

No. 33248-5-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

JAMES M. YOUNG and SHANNON YOUNG; STATE OF
WASHINGTON DEPARTMENT OF LABOR & INDUSTRIES

Appellants,

vs.

JUDITH A. YOUNG,

Respondent.

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

COUNTER STATEMENT OF THE CASE 1

COUNTER STATEMENT OF ISSUES PRESENTED
FOR REVIEW 1

ARGUMENT

 A. Summary of Argument 1

 B. The court should not consider the error
 Appellants raise because they did not raise
 it in the trial court. 2

 C. The proper measure of damages when recovering for
 work performed is the reasonable value of the services
 provided 5

 1. The measure of Appellants’ recovery is
 controlled by the concept of quantum meruit .. 6

 2. The measure of recovery in quantum meruit is
 the reasonable value of the work 10

 3. The measure of reasonable value in quantum
 meruit cases varies with the circumstances ... 15

 D. Substantial evidence supports the trial court’s
 conclusion that the amount awarded was a
 reasonable value for Appellants’ work 17

CONCLUSION 20

TABLE OF AUTHORITIES

WASHINGTON DECISIONS

Ausler v. Ramsey, 73 Wn. App. 231, 868 P.2d 877 (1994) 9, 10

Baile Communications, Ltd. v. Trend Bus. Syst., 61 Wn. App. 151
810 P.2d 12 (1991) 6, 8, 9, 10

Barr v. Day, 124 Wn.2d 318, 879 P.2d 912 (1994) 8, 9

Balandzich v. Demeroto, 10 Wn. App. 718, 726, 519
P.2d 994 (1974)

Bort v. Parker, 110 Wn. App. 561, 42 P.3d 980 (2002) 9

Brader v. Minute Muffler Installation, Ltd., 81 Wn. App. 532
914 P.2d 1220 (1996) 16

Chemical Bank v. Washington Public Power Supply System, 102 Wn.2d 874
691 P.2d 524 (1984) 8

Douglas Northwest, Inc., v. Bill O'Brien & Sons Constr., Inc., 64 Wn. App.
661, 828 P.2d 565 (1992) 9

Ducolon Mechanical, Inc. v. Shinstine/Forness, Inc., 77 Wn. App.
707, 893 P.2d 1127 (1995) 9, 15, 16

Dravo Corp. v. L.W. Moses Co., 6 Wash. App. 74
492 P.2d 1058 (1971) 16

Eaton v. Engelcke Mfg., Inc., 37 Wn. App. 677
681 P.2d 1312 (1984) 7, 9, 15, 19

| | |
|---|------------|
| <u>Farwest Steel Corp. v. Mainline Metal Works, Inc.</u> , 48 Wn. App. 719 741 P.2d 58 (1987) | 6, 7 |
| <u>Giedra v. Mount Adams School Dist. No. 209</u> , 126 Wn. App. 840 110 P.3d 232 (2005) | 9 |
| <u>Gregory v. Peabody</u> , 149 Wash. 227, 270 P. 825 (1928) | 14 |
| <u>Heaton v. Imus</u> , 93 Wn.2d 249, 608 P.2d 631 (1980) | 10, 13, 15 |
| <u>Irwin Concrete, Inc. v. Sun Coast Properties, Inc.</u> , 33 Wn. App. 190 653 P.2d 1331 (1982) | 10, 16 |
| <u>Lloyd v. Ridgefield Lumber Ass'n</u> , 38 Wn.2d 723 231 P.2d 613 (1951) | 8 |
| <u>Losli v. Foster</u> , 37 Wn.2d 220, 222 P.2d 824 (1950) | 13 |
| <u>Lynch v. Deaconess Medical Center</u> , 113 Wn.2d 162 776 P.2d 681 (1989) | 7, 16 |
| <u>MacDonald v. Hayner</u> , 43 Wn. App. 81 715 P.2d 519 (1986) | 7 |
| <u>Mason v. Mortgage America, Inc.</u> , 114 Wn.2d 842, 850 792 P.2d 142 (1990) | 17 |
| <u>Noel v. Cole</u> , 98 Wn.2d 375, 655 P.2d 245 (1982) | 10 |
| <u>Roberson v. Perez</u> , ___ Wn.2d ___, 123 P.3d 844 (2005) | 3 |
| <u>Smith v. Favilla</u> , 23 Wn. App. 59, 593 P.2d 564 (1979) | 14 |
| <u>Smith v. Shannon</u> , 100 Wn.2d 26, 666 P.2d 351 (1983) | 3 |
| <u>State v. A.N.W. Seed Corp.</u> , 116 Wn.2d 39 802 P.2d 1353 (1991) | 12, 14, 16 |
| <u>State v. Canfield</u> , 154 Wn.2d 698, 707, 116 P.3d 391 (2005) | 3 |
| <u>State v. Wicke</u> , 91 Wn.2d 638, 642, 591 P.2d 452 (1979) | 3 |

| | |
|--|----|
| <i>Truckweld Equip. Co. v. Olson</i> , 26 Wn. App. 638 618 P.2d 1017 (1980) | 6 |
| <i>Yates v. Taylor</i> , 58 Wn. App. 187 791 P.2d 924 (1990) | 7 |
| <i>Wright v. Colville Tribal Enterprise Corp.</i> , 127 Wn. App. 644 111 P.3d 1244 (2005) | 4 |
| WASHINGTON STATUES AND RULES | |
| CR 46 | 3 |
| RAP 12.8 | 12 |
| OTHER DECISIONS | |
| <i>Realmark Developments, Inc. v. Ranson</i> , 214 W. Va. 161,588 S.E.2d 150 (2003) | 5 |
| <i>Robertus v. Candee</i> , 205 Mont. 403, 670 P.2d 540 (1983) | 5 |
| <i>U.S. for Use of Bldg. Rentals Corp. v. Western Cas. & Sur. Co.</i> , 498 F.2d 335 (9th Cir.1974) | 16 |
| OTHER AUTHORITIES | |
| J. Dawson, <i>Unjust Enrichment</i> 9 (1951) | 8 |
| Joseph M. Perillo, <i>Restitution in the Second Restatement of Contracts</i> 81 Col.L.Rev. 37 (1981) | 16 |

COUNTER STATEMENT OF THE CASE

Though Appellants' statement of the case contains considerable statements that are irrelevant and appear intended only to appeal to emotions, Respondent accepts it to the extent of the statements actually relevant to the case. Additional facts are discussed in the context of Respondent's argument.

COUNTER STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Did Appellants preserve the trial court's alleged error for review?
2. What is the proper measure of recovery in this case?
3. Is the trial court's determination of damages supported by substantial evidence?

ARGUMENT

A. Summary of Argument

In this action to recover for services Appellants provided to Respondent, who are family members, the trial court awarded Appellants \$501,866.00, dollar for dollar the precise sum of the value assigned to the individual improvements by Appellants' own expert. (CP 639 (Conclusion of Law 7); Exh. 87 at 9). The only amounts the trial court did not award were

supplemental amounts for items such as the cost of bonds, insurance, taxes, overhead, profit, contingencies, mobilization costs, tools and general equipment, and the like. (CP 640 (Conclusion of Law 8b.); Exh. 87 at 9). These were costs generally attributable to general contractors, which appellants were not.

Appellants appear to assign error to the trial court's failure to award the supplemental expenses. Their arguments should not be accepted. Appellants never argued to the trial court that its award was in error and thus failed to preserve the error for review. Moreover, the court's decision was not in error. An appellate court will not disturb an award of damages made by the fact finder unless it is outside the range of substantial evidence in the record, or shocks the conscience, or appears to have been arrived at as the result of passion or prejudice. In an action to recover for services rendered, quantum meruit provides the relief. Quantum meruit allowed the court to award the reasonable value of Appellants' services. The court's award was well within the evidence.

B. The court should not consider the error Appellants raise because they did not raise it in the trial court.

In general, issues not raised in the trial court may not be raised on

appeal. RAP 2.5(a); *Roberson v. Perez*, ___ Wn.2d ___, 123 P.3d 844, 847 (2005); *State v. Canfield*, 154 Wash.2d 698, 707, 116 P.3d 391 (2005). The purpose of this rule is to allow the trial court the opportunity to consider all issues and arguments and correct any errors in order that unnecessary appeals will be avoided. *Smith v. Shannon*, 100 Wn.2d 26, 37, 666 P.2d 351 (1983). The rule applies with equal force regardless of whether a case is tried to a jury or the court.

The same rationale requires parties to inform a court acting as trier of fact of the rules of law they wish the court to apply. While a party has the right to assume that the trial court knows and will properly apply the law, this does not excuse failure to seek correction of an error once the complaining party becomes aware of it. If by no other means, this can be done by a motion for a new trial. *State v. Wicke*, 91 Wash.2d 638, 642, 591 P.2d 452 (1979). Failure to make such a motion when it would enable the trial court to correct its error precludes raising the error on appeal, unless the error was pointed out at some other point during the proceedings. *Wicke*, at 642-43, 591 P.2d 452; *Balandzich v. Demeroto*, 10 Wash.App. 718, 726, 519 P.2d 994 (1974). *See also* CR 46 (party must make known action which he or she desires court to take).

Since the present case was tried without a jury, a motion for a new trial would have permitted the trial court to correct any error.

Smith v. Shannon, supra, 100 Wn.2d at 37-38. In *Smith*, the court refused to consider appellant's argument that the trial court applied the wrong professional standard of care because she failed to bring the error to the trial

court's attention, even by post-trial motion.

Because Appellants do not include assignments of error or a statement of issues in their brief, it is not entirely clear what error they ascribe to the trial court.¹ Under the heading "Challenges to Trial Court's Findings and Conclusions; Standard of Review," they are careful to state they do not challenge a finding of fact. Brief of Appellants at 14. Rather, they say they "challenge the trial court's decision to ignore what the trial court itself stated was the 'generally appropriate' measure of recovery, and to instead adopt a lesser measure." *Id.* Their brief then argues as though they assign error to the trial court's failure to award the supplemental expenses identified on page nine of trial exhibit 87. Yet, nowhere did they present that error to the trial court. Neither before trial nor during closing arguments did they contend that the applicable measure of damages required the court to award these items, and allowed no discretion, nor that the trial court would be wrong if it did not. (See CP 592-609 (Appellants' trial brief); RP 784-88 (closing arguments)). Though they presented post-trial motions, they did not make the argument there, either. (See Post-trial orders and Judgment, CP 680-81, 682-

¹ Respondent does not contend that Appellants' violation of RAP 10.3(a)(3) is a basis for the court to decline review. See *Wright v. Colville Tribal Enterprise Corp.*, 127 Wash.App. 644, 648-49, 111 P.3d 1244 (2005).

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83, 684-87).² By failing to raise the issue, Appellants deprived the trial court of the opportunity to correct any error they may have shown. This court should not consider their argument for the first time here.

C. The proper measure of damages when recovering for work performed is the reasonable value of the services provided.

Appellants argue that their claim is for unjust enrichment and the proper measure of damages for unjust enrichment is the greater of “(a) the reasonable value to the other party of what he received in terms of what it would have cost him to obtain it from a person in the claimant’s position or (b) the extent to which the other party’s property has been increased in value or his other interest advanced.” Brief of Appellants at 15. As authority, they cite a West Virginia decision, *Realmark Developments, Inc. v. Ranson*, 214 W. Va. 161, 588 S.E.2d 150 (2003) and a Montana decision, *Robertus v. Candee*, 205 Mont. 403, 670 P.2d 540 (1983). However, resort to such authority is unnecessary. Washington courts have clearly defined the applicable measure of recovery and it is not as Appellants contend.

² Appellants have not included their post-trial motions in the record, but the issues raised in those motions may be gleaned from the trial court’s statement of its decisions.

1. The measure of Appellants' recovery is controlled by the concept of quantum meruit.

Understanding the proper measure of recovery requires consideration of two legal concepts, unjust enrichment and quantum meruit. That understanding is particularly important here because Appellants wrongly discuss the two interchangeably.

Unjust enrichment is a general principle that one should not be permitted to unjustly enrich himself at the expense of another but should be required to make restitution of or for property or benefits received where it is just and equitable that such restitution be made. Baile Communications, Ltd. v. Trend Bus. Syst., 61 Wn. App. 151, 159, 810 P.2d 12 (1991). Unjust enrichment is a contract implied in law requiring a party to make restitution based on the extent of any unjust enrichment. Farwest Steel Corp. v. Mainline Metal Works, Inc., 48 Wn. App. 719, 731, 741 P.2d 58 (1987) (quoting Truckweld Equip. Co. v. Olson, 26 Wn. App. 638, 646, 618 P.2d 1017 (1980)). A contract implied in law is one imposed by the courts because of an implied duty of the parties not based upon mutual assent.³

³ A contract implied in law is one of two types of implied contracts. The other is a contract implied in fact. Contracts implied in fact are express contracts which arise from the facts and subsequently show a mutual consent and an intention to contract with the other party.

Yates v. Taylor, 58 Wn. App. 187, 192, 791 P.2d 924 (1990). Two elements must be satisfied before a quasi-contractual obligation will be imposed: (1) the enrichment must be unjust, and (2) the party claiming unjust enrichment cannot be a mere volunteer. Yates, 58 Wn. App. at 192. A person is unjustly enriched when he or she profits or enriches himself or herself at the expense of another contrary to equity. Farwest Steel, supra, 48 Wn. App. at 731-32

Lynch v. Deaconess Medical Center, 113 Wn.2d 162, 165, 776 P.2d 681 (1989). A contract implied in fact requires a meeting of the minds, and an agreement of the parties arrived at from their conduct rather than their expressions of assent. MacDonald v. Hayner, 43 Wn. App. 81, 85, 715 P.2d 519 (1986).

A contract implied in fact is an agreement depending for its existence on some act or conduct of the party sought to be charged and arising by implication from circumstances which, according to common understanding, show a mutual intention on the part of the parties to contract with each other. The services must be rendered under such circumstances as to indicate that the person rendering them expected to be paid therefor, and that the recipient expected, or should have expected, to pay for them. A true implied contract, or contract implied in fact, does not describe a legal relationship which differs from an express contract: only the mode of proof is different.

Eaton v. Engelcke Mfg., Inc., 37 Wn. App. 677, 680, 681 P.2d 1312 (1984).

A contract implied in law, unlike a contract implied in fact, is not a contract at all. Instead, it "arises from an implied legal duty or obligation" based on the equitable principle of unjust enrichment. Lynch v. Deaconess Medical Center, 113 Wn.2d at 165. A contract implied in law, or "quasi contract," is not based on a contract, or on any consent or agreement. Eaton v. Engelcke Mfg., Inc., 37 Wn. App. at 680.

(citing *Lloyd v. Ridgefield Lumber Ass'n*, 38 Wn.2d 723, 736, 231 P.2d 613 (1951)).

Importantly, the term unjust enrichment represents a general principle which describes a variety of legal actions.

Just as the term "estoppel" has been used widely to describe a variety of legal actions, the term "unjust enrichment" is equally amorphous. John Dawson notes that, in the English common law, relief for unjust enrichment can be found under many different names, including remedies for disseisin of land, the quid pro quo requirement in an action for debt and remedies in equity for enforcing trust or canceling transfers for fraud and duress. J. Dawson, *Unjust Enrichment* 9 (1951). Relief for unjust enrichment is frequently called restitution. Restitution will be granted in a variety of circumstances, including those involving contractual relief for mutual mistake or commercial frustration.

Chemical Bank v. Washington Public Power Supply System, 102 Wn.2d 874, 904, 691 P.2d 524 (1984). Quantum meruit is one of the names of relief for unjust enrichment, and falls within the unjust enrichment doctrine. *Baile Communications, Ltd. v. Trend Bus. Syst.*, *supra*, 61 Wn. App. at 160. As such, the two elements necessary to prove any unjust enrichment claim are required to recover in quantum meruit.

Quantum meruit is a Latin phrase meaning "as much as he deserves." The concept refers to the extent of liability on a contract implied by law, and is premised on the desirability of avoiding unjust enrichment. *Barr v. Day*,

124 Wn.2d 318, 330 at n.3, 879 P.2d 912 (1994). "It is not a legal obligation like a contract or quasi-contract, but rather, is a remedy--'a reasonable amount for work done.'" Bort v. Parker, 110 Wn. App. 561, 42 P.3d 980 (2002), quoting Douglas Northwest, Inc., v. Bill O'Brien & Sons Constr., Inc., 64 Wn. App. 661, 683, 828 P.2d 565 (1992) (quoting Eaton v. Engelcke Mfg., Inc., 37 Wn. App. 677, 680, 681 P.2d 1312 (1984)). Quantum meruit is a form of restitution. It developed as a common count of the common law writ of assumpsit, allowing the plaintiff to recover for the value of services rendered to the defendant. Ducolon Mechanical, Inc. v. Shinstine/Forness, Inc., 77 Wn. App. 707, 711 n.1, 893 P.2d 1127 (1995).

Quantum meruit is the remedy to recover for work actually done. Giedra v. Mount Adams School Dist. No. 209, 126 Wn. App. 840, 850, 110 P.3d 232 (2005). It is based on the premise that one who uses and enjoys the labor and materials of another should not be unjustly enriched thereby. Ausler v. Ramsey, 73 Wn. App. 231, 232 n.1, 868 P.2d 877 (1994). Quantum meruit applies under the unjust enrichment doctrine to the extent it involves the retention of benefits in the form of services received. Baile Communications, Ltd. v. Trend Bus. Syst., supra, 61 Wn. App. at 160. The law implies a promise to pay a reasonable amount for the labor and materials absent an

express promise to do so. *Ausler v. Ramsey, supra*, at 232.

In this case, Appellants sought to recover for the value of labor and materials for various work that benefitted Respondent. (CP 638-39 (Findings of Fact 168-76)). Their claim is properly analyzed under the rules for quantum meruit.

2. The measure of recovery in quantum meruit is the reasonable value of the work.

In general, recovery in quantum meruit is limited to the reasonable value of services. *Bailie Communications, Ltd. v. Trend Bus. Sys., Inc., Supra* 61 Wn. App. 151, 160; *Irwin Concrete, Inc. v. Sun Coast Properties, Inc.*, 33 Wn. App. 190, 195, 653 P.2d 1331 (1982)(“Quantum meruit -- ‘a reasonable amount for the work done’ -- is the measure of recovery.”)(quoting *Heaton v. Imus*, 93 Wn.2d 249, 252-53, 608 P.2d 631 (1980)).

In disregard to this authority, Appellants try to find hard and fast rules from the measures of recovery used in particular cases. However, even the authorities they cite support the “reasonable value” measure of recovery. For example, Appellants cite *Noel v. Cole*, 98 Wn.2d 375, 655 P.2d 245 (1982), for the proposition that “a claimant in an unjust enrichment case who has in good faith provided services to the defendant for the improvement of real

property is entitled to recover **the market value** of those services.” Brief of Appellant at 17 (emphasis in original). Then they provide a misleading, partial quote from that decision. But the court’s actual statement on the measure of damages was: “The proper measure of its [the plaintiff’s] recovery is **the reasonable value of its improvement to the tract in question**, namely its partial road construction, less any profits from the timber removed.” 98 Wn.2d at 382 (emphasis added). The complete statement from the portion of the opinion Appellants quote is:

The proper measure of its [the plaintiff’s] recovery is the reasonable value of its improvement to the tract in question, namely its partial road construction, less any profits from the timber removed. Where, as here, the party seeking recovery is not at fault, reasonable value is measured by the amount which the benefit conferred would have cost the defendant had it obtained the benefit from some other person in the plaintiff’s position. Restatement (Second) of Contracts §§ 371, comment *b* (1981); 12 S. Williston, *Contracts* §§ 1485 (3d ed. 1970). **This amount is to be distinguished from cost and might be either more or less, though cost is some evidence of value. S. Williston, at §§ 1483 (3d ed. 1970); *Edwards*, at 607, 409 P.2d 153.**

98 Wn.2d at 382 (emphasis added to portions Appellants omitted). The meaning of this statement is clear: “Reasonable value” is the measure of recovery. Value is highly personal to the defendant, measured as it is by the cost to obtain the benefit “from some other person **in the plaintiff’s**

position.” And, actual cost is some evidence of value. None of this supports the contention that market value is an appropriate measure of “reasonable value” in any given case, let alone that market value is the only measure in every case.

Indeed, in a roughly analogous case, the Supreme Court rejected the contention that “value” necessarily meant “market value.” In State v. A.N.W. Seed Corp., 116 Wn.2d 39, 802 P.2d 1353 (1991), a defendant sought restitution of property executed upon in satisfaction of a judgment. The property had been sold at sheriff’s sale. RAP 12.8 required that the plaintiff restore the “value” of the property. The defendant contended that meant he was entitled to the fair market value, not the actual value received at the sheriff’s sale. The court rejected the contention.

Defendants argue that the word "value" in RAP 12.8 can only mean market value, citing cases for that general definition of "value." They convinced the trial court and the Court of Appeals, but we do not agree. After considering the historical perspective of restitution in these circumstances, the majority views as reflected in the Restatement of Restitution, and policy reasons, we conclude that the judgment debtor is entitled to the proceeds of execution, not the fair market value. Additionally, examination of the authorities cited by defendants and those relied upon by the Court of Appeals do not support the fair market value theory. . . . Restitution, the remedy sought by defendants, encompasses a very broad scope of remedies fashioned to fit a variety of circumstances. The restitution here sought is but a narrow application of the

underlying principle that one person may be "accountable to another on the ground that otherwise he would unjustly benefit or the other would unjustly suffer loss." Restatement of Restitution, at 1 (1937).

116 Wn.2d at 44-45

In a similarly misleading manner, Appellants cite *Heaton v. Imus*, 93 Wn.2d 249, 608 P.2d 631 (1980), for the proposition that an unjust enrichment claimant is entitled to recover reasonable profit. Brief of Appellants at 26. But that court's actual statement was: "A trial court may exercise discretion in granting lost profits to a prevailing party and may exclude them if there are circumstances which call for such exclusion." 93 Wn.2d at 254. The court even discussed *Losli v. Foster*, 37 Wn.2d 220, 222 P.2d 824 (1950), noting that it affirmed a trial court which had refused to include lost profits where the prevailing party, an experienced contractor, failed to advise the owners of the final probable costs of construction of a residence. *Id.*

Appellants' argument that they are entitled to the value of improvements as their recovery also is misplaced. The value of improvement rule is limited to circumstances not present here. The rule is

that where the labor or money of a person has been expended in the permanent improvement and enrichment of the property of another by parol contract or agreement which cannot be

enforced because, and only because, it is not in writing, the party repudiating the contract, as he may do, will not be allowed to take and hold the property thus improved and enriched, 'without compensation for the additional value which these improvements have conferred upon the property,' and it rests upon the broad principle that it is against conscience that one man shall be enriched to the injury and cost of another, induced by his own act.

Smith v. Favilla, 23 Wn. App. 59, 62, 593 P.2d 564 (1979), quoting *Gregory v. Peabody*, 149 Wash. 227, 231, 270 P. 825 (1928). Here, Appellants did not argue a parol agreement that was unenforceable solely because it was not in writing, and the trial court made no finding in that regard.

Ultimately, the gist of Appellants' contention seems to be that the measure of the greatest benefit to the defendant is always the measure of recovery in a case such as this. But that very contention was rejected in *State v. A.N.W. Seed Corp.*, *supra*. There, the court addressed the situation where the benefit to the unjustly enriched defendant did not coincide with the loss to plaintiff. Quoting from the Restatement of Restitution, the court stated:

If the value of what was received and what was lost were always equal, there would be no substantial problem as to the amount of recovery, since actions of restitution are not punitive. In fact, however, the plaintiff [here judgment debtor] frequently has lost more than the defendant [here judgment creditor] has gained, and sometimes the defendant has gained more than the plaintiff has lost.

In such cases the measure of restitution is determined with reference to the tortiousness of the defendant's conduct

or the negligence or other fault of one or both of the parties in creating the situation giving rise to the right to restitution. If the defendant was tortious in his acquisition of the benefit he is required to pay for what the other has lost although that is more than the recipient benefited. If he was consciously tortious in acquiring the benefit, he is also deprived of any profit derived from his subsequent dealing with it. *If he [judgment creditor] was no more at fault than the claimant, he is not required to pay for losses in excess of benefit received by him* and he is permitted to retain gains which result from his dealing with the property.

116 Wn.2d at 46-47(emphasis and brackets in original). Simply put, the doctrine of unjust enrichment and the measure of reasonable value does not necessarily deprive the debtor of all benefit he may have received, nor benefit the creditor to that extent.

3. The measure of reasonable value in quantum meruit cases varies with the circumstances.

"The term 'quantum meruit' literally means 'as much as deserved.' "
Eaton v. Engelcke Mfg., Inc., Supra 37 Wn. App. 677, 680, (quoting *Heaton v. Imus*, 93 Wn.2d 249, 252-53, 608 P.2d 631 (1980)). Quantum meruit is a form of restitution. *Ducolon Mechanical, Inc. v. Shinstine/Forness, Inc.*, 77 Wn. App. 707, 711 n.1, 893 P.2d 1127 (1995). A party is entitled to restitution only to the extent he or she conferred a benefit to the other party

through performance or reliance. Brader v. Minute Muffler Installation, Ltd., 81 Wn. App. 532, 537, 914 P.2d 1220 (1996).

Contrary to Appellants' assertion, what is "deserved" varies from case to case. Both the amount and measure of restitution depends on the particular circumstances of each case. State v. A.N.W. Seed Corp., 116 Wn.2d 39, 45, 802 P.2d 1353 (1991) ("Restitution . . . encompasses a very broad scope of remedies fashioned to fit a variety of circumstances.").

In quantum meruit and restitution cases, Washington courts measure the reasonable value of the benefit conferred to the defendant in a variety of ways. *See i.e., Losli v. Foster*, 37 Wash.2d 220, 232, 222 P.2d 824 (1950) (actual cost of labor and materials); *Irwin Concrete, Inc. v. Sun Coast Properties, Inc.*, 33 Wash.App. 190, 653 P.2d 1331 (1982) (contract price). Although early Washington cases limited recovery to the contract price, later cases suggest that this rule is not applicable in all cases. *See Dravo Corp. v. L.W. Moses Co.*, 6 Wash.App. 74, 91, 492 P.2d 1058 (1971) (citing early cases), *review denied*, 80 Wn.2d 1010 (1972); *see generally* Joseph M. Perillo, *Restitution in the Second Restatement of Contracts*, 81 Col.L.Rev. 37, 44-45 (1981); *U.S. for Use of Bldg. Rentals Corp. v. Western Cas. & Sur. Co.*, 498 F.2d 335, 338 (9th Cir.1974) ("The contract price, while evidence of reasonable value, is neither the final determinant of the value of performance nor does it limit recovery.").

Ducolon Mechanical, Inc. v. Shinstine/Forness, Inc., *supra*, 77 Wn. App. at 712.

D. Substantial evidence supports the trial court's conclusion that the amount awarded was a reasonable value for Appellants' work.

The amount of damages is a matter to be fixed within the judgment of the fact finder. A trier of fact has discretion to award damages which are within the range of relevant evidence. *Mason v. Mortgage America, Inc.*, 114 Wn.2d 842, 850, 792 P.2d 142 (1990). An appellate court will not disturb an award of damages made by the fact finder unless it is outside the range of substantial evidence in the record, or shocks the conscience, or appears to have been arrived at as the result of passion or prejudice. *Id.*

At the conclusion of the evidence, the trial court awarded Appellants \$501,866.00, dollar for dollar the precise sum of the value assigned to the individual improvements by their own expert. (CP 639 (Conclusion of Law 7); Exh. 87 at 9). The only amounts the trial court did not award were supplemental amounts which included amounts such as the cost of bonds, insurance, taxes, overhead, profit, contingencies, mobilization costs, tools and general equipment, and the like. (CP 640 (Conclusion of Law 8b.); Exh. 87 at 9). These were costs generally attributable to general contractors. The court stated that "under the circumstances of this case" Appellants "should not be" entitled to recover general contractor's costs. (CP 640 (Conclusion

of Law 8b.)(emphasis added))

A host of circumstances support the conclusion that these expenses were not costs Respondent would have incurred had she “obtained the benefit from some other person in the plaintiff’s position,” and were not part of the reasonable value of the work in this case. Among them are the following:

- Appellants and Respondent are family members, with an extensive history of financial dealings that benefitted both, but were not controlled by free-market conditions. One example of this was the substantial unsecured, interest only loan Respondent extended to plaintiffs. (CP 619 (Findings of Fact 13-14)). This history suggested that neither party expected their financial relationship to be governed purely by general market principles.
- The trial court specifically found that Respondent acted in good faith. (CP 633 (Finding of Fact 119(a))).
- Appellants were not general contractors, nor were they licensed as such. (CP 618 (Finding of Fact 4); CP 659, ln. 7-11).
- Appellants performed the work under conditions dissimilar to those that would have been expected of a general contractor. Appellants completed work on their own schedule and as their family and other business ventures allowed.
- A substantial portion of the award was compensation for Appellant’s own time. (CP 627 (Finding of Fact 79)). Profit reasonably can be considered inherent in the compensation for labor personally performed.

- Appellants did not actually incur some or all of the supplemental expenses.
- Appellants received other benefits the court did not offset. Among them was the rent-free, voluntary occupation of the premises for a period of years (CP 659, ln. 14; 669, lns. 8-11) including use of the premises to store their business-related property, the interest free use of loan proceeds for a period of years (CP 642 (Conclusion of Law 17D.)), and gifts (CP 668, lns. 5-7).
- At points during their relationship, Respondent had offered to pay Appellants and Appellants declined. (CP 660, lns. 9-20).
- Appellants did not advise Respondent that such costs were being incurred or would ordinarily be charged for the work Appellants were performing.
- Respondent promptly and without question paid expenses Appellants presented to her. (CP 668, lns. 7-10).

While virtually all of these various circumstances were the subject of dispute and opposing explanation, each was supported by the record. The trial judge, as the trier of fact, was well within his discretion to resolve those disputes in a manner that supports his conclusion that awarding the supplementary items was not justified in this case. Accord *Eaton v. Enkle Mfg., Inc.*, 37 Wn. App. 677, 682, 681 P.2d 1312 (1984) (“Eaton presented expert testimony that the reasonable value of his services was \$7800. The court's award of \$5415 is

within the range of evidence presented at trial and will not be disturbed on appeal.”)

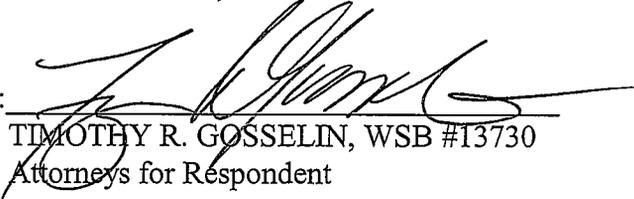
CONCLUSION

The appropriate measure of recovery in this case is the reasonable value of the services performed. The trial court awarded Appellants \$501,866.00. Substantial evidence supports that award. This court should affirm the trial court’s decision.

Respectfully submitted this 6th day of January, 2006.

BURGESS FITZER, P.S.

By:


TIMOTHY R. GOSSELIN, WSB #13730
Attorneys for Respondent

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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No. 33248-5-II

Thurston County Superior Court No.: 03-2-00937-4

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DIVISION II

JAMES M. YOUNG and SHANNON YOUNG; STATE OF
WASHINGTON DEPARTMENT OF LABOR & INDUSTRIES

Appellants.

vs.

JUDITH A. YOUNG

Respondent.

AFFIDAVIT OF MAILING

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WITNESS my hand and official seal this 6th day of January, 2006.

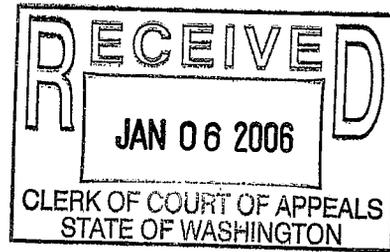
Diana Marsillo

Print Name: Diana Marsillo

Notary Public in and for the State of Washington

Residing at: Tacoma

My Commission Expires: 9-6-07



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