REVERSE and REMAND; and Opinion Filed August 29, 2018.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-00780-CV

THE BRANDT COMPANIES, LLC AND BRANDT INDUSTRIES, LLC, Appellants
V.
BEARD PROCESS SOLUTIONS, INC., Appellee

On Appeal from the 14th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-14-13334

MEMORANDUM OPINION

Before Justices Francis, Fillmore, and Whitehill
Opinion by Justice Fillmore

The Brandt Companies, LLC and Brandt Industrial, LLC (collectively, Brandt) appeal the trial court's judgment on a jury verdict in favor of Beard Process Solutions, Inc. (Beard) finding Brandt liable under a theory of quantum meruit for failing to compensate Beard for work performed on a construction project. The jury awarded Beard $6,221,626 in quantum meruit damages, which represented Beard's purported costs of performing the work, plus a fifteen percent markup. By agreement, Beard's claim for attorneys' fees was tried to the trial court after the verdict. The trial court rendered judgment in favor of Beard and against the Brandt entities, jointly and severally, awarding Beard $6,221,626 in actual damages on its quantum meruit claim and $1,227,171.58 for attorneys' fees through trial as well as conditional attorney's fees on appeal.

In eight issues, Brandt argues: (1) the evidence conclusively establishes the existence of a written subcontract between Beard and Brandt for the project; (2) the evidence conclusively establishes that Beard is barred by quasi-estoppel from denying the existence of a valid contract with Brandt; (3) the evidence is legally and factually insufficient to support the elements of Beard's quantum meruit claim; (4) the evidence is legally and factually insufficient to support the jury's award of quantum meruit damages because Beard offered no evidence to establish the reasonable value of its work; (5) the trial court erred in awarding Beard quantum meruit damages in the amount of $6,221,626 because Texas does not recognize the total cost damages methodology upon which the award was calculated and Beard did not offer evidence that it properly reduced its claim to account for costs for which it was responsible, and because Beard executed a waiver and release of all claims and costs for work it performed before April 30, 2014; (6) the trial court erred in awarding attorneys' fees to Beard under chapter 38 of the civil practice and remedies code because neither of the Brandt entities is an individual or a corporation; (7) the trial court's errors in the jury charge probably caused the rendition of an improper judgment, requiring a new trial; and (8) the trial court's erroneous evidentiary rulings resulted in an improper judgment, requiring a new trial.

We reverse the trial court's judgment in favor of Beard because the evidence conclusively established the existence of a written subcontract between Brandt and Beard for the project and because Beard produced less than a scintilla of evidence of the reasonable value of its services to support the quantum meruit damages awarded by the jury. Although we have resolved this appeal on legal sufficiency grounds, we conclude rendition is not appropriate because the jury failed to answer questions that would have resolved the actual issue in this case—whether certain work fell within Beard's scope of work under the subcontract—and because there is evidence that, if Beard can recover in quantum meruit, it has suffered some damages. Because further proceedings are

necessary in this case, we reverse the trial court's judgment and remand this case to the trial court for a new trial.[1]

BACKGROUND

Brandt and Beard's Ongoing Business Relationship

In April 2010, Brandt, as "Contractor," and Beard Integrated Systems, Inc. (Beard Integrated), as "Subcontractor," entered into a Master Subcontract Agreement (MSA) that provided "base terms and conditions for all future project-specific agreements between Brandt and Beard."[2] Under the MSA, Brandt and Beard were to enter into a work agreement for each such project that incorporated the MSA and would be governed by the terms and conditions of the MSA. The MSA stated the work agreements would provide, "among other things, specific information pertaining to the name and location of the project[,] the Owner, the Prime Contractor, the scope of work for that project, the Work Agreement amount, any bonding requirements and scheduling requirements." The MSA contemplated and provided for "actual delays," "actual cost impacts associated with the delays," "changes in the drawings and/or specifications" for the project, and claims by Beard for "extra work or costs."

This lawsuit arose out of a dispute between Brandt and Beard over the scope of Beard's responsibilities under a work agreement for field installation of piping and piping module components at a semiconductor facility in New York. Prior to securing that contract, Brandt and Beard worked together on several projects under the MSA, including a project involving a semiconductor facility in Texas.

[1] Based on our conclusion the evidence was legally insufficient to support the jury's finding there was not a written subcontract between the parties or to support the jury's award of quantum meruit damages, we need not address either whether the evidence is factually sufficient to support those findings or Brandt's remaining issues. *See* TEX. R. APP. P. 47.1.

[2] The signature line of the MSA stated the subcontractor was Beard Mechanical Contractors, Inc. The parties do not dispute that Beard Integrated, Beard Mechanical Contractors, Inc., and Beard are affiliated entities subject to the MSA. Accordingly, throughout this opinion, we refer to Beard as a party to the MSA.

Brandt Wins the GlobalFoundries Semiconductor Work
With a Bid that Includes the Price of Beard's Field Installation Services

In 2013, Brandt entered into a contractual agreement with GlobalFoundries U.S. Inc. (GlobalFoundries Agreement) to serve as a subcontractor for pipe and drain fabrication and installation work on a construction project involving the expansion of GlobalFoundries' existing semiconductor facility in Malta, New York (the Project). Under the GlobalFoundries Agreement, Brandt was to manufacture and construct prefabricated piping modules containing "fixed" piping systems (piping installed on large metal racks), fabricate certain "loose" piping systems (piping not attached to modules), and ship the modules and loose piping systems from its manufacturing facilities in Dallas, Texas, to Malta, New York, for field installation.

In connection with the preparation of a bid for the GlobalFoundries contract, Brandt contacted Beard in October 2013 to secure Beard's services as the subcontractor responsible for field installation of Brandt's piping modules and components on the Project. Following negotiation of Beard's scope of work and compensation for pipe installation and welding services, Brandt and Beard entered into Work Agreement 13-00835-019 (Work Agreement) under the MSA and incorporated documents (collectively, Subcontract). Under the Subcontract, Beard was required to install, interconnect, and weld the piping modules and components in the field.

While only Brandt was party to the GlobalFoundries Agreement, Brandt and Beard worked together to prepare a bid for fabrication and installation of the piping systems on the Project. Between October 2013 and November 2013, documents and information provided by and between GlobalFoundries, Brandt, and Beard included a breakdown of the piping modules that were to be installed, details on the requisite piping work to be completed, piping transition information, and other details related to the manufacture and installation of the piping modules. On November 4, 2013, Beard provided Brandt its lump-sum bid of $4,800,000 for pipe installation and welding

work on the Project.[3] The same day, Brandt submitted a letter to GlobalFoundries bidding $22 million for fabrication and installation of the piping systems, which included Beard's bid for field installation and welding services. Under the terms of the bid, Beard would "interconnect each module, install all piping and cable tray interconnects to the mains, test, certify, and commission each system." The letter pitched the "strategic partnership" of the "Brandt–Beard team," emphasized their "long and mutually beneficial business relationship," referenced several projects they previously "collaborate[d] and work[ed] together on," and attributed the success of Brandt–Beard team projects to their "partnered approach" and "early engagement strategy and preconstruction philosophy." GlobalFoundries accepted the bid, and Brandt obtained the contract.

On November 26, 2013, Brandt provided Beard a copy of the GlobalFoundries Master Schedule for the Project, which called for Beard to begin work in January 2014 and complete its work in March 2014. On December 5, 2013, GlobalFoundries provided a "Statement of Work" to Brandt, detailing the labor and materials to be furnished by Brandt for the Project. On December 16, 2013, Brandt issued a Letter of Intent to Beard, identifying Beard's lump-sum price of $4,092,000[4] for its scope of work "as quoted." On December 30, 2013, Brandt emailed the parties' "subcontract," Work Agreement 13-00835-019, to Beard. Beard Integrated and Brandt were the parties to the Work Agreement, which incorporated the terms and conditions of the MSA, identified the job name, and stated the contract price of $4,092,000 for "the Scope of Work and Contract Document."

[3] Initially, Beard's bid included the amount of $800,000 for the "rigging and setting" of the modules. After the rigging and setting of modules was removed from Beard's scope of work, the contract price for Beard's work was $4,000,000.

[4] Beard was required to obtain a payment and performance bond in the amount of $92,000. The bond condition was subsequently removed.

Beard Begins Field Installation Work Under the Work Agreement and Submits Pay Applications and Change Orders to Brandt

The parties agree they "waived or ignored" the Work Agreement's signature requirement,[5] and Beard began field installation of the piping systems in December 2013. From at least December 26, 2013, through July 28, 2014, Beard generated and submitted to Brandt several change orders as provided in the MSA, requesting authorization to perform and be compensated for work in addition to the scope of work it agreed to perform under the Work Agreement.

As provided in the Subcontract, Beard submitted periodic payment applications to Brandt for work performed. Over the course of Beard's work on the Project, Beard submitted seven payment applications to Brandt that: (1) referenced the MSA, Work Agreement, contract price, and a detailed description of the work performed, (2) identified Brandt as the contractor and Beard as the subcontractor, and (3) billed Brandt against the lump sum Subcontract price. Beard's seven pay applications and the change orders were the only payment requests Beard submitted to Brandt. Pursuant to the pay applications, Beard received over $2.5 million from Brandt for its work on the Project.

A Dispute Arises Over Which Party Is Responsible for Installing Drain Supports and Drains Onto the Modules

On January 21, 2014, after Brandt's modules arrived at the Project site without drain supports or drains attached, Beard requested, pursuant to the Subcontract, a change order to install the vertical drain supports onto the modules. Beard asserted the Work Agreement required it to install only three loose piping systems in the field (process cooling water, ambient chilled water, and natural gas), and it was Brandt's duty to attach both the vertical drain supports and the drains onto the modules prior to shipping the modules to the Project site. Brandt rejected Beard's change

[5] At trial, Bertram Wells, Beard's Chairman and Chief Executive Officer, testified that "[b]oth parties, Brandt and Beard, waived or ignored" the Work Agreement's signature requirement.

order, taking the position that the Work Agreement required Beard to install the drain supports and drains onto the modules in the field. While the parties' work on the Project progressed, Brandt and Beard tried but were unable to resolve the question of whether Beard was responsible for field installation of the drain supports and drains under the terms of the Subcontract.

Beard Claims the Parties Do Not Have an Executed Contract but Continues to Submit Payment Applications to Brandt

Brandt's and Beard's work on the Project fell behind schedule. In response to GlobalFoundries' complaints, Brandt provided Beard a notice of supplementation under the MSA, indicating Brandt would perform part of Beard's work in order to meet GlobalFoundries' schedule for project completion. The following day, on April 3, 2014, Beard sent Brandt an email stating the parties did not have an executed contract.

On May 1, 2014, after having submitted to Brandt five payment applications since beginning work in December 2013, Beard informed Brandt it would not execute the Work Agreement because of the unresolved issue of whether Beard was responsible for installing drain supports and drains onto the modules, and the absence of a clear scope of work. On May 15, 2014, Beard submitted its sixth payment application to Brandt; and on June 15, 2014, Beard submitted its seventh payment application to Brandt. All of Beard's payment applications expressly referenced the MSA, Work Agreement, and agreed-upon price for Beard's work on the Project, and provided a detailed description of the scope of work that was the subject of the payment application.

Beard States in Assignment of Causes of Action Against Brandt that Claims Arose Out of Subcontract

After its work on the Project concluded, Beard Mechanical Contractors, Inc. (Beard Mechanical) and Beard Integrated (collectively, Assignors) entered into an Assignment of Causes of Action (Assignment) dated November 10, 2014, assigning to Beard (Assignee) their rights and

all causes of action arising out of or relating to the "Subcontract." The Assignment stated: (1) Assignors and Assignee "interacted with Brandt International, LLC and its affiliates (collectively, 'Brandt') in connection with a Master Subcontract Agreement dated April 2, 2010 (such agreement together with all other documents or agreements executed in connection therewith collectively being referred to as the 'Subcontract')"; (2) to Brandt's benefit, Assignee performed all or substantially all of the work "under the Subcontract"; (3) Assignors and Assignee "may possess causes of action against Brandt related to and/or arising from the Subcontract"; and (4) Assignors transferred to Assignee all causes of action against Brandt "relating to and/or arising out of the Subcontract."

The Lawsuit

Beard filed suit against Brandt alleging causes of action for quantum meruit, and, in the alternative, breach of contract, and breach of the Texas prompt payment statute, TEX. PROP. CODE ANN. §§ 28.001–.010 (West 2014). Brandt filed counterclaims and third party claims against Beard for breach of the Subcontract, common law fraud, and, in the alternative, quantum meruit. The case was tried to a jury from January 30, 2017, to February 3, 2017.

The trial court's charge asked the jury to determine the parties' liability under both breach of contract and quantum meruit theories of recovery. Among other things, the jury found there was no written subcontract between Brandt and Beard for the Project, quasi-estoppel did not bar Beard from asserting the Subcontract was not a valid agreement, Beard performed compensable work for Brandt for which Beard was not compensated, and Brandt did not perform compensable work for Beard for which Brandt was not compensated. The jury awarded Beard $6,221,626 in quantum meruit damages, which was based on evidence of Beard's costs of performing the work, plus a fifteen percent markup. By agreement, Beard's claim for attorneys' fees was tried to the court after the verdict.

On April 10, 2017, the trial court rendered judgment in favor of Beard and against Brandt Industrial and The Brandt Companies, jointly and severally, awarding Beard $6,221,626 in actual damages on its quantum meruit claim and $1,227,171.58 in attorneys' fees through trial as well as conditional attorneys' fees on appeal. Brandt filed a Motion for Judgment Notwithstanding the Verdict and, subsequently, a Motion for New Trial or, In the Alternative, to Modify, Correct or Reform the Final Judgment, both of which the trial court denied. This appeal followed.

The Evidence at Trial

Beard's scope of work on the Project was the subject of numerous meetings, conference calls, and emails, as well as detailed and technical diagrams, spreadsheets, charts, descriptions of work to be performed, schedules, and other documents provided to Beard detailing the parameters of its responsibilities on the Project. On September 8, 2013, before Beard submitted its bid to Brandt for pipe installation and welding work on the Project, Bertram Wells, Beard's Chairman and Chief Executive Officer, emailed Brandt and Steve Bullock, Beard's Chief Operating Officer, stating, "The window on this is short and the drawings are not much." However, from October 2013 through January 2014, Brandt provided to Beard substantial, detailed information defining the work Beard would perform on the Project. Emails and documents exchanged between the parties from October 11 through October 25, 2013, addressed Beard's scope of work and other matters relevant to Beard's preparation of its cost estimate, including specific diagrams and charts depicting work to be performed, construction materials to be used, and the module and piping systems to be installed. For example, on October 11, 2013, the parties addressed whether Beard's scope included "remov[ing] grating, handrails as needed," "helium leak testing," "[p]unching the W beams and installing the HSS frames (furn by Brandt) shown on rack drawings (see SBFR-930 and 950) and field welding the connections for the moment frames," "installing the additional Wbeams shown on XBFG-913, 914 to the left of column O," "final connections to spot coders,"

and other technical details on the parties' respective responsibilities for fabrication and installation of the piping systems on the Project. In the same period, emails between Brandt and Beard referenced multiple meetings and meeting agendas regarding Beard's specific scope of work and related duties on the Project.

Brandt also provided spreadsheets and other documents to Beard that detailed Beard's responsibilities on the Project. For example, an October 8, 2013 email from Brandt to Bullock and other Beard team members forwarded a "matrix of the modules sortable by bay, service, system. . . etc." Bullock testified the matrix "dictate[d] which pipe systems [were] affixed to the module and it gave an allowance . . . for Beard to connect the modules together. So [Brandt was] basically telling [Beard] what would be affixed to the module and then what our responsibility would be." According to Bullock, the matrix "show[ed] [the drains] would be already attached" to the modules when they arrived on the Project site. Bullock confirmed he believed Beard and Brandt "had a meeting of the minds on what [Beard] was supposed to be doing" until they disagreed "over whether or not drain [work] was or was not in the scope."

On October 31, 2013, Beard emailed Brandt a spreadsheet that provided "milestone" dates for Beard's completion of specific installation and welding work. In a November 2013 email to Brandt and Beard team members, GlobalFoundries attached a detailed agenda that addressed Beard's piping system installation and welding duties on the Project. Other emails between Brandt and Beard in November 2013 requested clarification on construction materials to be used on the Project, Beard's scope of work, scheduling, and process, such as alignment requirements for welding the modules. On November 14, 2013, Wells emailed a list of discussion topics to Brandt and Beard team members for a conference call to be held later that day. The topics included "a detailed breakout of the estimate so [Beard] can ensure [Beard has] scopes covered. . . ."

At trial, Wells testified Beard did not have a "clear understanding of what its scope of work was on the Project" before it began work. Wells confirmed, however, that at his deposition, he testified, "It is my opinion that [Brandt and Beard] had a clear understanding of [Beard's] scope of work and price."

Brandt employee Jason Fee was "involved in the exchange of documentation relative to the subcontract." On December 26, 2013, Fee emailed the GlobalFoundries Master Schedule to Wells and Jerry Love, a Beard project manager. On December 30, 2013, Fee emailed the Work Agreement to Beard, stating, "Let me know if you have any questions." The header on the first page of the Work Agreement stated,

> ATTACHMENT TO MASTER SUBCONTRACT NO. 860-04-10
> WORK AGREEMENT NO. 13-00835-019
> (Must be included on Invoices and Requisitions)

According to Fee, the "significance of this language" was to "identif[y] that [Beard would be] operating under [Brandt and Beard's] Master Subcontract Agreement," with "prenegotiated terms in place." Emails introduced into evidence reflected that Beard requested a copy of the MSA from Brandt in late January 2014, which Fee provided. Fee testified he was not aware of any objections by Beard to the terms and conditions of the MSA or the Work Agreement.

In a December 9, 2013 email to Love, Wells indicated he believed the parties had reached an agreement. There, Wells stated "the change orders have been submitted and approved;" he was "going to get . . . a contract today;" and he would "get the bonding information submitted today." In a December 16, 2013 email to Beard's bonding company, Wells stated, "They are finalizing the contract but we went with Brandt as a partner on this project and have already started with work." Wells's December 16 email confirmed a price of $4,092,000 for Beard's work on the Project, and forwarded an email sent by Fee to Wells, Love, and Bullock stating, "[t]his cost also includes the bond, which was an adder for $92,000." At trial, Wells confirmed he submitted the Work

Agreement to the bonding company, and "represented [the Work Agreement] to [Beard's] surety as the subcontract [Beard] wanted bonded."

Further, there was evidence that Beard understood and expected that GlobalFoundries' specific "service needs" from its subcontractors would evolve as construction on the Project progressed and design changes were made. Karl Houck, Brandt's director of estimating, testified his responsibilities on the Project included "assembling the bid, getting out for quotes for all of the materials, assembling the quotes on all the subcontractors, getting the recap ready and getting the proposal written as well." When asked to describe "the typical challenges of a semiconductor job that should be expected on a job like [the Project]," Houck stated,

> They're very fast paced. There's usually incomplete documents to start with. You're doing a design-build. The design is going on as the project is being built. There's a great rush to market.

In an October 23, 2013 email attaching "Proposal Clarifications"[6] on Beard's scope of work and attendant costs, Beard stated, "[w]e understand that service needs . . . will change as design progresses. Our goal is to be flexible through this process and have a cost structure that will not artificially escalate these costs." At trial, Houck explained,

> This was a design-build type of project. . . . the construction was going on as the design was being finalized, which, just as the same from the first bid to the second bid, there were major changes in the design. We knew [the changes] were going to continue to happen. They're going to change the needs and requirements for certain type of tools that you have to have for this type of semiconductor fab. And so [Brandt was] making [Beard] aware [Brandt] understood this was going to happen.

Houck testified that Beard "[had] a lot of semiconductor type of experience," and such changes "shouldn't have been a surprise." According to Houck, Bullock did not dispute the "content on the service changes."

[6] The October 23, 2013 email was forwarded to Bullock on the following day.

Wells testified that interconnecting the drains was "absolutely" within Beard's scope of work, and "[t]he only question [was] to what extent was the drain work within Beard's scope." Houck testified that Beard's scope of work on the Project was "[a]ll of the installation," to "receive and manage the material" on-site, and "test it" after installation. According to Houck, during the bidding stage "both Bert Wells and Steve Bullock . . . assured [Houck] they had it covered and they understood their scopes."

During the bidding process, Beard received all of the documents GlobalFoundries provided to Brandt. In order to provide Beard an "opportunity to look at it from [Brandt's] point of view as well as [Beard's] point of view to make sure [they both] were on the same page" when preparing its bid, Brandt did not "hold any documentation back." Houck testified,

> [Beard] had the same RFP documents [Brandt] did. They had the same plans, the same specifications, the same drawings. All the information [Brandt] had, [Houck] expected [Beard] to do the same thing [Brandt] did, which was prepare their bid, to vet out the documents, to look the specifications over. They were going to be the install contractor. [Houck] expected them to go on site and understand what it was going to take to get these modules in the air and to connect this pipe and make this job work.

Houck discussed these expectations with Beard team members, including Bullock. At trial, he explained the Subcontract between Brandt and Beard was a "lump-sum job,"

> . . . mean[ing] that [Beard] own[ed] the job. That they have the plans, they have the specs, they do their own takeoffs, they put the job – they put their own recap together. And based on their experience on site, they come up with their own number and then they live with it.

Houck emphasized the importance of Beard, as a subcontractor, preparing its own cost estimate to be incorporated into the bid. Houck explained, "how do you know what your cost is going to be if you don't do your own estimate? You can't count on somebody else to do your job for you."

Beard's October 11, 2013 written proposal to Brandt, which was introduced into evidence at trial, stated, "Beard's proposal is based upon a mutually agreeable contract." Houck testified this clause "meant that [Beard and Brandt] would enter into a mutually agreeable contract before

we started work." Houck confirmed that Brandt had the "same contingency." Beard began work on the Project in December 2013.

Wells testified that both parties waived or ignored the Work Agreement's requirement that:

> Subcontractor and Contractor signatures are required before Subcontractor is authorized to proceed with scope of work and before payment will be made.

Notwithstanding the lack of signatures, Wells confirmed "Beard proceeded with its work" on the Project, "Brandt pa[id] Beard [two] and a half million dollars," and "Beard conducted itself in a fashion that was contrary to this language." Fee corroborated Wells's testimony stating, "Beard . . . proceed[ed] with its work and continue[d] with its work without signing this agreement," and Brandt paid Beard "pursuant to [the] work authorization without an executed document."

Evidence was admitted indicating scope disputes between contractors and subcontractors are commonplace in the construction industry. When changes to the scope of a subcontractor's work are required on a project, it is customary to implement the change order process. Beard witnesses testified that changes or disputes between a contractor and a subcontractor with respect to the scope of work do not indicate the parties do not have a contract. Wells testified, "in the construction industry, it's not uncommon for there to be scope disputes between contractors," and "typically what happens when there's a scope dispute is one of the contractors, if it's the subcontractor, takes the position that it's entitled to additional compensation for more scope" and "prepare[s] a change order request . . . ." According to Wells, the change order process for handling disputes concerning the scope of work to be performed occurs on "[m]ost jobs," and "simply because those disputes arise or those claims arise doesn't mean that the subcontract is nullified[.]"

Kenneth Tabbutt, a Beard senior process estimator on the Project,[7] also testified it is "a rule of thumb within the construction industry" that "when a contractor encounters scope that it

[7] Tabbutt testified that, as a senior process estimator, he "assembles the values and the cost of a project for materials and labor, and then what general conditions or management costs [it would] take to actually perform that work. . . . all new scope, all new jobs that [Beard] undertake[s] require an estimate. And [Tabbutt] determine[s] what those values are."

believes is beyond its base contract work, it prepares a change order." Tabbutt confirmed that from at least December 26, 2013, through July 28, 2014, "Beard conducted itself in accordance with Paragraph 27 of the Master Subcontract Agreement," and generated and submitted change orders to Brandt for work that was "not part of [Beard's] scope."

Wells testified that Beard prepared and submitted to Brandt seven pay applications in compliance with the MSA. Wells stated, "Beard proceeded with the work, Brandt made payment for the work . . . [and] payment for the work [was] . . . requested pursuant to the Master Subcontract Agreement and the Work Agreement." According to Wells, "all three pages of all the pay applications . . . specifically referred to the work authorization and Master Subcontract Agreement," the Project, and the work performed.

The parties' conflict regarding Beard's scope of work arose when Brandt received Beard's February 10, 2014 change order for field installation of drain supports onto the modules. Brandt and Beard disagreed about whether Beard's scope of work under the Work Agreement required Beard to install the drain supports and drains onto the modules. Emails from both parties attempted to justify their respective positions relying upon language in the Work Agreement. An email dated May 1, 2014, from Beard to Brandt expressed Beard's desire that a defined scope of work be "included as an exhibit to this contract." An April 3, 2014 email from Beard to Brandt listed by line-item "Beard's original scope," and "issues that Brandt created." In this April 3 email, Beard claimed it did not have an "executed contract" with Brandt.

Multiple emails exchanged between Brandt and Beard in April 2014 underscore both parties' desire to procure an executed contract. The parties, however, continued to act in compliance with the terms of the Subcontract. Beard continued to submit pay applications that referenced the Work Agreement and MSA. Pursuant to the pay applications, Brandt continued to make payments to Beard consistent with the terms of the Work Agreement and MSA. According

to a May 1, 2014 email between Brandt and Beard, the primary impediment to execution of a written contract was the parties' disagreement over who was responsible for installing the drain supports and drains onto the modules. An email from Fee to Love stated, "The drains, I don't believe you and I can resolve, however the balance I'm hopeful we would be able to." Testimonial evidence at trial confirmed that the parties' dispute over installation of the drain supports and drains onto the modules was "the subject of [Brandt and Beard's] whole dispute."

The Jury Charge

The jury charge presented thirteen questions to the jury.[8] Question No. 1 required the jury to determine whether Brandt and (a) Beard, (b) Beard Integrated, or (c) Beard Mechanical had agreed upon a written subcontract for the Project. After resolving the threshold question of whether the parties had a contract, the charge directed the jury to proceed to one subset of questions if the answer to any part of Question No. 1 was "yes" and a different subset of questions if the answer to any part of Question No. 1 was "no." If in response to Question No. 1, the jury found there was not a subcontract, the charge directed the jury to skip Question Nos. 3, 4, 5, 6, 7, 8, and 11, which presented questions related to breach of a subcontract. If the jury found there was a subcontract, the charge directed the jury to skip Question Nos. 2, 9, 10, and 12, which presented questions allowing recovery of damages on a theory of quantum meruit. The charge did not allow the jury to award either Brandt or Beard damages under both breach of contract and quantum meruit theories.

The jury was charged in Question No. 1:

> Do you find from a preponderance of the evidence that Brandt and Beard Process, Beard Integrated, or Beard Mechanical agreed [sic] a written subcontract for the project?
>
> . . . .

[8] The last two of the thirteen questions were both labeled "Question No. 12."

Answer "Yes" or "No" for each.

a. Beard Process: ___

b. Beard Integrated: ___

c. Beard Mechanical: ___

The jury was specifically instructed that a "valid and enforceable contract can be entered by the acts, objective conduct and performance of the parties and a signature is not required." The jury answered "no" to Question No. 1, as to each the three listed Beard entities.[9]

As relevant to this appeal, after the jury found here was no written subcontract between Brandt and Beard for the Project, the charge directed the jury to answer Question No. 2, which read:

> Do you find from a preponderance of the evidence that any of the following are barred by quasi-estoppel from asserting the Subcontract is not a valid agreement?
>
> Answer "Yes" or "No" for each.
>
> a. Beard Process: ___
>
> b. Beard Integrated: ___
>
> c. Beard Mechanical: ___
>
> d. Brandt: ___

The jury answered "no" to Question No. 2, as to each of the three listed Beard entities.[10] In accordance with the instructions in the charge, the jury did not answer the remaining questions relating to breach of contract, which asked whether either Brandt or Beard failed to comply with its obligations under the subcontract and which party failed to comply first. The jury's answers to these questions would have determined whether the installation of the drain supports and drains onto the modules fell within Beard's scope of work under the Subcontract.

[9] Brandt challenges on appeal only the jury's answer to Question No. 1(a) that there was not a written subcontract between Brandt and Beard.

[10] A line was drawn through "d. Brandt" in jury charge Question No. 2, and the jury did not answer Question No. 2 as to Brandt.

Because the jury found there was not a written subcontract for the Project, it proceeded to answer Question Nos. 9, 10, and both Questions labeled No. 12. The jury found that Beard performed compensable work for Brandt for which it was not compensated; the reasonable value of the uncompensated work by Beard was $6,221,626.00; and Brandt did not perform compensable work for Beard for which it was not compensated. The trial court rendered judgment on the jury verdict.

Standard of Review

When a party challenges the legal sufficiency of the evidence supporting an adverse jury finding on which it had the burden of proof at trial, it must demonstrate the evidence establishes as a matter of law all vital facts in support of the issue. *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 241 (Tex. 2001) (per curiam). In reviewing a "matter of law" challenge, we first examine the record for evidence that supports the adverse finding, crediting favorable evidence if a reasonable fact-finder could, while disregarding all evidence to the contrary, unless a reasonable fact-finder could not. *Id.* Anything more than a scintilla of evidence is legally sufficient to support the finding. *City of Fort Worth v. Zimlich,* 29 S.W.3d 62, 69 (Tex. 2000). Only if there is no evidence to support the adverse finding do we then examine the entire record to determine whether the contrary proposition is established as a matter of law. *Id.* The issue will be sustained only if the contrary proposition is conclusively established. *Id.*

A party who challenges the legal sufficiency of the evidence to support an adverse jury finding on an issue on which it did not have the burden of proof must show that no evidence supports the finding. *Exxon Corp. v. Emerald Oil & Gas Co.*, 348 S.W.3d 194, 215 (Tex. 2011). We may sustain the legal sufficiency challenge only when (1) there is a complete absence of evidence of a vital fact; (2) the court is barred by rules of law or evidence from crediting the only evidence of a vital fact; (3) the evidence offered to prove a vital fact is no more than a mere

scintilla; or (4) the evidence conclusively disproves a vital fact. *King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 751 (Tex. 2003); *TRG-Braes Brook, LP v. Hepfner*, No. 05-17-01094-CV, 2018 WL 3434555, at *2 (Tex. App.—Dallas July 17, 2018, no pet. h.) (mem. op.).

We consider the evidence in the light most favorable to the verdict and indulge every reasonable inference that would support it. *City of Keller v. Wilson*, 168 S.W.3d 802, 822 (Tex. 2005). We "credit favorable evidence if reasonable jurors could, and disregard contrary evidence unless reasonable jurors could not." *Id*. at 827. Evidence is legally sufficient if it "would enable reasonable and fair-minded people to reach the verdict under review." *Id.* However, evidence "does not exceed a scintilla if it is so weak as to do no more than create a mere surmise or suspicion that the fact exists." *In re Ja.D.Y.*, No. 05-16-01412-CV, 2018 WL 3424359, at *2 (Tex. App.—Dallas July 16, 2018, no pet. h.) (mem. op.) (quoting *Walker v. Anderson*, 232 S.W.3d 899, 907 (Tex. App.—Dallas 2007, no pet.)).

Breach of Contract

In its first issue, Brandt challenges the legal sufficiency of the evidence to support the jury's answer to jury charge Question No. 1(a), finding there was no written subcontract between Brandt and Beard, an issue on which Brandt had the burden of proof at trial.[11] Brandt contends the evidence conclusively established the parties entered a binding contract and the issue is whether field installation of the drain supports and drains onto the modules fell within Beard's scope of work under that contract. Brandt argues no evidence supported the jury's failure to find the existence of a written subcontract between Brandt and Beard and "the evidence conclusively establishe[d] the opposite."

[11] Brandt filed a counterclaim and third party claims against Beard alleging, among other things, breach of contract. Beard asserted a breach of contract claim against Brandt only in the alternative to its quantum meruit cause of action.

The elements of a valid contract are: (1) an offer, (2) an acceptance in strict compliance with the terms of the offer, (3) a meeting of the minds as to the material terms, (4) each party's consent to the terms, and (5) execution and delivery of the contract with the intent that it be mutual and binding. *Healey v. Romero*, No. 05-16-00598-CV, 2018 WL 2126903, at *2 (Tex. App.—Dallas May 7, 2018, no pet.) (mem. op.); *see also Sacks v. Haden*, 266 S.W.3d 447, 450 (Tex. 2008) (per curiam) (meeting of the minds is necessary to formation of binding contract). Consideration is also an essential element of a valid contract. *Tour De Force, Ltd. v. Barr*, No. 05-14-01430-CV, 2016 WL 1179417, at *2 (Tex. App.—Dallas Mar. 28, 2016, no pet.) (mem. op.). The party seeking to enforce the contract bears the burden of proving the existence of the contract and its terms. *Calce v. Dorado Exploration, Inc.*, 309 S.W.3d 719, 737 (Tex. App.—Dallas 2010, no pet.).

For an agreement to be enforceable, there must be a meeting of the minds with respect to its subject matter and essential terms. *Gilbert v. Fitz*, No. 05-16-00218-CV, 2016 WL 7384167, at *4 (Tex. App.—Dallas Dec. 21, 2016, no pet.) (mem. op.). Generally, whether an agreement is an enforceable contract is a question of law. *Douglas-Peters v. Cho, Choe & Holen, P.C.*, No. 05-15-01538-CV, 2017 WL 836848, at *19 (Tex. App.—Dallas Mar. 3, 2017, no pet.) (mem. op.). However, when a meeting of the minds is contested, the determination of the existence of a contract may be a question of fact. *Franco v. Ysleta Indep. Sch. Dist.*, 346 S.W.3d 605, 608 (Tex. App.—San Antonio 2009, no pet.).[12] The determination of whether the parties had a meeting of the minds must be resolved utilizing an objective standard; we consider the meaning reasonably conveyed by what the parties said and did, and not on their subjective state of mind. *Parker Drilling Co. v. Romfor Supply Co.*, 316 S.W.3d 68, 73 (Tex. App.—Houston [14th Dist.] 2010, pet. denied). "We

[12] *See also Geophysical Micro Computer Applications Int'l, Ltd. v. Paradigm Geophysical Ltd.*, No. 05-98-02016-CV, 2001 WL 1270795, at *3 (Tex. App.—Dallas Oct. 24, 2001, pet. denied) (not designated for publication).

view the conduct and circumstances surrounding the transaction from a reasonable person's interpretation at that particular point in time." *Id.*; *see also Wal-Mart Stores, Inc. v. Lopez*, 93 S.W.3d 548, 556–57 (Tex. App.—Houston [14th Dist.] 2002, no pet.).

A contract also must be "sufficiently definite to confirm that both parties actually intended to be contractually bound." *Fischer v. CTMI, L.L.C.*, 479 S.W.3d 231, 237 (Tex. 2016). "To be enforceable, a contract must address all of its essential and material terms with 'a reasonable degree of certainty and definiteness.'" *Id.* (quoting *Pace Corp. v. Jackson*, 155 Tex. 179, 284 S.W.2d 340, 345 (1955)). Whether a particular contractual term is essential or material is a question of law. *Sharifi v. Steen Auto., LLC*, 370 S.W.3d 126, 142 (Tex. App.—Dallas 2012, no pet.).

In determining whether a term is material or essential, courts consider the subject matter of the particular contract at issue. *Wal-Mart Stores, Inc.*, 93 S.W.3d at 556–67; *see also Fischer*, 479 S.W.3d at 237 (noting that "material terms of a contract are determined on a case-by-case basis" and "[e]ach contract should be considered separately to determine its material terms"). A term is essential if the contracting parties would reasonably regard it as a vitally important element of their bargain. *Fischer*, 479 S.W.3d at 237. The essential terms of a contract must be sufficiently certain to enable a court to determine the rights and responsibilities of the parties. *Sharifi*, 370 S.W.3d at 142; *see also Fischer*, 479 S.W.3d at 237. "If the terms of an alleged contract are so indefinite that it is impossible for the courts to determine the rights and obligations of the parties, it is not an enforceable agreement." *Goldman v. Olmstead*, 414 S.W.3d 346, 355 (Tex. App.—Dallas 2013, pet. denied). However, "[w]here the parties have intended to conclude a bargain, the agreement's silence as to non-essential, or collateral, matters is not fatal" to the formation of a contract. *Sharifi*, 370 S.W.3d at 142–43 (internal citation omitted). "[P]art performance under an agreement may remove uncertainty and establish that a contract enforceable as a bargain has been formed." *Fischer*, 479 S.W.3d at 240 (quoting RESTATEMENT (SECOND) OF CONTRACTS § 34(2)).

"When the parties' actions demonstrate that they intended to 'conclude a binding agreement, even though one or more terms . . . are left to be agreed upon . . ., courts endeavor, if possible, to attach a sufficiently definite meaning to the bargain." *Id.* (quoting RESTATEMENT (SECOND) OF CONTRACTS § 33(2)).

Brandt and Beard dispute whether the evidence established a meeting of the minds on the essential elements of an agreement. Brandt characterizes the parties' disagreement as a post-contract formation dispute over whether Beard's scope of work under the Work Agreement included field installation of the drain supports and drains onto the modules. Beard, on the other hand, argues that, in hindsight, the parties never had a meeting of the minds on whether installation of the drain supports and drains onto the modules fell within the scope of Beard's work, the complete scope of Beard's duties was a material and essential term to contract formation, and the parties therefore never had an enforceable contract. According to Beard, it was only after it had been working on the Project for some time that the parties realized they had different understandings regarding the scope of Beard's duties under the Work Agreement, and those different understandings of the scope of work demonstrate there was never a binding agreement in the first instance.

Brandt and Beard worked together on several projects prior to the GlobalFoundries Project, and had entered into a written MSA that provided base terms and conditions for future project-specific agreements between the two companies. As Brandt contemplated submitting a bid to provide piping system fabrication and installation services for the Project, it contacted Beard to determine whether Beard would serve as its subcontractor responsible for field installation of Brandt's piping modules and components. Brandt and Beard collaborated on the terms of the bid, including scope of work and compensation, and offered a bid to GlobalFoundries that was accepted.

Thereafter, Brandt and Beard entered into the Work Agreement relating to the Project which incorporated the terms of the MSA. The Work Agreement contained Beard's agreed compensation in the lump-sum amount of $4,000,000 and Beard's agreed scope of work, which consisted generally of interconnection of the prefabricated modules, installation of piping systems and interconnections to the main pipes (including field installation of three "loose" piping systems for process cooling water, chilled water, and natural gas), and testing, certification, and commissioning of each piping system.

In February 2014, when Brandt's prefabricated modules arrived at the Project site without drain supports and drains affixed to the modules, a dispute arose between the parties as to whether Beard's scope of work under the Subcontract included field installation of drain supports and drains onto the modules. The record contains many emails and other documentation detailing the nature of the dispute and attempts to resolve it, including Beard's request that Brandt authorize a change order for the installation of vertical drain supports as an additional Beard scope of work under the Subcontract. Ultimately, the parties could not agree on whether field installation of drain supports and drains onto the modules was within Beard's original scope of work under the Subcontract or subject to the Subcontract change order process.

Objectively viewing the communications between the parties, and the acts and circumstances surrounding those communications, the evidence establishes both Brandt and Beard intended for the Subcontract to be effective and binding at the time work on the Project commenced. The material terms of that agreement were that Beard would install, interconnect, and weld the piping modules and components at the Project site and Brandt would pay Beard $4,000,000. Beard performed substantial work under the Subcontract, and Brandt paid Beard as it completed the work in accordance with the terms of the Subcontract. As relevant to this appeal,

the only dispute between the parties is whether the installation of the drain supports and drains on the modules fell within the scope of the work Beard was required to perform under the Subcontract.

We conclude there is less than a scintilla of evidence that Brandt and Beard did not enter into a written subcontract relating to the field installation of Brandt's piping modules and components at the GlobalFoundries facility. Further, the evidence conclusively established that such a subcontract existed. Accordingly, the evidence is legally insufficient to support the jury's finding in response to Question No. 1(a) that a written subcontract did not exist between Brandt and Beard. We resolve Brandt's first issue in its favor.

Quantum Meruit

Our disposition of Brandt's first issue does not end our inquiry in this case. There is another reason the verdict cannot be sustained—the damages awarded by the jury on Beard's quantum meruit claim. We therefore turn to Brandt's fourth issue in which it contends the evidence is legally insufficient to support the jury's answer, in response to Question No. 10, that the reasonable value of Beard's compensable work for which it had not been compensated was $6,221,626. At trial, Beard had the burden of proving damages that were recoverable on its quantum meruit claim. Brandt asserts Beard produced no evidence of the reasonable value of the work it performed on the Project.

"Quantum meruit is an equitable remedy that is 'based upon the promise implied by law to pay for beneficial services rendered and knowingly accepted.'" *Hill v. Shamoun & Norman, LLP*, 544 S.W.3d 724, 732 (Tex. 2018) (quoting *In re Kellogg Brown & Root, Inc.*, 166 S.W.3d 732, 740 (Tex. 2005) (orig. proceeding)). To recover on a quantum meruit claim, the plaintiff must prove that: (1) valuable services were rendered or materials furnished, (2) for the person sought to be charged, (3) those services or materials were accepted, used, and enjoyed by the person sought to be charged, and (4) the person sought to be charged was reasonably notified that the plaintiff

performing the services or furnishing the materials was expecting to be paid by the person sought to be charged. *Id.* at 732–33.

Recovery under the theory of quantum meruit is generally precluded if a valid contract covers the services or materials furnished. *Id.* at 733.[13] The existence of a contract, however, does not preclude quantum meruit recovery for services not covered by the contract. *Hong v. Nations Renovations, LLC*, No. 05-15-01036-CV, 2016 WL 7473900, at *3 (Tex. App.—Dallas Dec. 29, 2016, pet. denied) (mem. op.); *Bluelinx Corp. v. Tex. Constr. Sys., Inc.*, 363 S.W.3d 623, 627 (Tex. App.—Houston [14th Dist.] 2011, no pet.). Moreover, in the context of construction contracts, a contractor may recover the reasonable value of services rendered and accepted under the theory of quantum meruit if:

> (1) The services rendered and accepted are not covered by the contract; (2) the contractor partially performed under the terms of an express contract, but was prohibited from completing the contract because of the owner's breach; or (3) the contractor breached but the owner accepted and retained the benefits of the contractor's partial performance.

Gentry v. Squires Constr., Inc., 188 S.W.3d 396, 402–03 (Tex. App.—Dallas 2006, no pet.); *see also Murray v. Crest Constr., Inc.*, 900 S.W.2d 342, 345 (Tex. 1995) (per curiam).

The plaintiff is required to produce evidence of the correct measure of damages in order to recover on a quantum meruit claim. *LTS Grp., Inc. v. Woodcrest Capital, L.L.C.*, 222 S.W.3d 918, 920–21 (Tex. App.—Dallas 2007, no pet.). The measure of damages for recovery on a quantum-meruit claim is the reasonable value of the work performed and the materials furnished. *Hill*, 544 S.W.3d at 733. Evidence of anticipated benefits of a contract, without more, will not support the recovery of damages for a quantum meruit claim. *Marrocco v. Hill*, No. 14-14-00137-CV, 2015 WL 9311521, at *3 (Tex. App.—Houston [14th Dist.] Dec. 22, 2015, no pet.) (mem. op.); *Green*

[13] *See also Black Lake Pipe Line Co. v. Union Constr. Co., Inc.*, 538 S.W.2d 80, 86 (Tex. 1976) (concluding party could not recover on quantum meruit claim if work was required by contract), *overruled on other grounds*, *Sterner v. Marathon Oil Co.*, 767 S.W.2d 686 (Tex. 1989).

Garden Packaging Co., Inc. v. Schoenmann Produce Co., Inc., No. 01-09-00924-CV, 2010 WL 4395448, at *6–7 (Tex. App.—Houston [1st Dist.] Nov. 4, 2010, no pet.) (mem. op.) (concluding evidence of anticipated profits under contract was not proper measure of damages for quantum meruit claim); *M.J. Sheridan & Son Co., Inc. v. Seminole Pipeline Co.*, 731 S.W.2d 620, 625 (Tex. App.—Houston [1st Dist.] 1987, no writ) (concluding evidence of actual costs incurred on job represented damages for breach of contract, not quantum meruit).[14]

The only specific evidence of the reasonable value of Beard's work on the Project was Tabbutt's testimony:

> Q. So now I want to talk about the reasonable value of the services you guys did that Beard rendered.
>
> A. Yes, sir.
>
> Q. I want to compare and contrast what was planned and what you actually did. So what was the number of hours that you planned to do?
>
> A. Our planned hours were 30,000 man-hours.
>
> Q. What were your actual hours?
>
> A. 76,000.
>
> Q. Let's talk about the number of welds. Originally at the outset, what was the planned number of welds?
>
> A. 3,550, I believe, -58.
>
> Q. And what was the actual number of welds that you ended up doing?
>
> A. Overall for the project was 10,040.
>
> Q. How about just Beard, what did Beard so [sic]?
>
> A. Just Beard? 8500.

[14] *See also Nu-Build & Assocs., Inc. v. Sooners Grp., L.P.*, No. 05-15-01303-CV, 2018 WL 2715290, at *1 (Tex. App.—Dallas June 6, 2018, no pet.) (mem. op.) (concluding that party seeking completion cost damages must prove those costs are reasonable, and proof of amounts charged and paid, alone, was no evidence the payment was reasonable).

Q. So the – how about manpower? What was your planned manpower as a peak?

A. At its peak was 44 men.

Q. And how about actual?

A. 115.

Q. How about the duration? At the very beginning, what was the plan?

A. Our actual construction time was three months.

Q. What was it actually?

A. Seven.

Q. And when you're trying to decide what's a reasonable value for the work that you've performed, what are some of the factors the jury – you would have the jury to consider?

A. I would consider our job cost. I would take our job cost and put a fair and reasonable markup on it. 15 percent.

Q. And then –

A. Then I would probably deduct what's been paid to date, and that would be the balance due Beard.

Tabbutt's testimony as to Beard's damages was based on the costs Beard bid and incurred on the Project plus a markup of fifteen percent. However, evidence of actual costs incurred on the job is not the quantum meruit measure of damages. *M.J. Sheridan & Son Co., Inc.*, 731 S.W.2d at 625. Further, although Tabbutt testified that Beard incurred more costs than anticipated, he did not testify that either the originally anticipated costs or the costs actually incurred were reasonable and provided no basis from which the jury could infer the costs were reasonable.

Beard argues Tabbutt's testimony was "backed up by substantial testimony detailing the work performed, the number of hours worked, the rates for the work, and the factors that increased the costs" and that Brandt's "estimate of costs for the work it claims to have 'supplemented'

supports Beard's testimony about the reasonable value." All of the evidence pointed to by Beard pertains to amounts set by the Subcontract, an impermissible measure of damages recoverable in quantum meruit. *See San Antonio Aerospace, L.P. v. Gore Design Completions, Ltd.*, No. 07-06-0309-CV, 2008 WL 2200035, at *2 (Tex. App.—Amarillo May 28, 2008, pet. denied) (mem. op.) (concluding evidence was legally insufficient to support quantum meruit award because evidence showed award was based on total value of contract); *M.J. Sheridan & Son Co., Inc.*, 731 S.W.2d at 625. Further, there was no evidence that these amounts were reasonable.

We conclude Beard failed to produce more than a scintilla of evidence that the reasonable value of the compensable services it provided to Brandt was $6,221,626. Accordingly, the evidence is legally insufficient to support the jury's award of damages on Beard's quantum meruit claim. We resolve Brandt's fourth issue in its favor

Disposition

Having sustained two legal sufficiency challenges made by Brandt, we now determine the proper disposition of this case. Generally, when the evidence is legally insufficient to support a judgment, we render the judgment the trial court should have rendered. *See Akin, Gump, Strauss, Hauer & Feld, L.L.P. v. Nat'l Dev. & Res. Corp.*, 299 S.W.3d 106, 124 (Tex. 2009). However, we must remand the case to the trial court when further proceedings are necessary. TEX. R. APP. P. 43.3(a); *see also Knapp v. Wilson N. Jones Mem'l Hosp.*, 281 S.W.3d 163, 176 (Tex. App.—Dallas 2009, no pet.) ("Remand is appropriate when, for any reason, a case has not been fully developed.").

The claims in this case can be resolved only after it is determined whether the installation of the drain supports and the drains onto the modules fell within Beard's scope of work under the Subcontract. Because the jury failed to find the existence of a written subcontract, it did not determine this factual issue; rather, as instructed by the charge, it considered only Beard's quantum

meruit claim. Because the jury failed to answer a factual question necessary to resolve the case, it is appropriate to remand the entire case for further proceedings. *See Advanced Personal Care LLC v. Churchill*, 437 S.W.3d 41, 47–49 (Tex. App.—Houston [14th Dist.] 2014, no pet.).

Further, we have concluded the evidence was legally insufficient to support the damages awarded by the jury on Beard's quantum meruit claim. However, there is legally sufficient evidence that, if the installation of the drain supports and the drains onto the modules was not included in the scope of Beard's work under the Subcontract and was not subject to the change order process in the Subcontract, Beard incurred costs to install the drain support and drains that may be recoverable in quantum meruit. When there is some evidence of damages, but not enough evidence to support the full amount of damages awarded by the jury, it is inappropriate to render judgment. *See Akin, Gump, Strauss, Hauer & Feld, L.L.P.*, 299 S.W.3d at 124. In such a situation, we may either suggest a remittitur or remand for a new trial. *Id.*

Based on the state of the record and the unresolved factual issues,[15] we conclude further proceedings are necessary in this case. Accordingly, we reverse the trial court's judgment in favor of Beard and remand the case for a new trial.

/Robert M. Fillmore/
ROBERT M. FILLMORE
JUSTICE

170780F.P05

[15] In addressing the jury's answers to Questions No. 1(a) and 4, we express no opinion as to whether any claim a party may have against another party is properly based in breach of contract or quantum meruit.

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

THE BRANDT COMPANIES, LLC AND BRANDT INDUSTRIAL, LLC, Appellants

No. 05-17-00780-CV V.

BEARD PROCESS SOLUTIONS, INC., Appellee

On Appeal from the 14th Judicial District Court, Dallas County, Texas,
Trial Court Cause No. DC-14-13334.
Opinion delivered by Justice Fillmore,
Justices Francis and Whitehill participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **REVERSED** and this cause is **REMANDED** to the trial court for a new trial.

It is **ORDERED** that appellants The Brandt Companies, LLC and Brandt Industrial, LLC recover their costs of this appeal from appellee Beard Process Solutions, Inc.

Judgment entered this 29th day of August, 2018.