

Practitioner Insights

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In the absence of a contract, liability for services rendered can be imposed by an action for quasi-contract or quantum meruit

Updated: April 24, 2013



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Overview

If no express contract for services exists, the party providing services has two potential remedies. First, if the party receiving the benefit of the services had not assented to an agreement, the party providing services nevertheless may receive restitution for the unjust enrichment of the other by bringing an action in quasi contract (a contract implied-in-law) for services rendered, where there was an expectation that the service would be paid for and it would be unjust for the other party to receive the benefit of the services without paying compensation. Second, if the parties lack an express contract but there is a partial agreement, which for some reason falls short of being an enforceable contract, a party may recover in quantum meruit on a (contract implied-in-fact) for the reasonable value of the services rendered.

State law governs this issue. [State Aspects](#).

- 14th & Heinberg, LLC v. Terhaar & Cronley Gen. Contractors, Inc., 43 So. 3d 877, 881 (Fla. 1st DCA 2010)
- Am. Safety Ins. Serv., Inc. v. Griggs, 959 So.2d 322, 331 (Fla. 5th DCA 2007)
- Baron v. Osman, 39 So. 3d 449, 451 (Fla. 5th DCA 2010)

Detailed Explanation

Federal Aspects

State law governs this issue. See [State Aspects](#).

State Aspects

Quasi Contract or Contract Implied-in-Fact Form the Basis to Recover for Services Provided in the Absence of a

Contract for Services

The underlying facts will determine the remedy for services rendered to another without compensation. In the absence of an express contract, a party may recover through action for quasi contract under the principle of unjust enrichment. *Baron v. Osman*, 39 So. 3d 449, 451 (Fla. 5th DCA 2010). However, where there is an agreement for services where terms are inferred from the conduct of the parties, there is a contract-in-fact. *McMillan v. Shively*, 23 So. 3d 830, 831 (Fla. 1st DCA 2009). If no express or implied-in-fact contract exists, a party may recover for services provided under quasi contract. *Am. Safety Ins. Serv., Inc. v. Griggs*, 959 So.2d 322, 331 (Fla. 5th DCA 2007); *Baron v. Osman*, 39 So. 3d 449, 451 (Fla. 5th DCA 2010).

A quasi contract is also known as a contract implied-in-law. *14th & Heinberg, LLC v. Terhaar & Cronley Gen. Contractors, Inc.*, 43 So. 3d 877, 881 (Fla. 1st DCA 2010).

Quasi-Contract Action Does Not Arise from a Contract

An implied-in-law “quasi-contract” is not a contract at all, but rather an obligation imposed by the court to bring about justice and equity, without regard to the intent of the parties and without regard to whether they have an agreement; it is a noncontractual obligation that is treated procedurally as if it were a contract and is also referred to by some courts as unjust enrichment or restitution. *14th & Heinberg, LLC v. Terhaar & Cronley Gen. Contractors, Inc.*, 43 So. 3d 877, 881 (Fla. 1st DCA 2010).

There Is Little Practical Difference Between a Quasi Contract and Quantum Meruit Claim

A contract implied-in-law or quasi contract is distinguished from a contract implied-in-fact, which permits recovery under the theory of quantum meruit. *14th & Heinberg, LLC v. Terhaar & Cronley Gen. Contractors, Inc.*, 43 So. 3d 877, 881 (Fla. 1st DCA 2010). Practically speaking there is little difference between quasi contract and quantum meruit claims. A quasi contract claim is based on a contract implied by law, where the court does not take any regard to the parties’ intentions. *Hull & Co., Inc. v. Thomas*, 834 So. 2d 904, 906 (Fla. 4th DCA 2003). A quantum meruit claim is based on a contract implied by fact, where the court looks at the facts and circumstances surrounding the claim. *McMillan v. Shively*, 23 So. 3d 830, 831 (Fla. 1st DCA 2009). Both claims, in the end, are seeking recovery for the value of benefits provided.

Unjust Enrichment Is the Principle Used for Quasi Contract Recovery

A contract implied-in-law, also known as a quasi contract, is established where it is deemed unjust for one party to have received a benefit without having to pay compensation for it. *14th & Heinberg, LLC v. Terhaar & Cronley Gen. Contractors, Inc.*, 43 So. 3d 877, 880 (Fla. 1st DCA 2010).

A quasi contract is not based upon the finding, by a process of implication from the facts, of an agreement between the parties. Quasi contracts are a legal fiction, an obligation created by the law without regard to the parties’ expression of assent by their words or conduct. *Hull & Co., Inc. v. Thomas*, 834 So. 2d 904, 906 (Fla. 4th DCA 2003). The fiction was adopted to provide a remedy where one party was unjustly enriched, where that party received a benefit under circumstances that made it unjust to retain it without giving compensation. *14th & Heinberg, LLC v. Terhaar & Cronley Gen. Contractors, Inc.*, 43 So. 3d 877, 880-81 (Fla. 1st DCA 2010). The most significant requirement for a recovery on quasi contract is that the enrichment to the defendant be unjust. *14th & Heinberg, LLC v. Terhaar & Cronley Gen. Contractors, Inc.*, 43 So. 3d 877, 881 (Fla. 1st DCA 2010).

- Restatement (Third) of Restitution and Unjust Enrichment §1 (Underlying Principles--Unjust Enrichment)

Measure of Recovery for Unjust Enrichment Is the Benefit Received

Damages for unjust enrichment are based on value from the standpoint of the benefit received by the recipient of the benefits, not the cost to the provider. The entire gain is treated as unjust enrichment, even when the recipient’s gain exceeds the measurable injury to the claimant. *Kane v. Stewart Tilghman Fox & Bianchi, P.A.*, 85 So. 3d 1112, 1115 (Fla. 4th DCA 2012).

Plaintiff Must Prove Elements Needed for Recovery in Quasi Contract

The elements of a cause of action for quasi contract are that: (1) the plaintiff conferred a benefit on the defendant; (2) the defendant has knowledge of the benefit; (3) the defendant accepted or retained the benefit conferred; and (4) the circumstances are such that it is inequitable for the defendant to retain the benefit without paying fair value for it. *Baron v. Osman*, 39 So. 3d 449, 451 (Fla. 5th DCA 2010).

- 8 Fla. Pl. & Pr. Forms § 68:12 Checklist—Drafting a complaint in action by contractor under implied contract for services performed (quantum meruit)
- 7 Fla. Pl. & Pr. Forms § 47:9 Complaint—For recovery of damages in quantum meruit

Quantum Meruit or Contract Implied-in-Fact Forms the Basis to Recover for Services Provided in the Absence of an Agreement for Compensation

A contract based on the parties' words is characterized as express, whereas a contract based on the parties' conduct is said to be implied-in-fact. *Baron v. Osman*, 39 So. 3d 449, 451 (Fla. 5th DCA 2010). A contract implied-in-fact exists where the parties have made an agreement of sorts which falls short of being an enforceable contract. *14th & Heinberg, LLC v. Terhaar & Cronley Gen. Contractors, Inc.*, 43 So. 3d 877, 881 (Fla. 1st DCA 2010). A contract implied-in-fact is not put into promissory words with sufficient clarity, so a fact finder must examine and interpret the parties' conduct to give definition to their unspoken agreement. *Commerce P'ship 8098 Ltd. P'ship v. Equity Contracting Co., Inc.*, 695 So. 2d 383, 385 (Fla. 4th DCA 1997).

When a person provides services to another without an agreement regarding compensation, a promise to pay for those services will generally be implied. *McLane v. Musick*, 792 So. 2d 702, 705 (Fla. 5th DCA 2001). Without an agreement as to compensation, one renders services to the benefit of another, or at the request of another, a promise or agreement on the part of the latter to pay the reasonable value of such services will be implied. *Della Ratta v Della Ratta*, 927 So 2d 1055, 1059 [Fla Dist Ct App 2006].

A common form of contract implied-in-fact occurs when one party has performed services at the request of another without discussion or clarification of definitive compensation. These circumstances justify the inference of a promise to pay a reasonable amount for the service. The enforceability of this obligation turns on the implied promise, not on whether the defendant has received something of value. *Commerce P'ship 8098 Ltd. P'ship v. Equity Contracting Co., Inc.*, 695 So. 2d 383, 387 (Fla. 4th DCA 1997).

Family Member Exception to Implied Promise to Pay Exists

The general rule that implies a promise to pay when a person provides services to another without a written agreement regarding compensation is not applicable if the services are rendered by and for members of the same family or relatives who live together. *McLane v. Musick*, 792 So. 2d 702, 705 (Fla. 5th DCA 2001). In such cases, no presumption arises that one is to be paid for the services rendered. *Della Ratta v Della Ratta*, 927 So 2d 1055, 1059 [Fla Dist Ct App 2006]. In the absence of an express contract or promise to pay, no right of action accrues for the services, especially where the relationship evinces the mutuality or reciprocity of services, benefits and duties, which characterize normal family life. *McLane v. Musick*, 792 So. 2d 702, 705 (Fla. 5th DCA 2001).

The "family member presumption" applies to personal services that a child performs for a parent while living at home with the parent and as one of the family. *Della Ratta v Della Ratta*, 927 So 2d 1055, 1059 [Fla Dist Ct App 2006].

Measure of Recovery in Quantum Meruit for Services Rendered Is the Reasonable Value of the Services

The measure of damages in quantum meruit damages is the reasonable value of the labor and services rendered, and the materials furnished. *Puya v. Superior Pools, Spas & Waterfalls, Inc.*, 902 So. 2d 973, 976 (Fla. 4th DCA 2005). An action based upon quantum meruit for the reasonable value of services performed is founded upon the legal presumption that a party benefitted must pay reasonable compensation for such services to prevent that party from being unjustly enriched. *Symon v. J. Rolfe Davis, Inc.*, 245 So. 2d 278, 279 (Fla. 4th DCA 1971); *Bergman v.*

DeJulio, 826 So. 2d 500, 503 (Fla. 4th DCA 2002).

- Am. Jur. Pleading and Practice Forms, Attorneys-at-Law § 256. Complaint or petition—Reasonable value of services—General form

Modified Quantum Meruit Rule Applies to Discharged Attorney's Action for Fees

Unlike an award of attorney fees to a prevailing party, a quantum meruit award for reasonable value of discharged attorney's services must take into account the actual value of the services to the client. *Morgan & Morgan, P.A. v. Guardianship of McKean*, 60 So. 3d 575, 577 (Fla. 2d DCA 2011).

Where an attorney has been discharged prior to the successful occurrence of a contingency, courts apply the "modified quantum meruit rule," which allows a discharged attorney to recover the reasonable value of its services rendered prior to discharge, limited by the maximum contract fee, as long as the contingency occurs. *Naftzger v. Elam*, 41 So. 3d 944, 946 (Fla. 2d DCA 2010).

Limiting the amount of quantum meruit fees payable to a prior attorney, who was discharged without cause prior to the contingency occurring under a contingency fee contract, is necessary to advance the goal of not penalizing a client for exercising its absolute right to discharge an attorney. *Rosenthal, Levy & Simon, P.A. v. Scott*, 17 So. 3d 872, 876 (Fla. 1st DCA 2009).

- Am. Jur. Pleading and Practice Forms, Attorneys-at-Law § 257. Complaint or petition—Reasonable value of services—Discharge of attorney by plaintiff prior to completion of case
- Cause of Action by Attorney to Recover Fees on Quantum Meruit Basis, 16 Causes of Action 85
- Interference with Attorney's Contingent Fee Contract, 13 Am. Jur. Trials 153

Plaintiff Must Allege Elements of Prima Facie Case in Quantum Meruit

To satisfy the elements of quantum meruit, a plaintiff must allege facts that, taken as true, show that the plaintiff provided, and the defendant assented to and received, a benefit in the form of goods or services under circumstances where, in the ordinary course of common events, a reasonable person receiving such a benefit normally would expect to pay for it. *Babineau v. Fed. Exp. Corp.*, 576 F.3d 1183, 1194 (11th Cir. 2009) (applying Florida law); *Merle Wood & Associates Inc. v. Trinity Yachts, LLC*, 10-61997-CIV-HUCK, 2011 WL 845825 (S.D. Fla. 2011) (applying Florida law).

For Both Quasi Contract and Contract Implied-in-Fact, Services Must Have Been Provided with an Expectation of Payment

The expectation of compensation is an element of proof in a claim for both a quasi contract and a contract implied-in-fact. *14th & Heinberg, LLC v. Terhaar & Cronley Gen. Contractors, Inc.*, 43 So. 3d 877, 881 (Fla. 1st DCA 2010). Where services are rendered by one person for another which are knowingly and voluntarily accepted, the law presumes that such services are given and received in expectation of being paid for. *Bergman v. DeJulio*, 826 So. 2d 500 (Fla. 4th DCA 2002).

Plaintiff May Not Recover for Any Increased Value of Property, Only Value of Services Provided

In a claim for unjust enrichment, a builder was only awarded damages for the value of the services provided. The court found that to award builder for the increase in value of the building would be inequitable. *14th & Heinberg, LLC v. Terhaar & Cronley Gen. Contractors, Inc.*, 43 So. 3d 877, 882 (Fla. 1st DCA 2010).

Quasi Contract Action Is Available for Disputes Outside the Subject of an Existing Express Contract

Where there is an express contract between the parties, claims arising out of that contractual relationship do not support a claim for unjust enrichment. *Moynet v. Courtois*, 8 So. 3d 377, 379 (Fla. 3d DCA 2009). However, the mere existence of an express contract does not preclude suit in quasi contract for disputes that are not governed by the subject matter of

the contract. *Excess Risk Underwriters, Inc. v. Lafayette Life Ins. Co.*, 328 F. Supp. 2d 1319 (S.D. Fla. 2004).

- Judgment in action on express contract for labor or services as precluding, as a matter of res judicata, subsequent action on implied contract (quantum meruit) or vice versa, 35 A.L.R.3d 874
- Recovery on quantum meruit where only express contract is pleaded, under Federal Rules of Civil Procedure 8 and 54 and similar state statutes or rules, 84 A.L.R.2d 1077
- Am. Jur. Pleading and Practice Forms, Restitution and Implied Contracts § 44. Complaint, petition, or declaration—On quantum meruit—Extra services rendered in performance of contract

Recovery Allowed in Quantum Meruit for Contract Is Unenforceable Under Statute of Frauds

Where a contract is unenforceable under the statute of frauds, liability could nonetheless be imposed. In such a case, liability is not upon the agreement, but upon a quantum meruit, to the extent of the benefit received. *LynkUs Communications, Inc. v. WebMD Corp.*, 965 So. 2d 1161, 1167 (Fla. 2d DCA 2007).

Procedural Aspects

A Party Can Plead Both Express Contract and Implied Contract

A person is not precluded from pursuing alternative claims of breach of contract and unjust enrichment in separate counts. *Intercoastal Realty, Inc. v. Tracy*, 706 F. Supp. 2d 1325 (S.D. Fla. 2010). A party may plead alternative causes of action for an express contract, a contract implied-in-law, and a contract implied-in-fact. *Baron v. Osman*, 39 So. 3d 449, 452 (Fla. 5th DCA 2010).

Choosing Which Type of Claim to Pursue Requires Several Strategic Considerations

Deciding whether and when to bring a quasi-contract or quantum meruit claim as opposed to a claim for breach of an express contract requires several strategic considerations. For example, a plaintiff may wish to initially plead such an implied-contract claim, as an alternative theory, alongside a claim for breach of an express contract. Exposure to broader discovery and possible necessary motion practice from a defendant may lead the plaintiff to stick with one theory over the other, at least initially. Indeed, a plaintiff may choose to explore the appropriateness of such a claim through the discovery process with respect to a breach of contract claim and seek leave to amend if necessary. The key to the analysis is determining the existence and ability to establish that there is an express contract between the parties on the relevant subject matter, which the defendant breached that caused damage to the plaintiff. If not, or if difficult to prove, a plaintiff may need to consider pursuing an implied contract theory.

Plaintiff Should Consider Possible Damages Under Each Claim

A plaintiff should also consider the possible damages available under an implied contract claim versus and express contract claim. Where there is an express contract on a limited subject area with a limited contractual remedy provision and the plaintiff provided goods and/or services arguably beyond the scope of that agreement, then an implied contract theory may provide the plaintiff with the best (and only) possibility for recovery.

Plaintiff Must Eventually Pick a Theory to Pursue, as Implied Contracts and Express Contracts Become Mutually Exclusive

Eventually, the plaintiff must decide upon which theory he/she seeks to recover a judgment upon, as an implied contract theory and an express contract theory become mutually exclusive as the litigation moves toward final resolution. This election of remedies principle should be considered by both the plaintiff and the defendant as the case progresses and may require a judicial determination if the plaintiff fails to clearly decide which theory he/she intends to proceed with at trial. Moreover, while often found in an express contract, an implied contract does not have a provision providing for the recovery of attorneys' fees and costs.

Defendants Should also Take Notice of the Plaintiff's Avenues to Pursue

A defendant must also understand these issues and dynamics in order to properly defend against, and assess the value of the plaintiff's case. Doing so may avoid unnecessary motion practice and focus on the real issues requiring judicial attention.

Quasi Contract Is an Action at Law

An action for unjust enrichment is an action at law, not in equity. *Am. Safety Ins. Serv., Inc. v. Griggs*, 959 So. 2d 322, 331 (Fla. 5th DCA 2007). Although some Florida courts describe quasi contracts as being "equitable in nature," the term is used in the sense of "fairness," to describe that quality which makes enrichment unjust, and not as a reference to the equity side of the court. *Commerce P'ship 8098 Ltd. P'ship v. Equity Contracting Co., Inc.*, 695 So. 2d 383, 390 (Fla. 4th DCA 1997); *Berry v. Budget Rent A Car Sys., Inc.*, 497 F. Supp. 2d 1361, 1369 (S.D. Fla. 2007).

Statute of Limitations on Claims for Unjust Enrichment Is Four Years

The statute of limitations on a claim for unjust enrichment is four years. § 95.11, Fla. Stat. Ann.; *Brown v. Nationscredit Fin. Services Corp.*, 32 So. 3d 661, 662 (Fla. 1st DCA 2010). The four-year statute of limitations for unjust enrichment applies from the time of the event, not its discovery. *Davis v. Monahan*, 832 So. 2d 708, 709 (Fla. 2002).

A quantum meruit claim is governed by the four-year provision under either under §95.11(3)(p), Fla. Stat. Ann. relating to any action not specifically provided for in the Florida limitations statutes, or §95.11(3)(k), Fla. Stat. Ann. applying to an equitable action on an obligation not founded on a written instrument. *Moneyhun v. Vital Indus., Inc.*, 611 So. 2d 1316, 1322 (Fla. 1st DCA 1993).

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Acknowledgments

¹*The author would like to thank Matthew Criscuolo for contributing to this article.*