by implication and in furtherance of equity, implicitly missing contractual terms. A quantum meruit analysis cannot supply "missing" terms that are not "missing." The reason for the rule is that where the parties have freely, fairly and voluntarily bargained for certain benefits in exchange for undertaking certain obligations, it would be inequitable to imply a different liability.

The court ignored the rule that equitable entitlement to a quantum meruit payment is not implied where the parties have actual contract terms covering payment. A court may not, not even under the guise of equity jurisprudence, substitute the court's own concepts of fairness in place of the parties' own contract.

We reverse.

Quigley v. Rayner

Franklin Supreme Court (1987)

Franklin Supreme Court (1987)Margaret Rayner, an artist of some renown, was a contestant in a competition sponsored by Alexander & Barton, Ltd. to produce a mural for the foyer of that company's new high-rise office building in Dorston, Franklin. Pursuant to the terms of the competition, she painted a 3' x 5' picture of her conception of the mural for entry in the contest and shipped it via common carrier for timely arrival at the offices of the designated contest judges.

The crate containing Ms. Rayner's painting was mistakenly delivered to a retail store in Barnard, Franklin, about 75 miles distant from the intended destination in Dorston. Vernon Quigley, manager of the store in Barnard, noticed the error after the common carrier's driver had departed. It happens that Mr. Quigley's home is equidistant between Barnard and Dorston, so he took it upon himself to load the crate in his pickup truck and, not knowing its contents, deliver it to the Dorston destination stenciled on the crate. The delivery was made within the time allowed under the rules of the contest. The next day would have been too late. Mr. Quigley obtained a receipt for the delivery and sent it and a handwritten explanation of the circumstances to Ms. Rayner, whose return address had also been stenciled on the crate as "sender." In his note, Mr. Quigley stated that he would "appreciate being paid" for his effort.

As fate would have it, Ms. Rayner's painting was selected as the winning entry. The award for the painting of the mural carried with it a commission of $150,000. The results of the contest were widely publicized and came to the attention of Mr. Quigley, who presented Ms. Rayner with a demand for a "sizeable reward" for his part in having procured her the commission. Ms. Rayner declined, offering instead to pay Mr. Quigley $475.00, the amount of the freight bill she would have had to pay the common carrier. He rejected the offer and sued for "$75,000 or such other sum as the court deems proper in quantum meruit."

The trial court awarded him $475.00, the reasonable value measured by what it would have cost Ms. Rayner to obtain the services from another person. In this case, the common carrier's freight bill for making the delivery was a convenient point of reference. The Court of Appeal affirmed.

Mr. Quigley had no contractual obligation to deliver the crate to Dorston and no contractual right to be paid for it. At the very best, he was a gratuitous bailee whose obligation was to exercise minimal care to safeguard the crate.

The absence of a contract between Ms. Rayner and Mr. Quigley, however, does not preclude recovery in quantum meruit. The underlying idea behind quantum meruit is the law's distaste for unjust enrichment where one confers upon another a benefit that has enriched the other. But it is one thing to require that the defendant be benefited by services and quite another to measure the value of those services by the amount by which the defendant was benefited as a result of them. This resulting benefit theory is the measure the plaintiff urges us to adopt.

The resulting benefit theory is an open-ended standard which can have the effect of giving the plaintiff a recovery that has no reasonable relation to the value of the services rendered. Such a recovery allows the value of the services to depend upon the impact of the benefit conferred on the defendant rather than upon the intrinsic value of the services. Allowing recovery based on the resulting benefit theory would frequently impose, as it would in this case, an unconsented-to exchange of a part of the underlying enterprise and impart a windfall.

While it might be proper in some circumstances to apply the resulting benefit theory of recovery in quantum meruit, this is not such a case. Here, it would confer upon Mr. Quigley a windfall out of proportion to any possible expectation he might have had when he performed the services. The most he could reasonably have expected would have been that he would be paid what it might otherwise have cost the plaintiff. That is the correct measure of damages in these circumstances.

Accordingly, we affirm.