WALPOLE WOODWORKERS, INC. *v.* SID MANNING
(SC 18778)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh and Harper, Js.*

Argued September 28—officially released December 18, 2012

David l. Gussak, for the appellant (defendant).

Brent M. Stratton, for the appellee (plaintiff).

Opinion

ROGERS, C. J. The sole issue in this appeal is the measure of damages that a contractor who fails to meet certain requirements of the Home Improvement Act (act), General Statutes (Rev. to 2003) § 20-429 et seq., may recover in quantum meruit when the homeowner invokes the act in bad faith. We hold that, on the facts of this case, the unpaid balance of the contract price is an appropriate measure of damages in restitution, and we affirm the decision of the Appellate Court.

The following facts and procedural history are relevant to this appeal. The parties entered into a written contract for $22,318, under which the plaintiff, Walpole Woodworkers, Inc., agreed to install a fence around certain real property owned by the defendant, Sid Manning. In addition, the contract contained provisions by which the defendant agreed to pay all past due sums, attorney's fees, interest, and costs if he failed to pay pursuant to the terms of the contract. The contract did not contain a starting date or a completion date. The defendant paid a deposit of $11,000 upon execution of the contract and the plaintiff substantially completed the fence installation in November, 2004. Thereafter, in May, 2005, the plaintiff sought payment of the balance owed on the contract. The defendant refused to pay, stating for the first time that his small dog could escape under the fence. The plaintiff designed a free "fix" for the problem, but was unable to install it for six months because the parties could not agree on a date for the work. The "fix" was completed in November, 2006, but the defendant still refused to pay the balance due.

The plaintiff filed its action in May, 2007, alleging that it had performed all of its contractual obligations, and seeking the balance due on the contract, as well as attorney's fees and interest as provided in the agreement. The defendant answered, inter alia, that he was not liable under the contract because the plaintiff had failed to comply with § 20-429 (a) (7)[1] of the act, which requires contracts to contain a starting and completion date.[2] The plaintiff responded that the defendant had raised the act in bad faith.

The attorney fact finder agreed with the defendant that the contract did not comply with § 20-429 (a) (7) because it did not contain a starting or completion date.[3] The fact finder determined, however, under *Habetz* v. *Condon*, 224 Conn. 231, 618 A.2d 501 (1992), that the defendant had invoked the act in bad faith, and recommended that the court render judgment in favor of the plaintiff for the balance due, as well as for attorney's fees, costs, and interest pursuant to the contract. Subsequently the trial court rendered judgment in favor of the plaintiff, after reducing the amount of the attorney's fees award pursuant to General Statutes § 42-150aa (b).[4] On the defendant's appeal, the Appellate Court reversed

the award of attorney's fees, costs, and interest, but otherwise directed judgment in favor of the plaintiff for the balance due under the bad faith doctrine. *Walpole Woodworkers, Inc.* v. *Manning*, 126 Conn. App. 94, 110, 11 A.3d 165 (2012).[5] This certified appeal followed.[6]

I

We briefly outline the contours of the statutory scheme governing home improvement contract disputes. Section 20-429 (a) provides that no home improvement contract shall be valid or enforceable against a homeowner unless it contains certain enumerated criteria.[7] "The aim of the [act] is to promote understanding on the part of consumers with respect to the terms of home improvement contracts and their right to cancel such contracts so as to allow them to make informed decisions when purchasing home improvement services." *Wright Bros. Builders, Inc.* v. *Dowling*, 247 Conn. 218, 231, 720 A.2d 235 (1998).

In *Barrett Builders* v. *Miller*, 215 Conn. 316, 328, 576 A.2d 455 (1990), this court held that a contractor who did not comply with the written contract requirement of the act could not recover in restitution. This result was subsequently modified by one common-law and one statutory exception. First, in *Habetz* v. *Condon*, supra, 224 Conn. 240, this court held that contractors may recover in restitution despite noncompliance with § 20-429 (a), when homeowners invoke the protections of the act in bad faith. Subsequently, the legislature enacted No. 93-215, § 1, of the 1993 Public Acts, now codified as § 20-429 (f), which allows recovery of payment for work performed "based on the reasonable value of services which were requested by the owner" for partial noncompliance with certain requirements of the act when "the court determines that it would be inequitable to deny such recovery."[8] Thus, both *Habetz* and § 20-429 (f) provide for recovery in quantum meruit despite a contractor's noncompliance with certain statutory requirements.[9]

II

The issue in the present case is narrow. The defendant does not contest the trial court's finding that he invoked the act in bad faith, nor does he challenge the continuing vitality of the bad faith exception.[10] On appeal, the only issue before this court is the application of the principles of restitution to the particular facts of this case.

We begin with the standard of review. The determination of whether an equitable doctrine applies in a particular case is a question of law subject to plenary review. *David M. Somers & Associates, P.C.* v. *Busch*, 283 Conn. 396, 408, 927 A.2d 832 (2007). "The amount of damages available under [quantum meruit and unjust enrichment], if any, is [however] a question for the trier of fact. . . . The factual findings of a trial court must

stand, therefore, unless they are clearly erroneous or involve an abuse of discretion." (Citation omitted; internal quotation marks omitted.) Id., 407; *Hartford Whalers Hockey Club* v. *Uniroyal Goodrich Tire Co.*, 231 Conn. 276, 283, 649 A.2d 518 (1994). Because damages under the bad faith exception are measured in restitution, we will reverse an award only "when there is no evidence in the record to support it . . . or when although there is evidence to support it, [we are] on the entire evidence . . . left with the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *New Hartford* v. *Connecticut Resources Recovery Authority*, 291 Conn. 433, 487, 970 A.2d 592 (2009).

We now turn to the central issue in this appeal, the proper measure of damages in restitution under the bad faith exception. The measure of damages in restitution is the reasonable value of the benefit to the defendant. *David M. Somers & Associates, P.C.* v. *Busch*, supra, 283 Conn. 408; *New Hartford* v. *Connecticut Resources Recovery Authority*, supra, 291 Conn. 460 ("[t]he recovery of restitution may take several forms, including . . . the payment of the monetary value of the defendant's gain" [citations omitted; internal quotation marks omitted]). "[W]herever justice requires compensation to be given for property or services rendered under a contract, and no remedy is available by an action on the contract, restitution of the value of what has been given must be allowed." 26 S. Williston, Contracts (4th Ed. Lord 2003) § 68:4, p. 57.

The measure of restitution is "essentially equitable, its basis being that in a given situation it is contrary to equity and good conscience for one to retain a benefit which has come to him at the expense of another. . . . With no other test than what, under a given set of circumstances, is just or unjust, equitable or inequitable, conscionable or unconscionable, it becomes necessary in any case where the benefit of the doctrine is claimed, to examine the circumstances and the conduct of the parties and apply this standard." (Citations omitted; internal quotation marks omitted.) *Hartford Whalers Hockey Club* v. *Uniroyal Goodrich Tire Co.*, supra, 231 Conn. 282–83.

A court may select from among several methods of determining the amount of recovery in restitution, depending on the circumstances and conduct of the parties in a particular case. *New Hartford* v. *Connecticut Resources Recovery Authority*, supra, 291 Conn. 451. For example, the Restatement (Third) of Restitution and Unjust Enrichment lists the following measures of recovery: "(a) [T]he value of the benefit in advancing the purposes of the defendant, (b) the cost to the claimant of conferring the benefit, (c) the market value of the benefit, or (d) a price the defendant has expressed a willingness to pay, if the defendant's assent may be

treated as valid on the question of price." 2 Restatement (Third), Restitution and Unjust Enrichment § 49 (2011).[11]

Although not directly enforceable under the contract, the contract price is evidence of the reasonable value of the benefit the defendant received from the plaintiff. In *Habetz* v. *Condon*, supra, 224 Conn. 235, this court affirmed a judgment of $16,244 for the balance due on the contract plus extras performed at the homeowner's request, despite violations of § 20-429 (a), when the defendant raised the act in bad faith. Although the recovery was in restitution, the balance due on the contract was sufficient evidence by which to measure the award. See id., 233–35. This approach is consistent with the Restatement (Third), which provides that "[r]easonable value is normally the lesser of market value and a price the recipient has expressed a willingness to pay." 2 Restatement (Third), supra, § 50 (2) (b). Indeed, our restitution cases commonly use the contract price to calculate the benefit bestowed on the defendant. See, e.g., *Hartford Whalers Hockey Club* v. *Uniroyal Goodrich Tire Co.*, supra, 231 Conn. 284–85 ("trial court's finding, based upon the contract price agreed to [by the defendants' agent] was a fair and reasonable estimate of the benefit accorded to the defendants"); *United Coastal Industries, Inc.* v. *Clearheart Construction Co.*, 71 Conn. App. 506, 515, 802 A.2d 901 (2002) ("[t]he contract price is evidence of the benefit to the defendant . . . but it is not conclusive").[12]

In the present case, the contract, although unenforceable, is the only evidence of the reasonable value of the fence to the defendant. Here, the defendant contracted to pay $22,318 in return for the construction of a fence, and refused, in bad faith, to pay the balance due of $11,318 after the work was completed. Under these circumstances, the balance due on the contract conforms to "the reasonable value to the other party of what he received in terms of what it would have cost him to obtain it from a person in the claimant's position." 3 Restatement (Second), Contracts § 371 (a) (1981). A trial court does not abuse its discretion by calculating the benefit to a defendant based upon a freely negotiated contract price.[13] See *Hartford Whalers Hockey Club* v. *Uniroyal Goodrich Tire Co.*, supra, 231 Conn. 285–86.

The judgment of the Appellate Court is affirmed.[14]

In this opinion the other justices concurred.

* The listing of justices reflects their seniority status on this court as of the date of oral argument.

[1] General Statutes (Rev. to 2003) § 20-429 (a) provides in relevant part: "No home improvement contract shall be valid or enforceable against an owner unless it . . . (7) contains a starting date and a completion date . . . ."

[2] In addition to the defense under the act, the defendant also alleged that the plaintiff's performance was substandard, that its violations of the act constituted per se violations of the Connecticut Unfair Trade Practices Act,

General Statutes § 42-110a et seq., and that the defendant was entitled to rescind the contract and recoup moneys paid. The trial court rejected these counterclaims, and the Appellate Court affirmed. These issues are not before us in this appeal.

[3] The trial court referred the matter to an attorney fact finder pursuant to Practice Book § 23-53, which provides in relevant part: "The court, on its own motion, may refer to a fact finder any contract action pending in the superior court . . . which is based upon an express or implied promise to pay a definite sum, and in which the amount, legal interest or property in controversy is less than $50,000, exclusive of interests and costs. . . ."

[4] General Statutes § 42-150aa (b) provides: "If a lawsuit in which money damages are claimed is commenced by an attorney who is not a salaried employee of the holder of a contract or lease subject to the provisions of this section, such holder may receive or collect attorney's fees, if not otherwise prohibited by law, of not more than fifteen per cent of the amount of any judgment which is entered."

[5] Although the Appellate Court awarded the balance due on the contract price under the bad faith exception, it did not discuss whether this sum was a correct measure of damages in restitution. *Walpole Woodworkers, Inc.* v. *Manning*, supra, 126 Conn. App. 107.

[6] We granted the defendant's petition for certification to appeal limited to the following question: "Did the Appellate Court properly conclude that a contractor who has violated the [act] . . . may recover the balance due under a contract as the 'reasonable value' of its services under the 'bad faith' exception of the act?" *Walpole Woodworkers, Inc.* v. *Manning*, 300 Conn. 940, 941, 17 A.3d 476 (2011).

[7] General Statutes (Rev. to 2003) § 20-429 (a) provides in relevant part: "No home improvement contract shall be valid or enforceable against an owner unless it: (1) Is in writing, (2) is signed by the owner and the contractor, (3) contains the entire agreement between the owner and the contractor, (4) contains the date of the transaction, (5) contains the name and address of the contractor, (6) contains a notice of the owner's cancellation rights in accordance with the provisions of chapter 740 [Home Solicitation Sales Act], (7) contains a starting date and completion date, and (8) is entered into by a registered salesman or registered contractor. . . ."

[8] General Statutes § 20-429 (f) provides: "Nothing in this section shall preclude a contractor who has complied with subdivisions (1), (2), (6), (7) and (8) of subsection (a) of this section from the recovery of payment for work performed based on the reasonable value of services which were requested by the owner, provided the court determines that it would be inequitable to deny such recovery." The omission of the starting and completion date from the contract is not among the statutory requirements mitigated by § 20-429 (f).

[9] Quantum meruit is an equitable remedy to provide restitution for the reasonable value of services despite an unenforceable contract. Recovery in quantum meruit is based on restitution, and "entitles the performing party to recoup the reasonable value of services rendered." 26 S. Williston, Contracts (4th Ed. Lord 2003) § 68:1, p. 24. The term literally means " 'as much as he has deserved' . . . ." Black's Law Dictionary (9th Ed. 2009).

In addressing cases for restitution under the act, "this court has collectively referred to theories of quasi contract, quantum meruit and unjust enrichment as quasi contract claims of restitution." *Habetz* v. *Condon*, supra, 224 Conn. 236 n.9; *Barrett Builders* v. *Miller*, supra, 215 Conn. 317 n.1. We take this opportunity to clarify these closely related terms. Quantum meruit and unjust enrichment are noncontractual means of recovery in restitution. Quantum meruit is a theory of recovery permitting restitution in the context of an otherwise unenforceable contract. In contrast, recovery under a theory of unjust enrichment applies in the absence of a quasi-contractual relationship. See 66 Am. Jur. 2d, Restitution and Implied Contracts § 33 (2011).

Because both doctrines are restitutionary, the same equitable considerations apply to cases under either theory. The terms of an unenforceable contract will often be the best evidence for restitution of the reasonable value of services rendered in quantum meruit, although sometimes the equities may call for a more restrictive measure. See 2 Restatement (Third), Restitution and Unjust Enrichment § 50 (2) (c) (2011).

We recognize that this court has used quantum meruit and unjust enrichment interchangeably, or as equivalent terms for recovery in restitution. See, e.g., *Hartford Whalers Hockey Club* v. *Uniroyal Goodrich Tire Co.*, 231 Conn. 276, 282, 649 A.2d 518 (1994) ("[u]njust enrichment applies whenever justice requires compensation to be given for property or services rendered

under a contract, and no remedy is available by action on the contract"). In addition, cases decided under the bad faith exception after *Habetz* have invoked both quantum meruit and unjust enrichment. See, e.g., *Dinnis* v. *Roberts*, 35 Conn. App. 253, 260–61, 644 A.2d 971 (finding no bad faith), cert. denied, 231 Conn. 924, 648 A.2d 162 (1994). Nevertheless, because actions brought under the bad faith exception and § 20-249 (f) both arise from unenforceable contracts, they are best described as in quantum meruit for "the reasonable value of services which were requested by the owner . . . ." General Statutes § 20-429 (f); see 36 H.R. Proc., Pt. 16, 1993 Sess., pp. 5604–5605, remarks of Representative John W. Fox (bill meant to allow recovery for contractors on theory of quantum meruit).

[10] The question of whether the bad faith exception in *Habetz* survives the subsequent statutory enactment of subsection (f) of § 20-429 is not before us. For the purposes of this appeal, we assume that the judicially created bad faith exception survives the legislative enactment of § 20-429 (f).

[11] We note that the award calculated with these methods will be identical in many cases. See 2 Restatement (Third), supra, § 49, comment (g) ("[i]f the claimant has rendered a conforming performance under a contract that is unenforceable solely for want of formality . . . the value of the performance to the recipient is presumptively equal to the lesser of contract price and market value, two measures that are frequently identical").

[12] In *United Coastal Industries, Inc.* v. *Clearheart Construction Co.*, supra, 71 Conn. App. 515, the trial court reviewed invoices and exhibits, and heard testimony in addition to the evidence of the contract price. That case involved, however, restitution for a partially completed demolition, requiring the court to determine the portion of the work completed by the plaintiff subcontractor, and the portion left unfinished. Id. In the present case, the plaintiff substantially performed the contract, obviating the need for fact-finding relating to partial, incomplete, or unsatisfactory work.

[13] Although the Restatement (Third) notes that "[r]easonable value may be measured by a more restrictive standard if . . . prevailing prices include an element of profit that the court decides to withhold from the defendant"; 2 Restatement (Third), supra, § 50 (2) (c); the trial court's decision not to limit recovery in this manner was not clearly erroneous given the circumstances and conduct of the parties. Moreover, the defendant presented no evidence of the plaintiff's profit. We note that the plaintiff will not recover interest, costs, or attorney's fees, which it would have been entitled to under the contract.

[14] Although we recognize the attorney fact finder recommended and the trial court awarded damages based on the contract, and not in restitution, this error was corrected by the Appellate Court's partial reversal of the judgment as to the award of attorney's fees, costs, and interest. Because the balance due on the contract is sufficient evidence from which to determine damages in restitution, there is no need to remand this case for further fact-finding under the correct legal standard.