STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

[FILED: July 26, 2023]

AMERICO MALLOZZI aka	:	
AMERICO MALLOZZI & ASSOCIATES	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. PC- 2020-3773**
	:	
WARWICK WINGS, LLC	:	
Defendant.	:	

DECISION

LANPHEAR, J. This matter is before the Court for decision following a non-jury trial in a breach of contract case. Each party has submitted post-trial memoranda. For reasons that follow, this Court finds for the plaintiff.

I

FINDINGS OF FACT

The facts, as determined from all the evidence presented at trial, are as follows:

Warwick Wings, LLC[1] is the owner and operator of a building at 667 Airport Road in Warwick, Rhode Island. It was a franchisee of Hooters of America, a chain of restaurants. In 2014, the restaurant had been closed. Working with Hooters, Warwick Wings was attempting to renovate it. Initial plans had been discussed and some work was done with Americo Mallozzi, (Mallozzi) an architect in Rhode Island.

[1] Several of the members of Warwick Wings, LLC were employed or associated with Attila Wings, LLC.

In March 2015, the restaurant sustained damage from the weight of ice and snow. This damage extended to its roof and the roof framing system. Warwick Wings sought to renovate and reopen the premises. Warwick Wings enlisted Mallozzi to perform architectural services.

Nadeau Corporation (Nadeau), an engineering firm, was retained by Warwick Wings to assess the damage. In June 2015, Nadeau worked with Mallozzi to prepare an estimate for Warwick Wings for work to be done, including the replacement of the trusses. (Ex 3.) Nadeau was selected by the landlord to review the damage and review the work to be completed. Warwick Wings then negotiated with Mallozzi to perform architectural services for the renovation. Exhibit 2 is a copy of the retainer agreement prepared by Mallozzi in September 2015 and agreed to by all the parties to this action (hereinafter "the contract").[2] The architectural fees are based on the cost of the project. The contract references the engineering fees separately, mentions the same estimate provided by Nadeau, but adds that the amount of fees "may increase or decrease depending on the final cost." (Ex. 2.) The contract speaks for itself but also requires that construction be done in compliance with building codes and owner's insurance requirements.

Defendant also retained Odeh Engineers, Inc. for a separate roof inspection. Odeh Engineers prepared an engineering report in early 2015, and the parties received copies of it. (Ex. 23.) This report concluded the "roof trusses cannot be successfully reinforced in place. The existing damaged roof framing therefore must be removed and replaced with a new roof framing system." (Ex. 23, at 11.) The report discussed the alternative of repairing the roof trusses in place but recommended against it as additional trusses would need to be installed and found the alternative "may not be feasible."

[2] Mallozzi had previously worked on the building. (*See* Ex. 9, floor plan for renovations, October 2014.)

The City of Warwick Building Inspector referenced the Odeh report when requiring new trusses. (Ex. 17.) In correspondence with the Warwick Building Inspector, the defendant agreed the entire roof would be replaced. (Ex. 16.) Based on the need for new trusses, Mallozzi continued preparing plans.

The parties executed and entered into a binding written contract (Ex. 2). It establishes the terms including the tasks assigned to Mallozzi, the total payment due and the payment schedule. Mallozzi promptly commenced work under the contract. By April 2016, he drafted and produced floor plans, schedules and details (Ex. 10), a structural demolition plan (Ex. 11), and plans for bidding (Exs. 12 and 13). These plans were based on a reconstruction estimate of $1,250,000 (Ex. 3). Of course, these plans included replacement of the trusses, roof framing and roof as required by Nadeau, Odeh and the building inspector. Mallozzi completed the schematic design, the design development and the contract development designs (Exs. 9-13A). Most importantly, he completed the bidding phase (*see* Ex. 12) which qualifies him for at least 80% of the fees pursuant to the contract (Ex. 2). Mallozzi continued to rely on the engineering prepared by Nadeau and was never asked to retrofit his proposal in accord with the engineering of Odeh.

In May 2016, Mallozzi pressed for payment for the $63,149.64. (Ex. 7-1.) In November 2016, Warwick Wings paid Mallozzi $46,848.55 (*See* Exs. 5, 6 and 7-2), which is less than Mallozzi was pressing for. After queries from Mallozzi, Mr. Wooden never responded (Tr. 37, Apr. 27, 2023 (Tr.).).

In October 2015, Warwick Wings had filed a claim with its property insurer, Liberty Mutual. Claims were also filed in May 2016. In 2017, the claim had ripened into Rhode Island Superior Court litigation and was removed to the United States District Court for the District of Rhode Island. The claim went to appraisal with a neutral umpire and an award issued in June

2017. By August 2018, a law firm had been retained by Warwick Wings to contest the amount of the award. Exhibit 27 is a letter from the firm dated August 6, 2018 for a revised claim. The claim includes charges from Odeh, Nadeau, and $110,000 for services rendered by (but not paid to) Mallozzi.[3]

In December 2018, Mallozzi and Mr. Wooden of Attila Wings spoke by telephone concerning Mallozzi's outstanding bill and the work to be done. While testifying, Mr. Wooden referenced his notes to his superior, Mr. Moran, concerning that call. (Ex. 28.) The Court does not conclude that the contract was terminated at that time. While Mr. Wooden was careful in documenting significant discussions, there was no writing to indicate the Mallozzi work was at an end. No internal note documenting a termination was submitted. Mr. Moran concluded that Mallozzi was terminated during the December 2018 telephone call and claimed he agreed to this termination, though there was no writing.

Mallozzi waited to be brought current for two years and was waiting to finalize plans. He wrote various correspondence seeking payment while waiting for the project to move forward.

Meanwhile, Warwick Wings' dispute with its insurer was moving toward litigation in 2018. U.S. Judge Magistrate Sullivan conducted a settlement discussion followed by a private mediation. From the Answer filed in the case, it appears that the insurer retained a separate engineer and suggested that the reconstruction could be done for less.[4] The federal suit referenced the Odeh report (Ex. 23, at 11), which provided for alternatives to the replacement of the entire

[3] It was not established whether Mallozzi was informed about the Liberty Mutual dispute, or the federal litigation. Defendant had ceased its communications with Mallozzi.

[4] Mr. Moran testified that the umpire had found that the roof could be repaired in place, apparently relying on the testimony of a new engineer. This would have been prior to the June 2017 arbitration award. However, there is no evidence to show that Mallozzi had any idea of this prior to the December 2018 telephone call with Mallozzi and Mr. Wooden.

roof. The insurer also alleged that the parties negotiated and executed a settlement, but counsel for Warwick Wings contended that their signatory was without authorization to agree to the settlement. *See* Releases of May, 2019 (Ex. 30) and Motion of Liberty Mutual to Enforce the Settlement Agreement and Memorandum, May 29, 2019, in *Hoot Owl Restaurants, LLC v. Liberty Mutual Fire Insurance Company*, C.A. No.: 17-CV-00168-JJM-PAS.[5]

Although the litigation appears to have ended in a settlement accord, Mr. Moran of Attila Wings testified before this Court:

> "And so we lost that [Liberty Insurance] lawsuit. And when I lost that, I realized that Mr. Mallozzi did get in this battle with counsel in regards to the architectural and structural work, and that was the reason why we determined that we were going to go forward with Mr. Mallozzi's termination." (Tr. at 96:11-15.)
>
> "And Mr. Mallozzi had taken the position so many times so vehemently that it could not be repaired that when the time came and we found out that he was wrong, we actually, I lost faith in his ability to do the plans, and I did not want to hire him again because I didn't couldn't trust that his work was going to be adequate to do the job . . . (Tr. at 118:15-21.)

Without showing supporting documentation or specifics, Mr. Wooden and Mr. Moran testified that the actual roof repair and renovation cost much less than the projections of Mallozzi and Mr. Nadeau. Mr. Moran testified that based on the arbitration, the federal court concluded the

[5] The Court is unable to make specific findings concerning all of the federal court litigation. Defendant asked that the Court take judicial notice of the federal case documents, but the Court only received Exhibits 33-37 and Ex. A. These documents and Exhibit 27 show the insurer had an independent structural examination (Ex. 33 at 7-10) which may have concluded that the damage was not significant enough either to justify full coverage or to justify full replacement under the policy. The Court will not rely on the allegations in the unverified federal complaint for findings of fact here. Of course, this Court is unfamiliar with the negotiations in federal mediation. There was no evidence submitted at trial before this Court concerning whether Mallozzi knew of any other engineer or settlement. Mr. Moran seemed to be under the impression that the federal court allowed the roof to be repaired in place, but this Court is unsure whether that was a ruling of the Court, or if Mr. Moran understands whether it was a coverage issue, a building code issue, a difference in opinion by engineers, or a simple compromise at mediation.

renovations could be done for only $453,000.[6] Mr. Moran claimed that Mallozzi was terminated because of the cost and Mallozzi's failure to comply with "the codes" (Tr. 129-130). After the insurance settlement, the building was renovated without replacing the trusses, simply reinforcing them.

Although the arbitration and the federal court agreed that the cost to renovate the building would be $453,000, Warwick Wings received at least $785,000 in settlement from Liberty. (Ex. 31.) Moran testified the extra was for lost business income. (Tr. 110.) However, in its closing argument, defendant asserts that these payments were for cash value losses, depreciation and code upgrades. Presumably, this includes the bill of Mallozzi for $110,000 which remained unpaid. (Def.'s Closing Argument at 11 n.1, May 19, 2023.)

Mr. Moran admits Mallozzi completed plans for the bid, but claimed he had no intention of using the Mallozzi plans. (Tr. 114-115.) Mr. Moran also acknowledged that Warwick Wings based its claim with Liberty Mutual on Mallozzi's work in order to seek a higher payment in the appraisal process and the federal court. It used Mallozzi's work and bill.

Mallozzi continued to press for payment for services rendered through April 2020 and his claimed balance was $63,149.64. He had alleged that he was due the full $137,500 contract amount in his demand of May 13, 2016 (Ex. 7-1), and in April he had alleged the balance was $63,149.64.[7] Mallozzi stated he had been waiting to be brought current for two years and waiting to finalize plans. Mr. Wooden eventually told Mallozzi they were fighting with the insurer. Again, there was no communication to Mallozzi to indicate his work was at an end, or to refute the Mallozzi invoice. The Court finds that while Warwick Wings had stopped making payments much

[6] *See* Appraisal Award attached to Liberty Mutual's Motion to Confirm, Ex. A.
[7] This balance resulted after all payments had been credited.

earlier, it gave up all hope of continuing the contract in December 2018. No payments were made after December 2016. Nevertheless, Mallozzi was never informed that the contract had been terminated. To the contrary, he believed that Warwick Wings was simply not continuing its construction or not using his services, nor was he being paid amounts he considered very past due. In 2020 Mallozzi instituted suit.

The Court concludes that Mr. Wooden never told Mallozzi his work was wrong or unacceptable, nor did he ask Mallozzi to change anything. (Tr. 35.) Nevertheless, another contractor was hired. Warwick Wings simply assumed that the drawings of Mallozzi were incorrect because Liberty Insurance and the building department and engineers concluded that the building could be repaired in place.

Presentation of Witnesses

Mr. Wooden was the first witness. He is the Vice President of Operations for Attila Wings, a consulting company for Warwick Wings, LLC, which owns the Hooters restaurant in Warwick. He is also a member of Warwick Wings, LLC and appears to have had the most interaction with Mallozzi for Mallozzi's contract and negotiations. On examination by plaintiff's counsel, he began as affable, cooperative, knowledgeable about the facts and responsive. He was comfortable in testifying and seemed quite knowledgeable about the reconstruction project, the role of Warwick Wings, and the process. As the interrogation moved to how Mallozzi's work was used, and how the engineers were retained, he limited his answers by distinguishing the questions and indicated that some of the subjects were not in his expertise. He became less cooperative. He avoided answering questions concerning how Mallozzi's documents were reviewed and used by the company, and suddenly seemed to stop cooperating (not recalling documents and indicating he had not seen certain documents), particularly when asked about the termination of Mallozzi. Of

course, Mallozzi's alleged termination was an important contested issue at trial and it was odd for these businesspersons not to have any documentation and limited recollection of their key conversations. While obviously prepared to testify, Mr. Wooden did not recall the bill or a proof of claim for the insurance, particularly Mallozzi's request for further payment. (Ex. 7-2.) These responses lessened his credibility.

Mr. Wooden was far more cooperative, even helpful, with his own counsel, and was often led through the examination. His credibility declined when he claimed he could interpret the contracts, and he never described the reason for the lack of payments to Mallozzi. On reexamination by plaintiff's counsel, he was less responsive when asked if Liberty Mutual was seeking to have the Building Inspector allow a reconstruction or how he determined the Mallozzi plans were incorrect. He claimed he could not recall, avoided questions and tried to get plaintiff's counsel off track. His credibility significantly declined.

Mr. Moran was the CEO for Attila Wings, apparently a consulting company for Warwick Wings, and he was a part owner of Warwick Wings. He was formal, respectful, calm and businesslike, responding to all questions. He agreed the trusses needed to be replaced in 2016 and agreed with the claims for loss of business income and other unspecified claim additions. When asked about why he dismissed Mallozzi (though he claimed Mr. Wooden handled the dismissal) he insisted that Mallozzi did not know the Rhode Island code and blamed Mallozzi for the lower appraisal award. He was clearly upset at Mallozzi.

Mr. Moran referred to a landlord as retaining Nadeau and depended on the landlord to obtain information for Mallozzi to complete the drawings, though the landlord was never clearly identified. (Tr. 62.) Mr. Moran testified that rather than constructing a new frame and roof, the

company decided to repair the frame in place. He claimed this was what "the code" called for, but never provided a citation or produced an expert to substantiate this allegation.

Mr. Moran and Mr. Wooden indicated that their decision to terminate Mallozzi was made in December 2018. Before then, they claimed they were waiting for the landlord. Oddly, no records or notes of any communications during this period indicate any conversations with the landlord, or with Mallozzi. This impaired their credibility. Accordingly, Mr. Moran appears to have blamed Mallozzi for the engineering differences, though both Mr. Wooden and Mr. Moran could not indicate why Mallozzi was independently responsible.

Mr. Moran claimed that he never knew that Mallozzi was being left in limbo for over two years. He testified that he was still intending to use Mallozzi and therefore included his work on the August 2018 proof of claim, though Mallozzi had not been paid, or brought current, in two years. Mallozzi was pressing for payment and was terminated just four months later. Mr. Moran claimed that Mallozzi was paid for several phases of the contract, but not for the stages that were dependent on entering into a bidding contract—but he was unable to explain why the bidding documents were insufficient. Mr. Moran's testimony pivoted by claiming that Mallozzi had violated 'the code" but based the insurance claim on Mallozzi's estimate. Whether well-founded or not, the grudge blaming Mallozzi for the engineering work skewed not only the weight of their testimony, but their perception of who, if any, was to blame. This grudge, obvious but not acknowledged, impaired the credibility of Mr. Moran and Mr. Wooden.

Mallozzi testified on defendant's case, but he was clearly limited. Many of the facts occurred eight years before and Mallozzi testified at age 91. He was energetic and of good spirits but quickly got off track, pointing at the defense witnesses and going into tangents. Respectfully, his testimony was of little value.

II

ANALYSIS

The complaint alleges two counts: breach of contract and unjust enrichment. The defendant has counterclaimed for unjust enrichment.

Breach of Contract

> "The long-recognized essential elements of a contract are 'competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation.'" *Rhode Island Five v. Medical Associates of Bristol County, Inc.*, 668 A.2d 1250, 1253 (R.I. 1996) (citing Black's Law Dictionary 322 (6th ed.1990)); *see also Lamoureux v. Burrillville Racing Association*, 91 R.I. 94, 98, 161 A.2d 213, 215 (1960).

The formation of a contract, evidenced by Exhibit 2, is not in question. The issue is whether the contract was breached.

Mallozzi based his architectural bids on engineering plans of Nadeau Engineering which appear to be consistent with the plans of Odeh Engineering. Clearly, Warwick Wings understood that Mallozzi was proceeding with the plans based on the specifications of the engineers (replacement of roof trusses), and Warwick Wings recognized that Mallozzi was doing so. Indeed, there is no allegation that Mallozzi was told to follow other plans.

Mallozzi, relying on the engineers' directives, prepared documents which required the installation of new roof trusses. Nadeau, Odeh and the building inspector were requiring replacement trusses. As an architect, Mallozzi followed the directives of the engineers, and was never shown to be in breach or negligent for doing so.

In sum, plans had been prepared by Mallozzi for Warwick Wings and presented to Warwick Wings. Warwick Wings, then embroiled in a dispute with its insurer, did not go out to bid with the Mallozzi plans. More significantly, Warwick Wings ceased making payments.

According to the contract (Ex. 2), Mallozzi was to be paid certain periodic payments. There is no dispute that the parties entered into this binding contract. Upon completion of the bidding plans on April 11, 2016, Mallozzi should have received 80% of the full contract price. (Ex. 2); 80% of $137,500 equals $110,000. As of November 28, 2016, Mallozzi was continuing to make demands upon the defendant for payment. In 2016, defendant made payments of $46,848.55, woefully behind the $110,000 past due. Clearly, defendant was in breach of the contract.[8]

In April 2016, Mallozzi was due at least $55,312[9] Some payments were made by Warwick Wings in November 2016 to Mallozzi, but these payments were only for $46,848.55 (*See* Exs. 5, 6 and 7-2). Therefore, by the end of November 2016, Warwick Wings was in substantial breach of the contract. As our high court held in *Women's Development Corp. v. City of Central Falls*, 764 A.2d 151, 158 (R.I. 2001):

> "A party's material breach of contract justifies the nonbreaching party's subsequent nonperformance of its contractual obligations. *See Iannuccillo v. Material Sand and Stone Corp.*, 713 A.2d 1234, 1239 (R.I. 1998); *Aiello Construction, Inc. v. Nationwide Tractor Trailer Training and Placement Corp.*, 122 R.I. 861, 863, 413 A.2d 85, 87 (1980). But whether a party has substantially performed or materially breached its contractual obligations is usually a question of fact . . .
>
> Determining the legal threshold for 'materiality' is "necessarily imprecise and flexible." Restatement (Second) *Contracts* § 241 cmt. a at 237 (1981). One court has described a material breach as "a failure to perform a substantial part of the contract or one or more of its essential terms or conditions, or if there is such a breach as substantially defeats its purpose"; in other words, such a breach is one that, "upon a reasonable construction of the contract, it is shown that the parties considered the breach as vital to the existence of the

[8] Mallozzi states that defendant abandoned the contract. While defendant abandoned, it also breached the contract after Mallozzi had substantially performed. (Post-Trial Mem. at 17.) Defendant had not made payment for two years or responded to Mallozzi's requests.

[9] He was due at least $55,312 after completing the bidding plans, not including the 20% holdback. (Ex. 2, at 2.)

> contract." *UHS-Qualicare, Inc. v. Gulf Coast Community Hospital, Inc.*, 525 So.2d 746, 756 (Miss. 1987).

As indicated, the failure to pay for six months constituted a material and substantial breach.

Defendant contends Mallozzi was "terminated" in a telephone call of December 2018. Even though a substantial contract was being terminated, Mr. Wooden claims that the termination was only in a telephone call, not in writing or in notes to his superior. (Tr. 84.) Nevertheless, Mallozzi continued to send bills for $63,149.63, Ex. 7-3. The Court cannot find that the contract was terminated, or that Warwick Wings cured its breach.

Warwick Wings blamed Mallozzi for the federal court action and reduced mediated settlement. However, there is no evidence to substantiate that Mallozzi knew of the lower award, knew that the roof work was completed by another architect, or that he was terminated and his bill would never be paid. The Court cannot find that any alleged termination was justified, or that the defendant was justified in its failure to cure.

In its post-trial memorandum, defendant alleges that the contract was cancelled for cause. (Post-Trial Mem. 5, May 19, 2023.) Not only did defendant fail to establish that the contract was unilaterally "cancelled" but it also failed to show any cause. Defendant is concerned that Mallozzi wanted a new replacement roof. Two engineers and the building inspector required a replacement roof. The architect followed the directives of the structural engineers. The defendant failed to show that the architect's work was deficient, or below the standard of architects. To the contrary, it was reasonable for the architect to follow the engineers' directives and may have been negligent if it failed to do so. The defendant agreed and signed the contract to design a replacement roof and trusses.[10]

[10] There are a number of facts that defendant claims were established at trial which were not: the terms of defendant's lease (Post-Trial Mem. 3), the price of a repaired roof, (*id.*), that defendant

Moreover, the contract was not impossible to perform. No supervening event occurred but for an agreed settlement and the only thing which frustrated the performance was defendant's failure to communicate with Mallozzi, once Mallozzi's work was found to be unacceptable. *See* Def.'s Closing Argument 18, *Burt v. Board of Trustees of University of Rhode Island*, 2023 WL 1408202, at *7 (D.R.I. Jan. 31, 2023). Instead of communicating with Mallozzi the defendant simply ignored its contract and the bill.[11]

Contract Damages

The value of the contract for Mallozzi was at least $137,500 if he completed the work. (Ex. 2.) He did complete the work through the bidding phase, although his bid package was not used by defendant because Warwick Wings breached by not paying and, allegedly, terminating the contract. Warwick Wings paid Mallozzi only $46,848.55. Mallozzi continued to bill for the balance of the $110,000 which he claimed he was due as of May 13, 2016 (Ex. 7-1).

Pursuant to the terms of the written contract, "The Architectural Fee for Design Services rendered shall be a fix lump sum fee as agreed . . . based upon the agreed to scope of work . . ." (Ex. 2, at 2.) Payments were to be in "progress payments" to be made during different stages of

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was awarded monies in litigation, rather than in a settlement, who hired Mr. Nadeau, (*id.* at 8), the involvement of Mr. Cianci (*id.* at 9), the breakdown of the agreed insurance company settlement (*id.* at 11), or that Mallozzi knew of the Liberty Mutual claim and agreed to be bound by it (*id.* at 13), Mallozzi was simply agreeing to have insurance for his own work, or that construction of a replacement roof was impracticable (*id.* at 17).

[11] Such conduct is not only a material breach of the contract, but breach of the defendant's covenant of good faith. This Court has explained that '"[v]irtually every contract contains an implied covenant of good faith and fair dealing between the parties."' *Dovenmuehle Mortgage, Inc. v. Antonelli*, 790 A.2d 1113, 1115 (R.I. 2002) (quoting *Centerville Builders, Inc. v. Wynne*, 683 A.2d 1340, 1342 (R.I. 1996)). The implied covenant of good faith and fair dealing ensures that "contractual objectives may be achieved," *Ide Farm & Stable, Inc. v. Cardi*, 110 R.I. 735, 739, 297 A.2d 643, 645 (1972), and that "neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract." *McNulty v Chip*, 116 A.3d 173, 185 (R.I. 2015); 17A Am. Jur. 2d *Contracts* § 370 at 356 (2004).

the project . . . and "paid in installments as noted in schedule above." (Ex. 2, at 2.) In other words, the contract was for a fixed sum of $137,500, with payments to be made periodically, according to what work was completed. Mallozzi was to be paid a fixed sum for the entire project, a set lump sum, which will be paid in pre-established increments. *See generally Aetna Bridge Co. v State Department of Transportation*, 795 A.2d 517 (R.I. 2002). Hence, the value of the contract was $137,500, to be paid periodically.[12] Payments made at the end of the bidding stage, for example, should total 80% of the value of the contract (80% of $137,500 equals $110,000). There is no question that Mallozzi prepared and Warwick Wings received bid plans, the plans which allowed Warwick Wings to go out to bid for construction. Warwick Wings had the plans, but never went to bid. Instead, it breached the contract, going to another architect without even informing Mallozzi that it had abandoned the contract. Therefore, Mallozzi is awarded total damages of $63,151.45 ($110,000 less the $46,848.55 already received).

[12] While it is without question what a fixed lump sum constitutes, note how strikingly similar the concept of a fixed lump sum with anticipated periodic payments is to other types of payments in Rhode Island: Workers' Compensation payments in *Sarrasin v Crescent Co.*, 104 R.I. 69, 241 A.2d 818 (1968); unemployment compensation in *Almstead v. Department of Employment Security, Board of Review*, 478 A.2d 980 (R.I. 1984) and public assistance payments in *Mulllins v. Bourdeleau*, 517 A.2d 600 (R.I. 1986). The value of the contract is the whole lump sum, and they are paid periodically according to a previously stipulated schedule which each party will follow.

UNJUST ENRICHMENT

The plaintiffs have established a breach of contract, as indicated above. However, Mallozzi has also brought a second count for unjust enrichment. Our high court has held:

> Unjust enrichment is "[t]he retention of a benefit conferred by another, who offered no compensation, in circumstances where compensation is reasonably expected." Black's Law Dictionary 1771 (10th ed. 2014). "Instances of unjust enrichment typically arise . . . when a benefit is conferred deliberately but without a contract . . . ." *Id.* "The resulting claim of unjust enrichment seeks to recover the defendant's gains." *Id.* It is well settled in our state that, "[t]o recover for unjust enrichment, a claimant must prove: (1) that he or she conferred a benefit upon the party from whom relief is sought; (2) that the recipient appreciated the benefit; and (3) that the recipient accepted the benefit under such circumstances 'that it would be inequitable for [the recipient] to retain the benefit without paying the value thereof.'" *Emond Plumbing & Heating. Inc. v. BankNewport*, 105 A.3d 85, 90 (R.I. 2014) (quoting *Dellagrotta v. Dellagrotta*, 873 A.2d 101, 113 (R.I. 2005)).
>
> Quantum meruit is a slightly different, but closely related, cause of action that warrants some discussion and consideration in this case. A Latin term for "as much as he has deserved," quantum meruit is defined as '"[a] claim or right of action for the reasonable value of services rendered."' *Process Engineers & Constructors, Inc. v. DiGregorio, Inc.*, 93 A.3d 1047, 1052 (R.I. 2014) (quoting Black's Law Dictionary 1361, 1362 (9th ed. 2009)). "Such an action permits recovery of damages 'in an amount considered reasonable to compensate a person who has rendered services in a quasi-contractual relationship.'" *Id.* (quoting Black's Law Dictionary at 1361-62). We have recently stated that a plaintiff may recover in an action in quantum meruit if the plaintiff can show that a defendant '"derived some benefit from the services and would be unjustly enriched without making compensation therefor."' *Id.* (quoting *National Chain Co. v. Campbell*, 487 A.2d 132, 135 (R.I. 1985)); *see also South County Post & Beam, Inc. v. McMahon*, 116 A.3d 204, 211 (R.I. 2015).

Clearly, Warwick Wings attempted to benefit from the total bill of $110,000 submitted by Mallozzi: it claimed the full amount of the bill in its loss to the insurance company (Ex. 27, at 5). It has not been established, however, whether Warwick Wings appreciated the benefit, or accepted the benefit of the full bill at all. However, quantum meruit would justify an award for Mallozzi

for the reasonable value of services rendered if no contract were in effect. Here, the Court has found a binding contract in effect.

Defendant's Counterclaim for Unjust Enrichment

Defendant has counterclaimed for unjust enrichment. As indicated, the parties were in contract and defendant materially breached the contract while Mallozzi proceeded in good faith. Defendant conferred a benefit on Mallozzi, but it was merely a partial payment of its contract obligation. Defendant failed to honor the contract and breached. It is equitable to award recovery to the defendant. The defendant's claim for unjust enrichment must fail.

III

CONCLUSION

1. Plaintiff is awarded judgment on Count I of the complaint (breach of contract) against the defendant.
2. On Count II of the Complaint (unjust enrichment), judgment is awarded to the defendant.
3. On defendant's counterclaim (unjust enrichment), judgment is awarded to the plaintiff.
4. Plaintiff is awarded damages of $63,151.45 for breach of contract, plus interest and costs.
5. Plaintiff has requested attorneys' fees pursuant to G.L. 1956 § 9-1-45. Such fees cannot be determined until the end of litigation. Plaintiff shall file any request, with appropriate supporting materials, within thirty (30) days of the date of this Decision.
6. Defendant's motion for judgment pursuant to Rule 41(a) is denied.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Americo Mallozzi aka Americo Mallozzi & Associates**
CASE NO:	**C.A. No. PC-2020-3773**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**July 26, 2023**
JUSTICE/MAGISTRATE:	**Lanphear, J.**
ATTORNEYS:	
For Plaintiff:	**Girard R. Visconti, Esq.**
For Defendant:	**Daniel Calabro, Jr., Esq.**