

**ARKANSAS COURT OF APPEALS**

DIVISION II

No. CA11-706

SERVICEMASTER OF LITTLE ROCK,  
INC.

APPELLANT

V.

PEGGY VICKERS

APPELLEE

Opinion Delivered JANUARY 25, 2012

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT,  
SEVENTEENTH DIVISION  
[NO. CV-10-2139]HONORABLE MACKIE M. PIERCE,  
JUDGE

AFFIRMED

**ROBIN F. WYNNE, Judge**

ServiceMaster of Little Rock appeals from an order of the Pulaski County Circuit Court in which the court found that ServiceMaster breached a contract with Peggy Vickers and failed to prove that it was entitled to any damages. We affirm.

In March 2009, Ms. Vickers sustained water damage to her home. On March 18, 2009, she signed an authorization for ServiceMaster to perform emergency services in response to the damage. The agreement states that Vickers agreed to pay ServiceMaster for any additional services performed at her direction that were not covered by the claim. After the emergency services, which involved mold remediation, were performed, Vickers hired ServiceMaster to perform other repairs in connection with the water damage. There was no separate written agreement between the parties with respect to the other work. After performing some of the work, but before the work was completed, ServiceMaster quit the

job. Vickers hired another contractor to complete the job and paid him the proceeds she received from her insurance company.

On April 22, 2010, ServiceMaster filed a complaint in which it alleged that it had provided labor and materials to Vickers in the amount of \$14,528.93 and that Vickers failed to pay. At trial, Jeff Dill, the owner of ServiceMaster, estimated that the company completed twenty to twenty-five percent of the job between April and June 2009. Dill testified that ServiceMaster quit the job because Vickers would not make any payments to the company. Dill stated that he asked Vickers verbally for a payment on May 21, 2009, and none was made. He also described Vickers as a problem client. Dill stated that Vickers never disputed any of the charges or the necessity of the work performed but did make several complaints about the quality of the work performed.

At the conclusion of ServiceMaster's case, Vickers made a motion to dismiss in which she argued that there was no contract between the parties for the repairs done after the mold remediation work and that ServiceMaster was not asking for unjust enrichment. ServiceMaster responded that the March 18, 2009 authorization was the contract, that it performed the work, and that it was justified in leaving the job due to nonpayment. During its response to the motion to dismiss, ServiceMaster never made any mention of a claim for unjust enrichment, nor was there any motion made to amend the pleadings.

Peggy Vickers testified that she did sign the authorization for ServiceMaster to perform the emergency services. ServiceMaster was paid for the mold remediation work through Vickers's insurance company. According to Vickers, the authorization was the only

paperwork she ever signed. She denied having an oral agreement with ServiceMaster to do further repairs; she testified that the company went through her insurance-claims adjuster. Vickers further testified that she had problems with the company not showing up to work and not doing any work. She denied ever being asked for any money by ServiceMaster and testified that she did not know why the company left the job. After ServiceMaster left the job, Vickers hired Ronald Buck and paid him approximately \$58,000 to complete the work. Buck testified that it cost him between \$2000 and \$3000 to fix ServiceMaster's work.

Following the trial, both parties submitted proposed findings of fact. On February 17, 2011, the trial court filed a letter order in which it found that ServiceMaster breached the contract for repair by abandoning the job because Vickers was difficult to deal with. The court also found that Vickers did not breach the contract and that ServiceMaster did not plead quantum meruit. Ultimately, the court concluded that ServiceMaster failed to establish entitlement to damages, and it adopted the proposed findings submitted by Vickers. On February 25, 2011, ServiceMaster filed a motion to amend the pleadings to conform to the evidence and motion to reconsider. The trial court entered an order on March 1, 2011, that was consistent with the February 17, 2011 letter order. On March 3, 2011, ServiceMaster filed a supplemental motion to amend the pleadings to conform to the evidence and motion to reconsider. The motion was never ruled on by the trial court. This appeal followed.

In bench trials, the standard of review on appeal is not whether there is any substantial evidence to support the finding of the court, but whether the judge's findings were clearly erroneous or clearly against the preponderance of the evidence. *Shelter Mut. Ins. Co. v.*

*Kennedy*, 347 Ark. 184, 60 S.W.3d 458 (2001). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a firm conviction that an error has been committed. *Pulaski County v. Ark. Democrat–Gazette, Inc.*, 371 Ark. 217, 264 S.W.3d 465 (2007). Facts in dispute and determinations of credibility are within the province of the fact-finder. *Id.*

Appellant’s first argument on appeal is that the trial court erred as a matter of law when it refused to amend the pleadings to conform to the evidence entered at trial. We will not reverse a circuit court’s decision allowing or denying amendments to pleadings absent a manifest abuse of discretion. *See Neal v. Sparks Reg’l Med. Ctr.*, 375 Ark. 46, 289 S.W.3d 8 (2008).

Vickers expressly stated in her motion to dismiss that she believed ServiceMaster was not pursuing recovery for unjust enrichment. Instead of either arguing to the contrary or moving to amend the pleadings to conform to the evidence at that point, ServiceMaster relied on its argument that the authorization signed by Vickers constituted a contract between the parties that Vickers breached. No mention of any recovery for unjust enrichment is contained in ServiceMaster’s proposed findings of fact, which discuss only a contract claim. Vickers submitted proposed findings of fact and conclusions of law that also indicated that ServiceMaster was not pursuing any recovery for unjust enrichment, which failed to draw any type of response from ServiceMaster. It was not until after the court rendered a decision in favor of Vickers that ServiceMaster sought to amend the pleadings. Given the circumstances,

we hold that the trial court did not manifestly abuse its discretion by denying ServiceMaster's motions to amend their pleadings.

ServiceMaster's second point on appeal is that the trial court erred when it held that ServiceMaster did not plead quantum meruit. On the face of the complaint, it appears to be an action to recover an unpaid bill for services rendered. The complaint states that an affidavit from Ryan Dill, the Customer Service Manager for ServiceMaster, was attached and incorporated in accordance with Arkansas Code Annotated section 16-45-104, which pertains to suits on accounts. The complaint deals strictly with a remedy at law. No alternative prayer for any type of equitable relief is made anywhere in the complaint. There is nothing in the complaint that would have put Vickers on notice that ServiceMaster was seeking recovery for unjust enrichment. We hold that the trial court did not err by finding that ServiceMaster's complaint did not plead quantum meruit.

ServiceMaster's third point on appeal is that the trial court's decision to deny it recovery under the theory of quantum meruit was clearly erroneous. ServiceMaster is correct in its assertion that a contractor may, even though it has breached a contract, recover under the theory of quantum meruit. *See Pickens v. Stroud*, 9 Ark. App. 96, 653 S.W.2d 146 (1983). Under the case law, ServiceMaster would have been entitled to pursue a recovery in quantum meruit had it either requested such relief in its complaint or moved to amend the pleadings at a reasonable point in the proceedings. However, it did not. We hold that the decision by the trial court to deny recovery under quantum meruit was not clearly erroneous.

ServiceMaster's final point on appeal is that the trial court clearly erred in finding that Vickers did not breach the contract. The only evidence submitted by ServiceMaster regarding the alleged breach by Vickers was testimony that Vickers failed to make any payments while the repair project was ongoing. Vickers testified that ServiceMaster never asked her for any payments. Any conflicts in the testimony are for the trial court to resolve, and we will defer to the trial judge's superior position to judge and determine the credibility of the witnesses. *Dewitt v. Johnson*, 349 Ark. 294, 77 S.W.3d 530 (2002). The trial court, as was its duty, weighed the conflicting testimony and determined that there was no breach of the contract by Vickers. We hold that the trial court's finding in this regard is not clearly erroneous.

Affirmed.

HART and GLADWIN, JJ., agree.