

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CW 1718R

WEST JEFFERSON MEDICAL CENTER MEDICAL STAFF,  
THROUGH JONATHAN C. BORASKI, M.D., K. BARTON FARRIS, M.D.,  
PABLO J. LABADIE, M.D. AND DAVID C. TREEN, JR.

VERSUS

THE STATE OF LOUISIANA AND THE LOUISIANA DEPARTMENT OF  
HEALTH AND HOSPITALS

Judgment Rendered: **APR 16 2013**

*JMM*  
*Guidry*  
*McDonald*  
*Theriot*  
ON REMAND FROM THE SUPREME COURT OF LOUISIANA,  
NUMBER 2012-CC-0153, SEEKING REVIEW AND REVERSAL OF THE  
DENIAL OF LSU'S EXCEPTIONS AT THE NINETEENTH JUDICIAL  
DISTRICT COURT  
APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT  
IN AND FOR THE PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA  
DOCKET NUMBER 590587, SECTION "27"

THE HONORABLE TODD W. HERNANDEZ, JUDGE

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**BEFORE: GUIDRY, PETTIGREW, McDONALD, THERIOT,  
AND DRAKE, JJ.**

*Pettigrew, J. concurs. (by JMM)*

**McDONALD, J.**

The Supreme Court remanded this case with an instruction to address the issue of subject matter jurisdiction. Finding no subject matter jurisdiction, the case is dismissed.

The original petition of the parties was filed in the Twenty-Fourth Judicial District Court on April 30, 2007. The substance of the suit is that a group of doctors practicing at West Jefferson Medical Center voluntarily rendered services to indigent patients after Hurricane Katrina because Charity Hospital in New Orleans had been damaged and was closed. The suit was filed to attempt to be compensated for their services from the State or The Louisiana Department of Health and Hospitals (DHH). The Board of Supervisors of Louisiana State University and Agriculture and Mechanical College (LSU) was later added as a defendant. The suit was transferred to the Nineteenth Judicial District Court by the Louisiana Fifth Circuit Court of Appeal after a hearing on a venue exception was appealed and it was determined that the Nineteenth Judicial District was the proper venue.

Our opinion only addresses the issue of subject matter jurisdiction. A court's subject matter jurisdiction is an issue that cannot be waived or conferred by consent of the parties. Cf. LSA-C.C.P. art. 925; *Whittenberg v. Whittenberg*, 97-1424 (La. App. 1 Cir. 4/8/98) 710 So.2d 1157, 1158. The issue addresses the court's authority to adjudicate the cause before it. *Id.* A judgment rendered by a court without subject matter jurisdiction is void. *Id.* In this case the defendants contend that the court does not have subject matter jurisdiction because the suit is against the state and a state agency, and the state has not waived sovereign immunity.

The legal basis for the suit is unjust enrichment. The plaintiffs allege that their treatment of the patients was without compensation, so they were

impoverished. However, Charity Hospital, which would have provided treatment to these indigent patients had it been in operation, receives state and federal funding; therefore, it is alleged the defendants were enriched. Even before the court can address the issue of impoverishment/enrichment it needs to determine the plaintiffs' right to successfully maintain the suit. The district court also denied the defendants' exception raising the objection of No Right of Action/Lack of Procedural Capacity. We render no opinion on defendants' other exceptions.

Unjust enrichment is well-recognized in our jurisprudence. It is a claim that is maintained when there is no other legal remedy available. The plaintiffs contend the waiver of immunity for contracts includes quasi contract. The defendants challenge this claim.

The Louisiana Constitution, Article XII, § 10, provides in pertinent part:

Neither the state, a state agency, nor a political subdivision shall be immune from suit and liability in contract or for injury to a person or property.

The defendants do not maintain that the plaintiffs have no right to sue, only that authorization must be received from the Legislature, which would effect a waiver of the state's sovereign immunity.

Plaintiffs rely on the fact that quasi contract was well-established prior to the 1974 Constitution<sup>1</sup> and use this to argue that the legislature intended to include it in the waiver of immunity provided in Article XII, § 10. The extent of recognition of quasi contract is somewhat beside the point. Actually, if quasi contract were not well-recognized in our jurisprudence one could argue more persuasively that it was meant to be included, but escaped notice. Ultimately that argument would fail because waivers of sovereign immunity must be "unequivocally expressed."<sup>2</sup>

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<sup>1</sup> *Minyard v. Curtis Products, Inc.*, 251 La. 624, 205 So 2d 422 (La. 1968).

<sup>2</sup> *Irwin v Dept. of Veterans Affairs*, 498 U.S. 89, 95, 111 S.Ct. 453, 457, 112 L. Ed. 2d 435 (1990).

It is also argued that quasi contract is synonymous with implied contract citing a U.S. Fifth Circuit Court of Appeals case.<sup>3</sup> Ironically, *Le Mieux Bros., Inc.*, the case cited, was, in fact, a contract case. The court in that case was noting whether one considered the case to be an implied contract or a quasi contract the “rights here sought to be enforced arose out of a contractual relationship.” *Id.* In the matter before us there is no “contract,” and that is precisely why we do not find the waiver of sovereign immunity to include quasi contract when it says contract.

Contracts require agreement whether it is express or implied, that is, implied by the nature of the activities of the parties.<sup>4</sup> Quasi contracts exist when the parties have no contractual relationship; however, circumstances dictate that one party should be compensated for moral or ethical reasons. Thus, the theory of unjust enrichment developed. Plaintiffs’ case is founded on a theory of unjust enrichment, as noted. There was no agreement between the state, or state agency, Charity Hospital, to provide services to these indigent patients. When Hurricane Katrina forced Charity Hospital to close, arrangements could have been made to refer their patients to West Jefferson, or to another local hospital. The contractual obligation thus transferred would have required the alternate hospital to be paid. Instead the physicians voluntarily undertook the treating of these patients, for which they are to be commended. Unfortunately for them, we do not find the waiver of sovereign immunity to include their unjust enrichment claims.

The Louisiana Constitution expresses a waiver of sovereign immunity for “contracts or for injury to a person or property.” It is well-established that this waiver must be strictly construed, it cannot be implied. Regardless of the ability of plaintiffs’ unjust enrichment claim to be called a quasi contract, it is not a contract. The legislature has waived sovereign immunity for contracts.

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<sup>3</sup> *Le Mieux Bros., Inc. v. Tremont Lumber Co.*, 140 F.2d 387 (5<sup>th</sup> Cir. 1944).

<sup>4</sup> La. Civ. Code art. 1906.

For the foregoing reasons, the district court's denial of the defendants' exception raising the objection of lack of subject matter jurisdiction is reversed. We dismiss the suit.

Until the legislature determines whether it wants to waive sovereign immunity for quasi contracts, the court lacks jurisdiction for such claims. Costs are assessed to plaintiffs.

**REVERSED; CASE DISMISSED.**