STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. BCD-23-440

CORE FINANCE TEAM AFFILIATES, LLC,

Appellants

v.

MAINE HOSPITAL ASSOCIATION,
MAINE MEDICAL CENTER,
SOUTHERN MAINE HEALTH CARE,
and
FRANKLIN MEMORIAL HOSPITAL

Appellants

On Appeal from Decision of the Superior Court (Cumberland County), Business and Consumer Docket

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BRIEF OF APPELLEE CORE FINANCE TEAM AFFILIATES, LLC

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FACTUAL AND PROCEDURAL STATEMENT

The federal government makes regular payments to health care providers in the United States pursuant to the Medicare program. Medicare Inpatient and Outpatient payments applicable to each provider is adjusted by, among other things, the area adjusted average hourly wage applicable to each provider's location compared to the national adjusted average hourly wage for the entire country. There are two components to the area adjusted average hourly wage, combined referred to as the wage index. The first component is known as the Annual Hourly Wage (AHW). Tr. 06/05/23, p. 76, l. 11-24. As its name suggests, it is made every year. Tr. 06/05/23, p. 77, l. 2, 3. A second component of wage index adjustment is the Occupational Mix Survey (OMS). It is made every three years. Tr. 06/05/23, p. 77, l. 3, 4. As the trial court noted, a hospital's payments from the Medicare program depend in significant part on the hospital's OMS. App. 0027. The OMS is essentially an adjustment to the Average Hourly Wage. Tr. 06/05/23, p. 83, l. 3-8. It's primary aim is to adjust the Medicare payments for differences in the nursing skill mix to adjust for the different hourly wage associated with higher and lower skill mix with the goal of making wage indices more uniform. Tr. 06/05/23, p. 83, l. 11-21.

Core Finance Team Affiliates, LLC is a health care consulting firm. Tr. 06/05/23, p. 76, l. 1. Core helps hospitals optimize its Medicare payments by

correctly and compliantly reporting the hospitals' AHW and OMS using data applicable to each provider. Tr. 06/05/23, p. 76, l. 11-22, p. 77, l. 1, 2.

In 2014, Core and hospitals in Maine, including the Hospital Defendants, entered into a contract for Core to provide them services. App. 0085-0105. The contract had two parts, one for services connected with the Annual Hourly Wage and the other for OMS services. App. 0085-0105. There is no dispute that the Hospital Defendants, pursuant to the contract, hired Core to provide Annual Hourly Wage services. A dispute arose, however, which ultimately lead to the present litigation, as to whether the Hospital Defendants hired Core to perform OMS services.

There is no dispute Core provided OMS services. As the trial court noted, the services in connection with the OMS work was a "massive undertaking, involving hundreds if not thousands of individual decisions regarding personnel, their functions and their proper classification under the applicable federal regulations." App. 0027. Core gathered the relevant data and supporting documentation originally submitted by the hospitals to the government, reviewed it, made changes to correct for errors and to identify opportunities to improve outcome and assisted the hospitals in preparing specific forms that had to be submitted. Tr. 06/06/23, p. 31, l. 23-25; p. 32, l. 1-11.

It is undisputed that as a result of the work Core did, the Hospital Defendants received an enormous benefit. Brad Bowman, the principal of Core, testified that for the three-year period covered by the work, Maine Medical Center received $2,903,628 in reimbursements from the government, Southern Maine Health Care received $632,850 and Franklin Memorial Hospital received $240,737. Tr. 08/24/23, p. 39, l. 12-16; p. 43, l. 3-16; p. 44, l. 1-15. The total benefits received by all three hospitals over the three-year period was $3,777,215. Tr. 08/24/23, p. 44, l. 16-20. (The benefits received are summarized in Plaintiff's Exhibits 72 and 73.)

While Core believes that the Hospital Defendants had opted-in to the OMS portion of the contract, the jury found they were not contractually obligated to participate in the OMS services component of the contract. App. 0042-0043. The Court then held a bench trial on Core's alternative theory of liability: unjust enrichment. Following issuance of its Findings, Conclusions and Order, the Court issued Final Judgment in favor of Core in the aggregate amount of $566,582.25. App. 0026-0041.

This appeal followed.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Did the Business Court err as a matter of law in allowing Appellee to assert unjust enrichment as an alternative theory of liability?

2. Were the Business Court's factual determinations on the elements of unjust enrichment clearly erroneous?

SUMMARY OF ARGUMENT

Appellants Maine Medical Center, Southern Maine Health Care and Franklin Memorial Hospital (collectively, "the Hospitals" or "the Appellants") appeal the Business Court's Final Judgment of October 23, 2023 and the Business Court's Findings, Conclusions and Order dated October 19, 2023. App. 0040-0041; App. 0026-0039. Distilled to its essence, Appellants argue that the Business Court erred as a matter of law in allowing Appellee ("Appellee" or "Core") to assert a cause of action for unjust enrichment and in rendering a verdict in favor of Core on that cause of action. Appellants assert the unjust enrichment cause of action is a "legally impossible" claim in this case, and that the only permissible legal theories of recovery were contract or *quantum meruit*.

The flaw in Appellants' argument is the assumption that Appellee was somehow precluded from asserting as an alternative to a legal theory of recovery, an equitable one. It is undisputed that there was an express contract in this case. App. 0053-0105. It is undisputed that the contract had two distinct parts – an Annual Hourly Wage component and an Occupational Mix Survey component. It is undisputed that Appellants agreed to be bound to the Annual Hourly Wage part. It is undisputed that there was a factual question as to whether Appellants "opted-in" to the Occupational Mix Survey component.

Appellee's Complaint asserted causes of action for breach of contract (Count I) and unjust enrichment (Count II). App. 0047-0052. Those theories were plead in the alternative. In the first phase of the trial, a jury heard the breach of contract claim. It found that Appellants did not opt-in to the Occupational Mix Survey component of the contract. App. 0042-0043. The Business Court then held a bench trial on the unjust enrichment claim. The Business Court found in favor of Appellee on the unjust enrichment claim and awarded Appellee an aggregate amount of $566,582.25.

The Business Court did not err in permitting Appellee to assert alternative legal theories – one sounding in law and the other in equity. Contrary to Appellants' assertion, the law does not mandate that a party must elect between one of the theories. Moreover, Appellants' argument that, under the facts of this case, unjust enrichment was an improper theory of recovery and that only contract or *quantum meruit* were the appropriate ones is incorrect. Indeed, a cause of action for *quantum meruit* would have been inappropriate as a matter of law, since there was no dispute that an express contract existed.

Appellants' other arguments – what they characterize as "subsidiary errors of law" – take issue with the Business Court's Factual Findings, which are subject to a clear error standard of rule. Those factual findings are supported by the record and Appellants have set forth no basis to overturn them.

STANDARD OF REVIEW

The trial court's rulings allowing Appellants to assert a cause of action for unjust enrichment and determining *quantum meruit* to be inapplicable to this case, are reviewed *de novo*. *Howard v. White*, 2024 ME 9; *Lyman v. Huber*, 2010 ME 139.

The trial court's factual determinations on the elements of unjust enrichment are reviewed under a clearly erroneous standard. *ERA-Northern Assocs. v. Border Tr. Co.*, 662 A.2d 243 (Me. 1995); *Me. Eye Care Assocs. P.A. v. Gorman*, 2000 ME 36; *Cates v. Donahue*, 2007 ME 38.

ARGUMENT

A. UNJUST ENRICHMENT WAS AN APPROPRIATE ALTERNATIVE THEORY OF RECOVERY

Appellants' arguments on appeal are premised on the assertion that the trial court should not have permitted Appellee to plead and prosecute a cause of action for unjust enrichment. They maintain that because there was a contract (App. 0053-0073), Appellee was precluded from asserting unjust enrichment as an alternative theory of recovery. The assertion is without merit.

There is no question that Appellee could plead alternative theories of recovery. Maine Rule of Civil Procedure 8(e)(2) in pertinent part provides:

> A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made

> in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements.

This is precisely what Appellee did. The Complaint pleads a cause of action for breach of contract in Count I and a cause of action for unjust enrichment in Count II. App. 0051-0052. Appellants cite no authority, nor could they, for the proposition that having plead alternative theories of recovery, Appellee was prohibited from taking both to trial. To the contrary, this Court has explicitly endorsed such a practice:

> We recognize that the existence of a contract precludes recovery on a theory of unjust enrichment because unjust enrichment describes recovery for the value of the benefit retained when there is no contractual relationship. [citation omitted.] June Roberts, however, is not precluded from pleading both theories because a **factfinder may find that no contract exists and may still award damages on the theory of unjust enrichment.**

June Roberts Agency, Inc. v. Venture Properties, Inc., 676 A.2d 46, 49, n. 1 (Me. 1996). (Emphasis added.)

This, of course, is what happened in this case, the difference being that there was no dispute there was an express contract, but rather whether Appellants opted-in to the OMS portion of it. The jury concluded they did not, but that did not preclude the Court, sitting in equity, from ruling on the alternative unjust enrichment theory.

B. *QUANTUM MERUIT* IS NOT APPLICABLE TO THIS CASE

A significant portion of Appellants' brief is devoted to an argument that a cause of action for *quantum meruit* should have been plead and *that* legal theory, as opposed to the equitable theory of unjust enrichment, was the only available recovery if the contract theory was rejected. The argument is specious.

At the outset it should be noted that Appellants seemingly assign error to Appellee, arguing it waived the *quantum meruit* claim which should – it says – have been plead as an alternative legal theory. As the trial court noted, "Hospital Defendants, as the adverse party, cannot dictate Core's claims or theories of recovery." App. 0037.

A large section of Appellants' brief outlines an historical analysis of the evolution of courts of law and equity. The background may be fascinating, but really has no bearing on the question of whether *quantum meruit* has any role to play in this case.

It doesn't. *Quantum meruit* is a valid theory of recovery "when there is no formal written contract but a contract implied in fact can be inferred from the parties' conduct." *Sweet v. Breivogel*, 2019 ME 18, ¶ 17. Here, on appeal, the parties are in agreement there was a formal, express contract; it is appended to the Complaint. App. 0053-0073. Indeed, Appellants state in their brief: "Here the

parties had a contract as the Business Court ruled before the jury trial began." Appellants' Brief, p. 19.

In the absence of an express contract, and in a situation wherein the parties acted as if a contract existed, the law might imply the existence of a contract. But here that would make no sense. The terms of the express contract were clear, and the jury rejected the argument that the Hospital Defendants had agreed to be bound by the OMS portion of that contract. There was no basis in law nor fact to have the jury infer the existence of some different contract. Any implied contract would of necessity have the same terms as what was already expressed. If the jury rejected the argument that the Hospital Defendants had opted-in to the express contract, it would of necessity reject the argument that they agreed to an implied contract that was its mirror image.

In *Paffhausen v. Balano*, 1998 ME 47, this Court went to some pains to describe the nature of a *quantum meruit* claim and distinguished it from unjust enrichment. The term "*quantum meruit*" translates to "as much as deserved", and describes the remedy more than the nature of the claim. *Id.* at ¶ 6 n. 3. A recovery in *quantum meruit* must be based upon contract principles. *Id.*, citing *Danforth v. Ruotolo*, 650 A.2d 1334 n. 2 (Me. 1994). It is a cause of action that seeks to imply a contract where no contract exists. Where, as here, there exists an express contract, *quantum meruit* is irrelevant.

This is why Appellants' argument that the only two viable theories of recovery available to Appellee were legal, as opposed to equitable, is wrong. Breach of contract and *quantum meruit* are both legal theories based on the existence of a contract. A party cannot recover in one action under both theories however – they are mutually exclusive. Where, as here, an express contract exists, you cannot recover in *quantum meruit*. Appellants maintain Appellee should have sued on both claims, but that makes no sense where the existence of an express contract is undisputed.

Furthermore, as noted by the trial court, Appellants have waived any argument, assuming one exists, that Appellee should have brought a *quantum meruit* claim. That was a defense which should have been asserted as an affirmative defense. See *Protocol Technologies, Inc. v. J.B. Grand Canyon Dairy, L.P.*, 406 S.W.3d 609, 614 (Tex. App. 2013). Appellants did not raise that affirmative defense in their Answer. Maine Rule of Civil Procedure 12(b) requires "[e]very defense, in law or fact to a claim for relief in any pleading, . . . shall be asserted in the responsive pleading thereto if one is required." Maine Rule of Civil Procedure 8(c) provides: "In pleading to a preceding pleading, a party shall set forth affirmatively . . . any . . . matter constituting an avoidance or affirmative defense." Nor, as the trial court observed, did Appellants preserve the issue for trial, nor did they request the jury be instructed on a *quantum meruit* defense.

The "*quantum meruit* defense" is really no defense at all. It is an attempt to dictate how the case should have been plead, and impose upon Appellee a contractual term (the manner of payment) that was never agreed-upon according to the jury.

For all these reasons, Appellants' argument that Appellee was obligated to assert a cause of action for *quantum meruit*, in addition to the already asserted breach of contract claim, fails. *Quantum meruit* simply has no place in this case.

The jury having concluded that Appellee had no legal remedy the Court properly moved to the second phase of the trial and considered Appellee's *quantum meruit* claim.

C. THE TRIAL COURT'S FACTUAL FINDINGS ON THE ELEMENTS OF UNJUST ENRICHMENT, INCLUDING ITS DETERMINATION OF THE VALUE OF THE BENEFIT CONFERRED, WERE NOT CLEARLY ERRONEOUS

The jury found that Appellant did not opt-in to the OMS portion of the contract. With that finding, the Court moved to the second phase of the trial,

where it heard evidence and rendered its judgment that Appellants were liable to Appellee pursuant to an unjust enrichment theory of recovery.[1]

Notwithstanding Appellants' contention the trial court "wrongly conducted a second trial", the trial court did not err as a matter of law in permitting Appellee to make its unjust enrichment claim. In order to prevail on its unjust enrichment claim, the trial court correctly held that Appellee had to prove by a preponderance of the evidence that: (1) it conferred a benefit on Appellants; (2) the Appellants had appreciation or knowledge of the benefit; and (3) Appellants' acceptance of retention of the benefit was under circumstances as to make it inequitable for them to retain the benefit without payment of its value to Appellee. *Me. Eye Care Associates, P.A. v. Gorman*, 2000 ME 36, ¶ 17.

The question for the trial court then becomes: how to most fairly value the benefit conferred by Appellee on the Appellants. It is worth noting that Appellants don't dispute a benefit was conferred. Rather, they take issue with the factual determinations made by the trial court in arriving at its determination of value.

[1] In their brief, Appellants refer to the Business Court having held "two trials" – a jury trial and a bench trial. Appellants' Brief, p. 1. Clearly there was one case, the subject of the instant appeal. It may be appropriate to refer to there having been two trials, although a better way to think about it is having had one trial with two phases. The distinction may simply be semantics. It is misleading, however, for Appellants to assert that the "second trial" or "second phase" occurred "although Core made no motion for new trial." Appellants' Brief, p. 1. That implies that the Court, *sua sponte*, decided that despite the verdict, a new trial would be held that reconsidered the jury's verdict. There was a jury trial because Appellants demanded a jury; there was a bench trial because the unjust enrichment claim was an equitable one and not triable of right by a jury. *Bowden v. Grindle*, 651 A.2d 347, 350-51 (Me. 1994).

In considering what the trial court did, the standard of review is significant. Contrary to what Appellants maintain – that the Court's factual determinations are reviewed *de novo* (Appellants' Brief, p. 9) the trial court's determinations on the elements of unjust enrichment are factual conclusions subject to a clearly erroneous standard. *ERA-Northern Assocs. v. Border Tr. Co.*, 662 A.2d 243 (Me. 1995); *Me. Eye Care Associates, P.A. v. Gorman*, 2000 ME 36; *Cates v. Donahue*, 2007 ME 38.

The trial court concluded as a factual matter that Appellants received over $3,777,215 in enhanced Medicare reimbursement payments and that the most appropriate and equitable way to measure the value of that benefit was utilization of a contingent fee model. App. 0033, 0034. Appellants aver that as a factual matter the trial court was constrained to use "the value of the service provided, i.e. its [Appellee's] usual or customary price in the market." Appellants cite no authority for this proposition, which, distilled to its essence, would require courts in unjust enrichment cases to use a *quantum meruit* measure of damages.

While there may be cases where the facts might equitably result in the damages for unjust enrichment and *quantum meruit* being the same, that may not always be the case. It certainly doesn't have to be. It is within the provenance of the Court, as the finder of fact, to make that determination. Here the Court – analyzing the facts – rejected Appellants' argument that paying Appellee on an

hourly basis for the services it provided was the correct analysis. The trial court pointed out that Appellee never expected to be compensated on an hourly basis, and as a result, did not keep track of its time. App. 0033. Second, the Court rejected the testimony of Appellants' expert witness as to what the value of Appellee's services was, noting it had "no confidence in the expert testimony on this issue." App. 0033. The Court was aware that all the other hospitals in Maine which were parties to the contract paid Core's OMS services on a contingent fee basis. Tr. 08/24/2023, p. 23, l. 1-9. Most importantly, the trial court, as a factual matter concluded that Appellants' hourly proposal was "parsimonious to the point of inequity." App. 0034.

The specific factual findings of the trial court cannot be ignored: The results of Appellee's work were "nothing short of extraordinary, substantial and impressive." App. 0029.[2] The remarkable work performed by Appellee "will continue to financially benefit" Appellants into the future. App. 0030. The "Hospital Defendants were ultimately paid approximately $3,777,215 more in Medicare reimbursement for fiscal years 2016, 2017, and 2018 than they otherwise would have been paid." App. 0031. And, ". . . the evidence supports findings that Core supplied its remarkable expertise as an OMS service-provider to Hospital

[2] As the trial court noted, Appellants' expert – effectively an agent of Appellants – conceded this. App. 0029.

Defendants, and that Core achieved extraordinary results for Hospital Defendants. An OMS service-provider other than Core and with less expertise and sophistication was unlikely to obtain similarly substantial payment increases for Hospital Defendants." App. 0032.

As mentioned previously, the trial court concluded as a factual matter that a contingent fee model was the most appropriate way to measure the value of the benefit retained by Appellants. The Court then proceeded to conduct a factual analysis of what contingent fee would be appropriate. Finding that based upon the Appellants' own expert witness, a reimbursement consultant, they and other consultants charge a contingent fee of between 20% and 25%, and considering: (1) the enhanced collective reimbursement payment totaled $3,777,215 and (2) Appellants will continue to benefit from Appellee's work into the future, the trial court concluded that a fee of 15% "would best reflect the value of the benefit received and retained by Hospital Defendants." App. 0035.

Moreover, the trial court had a factual basis for concluding a contingent fee model was most appropriate. All the other hospitals which were parties to the contract paid Core's OMS services on a contingent fee basis. Tr. 08/24/2023, p. 23, l. 1-9.

The trial court should be given great deference with respect to its factual findings. Similarly, its conclusion with respect as to how to most equitably

compensate the Appellee should not be disturbed. Appellants assert that it was "an error of law" for the court to disregard certain evidence. Appellants' Brief at 29. That is the wrong standard of review. The Court's factual findings and conclusions derived from those findings are subject to a clearly erroneous standard. Nothing in the record supports an argument that the Court's findings were clearly erroneous.

CONCLUSION

The Business Court did not err in allowing Appellee to assert alternative legal theories: breach of contract and unjust enrichment. One was a legal claim, the other an equitable one. Following the first phase of the trial, where the jury concluded Appellants had not opted-in to the OMS service portion of the contract, the Court appropriately proceeded to a bench trial on the unjust enrichment theory.

The court also did not err in ruling that *quantum meruit* was not a viable legal theory. First, Appellee did not plead *quantum meruit*. Second, the existence of an express contract made *quantum meruit* inapplicable. Finally, Appellants waived a *quantum meruit* argument by failing to plead it as an affirmative defense.

The Court's factual findings were not clearly erroneous. Rather, the Court engaged in a meticulous and thoughtful analysis of the relevant facts in reaching its factual finding and conclusion as to how to most equitably compensate Appellee.

This Court should affirm the Business Court's Final Judgment.

Dated: May 10, 2024

/s/ Lee H. Bals

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CERTIFICATE OF SERVICE

I, Lee H. Bals, hereby certify that on this 10th day of May, 2024, two copies of the Brief of Appellee Core Finance Team Affiliates, LLC were served by depositing same in the United States Mail, postage prepaid, addressed as follows, and, as set forth below, by electronic mail:

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