IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

HENRY DRAGT and JANE DRAGT, husband and wife, Appellants, v. DRAGT/DETRAY, LLC, a Washington limited liability company; and E. PAUL DETRAY and PHYLLIS DETRAY, and their marital community, Respondents.	No. 40171-1-II (Consolidated with No 41501-1-II) UNPUBLISHED OPINION

Armstrong, P.J. — In 1996, Henry and Jane Dragt formed a limited liability company with Paul DeTray for the purpose of developing a parcel of the Dragts' land. The Dragts eventually became frustrated with the progress of the development and, in 2004, they sold their land to a third party. DeTray sued and recovered damages for breach of contract. On appeal, we reversed the contractual damages award and remanded for the trial court to award DeTray unjust enrichment damages of $593,462.66 for his financial contribution to the project and quantum meruit damages, if any, for the reasonable value of his services.

On remand, the trial court awarded DeTray damages based on the extent his services increased the property's value. The Dragts appeal that award, arguing that the trial court erred (1) in calculating quantum meruit damages based on the increased value of the property, rather than the reasonable value of DeTray's services; (2) in awarding DeTray prejudgment interest; and (3) in awarding funds in the Thurston County Superior Court's registry to DeTray.

We hold that the trial court erred in calculating the quantum meruit damages; we reverse the award and remand for the trial court to dismiss DeTray's quantum meruit claim. We also hold that the trial court properly awarded prejudgment interest but calculated it using the wrong time period. On remand, the trial court must calculate interest from the date the Dragts sold the property to the date of our mandate. Finally, we hold that the trial court did not err when it distributed the funds in the court's registry to DeTray.

FACTS

Background

In 1996, the Dragts and DeTray formed a limited liability company, Dragt/DeTray LLC (LLC), to develop the Dragts' farmland. *Dragt v. Dragt/DeTray, LLC*, 139 Wn. App. 560, 564-65, 161 P.3d 473 (2007). In 1997, DeTray began making financial contributions to the LLC for the project, which totaled $593,462.66. *Dragt*, 139 Wn. App. at 567. The Dragts, however, became dissatisfied with the development's progress and, in 2004, they sold their land to a third party for $3,300,000. *Dragt*, 139 Wn. App. at 567-68.

To facilitate the sale, the Dragts and DeTray stipulated to deposit the net sale proceeds into the court's registry at closing, but they reserved "[a]ll rights, claims and arguments to or concerning those proceeds." Clerk's Papers (CP) at 543, 545. In exchange, DeTray released the lis pendens he had filed against the Dragts' real property. The stipulation further provided that "[t]he funds deposited into the registry of the Court shall not be released or disbursed without further order of this court." CP at 545. Under the stipulation, the Dragts deposited $70,704.93.

A month after closing, the third party buyer met with DeTray and offered to reimburse

him for his efforts in developing the land. *Dragt*, 139 Wn. App. at 568. DeTray never followed up on this offer. *Dragt*, 139 Wn. App. at 568.

Procedural History

In a previous appeal, we held that the Dragts benefited from "DeTray's financial contributions and services to the LLC during the development venture." *Dragt*, 139 Wn. App. at 575. Accordingly, we remanded for "an award of unjust enrichment against the Dragts for DeTray's costs, which amount to $593,462.66," and for the trial court to conduct a hearing to determine DeTray's damages under quantum meruit. We explained, "Because quantum meruit only allows restitution for a reasonable value for services, we remand for findings regarding the reasonable value of the benefit for the services DeTray conferred upon the Dragts." *Dragt*, 139 Wn. App. at 577.

At the hearing on remand, the trial court focused on the word "benefit" in our remand instructions and reasoned that the "proper way to determine the value of the benefit of the services DeTray performed is to calculate the increase in the value of the property due to all of DeTray's efforts." CP at 466-467. The trial court awarded DeTray $593,462.66 for his financial contributions, $367,946.85 in prejudgment interest on the financial contributions, and half the net surplus of the property sale, $784,295.25, for a total of $1,745,704.35. The Dragts appealed.

Four months later, the Dragts signed a security agreement with their attorneys, Ryan, Swanson, & Cleveland, PLLC (Ryan), granting Ryan a security interest in the court registry funds. Ryan then filed a financing statement to perfect its security interest in the funds on deposit with the court's registry. DeTray moved for an order releasing the registry funds to him. The

trial court concluded that, under RCW 62A.9A-203,[1] Ryan had no security interest in the deposited funds because "those funds were held *in custodia legis*, and thus [the Dragts] had no control over those funds at the time." CP at 787 (emphasis added). The trial court ordered that the registry funds be released to DeTray. The Dragts appealed. We stayed that ruling and consolidated the two appeals.

ANALYSIS

I. Quantum Meruit

The trial court's judgment on remand raises an issue of law, which we review de novo: whether the trial court properly calculated DeTray's damages under quantum meruit. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003) ("[q]uestions of law . . . are reviewed de novo").

"[Q]uantum meruit" literally means "as much as he deserved." *Losli v. Foster*, 37 Wn.2d 220, 233, 222 P.2d 824 (1950). Courts use quantum meruit to compensate an individual for the reasonable value of the services he or she has provided to another. *See Schuehle v. City of Seattle*, 199 Wash. 675, 683, 92 P.2d 1109 (1939); *Young v. Young*, 164 Wn.2d 477, 485, 191 P.3d 1258 (2008).

In our previous opinion, we explained that quantum meruit and unjust enrichment[2] are

[1] RCW 62A.9A-203 sets forth the formal requisites for attaching a security interest to collateral.

[2] Unjust enrichment provides a remedy for the "value of the benefit retained absent any contractual relationship because notions of fairness and justice require it." *Young*, 164 Wn.2d at 484, 486. It is measured in one of two ways: (1) "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;" or (2) "the extent to which the other party's property has been increased in value or his other interests advanced." *Young*, 164 Wn.2d at 487 (internal citations omitted).

distinct methods of recovery. *Dragt*, 139 Wn. App. at 576-77. We provided a specific award for DeTray's recovery under unjust enrichment, $593,462.66, and we specifically directed the trial court to award further damages under quantum meruit. *Dragt*, 139 Wn. App. at 577.

On remand, the Dragts moved for summary judgment because DeTray had presented no evidence of the market value of his services. In their motion, the Dragts correctly argued that our mandate was clear and allowed the court to award additional damages only for quantum meruit. In response, DeTray asserted that we had remanded for an additional award of unjust enrichment and argued only for damages based on the increased fair market value of the property. DeTray presented no evidence of the reasonable value of his services. The trial court accepted DeTray's argument, focusing on the word "benefit" within the phrase "reasonable value of the benefit for the services." Report of Proceedings (RP) at 101-02.

The word "benefit" within the quantum meruit remand instructions may appear ambiguous if considered in isolation. "Benefit" may mean DeTray's services as measured by the property's increased value; or, "benefit" may mean that which is traditionally compensable under quantum meruit (i.e., the measure of the fair market value of DeTray's services that benefited the Dragts, such as adding infrastructure to the development). Washington cases have consistently measured quantum meruit damages by the reasonable value of the claimant's services, not the increased value of the property.[3] In *Modern Builders, Inc. of Tacoma v. Manke*, 27 Wn. App. 86,

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[3] *See generally Schuehle*, 199 Wash. at 677; *Modern Builders, Inc. of Tacoma v. Manke*, 27 Wn. App. 86, 93, 615 P.2d 1332 (1980); *Irwin Concrete, Inc. v. Sun Coast Props., Inc.*, 33 Wn. App. 190, 195, 653 P.2d 1331 (1982); *Eaton v. Engelcke Mfg., Inc.*, 37 Wn. App. 677, 682, 681 P.2d 1312 (1984); *Ducolon Mech., Inc. v. Shinstine/Forness, Inc.*, 77 Wn. App. 707, 712, 893 P.2d 1127 (1995); *RWR Mgmt., Inc. v. Citizens Realty Co.*, 133 Wn. App. 265, 277, 135 P.3d 955

93, 95, 615 P.2d 1332 (1980), we specifically addressed whether a court can award damages based on the increased fair market value of property when awarding quantum meruit damages. The trial court, under a quantum meruit theory, had awarded damages based on the increase in fair market value of the house due to the plaintiff's services. *Modern Builders*, 27 Wn. App. at 91. We overturned the trial court's award, explaining:

> [W]hen quantum meruit recovery is allowed for extra or additional work, the measure of damages is the costs incurred by the performing party expressed as the cost of labor, materials and a reasonable allowance for profit, not the enhanced value to the estate of the party receiving performance. Therefore, the trial court erred in basing the damage computation on the increased value of defendants' house after completion of the remodeling by plaintiff, rather than upon proof of plaintiff's actual costs.

Modern Builders, 27 Wn. App. at 95 n.3.

Other Washington cases have used the "reasonable value of the benefit conferred" language and, in each case, the court properly awarded quantum meruit damages for the reasonable value of the claimant's services or remanded to the trial court to determine other dispositive issues before calculating potential quantum meruit damages. *Ducolon Mech., Inc. v. Shinstine/Forness, Inc.*, 77 Wn. App. 707, 712, 893 P.2d 1127 (1995) (court awarded the contractor only the reasonable value of the services provided less the owner's cost to complete and repair); *Bort v. Parker*, 110 Wn. App. 561, 580, 42 P.3d 980 (2002) (held contractor potentially entitled to quantum meruit and remanded to the trial court for calculation); *RWR Mgmt., Inc. v. Citizens Realty Co.*, 133 Wn. App. 265, 277, 135 P.3d 955 (2006) (court awarded quantum meruit based on the reasonable value of the services). Thus, the Washington cases

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(2006).

resolve any possible ambiguity in our remand language: the word "benefit" does not establish a new measure of quantum meruit damages, it merely requires that the services rendered benefit the receiver of the services. Accordingly, the trial court erred by calculating quantum meruit based on the increased value of the property, rather than on the value of the services rendered.

Finally, to recover quantum meruit damages, DeTray had to prove both the services he rendered and the value of those services. *Eaton v. Engelcke Mfg., Inc.*, 37 Wn. App. 677, 682, 681 P.2d 1312 (1984). DeTray stated he was not asserting the right to recover under quantum meruit and chose not to present any evidence of the fair market value of his services at the hearing on remand. Because DeTray failed to present evidence of the reasonable value of his services and conceded several times that he had no way to measure the value of his services, on remand the trial court must dismiss DeTray's claim for quantum meruit damages. *See also*, *Eaton*, 37 Wn. App. at 682.

We reverse and remand for the trial court to dismiss the quantum meruit claim and enter a judgment for unjust enrichment in the amount of $593,462.66, with interest. Because we reverse the trial court's award, we need not address the Dragts' arguments that the trial court erred in its calculation of damages.

II. Prejudgment Interest

The Dragts challenge the trial court's award of prejudgment interest to DeTray. We hold that the trial court properly awarded prejudgment interest but, on remand, the trial court must calculate DeTray's prejudgment interest from the date the Dragts sold their property to the date of our original mandate.

We review an award of prejudgment interest for an abuse of discretion. *Scoccolo Constr., Inc. ex rel Curb One, Inc. v. City of Renton*, 158 Wn.2d 506, 519, 145 P.3d 371 (2006). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or reasons. *Pac. Nw. Life Ins. Co. v. Turnbull*, 51 Wn. App. 692, 699-700, 754 P.2d 1262 (1988).

A. Award of Interest

"Prejudgment interest is granted to compensate a party for the loss of use of money to which he was entitled." *Jones v. Best*, 134 Wn.2d 232, 242, 950 P.2d 1 (1998). A court may award prejudgment interest if the amount claimed is liquidated. *Hansen v. Rothaus*, 107 Wn.2d 468, 473, 730 P.2d 662 (1986). A claim is liquidated when it can be exactly computed on the evidence and without relying on opinion or discretion. *Forbes v. Am. Bldg. Maint. W.*, 170 Wn.2d 157, 166, 240 P.3d 790 (2010). Even if the parties dispute the amount of the claim, it can be liquidated if the amount can be determined by reference to an objective source. *Prier v. Refrigeration Eng'g Co.*, 74 Wn.2d 25, 33-34, 442 P.2d 621 (1968).

The Dragts argue that the $593,462.66 in expenses constituted capital contributions by DeTray; thus, they did not "rightfully belong" to DeTray. Appellants' Br. at 32. But we have already determined that DeTray is entitled to recover those expenses, and we will not reconsider our prior holding.

The Dragts also contend they did not improperly use DeTray's financial contributions, other than the $280,000 paid toward the property's mortgage; thus, a prejudgment interest award is not proper here. The trial court may award prejudgment interest "not only when one party has

improperly used the funds, but also when one party is improperly deprived of those funds." *Forbes*, 170 Wn.2d at 168. DeTray was deprived of the funds he expended on the project between the date of the property sale and the date of our mandate.[4] Thus, this argument fails.

The Dragts next argue that DeTray is not entitled to prejudgment interest because he rejected the third party buyer's offer to reimburse DeTray for his financial contributions. A party who rejects an offer to pay the disputed claim is not entitled to prejudgment interest if the refusing party has access to the funds at all times and the parties agree on the value of the services rendered. *Richter v. Trimberger*, 50 Wn. App. 780, 785, 750 P.2d 1279 (1988). *Richter* does not apply here because, in spite of the third party buyer's offer, DeTray did not have access to the funds at all times and, at the time of the offer, the parties had not agreed on the value of DeTray's contributions.

Finally, the Dragts contend there is no basis for awarding prejudgment interest because DeTray never demanded reimbursement of his financial contributions. A demand, however, is not a prerequisite to recovering prejudgment interest. *See Universal/Land Constr. Co. v. City of Spokane*, 49 Wn. App. 634, 641, 745 P.2d 53 (1987). Thus, this argument also fails.

We hold, under these circumstances, the trial court did not err in granting prejudgment interest.

B. Interest Time Period

We next consider whether the trial court awarded prejudgment interest for the appropriate

[4] As we discussed above, DeTray sought additional unjust enrichment damages after we issued our mandate; thus, he was not improperly deprived of the funds from the date of our mandate through the date of judgment.

time period.

If the damages are liquidated, prejudgment interest accrues from the time the claim arose to the date of judgment. *Hansen*, 107 Wn.2d at 473. But a court can terminate prejudgment interest before the judgment is actually entered if the claimant could have entered the judgment earlier. *Seattle-First Nat'l Bank v. Wash. Ins. Guar. Ass'n*, 94 Wn. App. 744, 760-61, 972 P.2d 1282 (1999). In *Seattle-First Nat'l Bank*, the trial court awarded Seattle-First damages in 1993 but did not enter the final judgment until 1997. *Seattle-First Nat'l Bank*, 94 Wn. App. at 750, 760. The trial court awarded prejudgment interest only through its 1993 decision. We affirmed because either party could have presented an order for judgment during the subsequent four-year period before final judgment, and the unreasonable delay in presenting an order for judgment was a sufficient reason to limit the prejudgment interest award. *Seattle-First Nat'l Bank*, 94 Wn. App. at 760-61.

DeTray's unjust enrichment damages became liquidated when the Dragts sold their property on December 4, 2004, and he is entitled to prejudgment interest from the date of that sale through the date of our mandate. He is not entitled to prejudgment interest through the date the trial court entered final judgment on December 15, 2009, because he could have moved for judgment on the unjust enrichment award of $593,462.66 at any time after our mandate on July 3, 2007. Instead, he sought additional unjust enrichment damages in spite of our mandate limiting his further claim to quantum meruit damages. Requiring the Dragts to pay prejudgment interest for the four years after our mandate would penalize them for DeTray's pursuit of a claim not allowed under our mandate. *See Seattle-First Nat'l Bank*, 94 Wn. App. at 7. The trial court

abused its discretion in awarding prejudgment interest after our mandate.

Accordingly, on remand, the trial court must calculate interest from the date of the sale to the date of our mandate and amend the judgment to award prejudgment interest only for this time period.

III. Funds Held In Trial Court's Registry

Finally, the Dragts contend that the trial court erred in failing to distribute the funds in the Thurston County Superior Court's registry to Ryan, their attorney. Specifically, the Dragts contend that because they owned the property at issue, they also owned the proceeds from the property's sale; thus, they granted Ryan a valid, perfected security interest in the funds that had priority over any interest DeTray had in the funds. We disagree.

We review the trial court's decision to disperse the funds held in the trial court registry to DeTray for an abuse of discretion. *Pac. Nw. Life. Ins.*, 51 Wn. App. at 699-700. A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or reasons. *Pac. Nw. Life. Ins.*, 51 Wn. App. at 700.

A trial court has authority to distribute the funds within its custody to those parties who demonstrate they are entitled to the funds. *Wilson v. Henkle*, 45 Wn. App. 162, 169, 724 P.2d 1069 (1986). The trial court has broad discretion when discharging this duty so as to avoid an unlawful or unjust result. *Wilson*, 45 Wn. App. at 169.

The funds held in the court's registry are governed by CR 67 and RCW 4.44.480-.500. CR 67 provides:

> In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money . . . a party . . . may deposit with the court all or any part of such sum . . . [which] shall be deposited and withdrawn in

accordance with the provisions of RCW 4.44.480 through 4.44.500 . . . .

Once the funds are deposited with the court, the funds are "subject to the further direction of the court" and "shall not be loaned out, unless, with the consent of all the parties having an interest in, or making claim to the same." RCW 4.44.480, .500.

Funds deposited in the court registry are held *in custodia legis*.[5] *See Maybee v. Machart*, 110 Wn.2d 902, 904, 757 P.2d 967 (1988). Generally, property held *in custodia legis* is not subject to garnishment. *Maybee*, 110 Wn.2d at 904.

Here, to facilitate the property sale, the Dragts voluntarily stipulated to deposit the net sale proceeds into the court's registry at closing. DeTray released his lis pendens and entered into the stipulation to ensure that there would be money for him to recover at the completion of the lawsuit. The stipulation specifically provided, "The funds deposited into the registry of the Court shall not be released or disbursed without further order of this court." CP at 545.

The funds here were not subject to garnishment or any security interest. The parties agreed that the trial court could disburse the funds to whomever prevailed at trial. CR 67; RCW 4.44.480-.500. Because the Dragts' right to the funds was conditioned on the trial court's decision, they at most had a contingent interest in the funds; the security interest they granted to Ryan would have attached to the funds only if the trial court awarded the funds to the Dragts. *See Davis v. Cox*, 356 F.3d 76, 93-94 (1st Cir. 2004) ("At the commencement of the bankruptcy proceeding, [the defendant] held just a contingent interest to the property held *in custodia legis*,

[5] *Black's Law Dictionary* defines "*in custodia legis*" as "[t]he phrase . . . traditionally used in reference to property taken in to the court's charge during pending litigation over it." Black's Law Dictionary 783 (8th ed. 2004).

subject to the divorce court's disposition of the property.").

We hold the trial court did not abuse its discretion by awarding DeTray the funds in the court registry.

Conclusion

In sum, we reverse the trial court's award of additional damages based on an incorrect formula and remand for the trial court to dismiss the quantum meruit claim. On remand, the trial court must enter the unjust enrichment award set in our first opinion, totaling $593,462.66. We affirm the trial court's decision to award prejudgment interest but on remand, the trial court must recalculate the prejudgment interest from the date the Dragts sold the property to the date of our original mandate. Finally, we affirm the trial court's order distributing the funds in the court's registry to DeTray.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Armstrong, P.J.

I concur:

Quinn-Brintnall, J.

Penoyar, J. — In our previous decision, we remanded "for findings regarding the reasonable value of the benefit for the services DeTray conferred upon the Dragts." *Dragt v. Dragt/DeTray, LLC*, 139 Wn. App. 560, 577, 161 P.3d 473 (2007). The trial court made these findings and they are supported by substantial evidence. It seems to me that the majority departs from this clear remand language to make our decision consistent with the Supreme Court's recent clarification of the distinction between the concepts of unjust enrichment and quantum meruit. But our previous decision was written at a time when, as the Supreme Court notes, "Washington courts . . . used these terms synonymously." *Young v. Young*, 164 Wn.2d 477, 483, 191 P.3d 1258 (2008). And our remand language is the law of the case. *See State v. Schwab*, 163 Wn.2d 664, 672, 185 P.3d 1151 (2008) ("The law of the case doctrine provides that once there is an appellate court ruling, its holding must be followed in all of the subsequent stages of the same litigation.").[6]

On remand, DeTray went to considerable lengths to establish the "reasonable value *of the benefit*" of his services. *Dragt*, 139 Wn. App. at 577 (emphasis added). As rationale for our remand, we noted that the Dragts had been unjustly enriched because DeTray's financial contributions benefited the Dragts as they continued to own land of increasing value. *Dragt*, 139 Wn. App. at 577. Accordingly, we instructed the trial court to enter an award of unjust enrichment for DeTray's costs. *Dragt*, 139 Wn. App. at 577. Not satisfied that such an award fully compensated DeTray for his financial contributions,

[6] The majority concludes DeTray should have viewed our remand language through the lens of previous case law to see that his recovery was limited to the market value of his services. I am not convinced that this is a proper application of the law of the case doctrine in any case, particularly here where, as the *Young* court recognized, the legal lines were blurred.

we also instructed the trial court to enter findings regarding the "benefit" DeTray's services conferred upon the Dragts. Proceeding under this law of the case, DeTray and the trial court focused exclusively on the extent which DeTray's work increased the market value of the property. This was a reasonable interpretation of our remand instructions. But if DeTray proceeded under the wrong standard, as the majority concludes, his opportunity to prove up simply the "reasonable value of his services"—the correct standard, according to the majority—is now foreclosed. And the amount of money involved is substantial: the trial court concluded that DeTray's efforts had increased the value of the land by over $2.9 million dollars. While it was reasonable for the trial court to reduce this sum to award DeTray only half of the net surplus, it is not reasonable to eliminate this award entirely as a consequence of our opinion's ambiguity.

I would affirm or, at a minimum, remand for application of the proper standard.

Penoyar, J.