The Limits of a Quasi-Contract

Archon case emphasizes difference between express and implied contracts.

By Steven Nudelman

Relationships in the construction world are often governed by written contracts. These contracts provide predictability, which is critical to the players working on a construction project. This predictability is needed for risk management and developing the scope of work to be performed, the time of performance and the price of the work. What happens, however, when a party to a construction contract is asked to perform work on a project that is apparently outside the scope of its contract?

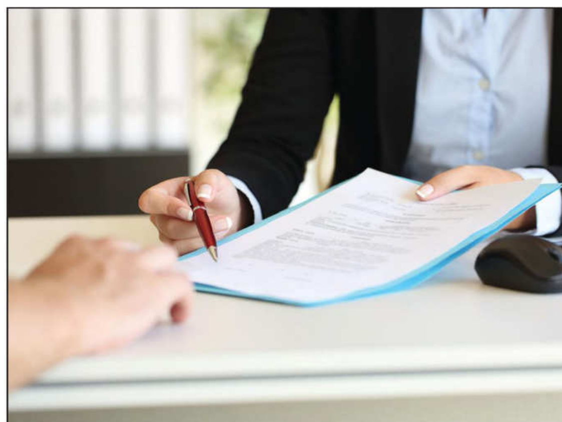
If you answered "change order," then you receive partial credit. Parties enter into a change order, which is executed by both parties to the contract, when they wish to amend their agreement — usually to address changes in contract time and/or contract sum. If the change order document is fully signed, then either party may enforce the change order's provisions as part of their written contract. However, if it is not fully signed or if there is no change order, then what is a subcontractor to do if it performs work, as directed, that is arguably outside the scope of its contract?

If you answered, "quantum meruit," then you receive partial credit again! This month's discussion is about the interplay between a claim for quantum meruit and a claim for breach of contract. By failing to appreciate the distinction between the two before it performed work on a project, a subcontractor was unable to prosecute its claim successfully for almost $250,000 in extra work.

The Archon Case

In Archon Construction Co. v. U.S. Shelter, LLC, 78 N.E.3d 1067 (Ill. App. Ct. March 31, 2017), Archon, an underground utility contractor, sought compensation for extra work against U.S. Shelter, a homebuilder, in connection with the installation of a sanitary sewer system for a residential development in Elgin, Illinois.

After Archon installed the system, the Elgin engineering inspector required additional work to be performed before he would accept the system. Although Archon's proposal (which was accepted by U.S. Shelter) called for the use of polyvinyl chloride (PVC) pipes, Archon was required to excavate, remove and replace a portion of the PVC pipes



with ductile iron pipes. Notably, although Archon only submitted a five-page proposal, it incorporated by reference the plans (and general notes) for the project. The general notes, "Sanitary Sewer" section, provide: "All sanitary sewers shall be televised and tested as required by [the city] prior to acceptance." Although Archon's proposal did not provide for the installation of ductile iron pipes, the general notes specified that the material of the sanitary sewer pipes could be either ductile iron or PVC.

After completing its work, Archon submitted a bill for installing ductile iron pipes — what it termed as "extra work" — to U.S. Shelter, who refused to pay. Archon subsequently brought suit and the Illinois Circuit Court was asked to decide whether Archon was entitled to recover damages.

Archon originally asserted claims for breach of contract and quantum meruit. For reasons that are not clear in the court decision, Archon voluntarily dismissed its breach of contract claim and pressed ahead solely on its quantum meruit claim. Following a trial, the Court ruled in favor of U.S. Shelter, finding that after the sanitary sewer system installed by Archon was not accepted by Elgin, the remediation work performed by Archon was part of the parties' contract and thus not subject to recovery under quantum meruit. The Circuit Court also found that under the terms of the parties' contract, any work removing and replacing material was to be performed at Archon's expense. Archon appealed to the Appellate Court of Illinois, which ultimately agreed with the Illinois Circuit Court.

Definition of Quantum Meruit

To understand the Courts' decisions and appreciate their significance, one must learn the definition of quantum meruit. Black's Law Dictionary (10th ed. 2014) defines quantum merit (Latin for "as much as he has deserved") as, "The reasonable value of services; damages awarded in an amount considered reasonable to compensate a

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person who has rendered services in a quasi-contractual relationship." (Emphasis added.) A quasi-contract is not actually a contract at all; rather, it is an implied contract or "an obligation imposed by law because of some special relationship between the parties or because one of them would otherwise be unjustly enriched." See Black's Law Dictionary (definition of "implied-in-law contract"). As the Illinois Appellate Court explained, "A quasi-contract, or contract implied in law, is one in which no actual agreement between the parties occurred, but a duty is imposed to prevent injustice." Hayes Mechanical, Inc. v. First Industrial, L.P., 351 Ill. App. 3d 1, 8 (2004).

Under Illinois law, to recover under a claim for quantum meruit, a plaintiff must prove that "(1) it performed a service to the defendant, (2) it did not perform the service gratuitously, (3) defendant accepted the service; and (4) no contract existed to prescribe payment for the service." Archon, 78 N.E.3d at 1074 (emphasis added). This last prong of the test proved fatal to Archon's claim because it is well-settled in Illinois (as well as many other states), that "an action in quasi-contract, such as quantum meruit, is precluded by the existence of an express contract between the parties regarding the work that was performed." Id. The Appellate Court reinforced this proposition by quoting an Illinois Supreme Court from 155 years ago:

As in physics, two solid bodies cannot occupy the same space at the same time; so in law and common sense, there can not be an express and an implied contract for the same thing, existing at the same time. This is an axiomatic truth. It is only when parties do not expressly agree, that the law interposes and raises a promise.

Walker v. Brown, 28 Ill. 378, 383 (1862).

The Illinois Appellate Court further explained: When the parties enter into a contract they assume certain risks with an expectation of a return. Sometimes, their expectations are not realized, but they discover that under the contract they assume the risk of having those expectations defeated. As a result, they have no remedy under the contract for restoring their expectations. In desperation, they turn to quasi-contract for recovery. This the law will not allow. Quasi-contract is not a means for shifting a risk one has assumed under contract.

Industrial Lift Truck Serv. Corp. v. Mitsubishi Int'l Corp., 104 Ill. App. 3d 357, 361 (1982).

In sum, both the Circuit and Appellate Courts found that Archon was not entitled to quasi-contractual relief for the costs it incurred for the services it performed. Specifically, the Courts found that the services were covered under the written agreement (and incorporated documents) between Archon and U.S. Shelter, and as the contractor, Archon was responsible for the costs of the additional work. Archon's argument that its contract only called for the installation of PVC pipe, and said nothing about the higher-priced, ductile iron pipe, was unavailing. "That may be so, but that does not change the fact that the subject matter of the contract between the parties was the installation of an acceptable sanitary sewer system" Archon, 78 N.E.3d at 1077.

As the Appellate Court explained, "The work that Archon performed, for which it now seeks money damages from U.S. Shelter, was part and parcel of the contract between the parties. Archon contracted to install a sanitary sewer system acceptable to the city. Its quantum meruit claim seeks to recover for repairing and reinstalling that very same sewer system. That work unquestionably involved the same 'general subject matter' as the contract." Id.

Takeaways

The Archon case is not groundbreaking in any particular way. However, it offers a number of lessons to a subcontractor on a construction project — lessons that cost Archon nearly a quarter million dollars to learn:

First, know your contract. Know the documents that comprise the contract and be sure to familiarize yourself with all of them.

Second, get a change order. Make sure that the change order is signed by all necessary parties and that it complies with all contractual requirements.

Third, know your claims. While the outside reader here may not know why Archon agreed to voluntarily dismiss its breach of contract claim, if it had not done so, the outcome of this case may have changed dramatically. Here, the Appellate Court held that Archon's claim for relief sounded in breach of contract not quantum meruit.

Fourth and most importantly, if you have questions about the above three pointers, check with your construction attorney. It is far more efficient, economical and productive to seek out legal advice early, before a claim has arisen, than it is to do so after a claim is ripe to be asserted. ●

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