Obligations - Quantum Meruit

Ray Carlton Muirhead
to them.18 In dealing with the punctuation of the exclusionary provision the court was squarely faced with conflicting expert testimony. However, by accepting the opinion that the three phrases of the provision were equal members of a series, each taking the same object, the court applied a well-known rule of English grammar,19 and the only case which held to the contrary was disregarded.20 The court's interpretation of the "Drive Other Cars" clause is in accord with the apparent purpose of such a clause; for though the clause was intended to extend some coverage to an insured when driving another automobile, it is questionable that the insurer desired to allow the insured, because of the intimacy of his family, to drive automobiles always available to him and still be covered.21

In October of 1956, the Louisiana State Insurance Commission approved a new policy known as the Family Combination Automobile Policy. The older Standard Automobile Combination Policy may now be converted to this new policy in accordance with certain regulations of the commission. Although the new Family Combination Automobile Policy contains no "Drive Other Cars" clause, it provides the same type of coverage.22 Though the new policy probably extends broader coverage than the old one in some areas, the same result would have been reached had the instant case arisen under it.23 Thus, by a deletion of possible misleading words, the insurance companies have achieved a clearer statement of the accepted purpose of the older policies' "Drive Other Cars" clause.

H. O. Lestage, III

OBLIGATIONS — QUANTUM MERUIT

Plaintiff, the owner of two adjoining buildings, authorized defendant, lessee of one building, to store goods temporarily in

19. FORESTER & STEADMAN, WRITING AND THINKING 170, Rule 18c (1941 ed.); HODGES, HARRRACE COLLEGE HANDBOOK 129, Rule 13d.
20. See Travelers Indemnity Co. v. Pray, 204 F.2d 821 (6th Cir. 1953).
22. This coverage is provided by the "Persons Insured" clause in light of the definition of the terms "non-owned automobile" and "relative."
23. In the new policy a "non-owned automobile" is defined as one not owned by the named insured or any relative. "Relative" is defined in the policy as a relative who is a resident of the same household. Thus, since the car in the instant case was owned by a relative of the named insured within the definitions of the new policy, the automobile could not be considered a "non-owned automobile" and the named insured would not have been covered while driving it.
the other building rent free. After defendant had so used the second building for about a week, plaintiff sent a letter informing defendant that he would either have to remove his goods or pay rent of $200 per month or $10 per day. Defendant made no reply to the letter and continued to store goods in the second building until he was evicted. The lower court allowed plaintiff to recover rent of $200 per month, apparently on quantum meruit. On appeal to the Court of Appeal, Orleans, held, affirmed. However, the court held that a contract had been formed by defendant's failure to respond to plaintiff's offer. Robert Werk & Co. v. Shifer, 91 So.2d 110 (La. App. 1956).

At common law the count in general assumpsit known as quantum meruit, which means "as much as he deserved," alleged a promise to pay the reasonable value of services rendered. Recovery on the basis of quantum meruit has been liberally allowed to prevent unjust enrichment and when an obligation to pay a debt of uncertain amount has arisen under a contract. Thus recovery of reasonable value may be granted in lieu of damages, when a contract contains no provision for the specific

1. Letter sent from plaintiff to defendant: "We are writing you this letter to clarify the present situation and avoid future misunderstandings. On or about the 28th or 29th of October the writer agreed to let you use a limited portion of the building, 3505 Gravier St., adjoining the building you leased from us. This limited use was understood to be for only a few days. "You have at this writing violated our understanding both in extent of use and time. Not to cause you undue hardship, we will not insist on you vacating the premises, as per our understanding above, but if you continue to occupy the premises we will charge you rent as follows: Two hundred dollars per month or Ten dollars per day. We reserve the right to immediate possession." Robert Werk & Co. v. Shifer, 91 So.2d 110, 112 (La. App. 1956).

2. BOUVIER, LAW DICTIONARY (8th ed. 1914).

3. 3 BLACKSTONE, COMMENTARIES *161; 1 CORBIN, CONTRACTS § 20 (1950); SHIPMAN, HANDBOOK OF COMMON LAW PLEADING 167 (3d ed. 1923).

4. When a sum certain money debt is created by the performance under a contract between the parties—that sum is due and no other sum may be recovered. Dermott v. Jones, 69 U.S. (2 Wall.) 1 (1864); Dibol v. Minott, 9 Iowa 403 (1859); Lynch v. Stebbins, 127 Me. 203, 142 Atl. 735 (1928); Rodemer v. Gonder, Hazlehurst & Co., 9 Gill 288 (Md. 1850); 5 CORBIN, CONTRACTS §§ 1109, 1111 (1950); RESTATEMENT, CONTRACTS §§ 350-351 (1932).

5. Professor Winfield lists three categories in which quantum meruit may be used: (1) when one party to a contract has committed a breach, and the other seeks reasonable remuneration for performance rendered rather than damages; (2) where a new contract is impliedly substituted for the original contract; (3) as a rule of law calling for reasonable remuneration where a contract does not fix a compensation to be paid for work rendered under it. He further states that the first category is quasi-contractual in nature and the latter two contractual. WINFIELD, THE LAW OF TORT 157-60 (1931). In a later book Professor Winfield divides the first category into three classifications. WINFIELD, THE LAW OF QUASI-CONTRACT 51-60 (1952).

6. Quantum meruit may be used as an alternate remedy to damages in cases of breach of contract. Wellston Coal Co. v. Franklin Paper Co., 57 Ohio St. 182, 48 N.E. 888 (1897); 5 CORBIN, CONTRACTS § 1104 (1950); WINFIELD, THE LAW
amount of compensation;\(^7\) when there is an impliedly substituted contract;\(^8\) when the plaintiff himself falls short of substantial performance\(^9\) yet seeks recovery because the other party has been enriched due to his efforts;\(^10\) or generally, any time a quasi-contractual obligation to pay for services rendered arises.\(^11\)

The idea of a quantum meruit recovery seems to have first appeared in Louisiana in 1820.\(^12\) Since that time its use has fol-

of Quasi-Contracts 51-52 (1952); Restatement, Contracts § 384(1), 328 (1932).

The two are quite different because in theory, at least, an award of damages is the method of placing the plaintiff in the position that he would have been in if the contract had been fully performed, while a recovery based on quantum meruit restores to plaintiff the value of his services. 5 Corbin, Contracts §§ 1102, 1107 (1950); Restatement, Contracts § 347, Comment (b) (1932).

Thus, when a defendant breaches a contract a quantum meruit recovery may be had. Chicago v. Tilley, 103 U.S. 146 (1880); Spitalny v. Tanner Const. Co., 75 Ariz. 192, 254 P.2d 440 (1953); Mooney v. York Iron Co., 82 Mich. 355, 46 N.W. 376 (1889); Kansas City Structural Steel Co. v. Athletic Bldg. Assn., 297 Mo. 615, 243 S.W. 922 (1922); Burton v. Ross, 251 S.W. 528 (Tex. Civ. App. 1923); 5 Corbin, Contracts § 1109 (1950); Restatement, Contracts § 381 (1932). This recovery, because of its restitution derivation as mentioned above, is not necessarily limited by the contract price. Schwansnick v. Blandin, 65 F.2d 354 (2d Cir. 1933); Hemminger v. Western Assurance Co., 95 Mich. 355, 54 N.W. 949 (1893); Derby v. Johnson, 21 Vt. 17 (1848); 5 Corbin, Contracts §§ 1112-1113 (1950); Restatement, Contracts § 347 (1932).


Contracts expressly stating that a fair and reasonable price is to be paid. Foster v. Young, 172 Cal. 317, 156 Pac. 476 (1916); Nave v. Taughler, 49 Cal. App. 308, 193 Pac. 508 (1920); Jewy v. Busek, 5 Taugh. 302, 126 Eng. Reprint 706 (1814).

8. This naturally would mean that some performance other than the performance called for in the contract was rendered by plaintiff and received by defendant — for instance, extra work might be done outside the contract for the reasonable value of which defendant would be liable. Ruttle v. Ross, 251 S.W. 528 (Tex. Civ. App. 1923); 5 Corbin, Contracts § 1109 (1950); Restatement, Contracts § 381 (1932). This recovery, because of its restitution derivation as mentioned above, is not necessarily limited by the contract price. Schwansnick v. Blandin, 65 F.2d 354 (2d Cir. 1933); Hemminger v. Western Assurance Co., 95 Mich. 355, 54 N.W. 949 (1893); Derby v. Johnson, 21 Vt. 17 (1848); 5 Corbin, Contracts §§ 1112-1113 (1950); Restatement, Contracts § 347 (1932).

9. "The term means that there has been no willful departure from the terms of the contract, and no omission of any of its essential parts, and that the contractor has in good faith performed all of its substantive terms ... There must be such an approximation to complete performance that the owner obtains substantially what was called for by the contract, although it may not be the same in every particular, and although there may be omissions and imperfections on account of which there should be a deduction from the contract price." Ballentine, Law Dictionary 1246 (2d ed. 1948). 3 Corbin, Contracts §§ 700-07 (1950); Shumaker & Lougdorf, Cyclopedic Law Dictionary 1066 (1940).

10. Allen v. McKibbin, 5 Mich. 449 (1858); Francouer v. Stephen, 97 N.H. 30, 81 A.2d 308 (1951); 5 Corbin, Contracts §§ 1124-1127 (1950); Restatement, Contracts § 337 (1932). However, recovery is usually denied if the breach is willful, on plaintiff's part. Harris v. The Cecil N. Bean, 107 F.2d 819 (2d Cir. 1932); Mallory v. Mackaye, 92 Fed. 749 (2d Cir. 1899); Callehan v. Stafford, 38 La. Ann. 556 (1886). Contra: Britton v. Turner, 6 N.H. 481 (1834). But see 5 Corbin, Contracts §§ 1122-1123 (1950) as to what constitutes a willful breach.


12. The quantum meruit concept first appeared in Louisiana jurisprudence in the form of quantum valebant, which deals with the value of goods sold rather than the value for services rendered. Gilly v. Henry, 8 Mart.(O.S.) 402 (La. 1820).
lowed, in the main, the common law development. Actually it appears to be little more than a label to cover a claim or judgment for the reasonable value of services rendered. Procedurally Louisiana courts have applied the rule that quantum meruit recovery may not be granted in cases where plaintiff prays for a sum specified in a contract but fails to prove the agreement for compensation as alleged. In such a case the filing of a separate suit based on a quantum meruit theory is necessary. The cautious pleader, however, may avoid this difficulty by pleading in the alternative.

In the instant case plaintiff apparently sought recovery of rent on the basis of an alleged contract fixing the amount due. The trial court did not find that a contract of lease had been proved but allowed recovery of "$873.33 4 month 11 days at 200 per mo. on quantum meruit No relationship of landlord & Tenant." In consequence, defendant argued on appeal that a quantum meruit recovery could not be allowed.


It would appear that it is possible to have a quantum meruit recovery greater than a contract price where the circumstances warrant it. Joublanc v. Daunoy, 6 La. 656 (1834); Villalobos v. Mooney, 2 La. 331 (1831).

Quantum meruit naturally connotes the reasonable value theme so it is shorter to say quantum meruit rather than stating a plea for reasonable value; then, too, it is in Latin. The actual need for quantum meruit in Louisiana law is doubtful in that there seems to be adequate provisions in the Civil Code to handle any such cases. See LA. CIVIL CODE arts. 21, 1928, 1935(3), 1965, 2292, 2293 et seq., 2295 et seq., 2765 (1870).

13. Duncan v. Blackman, 3 La. App. 421, 423 (1926), sets out the following, which seems to be a good general rule: "In order for plaintiff to recover judgment against defendant on a quantum meruit it must appear that there was a contract express or implied between them or that his services inured to her benefit; and in the absence of any obligation under a contract or quasi-contract, . . . whereby defendant became indebted to plaintiff he is not entitled to judgment for the value of the work done or services rendered by him in connection with the plans and specifications."

14. Quantum meruit naturally connotes the reasonable value theme so it is shorter to say quantum meruit rather than stating a plea for reasonable value; then, too, it is in Latin. The actual need for quantum meruit in Louisiana law is doubtful in that there seems to be adequate provisions in the Civil Code to handle any such cases. See LA. CIVIL CODE arts. 21, 1928, 1935(3), 1965, 2292, 2293 et seq., 2295 et seq., 2765 (1870).


16. The cautious method would be for plaintiff to pray first on the contractual price and alternatively, if the contract be not proven, that verdict be granted on a quantum meruit basis. Barnes v. Saia, 56 So.2d 439 (La. App. 1952). For the common law see 5 CORBIN, CONTRACTS § 1110 (1950); RESTATEMENT, CONTRACTS § 381, Comment (b), and § 384, Comment (b) (1932).

since plaintiff had sought recovery on a contract, which he had failed to prove. Although the court of appeal found that the facts "evidenced conclusively an implied consent to the terms of the letter of November 4th," it disposed of defendant's contention by saying, "Certainly we cannot say from these facts that plaintiff has based its recovery on an alleged contract and therefore cannot recover on a quantum meruit basis."

Pretermitting consideration of the inconsistency suggested by the positions of the lower and appellate courts, the case presents the question of whether contractual rather than quasi-contractual recovery was justified on the facts. The court, apparently relying on Articles 2293, 2294, and 1816, as well as certain prior decisions, indicated it was not necessary to distinguish between the two. A quasi-contractual obligation is imposed by the law "without any agreement," while a contractual obligation rests on agreement or consent. The existence of a contract would depend upon whether defendant had consented to the proposal contained in the letter of November 4th. In view of the fact that he made no reply, consent would have to be inferred from his silence or his actions, or both. The court apparently found that his continued occupancy, after receipt of the letter, constitutes such consent, by virtue of Article 1816.

Common law authorities support the principle that a contract cannot be thrust upon a party in consequence of his mere

18. It would seem that plaintiff alleged the facts, price, etc., which led to the finding of a contract and then merely asked for judgment, rather than specifically stating that he wished to recover on the contract. Likewise, he must not have included in his prayer any request for recovery based entirely on reasonable value, i.e., quantum meruit.
20. Id.
23. LA. CIVIL CODE art. 2294 (1870).
24. Id. at art. 1179.
25. This was one of the distinguishing features cited by the court in its discussion of the case of Hearne v. De Generes, 144 So. 194 (La. App. 1932), because in that case a protest was immediately sent, thus excluding any consent and leaving only quasi-contractual possibilities.
26. LA. Civil Code (1870). Had the court deemed it necessary it could have drawn on a wealth of further support. See LA. CIVIL CODE arts. 1811, 1816, 1817, 1818 (1870); Elfant v. Trahan, 156 La. 220, 100 So. 404 (1924); Shreveport Traction Co. v. Mulhaupt, 122 La. 607, 48 So. 144 (1909); Boyd v. Heine, 41 La. Ann. 393, 6 So. 714 (1889); Baker v. Stoutmeyer & Co., 2 McGoan 61 (La. 1884); Balch v. Young, 23 La. Ann. 272 (1871); Camfrancq v. Pille, 1 La. Ann. 197 (1848); Adle v. Metoyer, 1 La. Ann. 254 (1846); Beach v. McDonough, 5 Rob. 952 (La. 1848); Amory v. Black, 13 La. 264 (1830); Stubner v. Raymond, 17 La. App. 216, 135 So. 676 (1931).
silkence. 27 However, in cases in which a party continues to occupy property after being advised that there will be a charge if he continues to do so, his silence is counted as an acceptance of the terms contained in the notification. 28 Justification for this view lies in the fact that there is more than mere silence involved; there is a continued possession of property with knowledge of the terms on which it may be retained. Although the facts in such a case are not the same as where a tacit reconduction occurs by the lessee's continued occupancy of the leased property after expiration of a lease, the inference is perhaps just as strong. Hence, in the instant case a finding of implied consent based on silence plus continued possession of the property would seem to have been justified.

It appears that under the jurisprudence defendant's position that a quantum meruit recovery was not in order might well have had merit. Whether the court of appeal actually based its decision on an implied contract or on quantum meruit is not entirely clear. However, it does seem that the court was unwilling to deny plaintiff substantive relief by submitting him to the rigors of a rather harsh procedural rule. The difficulties presented by the instant case will be avoided under the proposed draft of the Revised Code of Practice, which contains a provision rejecting the old "theory of a case" doctrine by allowing a plaintiff recovery in the original action when he has shown a right thereto, 29 rather than requiring him to file a second suit.

27. 1 Corbin, Contracts § 73 (1950) (cases cited therein); Restatement, Contracts § 72 (1932).
28. 1 Corbin, Contracts § 75 (1950) (cases cited therein); Restatement, Contracts § 72 (1932).
29. La Civil Code arts. 2688-2689 (1870).
30. The jurisprudence seems quite clear to the effect that when a contract, with a set compensation, is proved there can be no quantum meruit or reasonable value recovery, so long as that contract has been so completed as to set up a sum certain money debt. Therefore, even if plaintiff did not allege entirely upon the contract a quantum meruit recovery would not seem to be in order. Hogan v. Gibson, 12 La. 457 (1838); Willis v. Melville, 19 La. Ann. 13 (1867). See note 4 supra.
31. "It is an established rule of pleading that a complainant must proceed on some definite theory, and on that theory the plaintiff must succeed, or not succeed at all. A complaint cannot be made elastic so as to take form with the varying views of counsel." Mescall v. Tully, 91 Ind. 96, 99 (1883). See Hubert, The Theory of a Case in Louisiana, 24 Tul. L. Rev. 66 (1949).
32. Louisiana State Law Institute, Code of Practice Revision, bk. II, tit. I, art. 8, reads as follows: "Relief granted under pleadings; sufficiency of prayer.
33. "Every final judgment, except one rendered by default, shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has
Under this provision of the proposed code a plaintiff is not restricted to the relief specifically prayed for; in this manner the same result would be achieved without imposing an unnecessary delay on the judicial recognition of plaintiff’s substantive rights.

Ray Carlton Muirhead

TAXATION — ACCOUNTING FOR PREPAID INCOME

The Automobile Club of Michigan furnishes road and map services to its members in accordance with one-year membership contracts, the dues for which are paid in advance. When received, the dues are credited to a liability account entitled “Unearned Membership Dues,” and monthly thereafter one-twelfth of this amount is transferred to an income account designated “Membership Income.” The Commissioner rejected the taxpayer’s method of accounting and held that all membership dues are taxable in the year received. The Tax Court sustained the Commissioner on the grounds that the dues must be reported in the year received in order to reflect income clearly. On appeal to the Court of Appeals for the Sixth Circuit, held, affirmed because money received under a “claim of right” is taxable income in the year received. On certiorari to the Supreme Court, held, affirmed. The taxpayer’s method of accounting failed to reflect income clearly. Automobile Club of Michigan v. Commissioner, 1 L. Ed. 746 (U.S. 1957).

It is within the intent of the income tax laws that each taxpayer should compute his tax liability in accordance with the method of accounting which he regularly employs. Section 42 of the Internal Revenue Code of 1939 expressly states that in

1. Acting in 1945 the Commissioner revoked his 1934 and 1938 rulings which had exempted the taxpayer from federal income taxes and applied the revocation retroactively to the years 1943 and 1944.

2. Automobile Club of Michigan, 20 T.C. 1033, 1047 (1953) : “Since the entire amount of membership dues was income for the year in which received and since the petitioner’s method of accounting for income did not take cognizance of the full amount thereof in such year, it is apparent that the petitioner’s method of accounting did not clearly reflect its income.”


4. Int. Rev. Code of 1939, § 41; U.S. Treas. Reg. 118, § 39.41-43: “It is recognized that no uniform method of accounting can be prescribed for all taxpayers, and the law contemplates that each taxpayer shall adopt such forms and systems of accounting as are in his judgment best suited to his purposes.”