IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR SUPERIOR COUNTY

JOHN HYNANSKY,	)	
	)	
Plaintiff,	)	
v.	)	C.A. No. 06C-03-200-JEB
	)	
1492 HOSPITALITY GROUP, INC, and DAVID SEZNA,	)	
	)	
Defendant.	)	

Submitted: January 29, 2007
Decided: August 15, 2007

OPINION

Decision on Measure of Damages in Quasi-Contract Action.

Appearances:

Edmond D. Johnson, Esquire and Cheryl Sisken, Esquire..
Attorneys for John Hynansky.

John C. Phillips, Jr., Esquire, and Brian E. Farnan, Esquire.
Attorneys 1492 Hospitality Group, Inc., and David Sezna..

JOHN E. BABIARZ, JR., JUDGE.

This is the Court's Opinion regarding the measure of damages in this quasi-contract case. Plaintiff filed a two-count complaint to recover monies due under a note (Count I) and the monetary value provided to Defendants by Plaintiff's business efforts (Count II).[1] Judgment in favor of Plaintiff has been entered as to Count I. As to Count II, the parties are in sharp disagreement. Plaintiff argues that he is entitled to recover the long-term value of the benefits conferred upon Defendants by Plaintiff's efforts, including covering payroll expenses for Defendant's businesses, preventing foreclosure and negotiating a reduction in Defendant Sezna's debts, thus allowing Sezna to find a new investor and ultimately, to sell his businesses at a profit. Defendants argue that the measure of damages is not the benefit conferred, but is the reasonable value of Plaintiff's

[1]Count I of the Complaint alleges that on July 29, 2004, the parties entered into a loan agreement in which Plaintiff lent Defendants $300,000 to keep Defendants' businesses afloat. Pursuant to the promissory note, the loan was to be repaid on July 29, 2005, in a single payment of principal and interest in the amount of $315,000. Count II alleges that Defendant Sezna asked Plaintiff to help him avoid foreclosure on certain business loans, reduce the debt accrued by his businesses, and restore their profitability. In return, Sezna allegedly offered Plaintiff a partnership interest in some or all of his businesses. The Complaint alleges that Plaintiff used his skills, experience and businesses contacts to accomplish Defendant Sezna's goals. The Complaint also alleges that when Sezna's financial situation began to improve, he ceased working with Plaintiff and took on a different business partner, ultimately selling off the businesses at a profit. Plaintiff seeks the value of the benefit he provided to Defendants.

alleged services on Defendants' behalf.

Plaintiff proceeds under the doctrine of quasi-contract. Recovery under a quasi-contract action is the value of the services provided, not the value of the benefit received.[2]

In the absence of an express agreement, a plaintiff may be able to recover the reasonable value of the materials or services rendered to a defendant on a quasi-contract theory.[3] To prevail on this theory, Plaintiff must show at trial that he provided services to Defendants and that he performed the services with the expectation that Defendants would pay for them.[4] Plaintiff must also show that the circumstances should have put Defendants on notice that Plaintiff expected to be paid.[5] If Plaintiff makes this showing, he may recover the reasonable value of his services under the restitutionary principle of quantum meruit.[6] The phrase literally means "as much as he deserves," and is the "reasonable worth or value of services rendered for the benefit of another."[7]

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[2]*Middle States Drywall, Inc. v. DMS Properties-First, Inc.*, 1996 WL 453418, at *10 (Del. Super.).

[3]*Id.*

[4]*Marta v. Nepa*, 385 A.2d 727, 729 (Del. 1978).

[5]*Id.*

[6]*Bellanca Corp. v. Bellanca*, 169 A.2d 620, 623 (Del. 1961).

[7]*Marta v. Nepa*, 385 A.2d at 730.

The standard for measuring the value of the performance under quantum meruit is the amount for which such services could have been purchased from one in the plaintiff's position at the time and place the services were rendered.[8] Quantum meruit is to be established by way of opinion testimony by expert witnesses in the same field of endeavor as Plaintiff, in response to hypothetical questions based on the facts of the case, as to the worth of the specific services rendered to Defendants by Hynansky and the reasonable compensation which Hynansky deserves.[9] This is consistent with the ad damnum clause in the Complaint, which refers to the value of Hynansky's services, not the benefit received because of his services. As to Count II, the Complaint seeks to recover "the value of the services [Plaintiff] rendered to Sezna and his businesses by persuading WTC to give Sezna time to reorganize his businesses. . . [and] the value of the services [Plaintiff] rendered to Hynansky and his businesses by persuading WTC to write down its debt by over $4MM and eliminating Sezna's personal guarantee. . . . "[10]

Despite the fact that the Complaint is framed in the language of quantum meruit, Plaintiff in his Memorandum Regarding Damages uses the terms quantum meruit and unjust enrichment interchangeably. As stated previously, quantum meruit is a principle

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[8] *Middle States Drywall, Inc. v. DMS Properties-First, Inc.*, 1996 WL 453420 (Del. Super.)(citing *United States v. Western States Mech. Contr.*, 834 F.2d 1533, 1539 (10th Cir.)).

[9] *Marta v. Nepa*, 385 A.2d at 730.

[10] Complaint at 6 (c) and (d).

of restitution arising from a cause of action in quasi-contract. Unjust enrichment is itself a cause of action, usually but not always equitable, based on an unjustified enrichment of one party and resulting impoverishment of another party, in the absence of a remedy at law.[11] The Complaint does not allege unjust enrichment nor argue the elements of such a claim. Plaintiff has stated a claim in quasi-contract and has asked to recover the value of the services he allegedly provided, in quantum meruit.

At trial, the parties may establish damages by opinion testimony from expert witnesses as to the manner in which compensation is determined for the type of services provided by Plaintiff.

It Is So ORDERED.

Judge John E. Babiarz, Jr.

Original to Prothonotary
JEBjr/ram/bjw

[11] *Jackson Nat'l Life Ins. Co. v. Kennedy*, 741 A.2d 377, 393 (Del. Ch. 1999).