IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

IRAN LAWRENCE, t/a IRAN LAWRENCE & COMPANY,	)	
Plaintiff,	)	
v.	)	C.A. No. 99C-02-190-JRS
AUGUSTINE DIBIASE, JR., MAIN STREET GALLERIA, LLC, and DIBIASE BROTHERS, CONSTRUCTION, INC.,	)	
Defendants.	)	

Date Submitted: February 5, 2001
Date Decided: February 27, 2001

DECISION AFTER NON-JURY TRIAL
AND POST-TRIAL MEMORANDA.
JUDGMENT FOR PLAINTIFF.

Jeffrey K. Martin, Esquire, 1509 Gilpin Avenue, Wilmington, Delaware, 19806. Attorney for Plaintiff.

Henry A. Heiman, Esquire, First Federal Plaza, Suite 600, Wilmington, Delaware, 19899. Attorney for Defendants.

SLIGHTS, J.

I. INTRODUCTION

Plaintiff, Iran Lawrence, t/a Iran Lawrence & Company[1] ("Lawrence") alleges that she is owed money for design services she performed on behalf and at the request of the defendants, Augustine DiBiase, Jr. ("DiBiase"), Main Street Galleria, LLC ("MSG"), and DiBiase Brothers Construction, Inc. ("DiBiase Brothers"), in connection with a shopping mall project in Newark, Delaware known as the Main Street Galleria (the "Galleria"). Defendants, the developers and builders of the Galleria, deny that they owe any money to Lawrence . This is the Court's decision after a non-jury trial which concluded with closing arguments on February 5, 2001, and consideration of the parties' post-trial submissions. For the reasons that follow, the Court will direct the Prothonotary to enter judgment for the plaintiff.

II. THE PARTIES

Lawrence holds an advanced degree in interior design from Drexel University and an advanced degree in fiber and textile design from Temple University. She is an artist of regional, if not national, renown. Her specialty is "fiberart": works of arts

[1]Iran Lawrence & Company is not, in fact, a company at all. According to the plaintiff, Iran Lawrence & Company is merely a name she uses to conduct her business. For purposes of its decision, the Court considers Ms. Lawrence alone, in her individual capacity, to be the party plaintiff in this case.

incorporating hand-dyed swatches of fabric in various quilt-like designs which are ultimately secured to a stretched canvas for framing. Lawrence's fiberart is on display at several local and regional corporate headquarters. She also has a piece on display at The White House.

Lawrence's artistic capabilities were not in dispute at trial. Defendants acknowledge that she is an accomplished artist. The controversy *sub judice*, however, involves Lawrence's work as an interior designer. In this regard, Lawrence is less accomplished for the simple reason that she is less experienced. Lawrence herself acknowledged that her primary focus is on her artwork; prior to her work for the defendants, she had occasionally offered her services as an interior designer, but never with respect to a major commercial project and never with respect to a retail shopping mall. She also acknowledged that, prior to her relationship with the defendants, she had never designed a tile floor.

DiBiase has been in the construction business for fifty (50) years. He took over ownership of DiBiase Brothers along with his brother, Lou DiBiase, in 1982 after DiBiase's father passed away. DiBiase Brothers is a construction firm which, over the years, has developed and built both residential and commercial properties. MSG was formed by DiBiase, Albert DeCeSaris and Tom Vendemio, each of whom owned a one-third interest in the LLC. MSG's sole purpose was to develop the Main Street

Galleria project. DiBiase was paid $20,000 from MSG pursuant to an Operating Agreement with MSG to oversee construction on the project. As best as the Court can discern from the testimony, DiBiase Brothers served as the project's general contractor.[2] Construction on the Galleria began in 1995 and was completed in the Spring of 1996.

III. THE PARTIES' CONTENTIONS

Lawrence contends that in early February, 1996, her friend, Sandy DiBiase, requested that Lawrence assist DiBiase in the selection of colors for tiles to be installed on the floor at the Galleria. DiBiase and Sandy DiBiase are husband and wife. Lawrence agreed to assist DiBiase with the selection of colors for the tile floor and met with him on February 6 or 7 for this purpose. During the course of their

[2]Unfortunately, neither the Operating Agreement nor any other contractual documents relating to the project were offered as evidence during the trial. Consequently, the exact nature of the defendants' respective roles for this project remains unclear to the Court. In any event, defendants have not attempted to distinguish one defendant from the others in their defense of this case. For her part, Lawrence testified that DiBiase led her to believe that she was working for the developers and builders of the project. No evidence presented at trial persuades the Court otherwise. Accordingly, to the extent Lawrence has proven that DiBiase entered into a contractual relationship with her, the Court will conclude that DiBiase acted with the knowledge and authority of DiBiase Brothers and MSG.

meeting, however, Lawrence contends that DiBiase expressed his displeasure with the design of the tile floor with which he was working and requested that Lawrence assist him in the preparation of a new, more elaborate design. She agreed to prepare a new floor design for DiBiase and thereafter performed several tasks in connection with her design work, including: (a) taking exhaustive field measurements of the floor on both the first and second levels of the Galleria; (b) selecting colors for the tiles to be used for the design; (c) communicating with the supplier of the tiles and the installer of the tiles; and (d) preparing rough and then final professional-grade drawings of the design. Lawrence contends that all of her work on this project was performed under a compressed time schedule set by DiBiase which, at times, required her to work between sixteen and eighteen hours per day. And, importantly, Lawrence contends that all of her work was performed with the knowledge and consent of DiBiase who clearly understood that Lawrence expected to be paid for her services.

Lawrence did not propose payment terms during her first meeting with DiBiase. Rather, she alleges that she advised DiBiase that she would need to assess what amount of work would be required to perform the job before she could quote a price. Lawrence is adamant, however, that she made it perfectly clear to DiBiase from the outset of their relationship on the Main Street Galleria project that she expected to be paid for her services. Lawrence ultimately advised DiBiase that her charge for design

services would be between $50,000 and $60,000. According to Lawrence, DiBiase responded by noting that Lawrence's design fee equaled or exceeded the anticipated installation fee for the floor. DiBiase then requested that Lawrence supply him with a "more realistic price" which she agreed to do. On or about March 7, 1996, Lawrence submitted an invoice to DiBiase which reflected a "design fee" of $27,400.00. To date, DiBiase has not paid this or any amount to Lawrence.

Lawrence acknowledges that she did not enter into a written contract with DiBiase or the other defendants respecting her design services. She urges the Court, nevertheless, to conclude that defendants are obliged to pay her pursuant to either: (a) an implied in fact contract; or (b) an implied in law or so-called "quasi contract." With respect to damages, Lawrence contends that under either of the theories of recovery she has proffered she is entitled to receive the reasonable value of her services as recognized in the local interior design community. In this regard, she has presented the testimony of R.W. "Buck" Simpers, AIA, a Wilmington architect who, among other distinctions, is a past-president of the American Institute of Architects of Delaware and a member (per the Governor's appointment) of the Board of Architects of the State of Delaware. Mr. Simpers has opined that the reasonable value of Lawrence's services is $39,000, which figure represents a rate of $150 per hour and assumes that Lawrence worked 260 hours on the project.

For his part, DiBiase admits that his wife requested that Lawrence assist him in the selection of colors for the tile floor. This concession, however, is the extent of the agreement between the parties regarding the events leading up to, during, and after Lawrence's design of the Galleria's tile floor. Both DiBiase and his wife testified that Lawrence was advised during the initial conversation with Mrs. DiBiase that the defendants had no money in their budget to pay Lawrence for her work on the project. Mrs. DiBiase testified that Lawrence agreed to assist DiBiase as a favor to Mrs. DiBiase and that this arrangement was clearly understood by all involved in the project from the outset of the relationship.

According to DiBiase, he had already selected a design for the tile floor from several alternative designs which were offered to him by the supplier of the tile, Roman Mosaic & Tile Co. ("Roman Mosaic") in West Chester, Pa. DiBiase chose a "star burst" design similar to a design he had admired at the King of Prussia Mall. DiBiase's partners in the project had also approved of the "star burst" design. His only request of Lawrence was that she assist him in the selection of colors for the tile to be utilized in the design he and his partners had already selected. According to DiBiase, Lawrence suggested to him after viewing the "star burst" that she could provide a more appealing design and, with DiBiase's acquiescence, she agreed to do so. As compensation, Lawrence requested only that DiBiase agree to display

prominently in the first floor common area of the Galleria a gold plaque of recognition of Lawrence's work. DiBiase agreed to these terms and Lawrence began her work.

DiBiase alleges that the first time he became aware that Lawrence expected payment for her services was when she presented him with an invoice for services on March 7, 1996. By this time, according to DiBiase, most of the tile for the first floor had already been installed per Lawrence's design (with modifications as required by DiBiase to "simplify" the design). DiBiase did not agree to pay the $27,000 invoice amount. As an accommodation to his wife's friend, DiBiase did offer to pay Lawrence $2000, an amount which reflected 40 hours of work at $50 per hour. Lawrence refused to accept this amount and, after further discussions failed to yield a satisfactory resolution for her, she filed this law suit.

DiBiase agrees that there was never a written contract which governed the parties' relationship. He contends that there cannot be an implied in fact contract between the parties because neither party ever operated under a reasonable expectation that Lawrence would be paid for her services. To the contrary, both parties knew from the outset that Lawrence would not be paid for her services. Similarly, DiBiase contends that the Court cannot impose quasi contractual obligations upon him because he has not been *unjustly* enriched by Lawrence's services.[3] According to DiBiase, one

[3]The Court emphasizes the term "unjustly" because DiBiase acknowledges that he used

cannot be *unjustly* enriched by another's services when both parties are operating throughout the relationship on the belief that no payment is expected for services rendered.

IV. FINDINGS OF FACT

Plaintiff, of course, bears the burden of proof with respect to her claims. The burden she bears in this case is to prove the facts supporting her claims by a preponderance of the evidence. If the evidence presented by the parties during trial is inconsistent, and its weight evenly balanced, then "the party seeking to present a preponderance of evidence has failed to meet its burden."[4] It is against this standard

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Lawrence's floor design, at least in part, and was thereby enriched to some extent. Nevertheless, DiBiase argues that he cannot be liable under a quasi contract unless the plaintiff establishes that any enrichment he has enjoyed was procured by him unjustly.

[4]*Eskridge v. Voshell*, Del. Supr., 593 A.2d 589 (1991)(ORDER)(citing *Guthridge v. Pen-*

that the Court must measure the evidence received at trial.[5]

1. Was There A Meeting of the Minds at the Outset of the Parties' Relationship?

Mod, Inc., Del. Super., 239 A.2d 709, 713 (1967)).

[5]Defendants have argued that the Plaintiff's implied contract claims should be measured against an enhanced burden of proof, namely, that the Court should require clear and convincing evidence to support the claims. Despite the Court's invitation to do so, Defendants have not supplied the Court with any authority to support the imposition of this enhanced burden of proof. In any event, the Court is satisfied that the appropriate burden of proof in this case is proof by a preponderance of the evidence, and it is against this standard Plaintiff's claims will be assessed. *See Morgan v. Conn-E Construction Co.*, Del. Super., C.A. No. 90C-03-011 (Kent), Ridgely, J., 1994 Del. Super. LEXIS 69, at * 5 (Feb. 14, 1994)(Mem. Op.)(applying preponderance of the evidence standard to implied contract claims); *Carey v. McGinty*, Del. Super., C.A. No. 86C-JL17 (Sussex), Chandler, J., 1988 Del. Super. LEXIS 177, at * 18 (May 18, 1988)(Mem. Op.)(same).

The Court finds that the evidence with respect to whether Lawrence should have expected to be paid at the outset of her work for the defendants is inconsistent and the weight of the conflicting evidenced is equally balanced. Lawrence testified that she advised DiBiase of her expectation for payment on the first day she met with him to offer her assistance with respect to color selection for the tile floor. The defendants, through DiBiase and his wife, Sandy DiBiase, maintain that Lawrence was told repeatedly by DiBiase and Sandy DiBiase that the defendants had no money available in the construction budget to pay for Lawrence's services and, consequently, that no payment could be made. Based on the Court's assessment that this testimony is as credible as Lawrence's testimony, the Court concludes that Lawrence has not carried her burden of proof with respect to this factual dispute.

B. Did the Parties Reach a Meeting of the Minds Prior to The First Written Demand for Payment?

The Court's determination of the parties' understanding at the outset of their relationship does not end the factual inquiry required to address plaintiffs' claims. Lawrence alleges that her expectation of payment was expressed to DiBiase throughout the course of her work on the project and was culminated in the presentation of her invoice for professional fees to DiBiase on March 5, 1996. DiBiase admits that he authorized Lawrence to prepare a design for the floor, but denies that he offered to pay her for her services. Instead, he contends that Lawrence requested only that she be given some sign of recognition for her work (such as a plaque in the first floor common area). Lawrence acknowledges that she asked for a plaque recognizing her work to be displayed somewhere in the Main Street Galleria, but insists that she advised DiBiase that she expected a monetary payment as well.

Here again, the testimony is directly at odds and equally balanced. It is reasonable for the

Court to conclude that Lawrence would expect payment for work, the completion of which clearly took a great deal of time and effort on her part.[6] On the other hand, the Court finds DiBiase's explanation of the process by which construction budgets are prepared and approved, and the inflexibility of such budgets once approved, to be credible and reasonable.[7] No one witness in corroboration of the parties' testimony tipped the balance for either side with respect to this factual controversy. Consequently, the Court finds that the plaintiff has not carried her burden of proving that the parties reached a meeting of the minds at any time prior to March 5, 1996 with respect to

[6]Lawrence's final drawings were received in evidence. They are quite elaborate and resemble works of art more than designs for a floor. Lawrence testified that she worked in excess of 315 hours on the project. The Court finds the testimony to be credible and supported by the work product she ultimately produced.

[7]As indicated, DiBiase testified that the budget prepared for this project simply did not contemplate additional expenditures for design services. He also testified that any modifications to the budget would have to be approved by both the bank which provided financing for the project and his fellow partners who invested in the project. The evidence revealed that neither the bank nor DiBiase's partners were ever asked to approve the design fees for Lawrence.

payment (of money) for her services.[8]

C. Did the Parties Reach a Meeting of the Minds on March 5, 1996?

[8]The Court does note that two witnesses Lawrence testified would corroborate her claim that DiBiase had committed to compensate her for her services did not, in fact, support her testimony. Neither John Kuster nor Paul Trevisan recalled any discussions with Lawrence, or between Lawrence and DiBiase, which supported the notion that Lawrence was to be paid for her work. Indeed, Mr. Kuster supported DiBiase's recollection that the compensation for Lawrence was to be in the form of publicly displayed recognition for her work.

The Court must next address the parties' conduct after it became clear to both sides that Lawrence expected payment. The earliest date on which the parties agree, and the preponderance of the evidence reveals, that Lawrence requested payment for her services is March 5, 1996, when she presented her invoice (dated March 7, 1996) to DiBiase. By this time Lawrence had completed her work for the defendants and the defendants had just commenced installation of a tile floor which was substantially in keeping with Lawrence's design.[9] While the parties do not agree on DiBiase's

[9]The parties differed on the extent to which Lawrence's design was incorporated into the finished product. Based on the evidence presented, including photographs of the floor as installed, the Court is satisfied that defendants used Lawrence's design for the installation of the tile floor. To the extent modifications were made, the modifications involved deleting minor portions of the design to make the floor - - in DiBiase's words - - "more simple." The parties also disagreed with respect to the progress that had been made in the installation of the floor as of March 5, 1996. Lawrence contends that the installation work had just begun; DiBiase contends that the installation work was near completion. The Court concludes that Lawrence's testimony on this issue is more credible. The evidence reveals that the tiles were not delivered to the Main Street Galleria until March 4, 1996. The delivery date suggests that the work on the floor had just begun as of March 5, 1996 (or, for that matter, March 7, 1996, the date DiBiase believes Lawrence presented her invoice).

exact response to Lawrence's invoice, they do agree that the *essentia* of his response was to reject the invoice and refuse payment. Thus, there was no meeting of the minds with respect to payment on March 7, 1996, or any time thereafter.[10]

D. Did DiBiase Receive Valuable Work Product and Services?

Lawrence has alleged that she provided a valuable work product to DiBiase in the form of her professional drawings, and that she provided valuable services to DiBiase including meetings with the tile supplier and installer and field measurements of the Galleria to help in the preparation of the drawings. She has offered varied evidence with respect to the actual value of her work. For instance, she testified that her initial quotation of a fee to DiBiase was based upon the valuation of her work as a piece of art. On this basis, comparing her design work to pieces of art she has sold in the past, she quoted to DiBiase a fee in excess of $50,000. When asked by DiBiase to supply a "more realistic" fee, she invoiced him $27,400, a number she acknowledged was based on no particular formula or calculation. At trial, she presented the testimony of an architect who valued her services, based on the reasonable value for such services in the community, at $34,000. Lawrence has not requested a sum certain in her complaint, nor did she do so at trial.

[10]DiBiase argues that Lawrence's invoice did not reflect a clear demand for payment of a sum certain. The Court rejects this contention. The invoice clearly and unconditionally requests payment. The letter which accompanied the invoice does not suggest that Lawrence would waive payment. Rather, the letter anticipates only that DiBiase may contest the invoice or at least wish to discuss it further.

DiBiase acknowledges that Lawrence's work does have some value, but claims that the value to him is *de minimus*. He has presented the expert testimony of a commercial realtor, Anthony Bariglio ("Bariglio"), who opined that Lawrence's design added no value to the Galleria property. Bariglio appeared to approach his work in this case from the perspective of a real estate appraiser, although he acknowledges that he is not licensed to appraise real estate in Delaware or elsewhere.[11] Specifically, Bariglio focused on the rental value of the commercial space within the Galleria and then assessed whether the tile floor enhanced that value. In this regard, Bariglio testified that the Galleria is "A space", meaning it is a premium piece of commercial property. Nevertheless, relying principally upon the clientele of the Galleria (allegedly 80% college students), Bariglio opined that the tile floor design added no commercial value to the property.

While Bariglio's perspectives were helpful to understand the commercial qualities of the property at issue, the Court must reject his ultimate conclusion. Bariglio acknowledged that the property is rated A space as a result of its appointments both inside and out. He also acknowledged that, as a commercial realtor, he is able to obtain a higher rental rate for his clients if the property is rated A as opposed to a lower rating. The Court does not find it credible that an elaborate, artistically designed tile floor does not enhance the appearance of the property and thereby enhance the property's ability to achieve an A rating. One need only refer to the real estate section of the

[11]Bariglio does have over 25 years in the commercial real estate business with some background in accounting and finance. Over plaintiff's objection, the Court allowed Bariglio to testify as to the enhancement, if any, of the rental value of the property by virtue of the installation of Lawrence's tile floor design.

local newspaper to discern that flooring, be it hardwood, tile or other, is showcased prominently in the marketing pieces which accompany properties for sale. Defendants have offered no credible explanation as to why the appearance of the floor in the common area of a commercial retail establishment would not likewise be a feature to market to prospective tenants whose customers must walk over these floors every day.

As can be gleaned from this discussion, the evidence regarding the value of Lawrence's services was as divergent in substance as the evidence regarding the nature of the parties' commercial relationship. The Court has determined that the services had some value. The task now is to apply the factual findings to the applicable law to determine: (1) if there is a basis to impose contractual duties upon the defendants; and (2) if so, if there is a basis in fact and law to determine an appropriate amount of damages for any breach of contract that may have occurred. The Court will address these issues *seriatim*.

V. DISCUSSION

A. Implied in Fact Contract

Lawrence has argued that the Court may imply the existence of a contract from the facts surrounding the parties' negotiations. An implied in fact contract is legally equivalent to an express contract; the only difference between the two is the proof by which the contract is established.[12] "An express agreement is arrived at by words, while an implied agreement is arrived at by acts."[13] The inquiry in both instances focuses on whether the parties have "indicated their assent to the

[12] *See In re Phillips Petroleum Sec. Litig.*, D. Del., 697 F.Supp. 1344, 1356 (1988), *rev'd on other grounds,* 3d Cir., 881 F.2d 1236 (1989)(citations omitted).

[13] *Trincia v. Testardi*, Del. Ch., 57 A.2d 639, 642 (1948).

contract."[14] In other words, to prevail on a theory of implied in fact contract, the plaintiff must establish that the parties, through their actions, "demonstrated a meeting of the minds on all essential terms of the contract", including price.[15]

Lawrence has failed to prove the existence of an implied in fact contract by a preponderance of the evidence. Specifically, Lawrence has not established that she reached a meeting of the minds with DiBiase with respect to the price of her services. Indeed, the Court is not satisfied that Lawrence herself knew what she would charge for her services when she began the design work for DiBiase. Her description of the first conversation with DiBiase regarding fees reveals that she was thinking like an artist, not an interior designer working on a commercial project. She couched her expected fee structure in terms of works of art she had created in the past, i.e., she explained to DiBiase the price for an average work of "fiberart" which, on a square footage basis, would have yielded a fee for her design services in excess of $200,000. When DiBiase summarily rejected this proposal, Lawrence worked backwards from this amount to formulate her subsequent fee proposals utilizing an arbitrary methodology more appropriate for artistic works than commercial design projects. Under these circumstances, it can hardly be said that the parties mutually assented to Lawrence's fees. And, absent agreement with respect to this critical term, it cannot be said that the parties formed a valid implied in fact contract.

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[14] *Freedman v. Beneficial Corp.,* D. Del., 406 F.Supp. 917, 923 (1975).

[15] *Heiman, Aber & Goldlust v. Ingram*, Del. Super., C.A. No. 96C-05-047 HDR, Ridgely, P.J., 1999 Del. Super. LEXIS 537, at * 2 (Aug. 18, 1999)(citations omitted).

2. Quasi Contract

An implied in law contract, or quasi contract, does not depend upon the mutual assent of the parties. "Quasi-contractual relationships are imposed by law in order to work justice and without reference to the actual intention of the parties."[16] Quasi contracts correct unjust enrichment; they are designed to remedy "the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience."[17] To prove a quasi contract, Lawrence must establish: (1) that she performed her services with an expectation that she would be paid; (2) that the services were performed under circumstances which should have put DiBiase on notice that she expected to be paid; and (3) that DiBiase retained the benefit of her services.[18] The Court concludes that Lawrence has carried her burden of proof on each of the three elements.

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[16]*Bellanca Corp. v. Bellanca*, Del. Supr., 169 A.2d 620, 623 (1961). *See also, Freedman*, 406 F.Supp. at 923 (quasi contracts "create an obligation 'for reasons of justice, without any expression of assent and sometimes even against a clear expression of dissent'")(citations omitted).

[17]*R.M. Williams Co., Inc. v. Frabizzio*, Del. Super., C.A. No. 90C-MY-10, Goldstein, J., 1993 Del. Super. LEXIS 55, at * 42-43 (Feb. 8, 1993)(Mem. Op.)(citing *Fleer Corp. v. Topps Chewing Gum, Inc.*, Del. Supr., 539 A.2d 1060, 1062 (1988)(citing, in turn, 66 Am. Jur. 2d, *Restitution and Implied Contracts,* § 3, p. 945 (1973)).

[18]*Bellanca Corp.*, 169 A.2d at 623; *Clothier v. McCloskey*, Del. Ch., C.A. No. 6229, Allen, C., 1986 Del. Ch. LEXIS 434, at * 17 (July 10, 1986)(Mem. Op.).

Notwithstanding Lawrence's inapt negotiation style, the Court is able to discern her expectation that she would be paid for her services from the evidence presented at trial. The Court has determined as a matter of fact, and as a matter of law, that Lawrence has not met her burden of proving that a meeting of the minds occurred between the parties at the outset of their relationship. The evidence presented at trial clearly reflects that the parties were operating under different assumptions when Lawrence first became involved in this project. For his part, DiBiase believed he was enlisting the assistance of his wife's friend to provide creative input with respect to the design of the tile floor. Lawrence believed her role to be more substantive. The Court is satisfied that neither party effectively communicated their respective understanding of the nature of Lawrence's assignment or the nature of the relationship they were forging with respect to the Galleria project. Nevertheless, the Court is also satisfied that at the outset of the relationship Lawrence expected to receive compensation for her services. The exact form and amount of the compensation was not settled in her mind, as evidenced from her own testimony with respect to the evolving nature of her fee requirements. Nevertheless, based on the extensive preparations and elaborate final product produced by Lawrence, and the history of the relationship as contemporaneously recounted by her in her March 7, 1996 letter to DiBiase, the Court rejects the notion that she intended her work to be performed gratuitously. As stated, she expected some compensation for her services.

Lawrence's expectations, while perhaps previously unclear, were unambiguously defined on March 5, 1996, when she presented her invoice to DiBiase. This event is significant to the Court's analysis of the *prima facia* elements of a quasi contract because the presentation of the

invoice to DiBiase, in the Court's mind, clearly evidences all three elements of the claim. When the invoice was presented by Lawrence, she expressed her intention to be paid, and DiBiase's acknowledgment of receipt of the invoice evidences his appreciation of Lawrence's expectation for payment. This exchange then placed DiBiase at a crossroads. The evidence reveals that the installation of the tile floor had not begun in earnest as of March 5. The evidence also reveals that had he chosen to reject Lawrence's fee proposal and return her design work, DiBiase could have exchanged the tiles he had purchased to install Lawrence's design, chosen an alternative design, including the "star burst" he initially was considering, and ordered and received the tiles needed for installation of the newly chosen design, all within a matter of weeks, if not sooner.[19] He did not do so. Instead, he purportedly rejected Lawrence's fee proposal out of hand, but then installed her design in the Galleria and thereby retained the value of her services without payment. Under these circumstances, the Court will impose a quasi contract upon the parties to remedy the unjust

[19]According to Mr. Trevisan, DiBiase received tiles from Roman Mosaic within days of his order. The star burst design was a "prefab" design, the tiles for which could easily be procured by Roman Mosiak. Indeed, as of February 28, 1996, Mr. Trevisan had already prepared a work order for the "star burst" design which contemplated the delivery of pre-cut tiles in pre-selected colors. It should also be noted that the entire floor installation was completed no later than March 22, 1996. This installation involved cutting the tiles on site and then installing them. Based on the evidence presented, therefore, the Court must reject DiBiase's contention that he was too far into the installation process to change designs. The evidence reveals that the delay caused by the change in designs would have been insignificant.

enrichment DiBiase has enjoyed since March of 1996.

3. The Appropriate Measure of Damages

"An award [of damages] based on quantum meruit is discretionary with the Court as to the fair value of the services rendered."[20] In determining the "fair value" of services, the Court can consider such factors as: (1) the time and labor required; (2) whether the work precludes the provider of services from taking on other work; (3) the fees customarily charged by other similar professionals in the locality; (4) the results obtained from the services; (5) the time limitations imposed by the client; and (6) the experience and reputation of the service provider.[21] The Court will apply these factors in determining the fair value of Lawrence's design services to DiBiase.

Lawrence was not an experienced designer at the time she began this project. Indeed, her lack of experience is most certainly what has led her to this Court to resolve a dispute which would have been avoided had she employed basic common sense business precautions, e.g., written estimates, work orders, etc. The opinions of her expert, however, assume that she was experienced in design work and that she justifiably could command the top dollar in the design community. His opinion relies heavily upon the fact that Lawrence "owns her own business, and it wasn't subordinated down lower."[22] The Court rejects this basis for determining the appropriate rate for Lawrence's services. Instead, the Court will employ a more traditional approach: the hourly rate

[20]*Heiman, Aber & Goldlust*, supra, at *7.

[21]*Id.* (citations omitted). It is noted that *Heiman, Aber & Goldlust* spoke to the fair value of counsel fees awarded pursuant to a claim of quantum meruit. The Court can see no reason why these factors would not also be helpful in determining the fair value of fees for services rendered by other professionals.

[22]Simpers Depo. at 31.

should be based primarily upon the professional's experience. Mr. Simpers testified that the architects in his firm with advanced degrees but less field experience bill at $75 - $85 per hour when performing design work similar to the work performed by Lawrence. This hourly rate more appropriately reflects Lawrence's experience. Because she worked under some time pressure, the Court will select the high end of the range proffered by Simpers ($85 per hour). In so doing, the Court accepts Lawrence's testimony that she was consumed with the work on this project and that she was unable to take on other work during the time she worked for DiBiase. The Court also recognizes that the finished product was quite impressive; as stated, the final design resembles a work of art.

The Court will accept Simpers' estimate of 260 hours of work on this project. While Lawrence testified that she spent over 320 hours on the project, it is reasonable to conclude that, like anyone doing something for the first time, Lawrence did not approach this project with the same efficiency a more experienced designer would have brought to the work. For similar reasons, the Court will not order compensation for two separate designs. DiBiase did not use the first design; he rejected it as "too busy." He did not, therefore, retain the benefit of Lawrence's work on that design. Moreover, the first design was part of a process of learning for Lawrence which, again, was reflective of her lack of experience in commercial design.

VI. CONCLUSION

Based on the foregoing, the Court will direct that the Prothonotary enter judgment in favor of Lawrence in the amount of $22,100.00. The Court also will order prejudgment interest at the legal rate.[23]

[23] *Rollins Environmental Services, Inc. v. WSMW Indus., Inc.,* Del. Super., 426 A.2d 1363

IT IS SO ORDERED.

(1980)(pre judgment interest appropriate in quasi contract cases at the prevailing legal rate).

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

IRAN LAWRENCE, t/a IRAN LAWRENCE & COMPANY,	)	
Plaintiff,	)	
v.	)	C.A. No. 99C-02-190-JRS
AUGUSTINE DIBIASE, JR., MAIN STREET GALLERIA, LLC, and DIBIASE BROTHERS, CONSTRUCTION, INC.,	)	
Defendants.	)	

O R D E R

This 28th day of February, 2001, for the reasons expressed in the Court's Opinion issued this date,

IT IS ORDERED that the that the Prothonotary enter judgment in favor of Iran Lawrence and against the defendants jointly and severally in the amount of $22,100.00. The Court also will order prejudgment interest at the legal rate.

Judge Joseph R. Slights, III