

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 26-CV-2973

GENE DUNBAR,
Plaintiff-Appellee

v.

DAWNA PEDERZANI,
Defendant-Appellant

OPINION AND ORDER

DECISION ON APPEAL

Defendant Dawna Pederzani appeals the small claims court's judgment against her and in favor of Plaintiff Gene Dunbar over payment for work that Dunbar, a contractor, did at Pederzani's property. Pederzani had refused to pay Dunbar for the work he did, alleging that the work was sub-par and that he did additional work that she did not ask him to do without providing an estimate for that additional work. The Court has listened to the recording of the small claims hearing and reviewed the record of this case. For the reasons discussed below, the judgment of the small claims court is **AFFIRMED IN PART** and **REVERSED IN PART**.

Background

Based on the credible evidence, the small claims court made the following findings of facts on the record at the hearing below. Pederzani and Dunbar had an agreement for Dunbar to do some work at Pederzani's property. That work consisted of repairs to a gate, a fence, and a shed, prepping and painting the shed, and work on the house. The parties' agreement took the form of email communications and oral conversations. The parties did not dispute the extent and quality of work done on the gate and fence, and Pederzani was satisfied with that work. Pederzani did not express any concerns about the *repair work* on the shed. Thus, the focus of the small claims court's decision was on the *painting* of the shed and the work on the house.

Dunbar spent approximately 13.75 hours for all the work excluding the priming and painting of the shed. He also provided of his own accord paint for the house and primer for the house and the shed, and did not charge for that. Dunbar testified that his initial quote for all the work of \$525, his updated estimate of \$650, and his final bill of \$775 were all based on his internal calculation using a \$40 per hour labor rate.

Pederzani was dissatisfied with the quality of the paint job on the shed, and the photographs admitted into evidence show parts of the shed where the paint is peeling and where the window has not been painted. Dunbar's view was that this was because he had agreed to paint the shed only "as needed" as captured in his Exhibit 2.

Pederzani was frustrated because she had asked Dunbar multiple times to communicate by text rather than email. The parties also communicated orally on different occasions. The nature of these communications resulted in miscommunications between the parties, such that Pederzani may not be able to see all of the work that Dunbar did. The trial court credited that Dunbar did the work on the house on the right side of the chimney, for instance.

The court stated that it asked about Dunbar's hourly rate because it needed some way to determine damages. It found that, despite the parties' written communications supplemented by their verbal conversations, the principles of quantum meruit and/or unjust enrichment applied. Under those principles, the court concluded that Dunbar had invested his time and resources into work on Pederzani's property, some of which Pederzani does not dispute, and that it would be unfair for her to receive the benefit of Dunbar's labor without some compensation.

The small claims court also credited the photographic evidence that the painting on the shed was not performed to a reasonable workmanlike quality that would be expected under the circumstances and would require some sort of rework. Therefore, the court did not award Dunbar the full amount of the requested damages. Instead, it awarded damages as follows:

- 13.75 hours of work excluding painting of shed: \$550 (based on rate of \$40 per hour)
- Paint and primer supplied by Dunbar: \$100
- Disposal fee: \$25

The total judgment for Dunbar was \$675 to be paid by Pederzani over 10 months, with interest not to run until after those 10 months. Pederzani appeals from that judgment.

Discussion

In small claims appeals, the Superior Court's review is based on the trial record and is limited to questions of law. 12 V.S.A. § 5538; V.R.S.C.P. 10(d). The small claims judge, as the finder of fact, "is in a unique position to assess the credibility of the witnesses and the weight of the evidence presented." *Kanaan v. Kanaan*, 163 Vt. 402, 405 (1995). Thus, the findings of the small claims court "must be construed, where possible, to support the judgment." *Kopelman v. Schwag*, 145 Vt. 212, 214 (1984). However, findings of fact must be supported by the evidence. *Brandon v. Richmond*, 144 Vt. 496, 498 (1984).

On appeal, Pederzani first contends that the small claims court erred by applying quasi-contract principles to a situation where there was an enforceable contract. Generally, "to prevail on a quasi-contract claim" such as quantum meruit or unjust enrichment, a "plaintiff must prove that (1) a benefit was conferred on defendant; (2) defendant accepted the benefit; and (3) defendant retained the benefit under such circumstances that it would be inequitable for defendant not to compensate plaintiff for its value." *Masiello Real Est., Inc. v. Matteo*, 2021 VT 81, ¶ 30, 215 Vt. 607 (quotation omitted). Though similar, quantum meruit and unjust enrichment are distinct, and that distinction is based on the measure of recovery: "Unjust enrichment focuses on the value of the benefit actually conferred upon the defendant. Quantum meruit, on the other hand, is determined by the reasonable value of plaintiff's services regardless of their value to defendant." *DJ Painting, Inc. v. Baraw Enters., Inc.*, 172 Vt. 239, 242 n.2

(2001) (quoting *In re Estate of Elliott*, 149 Vt. 248, 253 n.2 (1988)). The small claims court's award below was based on the reasonable value of Dunbar's services and, thus, invoked the quasi-contract theory of quantum meruit.

Although the parties had some semblance of an agreement, that does not mean that quantum meruit cannot apply. It is true, as Pederzani suggests, that "the existence of an express agreement on the subject matter of an unjust-enrichment or quantum-meruit claim *ordinarily* precludes recovery." *Beldock v. VWSD, LLC*, 2023 VT 35, ¶ 78 n.14, 218 Vt. 144 (emphasis added). But that "rule is not absolute." *Id.* ¶ 77. "[F]or unjust-enrichment and quantum-meruit claims, . . . the existence of an express agreement is not an automatic bar to recovery." *Id.* ¶ 78 n.14. As our Supreme Court has explained:

A valid contract displaces any inquiry into unjust enrichment as to matters within its scope. In other words, when an express contract does not fully address a subject, a court of equity may impose a remedy to further the ends of justice. Consequently, unjust enrichment applies in the contract context only when a party renders a valuable performance or confers a benefit upon another under a contract that is invalid, voidable, or otherwise ineffective to regulate the parties' obligations.

Id. ¶ 77 (quotations omitted); *see generally* *Liss v. Studeny*, 450 Mass. 473, 480, 879 N.E.2d 676, 682 (2008) ("While a party does not recover on the contract itself under quantum meruit, a court may look to the terms of the underlying contract to help determine appropriate recovery under quantum meruit."). Given the various different communications (and miscommunications) that formed the basis for Dunbar's work at Pederzani's property and the evidence that Pederzani assented to Dunbar performing additional work beyond what was outlined in their original "agreement," it was reasonable to conclude that the initial "agreement" was "ineffective to regulate the parties' obligations." *Id.* (quotation omitted). Consequently, it was entirely proper to apply a quasi-contract theory such as quantum meruit, and the small claims court did not err in that respect.

Pederzani maintains that even if it was proper to apply a quasi-contract theory, the court below nevertheless erred in several ways. She argues that the entire shed "needed" to be painted and that Dunbar should have done so. The trial court acknowledged that the painting of the shed was "sub-par" and would require future remediation, and accordingly did not award Dunbar damages for painting the shed.

She next contends that Dunbar produced no records, receipts, or documentation of having spent 13.75 hours at her property and that this was an "unsubstantiated claim put forth the day of the hearing." Appellant's Br. at 5 (filed June 18, 2026). This finding was based on Dunbar's testimony, which the trial court had discretion to credit. This Court cannot disturb that finding on appeal. While Pederzani asserts that it was not "fair" or "just" that the court allowed Dunbar to come up with an hourly rate "on the spot," that was a reasonable inquiry to determine the value of Dunbar's services for the purposes of quantum meruit principles.

Pederzani also asks that there be “no compensation” for “whatever [Dunbar] claims to have done on the house” because the photographs “clearly show” that what she requested to be scraped was “left untouched.” *Id.* at 6. However, the small claims court credited that Dunbar did the work on the house on the right side of the chimney, and this Court cannot disturb that credibility finding. Thus, he is entitled to recover the reasonable value of his services for that work.

Pederzani contends that a contractor cannot agree to a specific scope of a job, and then “randomly add on hours and materials for which they are not entitled.” *Id.* There is evidence, however, that after the initial “agreement,” she later requested additional work through email or verbal communications. Under quasi-contract principles, it would be unfair not to compensate Dunbar for that additional work. She similarly contends that the court rewarded Dunbar “unfairly by shifting from the agreed upon” flat fee of \$525 to a “substantial hourly wage of \$40.00 per hour.” *Id.* There was no error. This was a reasonable method to ascertain the value of Dunbar’s services for purposes of resolving the quantum meruit/unjust enrichment claim.

Lastly, Pederzani argues that the court erred in awarding Dunbar the cost of materials because she gave Dunbar her Lowe’s credit card and all materials were charged to that card. There is evidence in the record that Dunbar supplied at least some of his own paint and primer, however, and the small claims court was well within its discretion to credit that testimony. This Court observes that at the conclusion of the hearing below, Pederzani attempted to provide contrary testimony, but that this occurred after the evidence was closed and after the court issued its judgment. Nevertheless, the small claims court erred in awarding Dunbar for materials because Dunbar told Pederzani that he would provide the paint and primer with no charge, and he never asked for the cost of paint and primer at the hearing below. As the plaintiff in this proceeding, it was his burden to articulate the relief he was seeking. Therefore, the damages award must be reduced by \$100.

Order

The judgment of the small claims court is AFFIRMED IN PART and REVERSED IN PART. The judgment is reversed as to the award of \$100 for paint and primer, but affirmed in all other respects. The total judgment in favor of Dunbar is modified to \$575. An amended judgment shall issue.

Electronically signed on September 18, 2026 at 6:14 PM pursuant to V.R.E.F. 9(d).



Megan J. Shafritz
Superior Court Judge