No. 125133

In the

Supreme Court of Illinois

RESTORE CONSTRUCTION COMPANY, INC., and
RESTORE RESTORATION, INC.,

Plaintiffs-Appellees,

vs.

BOARD OF EDUCATION OF PROVISO TOWNSHIP HIGH SCHOOLS DISTRICT 209, sued as The School Directors of Proviso Township High School District 209,

Defendant-Appellant.

On Leave to Appeal from the Illinois Appellate Court,
First Judicial District, No. 1-18-1580.
There Heard On Appeal from the Circuit Court of Cook County, Illinois,
County Department, Law Division, No. 15 L 010904.
The Honorable **Bridget Mary McGrath**, Judge Presiding.

BRIEF OF PLAINTIFFS-APPELLEES RESTORE CONSTRUCTION COMPANY, INC. and RESTORE RESTORATION, INC.

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POINTS AND AUTHORITIES

NATURE OF THE CASE

After fire damaged its school, the Board of Education of Proviso Township High Schools District 209 (the District) asked Restore Restoration and Restore Construction (collectively Restore) to provide immediate mitigation services to ensure the school was ready for the upcoming year. The District's Superintendent of Schools and the Board's president signed contracts with Restore. Restore performed the work satisfactorily, receiving progress payments from the District's insurance carrier. However, when the District discovered it had not submitted the contracts to the Board for a vote, it refused to approve the final payment from its casualty insurance carrier for $1,428,553.90 on the ground that the contracts were void *ab initio*.

Restore sued the District under the equitable remedy of *quantum meruit*. The court dismissed the action after adopting the District's position that *quantum meruit* is not a viable remedy against a municipal unit if the underlying contract was void. After distinguishing between contracts implied in fact and those implied in law, the appellate court reversed. *Restore*, 2019 IL App (1st) 181580. It noted that the District's authorities principally addressed contracts implied in fact and it instead relied on cases holding governmental units liable on contracts implied in law.

The question raised on the pleadings is whether Restore has a cause of action in *quantum meruit* under the singular facts of this case.

ISSUES PRESENTED FOR REVIEW

The issues presented for review are:

1. At the District's request, Restore rebuilt the District's school pursuant to its specifications and with its approval. The parties operated under the mutual belief that they had a valid written contract, discovering at the last minute that the contract was technically void. The issue presented for review is whether Illinois courts have recognized a right to seek recovery pursuant to *quantum meruit* in that singular circumstance.

2. If the answer to the first question is in the negative, the issue presented is whether Illinois courts should recognize a right to recover against a municipal entity under *quantum meruit* because court control of that remedy means there is no possibility that a municipality will be saddled with an obligation it did not intend, so that the District's premise for barring such claims is missing.

STATEMENT OF FACTS

Because the facts are particularly critical where a party pursues an equitable remedy, Plaintiffs sets them out to ensure the court has complete access to them. Because the dismissal was pursuant to Section 2-619, the facts are taken from the complaint and the documents filed during the motion process. The allegations of common facts and the two counts relevant to this appeal are in the appendix to this response at A1.

The District's officers were involved.

The Board of Education of Proviso Township High Schools District 209 (District) is governed by a Board. C2050. The District is subject to a statutory school finance authority, the Financial Oversight Panel (FOP). C2050, C2053 (¶19). Netti Collins-Hart was the Superintendent of Schools of Proviso and the District's chief executive officer. C2050. Daniel Adams was the Board president. Todd Drafall was the School Business Official for the District and the FOP's Chief School Business Official for the District. C2053. The District operated Proviso East High School which was heavily damaged by fire on May 10, 2014. C2051. The District wanted prompt remediation so they could reopen the school for the upcoming school year. C2051.

Restore had worked under a similar agreement

This was not the first time the District had contracted with Restore for emergency remediation. C2052. The parties had entered into a contract the prior year, without a Board vote. The District paid for that work without a

Board vote, pursuant to its customary practice where losses were covered by its casualty insurance carrier. C2051.

The District supervised the work.

After the 2014 fire, the District again contacted Restore and requested emergency remediation and repair services, and Restore provided immediate service. C2052. Superintendent Collins-Hart signed contracts with each Restore company on May 22. C2053; C2124-26 (contracts). Board president Adams sign an amended agreement with Restore Construction on August 12, 2014. C2056 (¶29); C2263 (contract). The District was deeply involved in the project. The District hired Legat Architects to prepare work specifications and act as its contract administrator. C2052. Legat prepared specifications setting out the responsibilities of all the participants including the District and Travelers, the District's casualty carrier. C2053 (¶22); C2142 (project manual). Legat responded to all requests and submittals, with the District's concurrence. C2054 (¶ 24).

Collins-Hart affirmed the specifications on July 9, 2014. C2054. Drafall as the both District and FOP Official accepted and approved various subcontracts, bids, and invoices for the construction work. C2054. In his dual capacities, Drafall managed the District's fiscal and business activities. C2053. The District's Project Manager executed and approved various bids and sales orders at Drafall's direction. C2055. Legat reviewed applications for payment, and certified progress payments after finding that Restore had

performed the work in accordance with the contract. C2056. Legat distributed to the District every Architect's Certification for Payment. C2056-57 (¶ 33). Drafall attended construction meetings with District personnel and regularly updated the Board on the work's progress. C2054 (¶ 25), C2061. Drafall or those working at his direction approved Restore invoices. C2054-56 (¶¶ 26-28).

The parties believed a contract existed.

All those involved believed there were contracts for this work and no less than a majority of the Board knew and informally approved Restore's role. C2062. That belief was evidenced by a District attorney's opinion that the District signed the contract with the understanding that Restore would do the work for what the District's insurance carrier agreed to reimburse the District. C2062.

It later developed that the District had failed to properly approve the contracts with a Board vote. C2062.

Restore was to be paid via insurance.

The District was insured by Travelers, subject to a one-million-dollar self-insured retention. C2051, C2057. Restore was principally paid by Travelers Insurance. C2057 (¶ 39). The carrier accepted Legat's certifications for payment and paid various invoices, with the District endorsing the checks. C2058 (¶ 43). The District then delivered those checks to Restore. C2059 (¶ 44). The checks used to pay Restore included the District as a named payee

(C2326) and the District endorsed each check from Travelers before delivering it to Restore (C2058 (¶ 43, 44)).

Restore fulfilled the District's expectations.

Restore performed the remediation work pursuant to what all parties thought was a valid contract. C2062-63 (¶ 60). AIA documents submitted by Restore for compensation at appropriate intervals were sent to the District. C2331. The District's attorneys were involved in adjudicating issues arising in the course of the construction, including payroll records, costs, lists of the work remaining to be completed, and lien waivers. C2341.

Restore supplied labor and materials (C2063) and the Board accepted those services (C2061 (¶ 50)). Restore performed its work pursuant to the contracts and that work enabled the District to open on time. C2063-64. Restore expected to be paid, and the District knew Restore expected payment and accepted Restore's work knowing Restore expected payment. C2057, C2063.

All that is presumably why the circuit court found that all parties believed there was an enforceable contract between Restore and the District. C2534, C2539.

Restore completed the work but was not paid.

Restore performed the work, completing the final stage in 2015. C2062 (¶ 57), 2063 (¶ 61). The District accepted Restore's work without reservation. C2060 (¶¶ 50, 53). The total value of the work was $7,271,000. C2060 (¶ 49).

Restore Construction sought a balance of $1,242,098.02 in compensation for its work, and Restore Restoration similarly sought $186,455.88. C2064, C2967 (prayers for relief).

Proceedings below

a) circuit court

Restore sued the District and others. C1129; App. at A1. The District moved to dismiss under Section 2-619 on the ground that the District's Board never voted on the contracts, rendering them avoid *ab initio*. C1588. Such school district contracts are governed by various statutes. 105 ILCS 5/10-7, 5/10-12, 5/10-16.5. Although a majority of the Board members knew of and approved Restore's hiring, the District never presented the contract for a Board vote. C2064. The court dismissed the *quantum meruit* claims without prejudice. C2477, C2480-81.

Plaintiffs filed a Third Amended Complaint (C2049), setting out facts common to all counts (C2051), alleging *quantum meruit* claims (C2063), and also repeating previously stricken counts not at issue here.[1] App. at A1 (facts common to all counts and the two *quantum meruit* counts). The District moved to dismiss (C2409), relying on the court's earlier finding that the written contracts were void, and the court granted their motion. C2628.

[1] The District's brief at 6 describes the earlier complaints but that is not relevant.

b) appellate court

The appellate court reversed. 2019 IL App (1st) 181580. The court first noted that the parties agreed they believed they were operating under an express contract, but that no valid contract existed. *Id.* at ¶ 25. It explained that the District had not followed the statutory process for obtaining Board approval because the Board never took a vote and the contracts were not subject to the bidding process. Where a party lacks legal authority to form a contract, any purported contract is void *ab initio* because the municipality's conduct is deemed *ultra vires*.

The court then pointed to the distinction between contracts implied in fact and contracts implied in law, the latter imposing a duty to prevent injustice. *Id.* at ¶ 28. It found the four authorities on which the District relied inapposite. *Hope v. City of Alton*, 214 Ill. 102, 106 (1905); *Roemheld v. City of Chicago*, 231 Ill. 467, 471 (1907); *Gregg v. Town of Bourbonnais*, 327 Ill.App. 253, 64 N.E.2d 106 (1945); *South Suburban Safeway Lines, Inc. v. Reg'l Transp. Auth.*, 166 Ill. App. 3d 361 (1988).

The court deemed *Hope* without impact because it held that a municipal corporation is not estopped from denying the validity of a contract it lacked authority to make. The plaintiffs here were not seeking recovery on a contract. *Roemheld* was inapplicable because the plaintiff sought recovery pursuant to a contract implied in law, not a contract implied in equity. As to *Gregg*, the court said its holding was superseded by statute and it was not applicable

because although the plaintiff sought recovery under *quantum meruit*, the claim was for services furnished for the benefit of needy inhabitants, not services furnished for the benefit of the town. *Id.* at ¶ 30.

Finally, the court found that although *South Suburban* on first look might appear to prohibit any type of implied contract, whether in law or in fact, closer examination showed it applied only to contracts implied in fact. *Id.* at ¶ 31. The *South Suburban* opinion never mentioned contracts implied in law or quasi-contracts. The court found further support of its limited reading of *South Suburban* in *Matthews v. Chicago Transit Auth.*, 2016 IL 117638, ¶ 98, where this court specifically used the phrase "implied in fact" when citing the holding of *South Suburban*. The appellate court consequently said *Matthews* makes clear that the holding of *South Suburban* was limited to contracts implied in fact, not in law. *Restore, supra* at ¶ 33.[2]

The court then pointed out that the issue was not whether the District could be liable under a void contract, but rather whether the principles precluding enforcement of a void contract also precluded application of *quantum meruit*. *Id.* at ¶ 34. The court found that *quantum meruit* applied, relying on *Woodfield Lanes, Inc. v. Vill. of Schaumburg*, 168 Ill. App. 3d 763, 766–68 (1988) and *Karen Stavins Enterprises, Inc. v. Cmty. Coll. Dist. No. 508*, 2015 IL App (1st) 150356.

[2] The District says the appellate court concluded in paragraph 33 that *Matthews* makes clear that contracts implied in law are barred if the underlying contract is void. Def. br. at 26. For clarity, Restores notes that the appellate court did not say that.

It noted that *Woodfield Lanes* had ruled that Illinois courts have held municipalities liable on contracts implied in law despite the absence of proper contractual forms and said Restore's claim was the same. *Id.* at ¶¶ 36, 37. It found *Stavins* substantially similar. *Id.* at ¶¶ 38, 41. The *Stavins* court said the defendant's argument would have merit if the plaintiff was seeking to recover on an express contract or one implied in fact. *Id.* at ¶ 40. But that was not the case there or here. Both held that recovery could be had against a municipality for a contract implied in law despite failure to follow contracting policies.

Finally, the appellate court disposed of the District's contention that Restore was seeking the court's assistance to reward them for engaging in conduct not permitted as a matter of law and to allow them the opportunity to siphon public funds. The court deemed that suggestion "meritless." *Id.* at ¶ 42. It noted that both Restore and the District believed they were acting pursuant to a valid contract and that the District did not dispute that it accepted all of Restore's services without objection. In addition, Restore was not seeking to recover more than the value of its work and that amount was not in dispute. The court ruled it would be unjust to allow the District to retain the benefit of those services without paying a reasonable value for them.

ARGUMENT

Summary of Argument

Illinois recognizes a right of a vendor or contractor to seek recovery for the value of services rendered in good faith to a municipal unit of government where the work is performed without a valid contract if the municipality requests the work, agrees to pay for it, and receives the benefit of the agreement.

If that right is not clear from this Court's pronouncements in the late 1800s, the Court should affirm such a right under the singular circumstances here because the only basis for not recognizing such a right does not exist. The premises for a rule against *quantum meruit* is that a municipality could be led into an agreement it did not want and that taxpayer funds should be protected. In this case, those premises were absent. The District was fully aware of and approved all of Restore's work, and payment was to come from the District's casualty insurer, not the District.

I. Restore rebuilt the District's school pursuant to its requirements and with its approval, with the parties operating under the mutual belief they had a valid contract. After the District discovered it had failed to present the contract to the Board for a vote, the District refused to pay the balance due because the contract was technically void. In that circumstance, Illinois recognizes a right to seek recovery under quantum meruit.

Standard of Review

To clarify the District's standard of review, the District appealed from the decision reversing a dismissal entered pursuant to Section 2-619 of the

Code of Civil Procedure, not summary judgment. See def. br. at 2. The court's review is nonetheless *de novo*. *Karen Stavins Enterprises, Inc. v. Cmty. Coll. Dist. No. 508*, 2015 IL App (1st) 150356, ¶ 4, 36 N.E.3d 1015, 1016–17 (addressing a contract implied in law).

Argument

I. It is undisputed that Restore met the requirements for recovery under quantum meruit.

Preliminarily, Restore points out that the equitable basis for its claim was not disputed. Restore performed its work at the District's request, with its knowledge, and to its satisfaction. Restore not only performed but it accommodated the District by working on an emergent basis to meet the goal of re-opening the school that fall. That met the requirements for a claim under *quantum meruit*. *Karen Stavins Enterprises, Inc. v. Cmty. Coll. Dist*. No. 508, 2015 IL App (1st) 150356, ¶ 7, 36 N.E.3d 1015, 1018 (plaintiff must show it has furnished valuable services or goods which the defendant received under circumstances that would make it unjust to retain without paying a reasonable value).

After the District requested emergency remediation, District Superintendent Collins-Hart and Board president Adams signed contracts with Restore setting out the parties' duties and payment arrangements. C2052-53; C2124-26 (contracts), C2056 (¶29); C2263 (contract). The District knew what Restore was doing at every step because the District and its FOP were directly involved. The District hired an architect, Legat, to prepare

specifications and act as job administrator. C2052. Legat also prepared specifications setting out the responsibilities of all participants including the District and its casualty insurance carrier, Travelers. C2053, C2142. Legat worked subject to the District's concurrence. C2054.

Collins-Hart affirmed the specifications. C2054. The District's School Business Official, Todd Drafall, regularly updated the Board on the progress and the District approved Restore invoices. C2054-56, C2061. Drafall approved subcontracts, bids, and invoices. C2054. The District's Project Manager executed and approved various bids and sales orders. C2055. Legat reviewed applications for payment and certified progress payments after ensuring that Restore performed its work in accordance with the contract. C2056. Legat also distributed every Architect's Certification for Payment to the District. C2056-57. Drafall regularly updated the Board and also approved Restore's invoices. C2054-56, C2061. The District never instructed Restore to stop. The school opened on time.

The appellate court specifically recited that the District did not dispute that it accepted Restore's services without objection. C2060; Opinion at ¶ 42. The court also recognized that the parties believed they were operating pursuant to what they thought was a valid contract, confirming the trial court's similar finding. *Id.* at ¶ 25; C2534, C2539. The parties do not dispute that the contract was void.

The fundamentals for a recovery in equity were thus all in place. All that was left was the question of whether, in that singular circumstance, the law allowed a contractor like Restore to seek recovery against the District pursuant to the equitable remedy of *quantum meruit*.

II. Precedent must be cautiously analyzed because cases addressing claims against municipal units have often conflated contracts implied in fact and those implied in law.

Before addressing the precedent, Restore makes the same cautionary point that the appellate court acknowledged. There is a fundamental difference between contracts implied in fact and contracts implied in law, the latter being the equitable remedy on which Restore relies. Parties and courts often critically conflate those two despite the fact that one is the antithesis of the other. One oft-cited author noted that "courts demonstrate little understanding and little consistency in analysis of *quantum meruit* and its dual nature." Candace S. Kovacic, *A Proposal to Simplify Quantum Meruit Litigation*, 35 Am. U.L. Rev. 547, 572–75 (1986).

That error may have been the result of the failure of parties to accurately recite either their positions or the grounds for those positions. Indeed, the policy argument that Restore advances in Point IV for recognizing *quantum meruit* was not raised in any of the authorities cited by the parties.

Restore noted in its appellate brief that such confusion may have been the source of the circuit court's error, and also that lack of clarity about those two separate theories created ambiguities in cases discussing the two kinds of

potential recovery. Even here, the District similarly muddies the water by wrongly claiming that Restore contends it is entitled to payment "based upon a contract" and is "entitled to remuneration for a multi-million dollar construction contract." Def. br. at 4, 5. That is simply wrong. Restore is not suing on a contract.

Quantum meruit claims, claims described as based on contracts implied in law, are separate and distinct from contracts implied in fact. The distinction was explained in *Owen Wagener & Co. v. U.S. Bank*, 297 Ill. App. 3d 1045, 1047, 697 N.E.2d 902, 904 (1998), where the court sorted contract claims into three categories: breach of express contract; breach of implied contract; and *quantum meruit* or implied in law. The court in *Glenview Park Dist. v. Redemptorist Fathers of Glenview*, 89 Ill. App. 3d 623, 626–27, 412 N.E.2d 162, 164–65 (1980) similarly analyzed claims under either implied contract or *quantum meruit*. Unlike a contract implied in fact, a contract implied in law, such as a *quantum meruit* claim, is not an actual contract at all. *Ragnar Benson, Inc. v. Bethel Mart Associates*, 308 Pa. Super. 405, 414, 454 A.2d 599, 603 (1982).

a) A contract implied in fact is an actual contract.

A contract implied in fact is imposed where there is some expression or promise that can be inferred from the facts and circumstances so that all the elements of an express contract are present. *Marque Medicos Farnsworth, LLC v. Liberty Mut. Ins. Co.*, 2018 IL App (1st) 163351, ¶18, 117 N.E.3d 1155.

The court is actually writing a contract for the parties as they intended. One court noted that the only difference between an express contract and a contract implied in fact is that the former is oral or written while the latter is arrived at by consideration of the parties' conduct. *Century 21 Castles By King, Ltd. v. First Nat. Bank of W. Springs*, 170 Ill. App. 3d 544, 548, 524 N.E.2d 1222, 1225 (1988).

b) A contract implied in law is purely equitable.

A contract implied in law, like the one Restore asserts, also termed a quasi-contract, is not a contract at all. *Karen Stavins Enterprises, Inc. v. Cmty. Coll. Dist. No. 508*, 2015 IL App (1st) 150356, ¶ 7, 36 N.E.3d 1015, 1018. Rather, it is founded on an implied promise by the recipient of services or goods to pay for something of value that it has received. A contract implied in law exists independent of agreement or consent of the parties. In fact, the parties' intentions are disregarded. *Id.*; *Century 21 Castles by King, Ltd. V. First National Bank of Western Springs*, 170 Ill. App. 3d 544, 548 (1988). For example, a claim for *quantum meruit* was recognized where the work performed was wholly beyond the subject matter of the contract and thus not part of that contract. *Archon Constr. Co., Inc. v. U.S. Shelter, L.L.C.*, 2017 IL App (1st) 153409, ¶¶ 36-39, 78 N.E.3d 1067, 1075–76 (addressing a claim for "extra" work).

c) The two theories are mutually inconsistent.

The distinction between a claim based on a contract implied in fact and a claim in equity based on a contract implied in law was clarified with vivid imagery in *Archon Constr. Co., Inc. v. U.S. Shelter, L.L.C.*, 2017 IL App (1st) 153409, ¶ 33, 78 N.E.3d 1067, 1074–75. The *Archon* court said:

> "Simply put, if an express contract exists between the parties concerning the same subject matter, a party cannot assert a claim on a contract implied in law. (citation omitted) The two cannot "coexist." (citation omitted) Long ago, the supreme court explained why:
>
> > "As in physics, two solid bodies cannot occupy the same space at the same time, so in law and common sense, there can not be an express and an implied contract for the same thing, existing at the same time. This is an axiomatic truth. * * * "

Archon Constr. Co., Inc. v. U.S. Shelter, L.L.C., 2017 IL App (1st) 153409, ¶ 33, 78 N.E.3d 1067, 1074–75.[3]

The frequent failure to carefully distinguish the two requires close examination of precedent to see whether the court intended to comment on contracts implied in fact or law.

III-A. If a contract with a municipal entity is deemed void for technical reasons, Illinois recognizes a right to seek recovery under quantum meruit for the value of the work performed when that work was done at the request of and with the approval of the entity.

Illinois courts have approved a right to seek recovery under *quantum meruit* for the value of work performed pursuant to a technically void contract

[3] Even there, the court did not clarify that it was addressing a contract implied in fact.

where that work was done at the request of and with the explicit approval of the entity.

Looking first to the authorities the appellate court cited, the appellate court noted the recognition of a right of equitable recovery most recently in *Karen Stavins Enterprises, Inc. v. Cmty. Coll. Dist. No. 508*, 2015 IL App (1st) 150356, 36 N.E.3d 1015, a case mirroring this one. There, City Colleges refused to pay a talent agency for actors who the college hired through the agency. *Id.* at ¶ 2, 36 N.E.3d at 1016. As in this case, the Colleges asserted that its powers were strictly limited to those conferred by law. It showed that the plaintiff had not alleged compliance with the policies it had adopted (pursuant to those powers) for awarding contracts. And the plaintiff had not alleged that a person with authority signed the contract. *Id.* at ¶ 3, 36 N.E.3d at 1017. Nonetheless, the court approved the plaintiff's right to seek recovery under a "contract implied in law."

The *Stavins* court rejected the Colleges' contention that a contract can never be implied against a municipal entity if the prescribed method for executing contracts was not followed, the same argument the District makes. The court agreed the Colleges' argument would have merit if the plaintiff were seeking to recover on an express contract or a contract implied in fact. But the talent agency only sought recovery based on a contract implied in law, as in this case. The court held that recovery may be had from a governmental unit under a contract implied in law, a *quantum meruit* claim, despite the absence

of compliance with statutory policies and procedures governing the award of contracts. *Id.* at ¶ 8, 36 N.E.3d at 1018.

The District argues that *Stavins* is inapposite because it involved a direct hire (the District's undefined term, not addressed in any implied contract case) which was not unlawful and that there was therefore not what it calls an unlawful expenditure. From that, it reasons any discussion of contracts implied in law was dicta. Def. br. at 18. However, the District's premise is in error. The court's reasoning shows it assumed the defense was premised on a void contract, not a voidable contract.

The Colleges' motion asserted that City Colleges was limited to powers conferred upon it by law and that the contract fell outside those powers, so that any agreement was void. The Colleges agreed it had adopted procedures to award contracts, as the District did here. *Id.* at ¶ 3. Rules for processing contracts for colleges are established by statute or by official acts of the college, similar to a city passing an ordinance. The Colleges were thus subject to the same constraints that limited the District's ability to contract. See, e.g., 110 ILCS 805/7-14, 7-15, 7-23.1; 705/7-1 (the latter provision applies the general statutory restrictions for community colleges specifically to the City Colleges of Chicago, the defendant in *Stavins*). The Colleges argued the problem was that the plaintiff agency had not alleged compliance with those procedures. Consequently, we know what the *Stavins* court was referring to when it said:

> "The grounds for dismissal asserted by City Colleges * * * is that it cannot be liable to the plaintiff absent compliance with its

> policies and procedures for awarding contracts which the plaintiff has failed to allege. It argues that a contract cannot be implied if the prescribed method of executing its contracts has not been followed."

Karen Stavins Enterprises, Inc. v. Cmty. Coll. Dist. No. 508, 2015 IL App (1st) 150356, ¶ 8, 36 N.E.3d 1015, 1018.

That recitation shows the Colleges raised a void contract defense, just like the District did. The *Stavins* court was saying that the plaintiff agency in Colleges had not alleged it followed the prescribed method of executing a contract set out by the Colleges' rules, just as in this case. Consequently, the agency could not recover on a contract implied in fact (because such contracts are void) but only under *quantum meruit*. That the *Stavins* court assumed it was addressing a void contract rather than a voidable contract is also shown by the fact that the two cases it relied on (*Woodfield* and *Wacker*) addressed contracts deemed void for failure to follow ordinances.

The appellate court also relied on *Woodfield Lanes, Inc. v. Vill. of Schaumburg*, 168 Ill. App. 3d 763, 766–68, 523 N.E.2d 36, 38–39 (1988). The plaintiff there constructed a sewer which the Village accepted to its benefit, but the Village said it had not requested the sewer and refused to pay. The contractor sought equitable payment under a contract implied in law. Because the Village had never requested the sewer, it obviously had not voted or otherwise officially approved the work. Nonetheless, the court confirmed that the contractor was entitled to payment pursuant to a contract implied in law. *Id.* The court designated the specific theory of implied-in-law recovery as

unjust enrichment, a theory identical to *quantum meruit* except in determining how to value the recovery. *Stark Excavating, Inc. v. Carter Const. Services, Inc.*, 2012 IL App (4th) 110357, ¶¶ 37-39, 967 N.E.2d 465, 474.

The Village maintained it could not be liable under an implied contract, pointing to an opinion where a contractor sought recovery for work performed pursuant to promises of the city's agents where the agents had not followed the proper forms. *Woodfield, supra* at 768-69, 523 N.E.2d at 39. The *Woodfield* court pointed out that the plaintiff in that other case sought recovery under a contract implied in fact. That was legally different than the case before the *Woodfield* court where the contractor sought recovery under a contract implied in law. The Village's argument conflated the two types of contract.

The *Woodfield* court further pointed out that Illinois has allowed recovery against governmental units on contracts implied in law despite the absence of prior appropriations, the latter being fatal to claims based on express contracts or contracts implied in fact. *Id.* at 769. It held that the Village was not immune from suit in quasi-contract.

The District argued below that *Woodfield* is distinguishable because the Village's ordinance authorized it to require benefitted property owners (who received sewers) to reimburse the property owner who created the benefit (by installing sewers). *Woodfield, supra*, at767–68. That is correct, but the issue was not whether the Village should have collected payment from those benefitted and given that money to the property owner/contractor who built

the sewers. The contractor sued only the Village and the Village answered that it did not owe the contractor because it had not contracted for the work. It was in that context that the court held the Village was not immune from suit in quasi-contract, i.e., *quantum meruit*. The case is not a perfect fit, but it does support recovery under *quantum meruit* against a municipal unit even where there was no contract.

The District says *Woodfield* can be distinguished because there the Village was not paying its own funds but would be paying the contractor with money the Village received from landowners who benefitted from the sewers, whereas it says it is asked to "directly expend public funds." Def. br. at 29. To the contrary, if this Court approves application of *quantum meruit*, the District will ironically be in the same position it argues the Village in *Woodfield* was actually in. That is so because the District's argument overlooks that the funds it will pay under *quantum meruit* will come from its insurance carrier, *not* from taxpayers. C2057 (¶ 39), C2062.

The appellate court approved a similar quasi-contract recovery in *Town of Montebello, Hancock County v. Lehr*, 17 Ill. App. 3d 1017, 1021–22, 309 N.E.2d 231, 234–35 (1974). A county sought recovery from a town for funds the county paid to an assessor. The county based its claim only on quasi-contract. The court explained that such a recovery would be based on a fictitious promise to pay "wholly apart from the usual rules relating to contracts." *Id.* at 1021. The dissent clarified that the statutes allowing that

payment were void *ab initio*. Consequently, no valid statute allowed the board to employ the person whose payment was at the heart of the dispute. *Id.* at 1022-23. The *Montebello* court nonetheless allowed recovery for that person's salary under a contract implied in law, "one equitable in its nature and * * * one which reason and justice dictate." *Id.* at 1021.

Finally, although not precedential, in *Bd. of Trustees of Univ. of Ill. v. U.S. Fid. & Guar. Co.*, 90 C 1281, 1992 WL 162983, at *16 (N.D. Ill. July 2, 1992), the court agreed Illinois recognizes claims against municipal entities based on contracts implied in law, pointing to *Woodfield Lanes*.

III- B. The District contends this Court has rejected quantum meruit even where the claimant satisfactorily performed work at the municipality's request. However, the cases on which it relies either support Restore's position or are ambiguous.

In the introduction to this point, the District preliminarily says *D.C. Consulting Engineers, Inc. v. Batavia Park Dist.*, 143 Ill. App. 3d 60, 63, 492 N.E.2d 1000, 1002–03 (1986), held that when a contract is void *ab initio*, a contract cannot be implied in fact or law or established by estoppel. Def. br. at 11. What *D.C. Consulting* actually said was that there can be no implied contract, citing *Roemheld*, and that such a contract cannot be validated by principles of ratification or estoppel. The first part of that recitation does not distinguish between contracts implied in fact and those implied in law, and the latter part lists three examples of contracts implied in fact, not contracts implied in law. Thus, that court did not say a contract cannot be implied in either fact *or law*.

In a separate paragraph, in distinguishing void and voidable contracts, *D.C. Consulting* did say that if a contract is voidable, the plaintiff may recover in *quantum meruit*, but it did not address whether a plaintiff can recover under a void (as opposed to voidable) contract by way of *quantum meruit*. The fact the court cited *Roemheld*, where the plaintiff did *not* sue under *quantum meruit*, further illustrates that it believed it was addressing only contracts implied in fact.[4] *D.C. Consulting* is thus inapposite.

A. The District's Supreme Court authorities are neither apposite nor controlling.

In the appellate court, the District relied on two of this Court's decisions, *Hope v. City of Alton*, 214 Ill. 102, 106 (1905) and *Roemheld v. City of Chicago*, 231 Ill. 467, 470–71 (1907). Here, it adds *Clark v. Sch. Directors of Dist. No. 1*, 78 Ill. 474, 476 (1875) and *May v. City of Chicago*, 222 Ill. 595, 599–600 (1906). Def. br. at 11-15. Restore will address them in chronological order.

a) Clark v. School Directors

The District says *Clark* rejected a *quantum meruit* claim for a purchase that failed to conform to the law. Def. br. at 11; *Clark v. Sch. Directors of Dist. No. 1*, 78 Ill. 474, 476 (1875). However, that opinion is not nearly that clear. The plaintiff sold equipment to a school district and was paid with an order (a note which the vendor was to present to the treasurer). The order was deemed

[4] *Roemheld* is discussed in depth below.

void on its face because it provided for interest, contrary to the form prescribed by statute. The district refused to issue a substitute order.

The opinion does not say whether the vendor based his claim on a contract implied in law, e.g., *quantum meruit* or unjust enrichment. The Court simply referred to the deal as a "contract of purchase." From that and from the limited discussion in the very short opinion, it appears the vendor sought payment under a contract implied in fact rather than pursuant to *quantum meruit*.

The District focuses on this paragraph: "It is supposed that, although it may not be so, and though no action may lie upon it, yet there may be a liability upon a *quantum meruit*, the school directors having received and enjoyed the use of the property." That paragraph stands alone in the opinion. The court then said that in the absence of surplus funds, the district was not empowered to make the purchase. The court ruled there was no contract "implied by law" to pay arising from receipt and use of the articles.

The District ties that ruling to the preceding paragraph and concludes that *Clark* specifically considered whether "there may be a liability upon *quantum meruit*" and rejected that theory. Def. br. at 12.

However, as explained earlier, the phrase "contract implied in law" carries more than one meaning. The Court in *Clark* did not make clear which meaning it meant to give the phrase, likely because the parties had not made clear arguments about the alternative remedies. If the Court meant that a

vendor cannot recover under an equitable remedy, like *quantum meruit*, it should logically have stopped there. But it went on, declaring that the vendor plaintiff could sue to reclaim the property, i.e., in replevin. Replevin is a tort action, "a proceeding at law", but significantly it is intertwined with equity because courts are to adjust the equities in such cases. *Adams v. Greg Weeks, Inc.*, 327 Ill. App. 3d 380, 384–85, 763 N.E.2d 413, 416–17 (2002).

Given the earlier acknowledgement that "yet there may be a liability upon a *quantum meruit*" and the direction that the vendor did have a quasi-equitable remedy, *Clark* is not clear authority for the proposition that a vendor can never seek recovery under *quantum meruit*. If courts, including this Court, thought that was *Clark's* holding, one would have expected to see the case cited for that proposition in similar cases. Counsel cannot locate any case where *Clark* was cited for the proposition that the District attributes to it. Indeed, even the District did not cite *Clark* for that proposition until the case arrived here.

b) Hope v. City of Alton

In *Hope*, an attorney sued for wages but was blocked because an ordinance did not allow the city to retain his services so that the alleged agreement was void. *Hope v. City of Alton*, 214 Ill. 102, 106, 73 N.E. 406, 407 (1905). The lawyer alternatively argued that the city was estopped from denying payment. The *Hope* court reached the unremarkable conclusion that the city was not estopped from denying liability under a void contract. *Hope,*

supra 106. That was logical because estoppel is relevant only to contracts implied in fact, not contracts implied in law, due to the fact that estoppel is a contract-based claim. *Stahelin v. Bd. of Ed., Sch. Dist. No. 4, DuPage County*, 87 Ill. App. 2d 28, 39–42 (1967).

The very fact that the Court addressed a theory of recovery (estoppel) relevant only to contracts implied in fact shows the Court did not believe it was addressing *quantum meruit* or any equitable remedy. The opinion also does not say that the plaintiff sued under *quantum meruit* and the phrase is not seen there. For those reasons, the decision should not be read to foreclose *quantum meruit* claims.

c) May v. City of Chicago

The District next says *May* rejected a *quantum meruit* claim. Def. br. at 14. *May v. City of Chicago*, 222 Ill. 595, 599–600, 78 N.E. 912, 913 (1906). *May* is the only other of the District's four main authorities to specifically mention *quantum meruit*. The plaintiff there argued he was entitled to overtime wages on that theory.[5] The court once again reached the unremarkable conclusion that in the absence of an appropriation, city officials could not create liability. *May, supra* 599.

In its relatively brief discussion, the court said the plaintiff contended only that the city was bound by its promise to pay, i.e., bound by an oral

[5] In the answer to the petition for leave to appeal, counsel wrote that the plaintiff in *May* did not sue in *quantum meruit*. That was incorrect and counsel apologizes.

contract. As the District notes at 14 of its brief, the *May* court emphasized that a person dealing with a municipal corporation is charged with knowledge of the limitations on municipal contracts. That is relevant to whether a contract exists, but of course whether a contract exists is irrelevant to a *quantum meruit* claim like Restore makes.

That recitation in *May* suggests the court may have believed it was addressing only an implied in fact contract, despite the plaintiff's characterization of his claim. In any event, there is no evidence the parties furnished the court with the *quantum meruit* analysis that Restore provides in Point IV here. And the two cases that *May* cites for the proposition that city officials cannot create municipal liability absent an appropriation for the work (*Shober Lithographing* and *West Chicago Park Commissioners*) do not discuss *quantum meruit*, further suggesting the Court viewed the matter only as a claim under a contract implied in fact.

d) Roemheld v. City of Chicago

The District's final primary authority from this Court is *Roemheld. Roemheld v. City of Chicago*, 231 Ill. 467, 470–71, 83 N.E. 291, 292 (1907). The District points to the Court's preliminary discussion where it said there could be no "implied contract or implied liability" for municipalities if an ordinance was not followed, and that acceptance of performance would not render the city liable. *Id.* at 471. However, the plaintiff did not sue under *quantum meruit,* so that question was not before the court and there was no need for it to believe

it was addressing equitable remedies. That would explain why the court did not use the terms *quantum meruit* or unjust enrichment. In addition, the same case had been before the Court earlier. The earlier opinion, referenced in this Court's second decision, made clear that the parties had a contract and that the plaintiff's action was contract-based. *City of Chicago v. Roemheld*, 227 Ill. 160, 161, 81 N.E. 45, 45 (1907) (first appeal).

Consequently, even if this Court intended its discussion there to address *quantum meruit*, that discussion was dicta. And if all that did not make the preliminary discussion dicta, the court's conclusion did. It found that the ordinance did not apply, so it affirmed the appellate court's judgment in favor of the contractor rendering the service. It did not apply a rule barring recovery under *quantum meruit*.

B. Sexton v. City of Chicago allowed a quantum meruit recovery and supports Restore's position.

There is one further relevant decision of this Court from the late 1800s, but there the Court specifically endorsed *quantum meruit*. In *Sexton v. City of Chicago*, 107 Ill. 323, 333 (1883), an architect sued for the value of extra work done for a part of the project not set out in the specifications provide by the City. The Court found that if as matter of law there was no contract between the architect and the City for that work notwithstanding the signed document, the trial court erred when it refused to consider that the architect was allowed to recover under *quantum meruit*.

Specifically, the Court held:

> Whether the city, under the circumstances, was estopped from denying the correctness of the plans thus furnished appellant, and for that reason had no right to declare a forfeiture of the contract, or whether, by reason of a mutual mistake, caused by the negligence of the city, as to the subject matter of the contract, no contract was created between them, it is not important to inquire, as in either case the law is with the appellant, and he therefore had the right to acquiesce in the forfeiture of the contract, and proceed, as he did, upon a *quantum meruit* for the materials and his services.

Sexton v. City of Chicago, supra at 333. As with the other cases, this decision is not on all fours but the Court did allow a *quantum meruit* claim even in the absence of a contract, essentially the same fact situation here.

C. The District's appellate court decisions are inapposite.

The District also relies on appellate court decisions. Appellate court decisions are of course not controlling at this level of review and absent some reasoning there showing why one side or the other's position here is better advised, they are inapposite. Plaintiffs will therefore review them without an in-depth analysis.

The District first points to *Galion Iron Works & Mfg. Co. v. City of Georgetown*, 322 Ill. App. 498, 504, 54 N.E.2d 601, 603 (1944). Def. br. at 18. The merchant there claimed the city owed him for a road grader delivered to certain members of the city council and used over the protests of the mayor.

The court treated the first question presented there as involving a contract implied in fact. The court relied on *Roemheld* for its explanation that

no implied contract or implied liability could arise where the conditions for the city's exercise of its power to purchase were not satisfied. Even acceptance of the benefits would not create a contract. The further significance of that analysis is that the court apparently believed *Roemheld* addressed only contracts implied in fact because that is the only issue for which it cited *Roemheld*.

The *Galion* court then turned to what it said was the crucial question, that being whether under the particular facts of that case, the plaintiff could recover under *quantum meruit*. *Id.* at 504. For its *quantum meruit* analysis, the *Galion* court looked to *Hope* and *May*, noting that a city ordinance prohibited the employment for which the plaintiff sought payment in *Hope* and that no appropriation ordinance had been passed in *May*.

The lesson that Restore takes from *Galion* is that the court did not find that *quantum meruit* was not available. Rather, it determined whether the facts and circumstances allowed a *quantum meruit* recovery, implicitly recognizing the vitality of that remedy and also implicitly believing that neither *Hope* nor *May* created an absolute bar to applying *quantum meruit* against a municipality. And although the court declined to apply res judicata based on the plaintiff's previous failed mandamus action, the court nonetheless termed this action an afterthought and clearly did not give the *quantum meruit* claim any weight.

The District next cites *Gregg v. Town of Bourbonnais*, 327 Ill.App. 253, 64 N.E.2d 106 (1945). Def. br. at 18. The engineer sought payment under *quantum meruit* for rendering specifications. *Id.* at 255, 266. He could not recover under express contract because no vote had been taken. The project's primary object was relief of the unemployed, and the court noted that no governmental unit was obligated to provide such relief. *Id.* at 260. The court also noted the absence of proof about who requested the work and that even if such evidence had been adduced, the plaintiff had not shown the amount already paid was not adequate payment. *Id.* The court consequently rejected the *quantum meruit* claim not because it was not a viable remedy but because the plaintiff failed to prove that claim.

If *Gregg* has any relevance here, it is that like *Galion*, the *Gregg* court implicitly recognized the existence of a right to seek recovery under *quantum meruit* even though the statutorily required vote had not occurred. The court first specifically rejected the contention that the town was estopped from denying a contract, presumably because estoppel is based on a contract implied in fact and a contract cannot exist without a vote. The court next denied recovery under *quantum meruit*, but only because the plaintiff's proofs, described above, were insufficient. Even the District's quote from *Gregg* refers to the "evidence in this case", showing the court based its decision on the evidence, not on a rule that *quantum meruit* can never apply against a

municipality. Def. br. at 19. The court would have allowed recovery under *quantum meruit* if the engineer had proven that case.

Finally, the District cites *South Suburban Safeway Lines, Inc. v. Reg'l Transp. Auth.*, 166 Ill. App. 3d 361, 519 N.E.2d 1005 (1988). Def. br. at 21. In the appellate court, Restore argued and the court agreed that *South Suburban* was limited to contracts implied in fact. The court in *South Suburban* concluded only that the RTA was not estopped from denying incapacity to contract (*id.* at 368), and estoppel is only relevant to contracts implied in fact. After arguing strenuously in the appellate court that *South Suburban* addressed both contracts implied in fact and in law (Def. app. ct. br. at 11), the District now agrees that *South Suburban* "did not discuss *quantum meruit*", despite the court's passing reference to *quantum meruit* at 366, because the plaintiff did not sue under *quantum meruit*. Def. br. at 22.

In considering *South Suburban*'s relevance, the appellate court agreed that *Matthew's* treatment of *South Suburban* supported Restore's contention that *South Suburban's* holding is limited to contracts implied in fact. *Restore*, *supra* ¶ 33; *Matthews v. Chicago Transit Auth.*, 2016 IL 117638, ¶ 93, 51 N.E.3d 753, 780. *Matthews* cited *South Suburban* only for the proposition that a municipal corporation cannot be held liable under a contract implied in fact (*id.* at ¶ 98), twice pointing to "a contract implied in fact."

South Suburban's only value at this level of review is its injection of McQuillin, *The Law of Municipal Corporations,* into the discussion. McQuillin generally endorsed *quantum meruit* against municipalities, saying:

> "There is considerable authority, however, to support the rule that a recovery may be allowed in such cases, upon the theory that it is not justice, where a contract is entered into between a municipality and another, in good faith, and the corporation has received benefits, to permit the municipality to retain the benefits without paying their reasonable value, the same as a private corporation or individual would have to do."

McQuillin, *The Law of Municipal Corporations*, § 29.119, formerly § 29.112.

And in Section 29.118, McQuillin again acknowledged a role for *quantum meruit* against municipal entities, saying:

> "The general rule is that if the express contract is one the municipality had no power to make, i.e., ultra vires in the strict sense of the term, or if the municipality could not make an express contract of the kind sought to be enforced, the municipality cannot be held liable, on the theory of an implied contract, for the value of benefits received. * * * * In other words, a municipal corporation cannot be obligated upon an alleged implied contract which is ultra vires, contrary to statutes or charter provisions, or contrary to public policy. * * * * .
>
> *Under such circumstances, however, a court may permit or require a return of property or a restoration of benefits received by virtue of the void transaction, in the interests of justice; but this is not in recognition of any obligation based upon contract, but rather a repudiation of the contract.*" (emphasis added)

McQuillin, *The Law of Municipal Corporations*, § 29.118 (formerly 29.111).

McQuillin's discussion is of course not controlling but its explanation of what it deemed to be the critical distinction between the two theories of recovery is instructive.

IV. Illinois courts should recognize a right to recover against a municipal entity under quantum meruit in this singular circumstance because court control of that remedy ensures there is no possibility a municipality will be saddled with an obligation it did not intend to undertake. The remedy's equitable nature means courts applying it will protect municipalities from the dangers that served as the sole basis for not allowing recovery under the alternative remedy of contract implied in fact.

In the event the Court believes either that it has in the past endorsed a bar on *quantum meruit* recovery against municipalities or that its prior discussion of the topic requires clarification, the better rule would be to allow such a recovery where a court faces the singular circumstances here.

A. Municipalities are not exempt from the traditional obligation of fair dealing.

Preliminarily, Restore points out that courts have not seen a need to insulate municipal units from the obligations of common honesty and fair dealing applicable in all other commercial dealings. Rather, they have strictly limited or circumscribed the "void ab initio" doctrine. The "ab initio" rule is not ironclad. That is seen in cases where a municipal unit had power to authorize funds but either the power was exercised irregularly or a portion of the contract was beyond its power. In that scenario, courts find an obligation to pay even where the defendant is a governmental entity and there was no contract.

That attitude is illustrated in *Stahelin v. Bd. of Ed., Sch. Dist. No. 4, DuPage County*, 87 Ill. App. 2d 28, 39–42, 230 N.E.2d 465, 471–72 (1967) (collecting cases). That court acknowledged the rule that municipal corporations are bound by principles of honesty and fair dealing. It found that the district there was obligated to pay for "extras" even though there was no vote taken to authorize the expenditure.

The line some courts have drawn between two kinds of board expenditure, allowing suit where the power was exercised irregularly or a portion of the contract was beyond its power but barring suit otherwise, is often exceedingly fine. Restore's point is that the fact courts avoid over-restricting many remedies in municipal contract disputes without any evidence of resulting harm signals that courts should not be adverse to or fearful of allowing equitable remedies like *quantum meruit* in cases like this.

B. Allowing quantum meruit recovery will promote fair dealing.

Allowing Restore to seek recovery (this case is only at the pleading stage) under *quantum meruit* in this particular scenario fulfills the social goal described in *Stahelin* while at the same time maintaining the fiscal protection municipalities require. The idea underlying a call for judicial restriction of certain contract claims against municipal units is that a municipality should not find itself inadvertently and unintentionally bound either financially or in its future conduct by the unauthorized conduct of an officer or other representative. Even worse would be a scenario where it would be bound by

criminal intent on the part of its officer. As McQuillin noted, taxpayers require protection. McQuillin, *The Law of Municipal Corporations*, § 29.118. The latter need seems to have been of particular significance in the late 1800s when this Court issued the decisions discussed above. See, e.g., discussion in *President and Trustees of Lockport v. Gaylord*, 61 Ill. 276 (1871).

However, that kind of financial fear cannot rationally exist here because the District was aware of the entire transaction and in fact assumed it had approved the contract. In addition, the public purse was never at risk because the funds sought will come from the District's casualty carrier, not the District. Restore agreed payment would be determined by the carrier. C2062.

The District argues that a municipal corporation would be helpless to correct errors if the unauthorized acts of government employee were allowed to bind the municipality for unauthorized expenditures. Def. br. at 31. And it says Restore seeks enforcement of an illegal contract. Def. br. at 33. But the District seriously misstates and misconstrues the issue, muddying the legal waters. Restore is not claiming the District is bound by the acts of its officers; that would be a contract claim. Surely it is clear by this point that Restore is not claiming that the District is bound by its contracts, only that the District should be liable in equity.

The critical difference is that if there are issues raising a specter of inequity or improper risk to a municipal defendant, the trial court will address them in determining whether recovery is appropriate under *quantum meruit*.

The very nature of that equitable remedy ensures the outcome will not be unfair to the District or to any municipal unit in any similar case. That protects the public purse and fatally undercuts the parade-of-horribles argument advanced by the District. Contrary to the District's claim (Def. br. at 17), the distinction between contracts implied in fact and those implied in law is critical, not irrelevant, because the latter allows courts to protect municipalities. Restore presented this same argument below without rebuttal.

The District argues that allowing *quantum meruit* would give Restore the same benefits it would have received under a contract implied in fact, the latter being a remedy barred to it. Def. br. at 33. Again, it misunderstands the distinction between the two remedies. First, it is not correct that the plaintiff in a *quantum meruit* claim necessarily recovers the same damages as it would in an implied in fact contract claim. In the former, the vendor would recover the value of the work; in the latter, the vendor recovers the amount provided in the contract. The two are not necessarily the same. There is no "end-run" as the District argued in the appellate court, but rather a different contest.

Further, at this early stage of the proceedings, although it appears the amounts recoverable would ultimately be the same under both theories, that is only because the District's paperwork shows the value of the work is the amount shown in the architect's approvals under the contract. The agreement between those processes is likely the result of the District's intimate

involvement throughout the construction by way of its contacts and its architect's daily supervision. The District, via its architect, already approved Restore's valuation of the work. But the final resolution of value is of course up to the trial court.

More critically, the two processes are distinctly different. Under a contract implied in fact, the price is fixed. Under *quantum meruit*, the vendor must prove and the court must find value after hearing the evidence. That the outcome might be the same does not affect the fact that the two claim processes are different or mean that the *quantum meruit* process is void.

C. Allowing quantum meruit will not encourage improper conduct.

At this point, the District moves to representations similar to those in its petition. Def. br. at 33. It says allowing Restore to seek recovery under *quantum meruit* would permit it "to benefit from its knowingly unlawful conduct." It was wrong there and it is wrong here. There was no unlawful conduct, knowing or otherwise. And Restore did not "knowingly fail to follow the statutorily mandated contracting process." Def. br. at 17.

As both the trial and appellate courts made clear, both sides believed they were operating under a valid contract. C2539 (v3) ("I have no doubt probably every party in this room was working under the illusion that this - - there was an enforceable contract plaintiff and Proviso."); *Restore, supra* at ¶ 42 ("… plaintiffs and the District believed they were acting pursuant to a valid contract."). There was no "knowing failure" on the part of Restore to comply

with the School Code. Def. br. at 34. Indeed, as the District admits, the contract problem arose due to the "failure of Proviso's Board of Education to consider and vote on the underlying contractual arrangements . . . ." Def. br. at 10.

Thirty-one years ago, the court in *Woodfield Lanes* succinctly expressed the equitable principle that Restore promotes here when it concluded:

> "A court will find a contract implied by law without regard to agreements or promises between the parties when the contract must be imposed upon the parties in order to avoid an inequitable result. (citation omitted) We do not believe that the legislature meant to grant governmental bodies immunity from suit based on contract where equity demands that the court impose a contract. Therefore we hold that the Tort Immunity Act does not bar plaintiff's action based on a contract implied by law."

Woodfield Lanes, Inc. v. Vill. of Schaumburg, 168 Ill. App. 3d 763, 770, 523 N.E.2d 36, 40 (1988).

Woodfield was enforcing an equitable remedy under different circumstances, but its reasoning has not been undercut and the intervening 31 years have not produced the onslaught of municipal contracting problems predicted by the District.

D. Courts will protect municipal rights in quantum meruit claims.

That *quantum meruit* is an appropriate remedy in this situation is confirmed by the ability of courts to effectively draw a line between work that logically and ethically requires payment and work for which payment is, for some reason, undesirable. That ability is illustrated by the reasoning in

Walters v. Vill. of Colfax, 466 F. Supp. 2d 1046, 1056–57 (C.D. Ill. 2006). The district court noted a material distinction between estopping a municipality from gaining an unconscionable advantage by refusing to pay for services already performed, as occurred here, and estopping it from denying a contract it never had authority to make. The court was discussing estoppel, but the reasoning applies with equal force here. That same distinction was noted in *Linear v. Vill. of Univ. Park, Illinois*, 15 C 7653, 2017 WL 5905704, at *2 (N.D. Ill. Apr. 5, 2017). Courts can allow municipalities to refuse to proceed with performance of an improper contract, but it does not follow that courts must also ignore traditional equitable remedies where the work has been completed at the municipality's request.

The distinction between requiring a municipality to proceed with a contract that is deficient and void and requiring payment for a benefit the municipal unit requested and accepted exists because courts assume it is one thing to lock a municipal unit into a future performance based on an irregular contract, but quite another to require it to pay for a tangible benefit it asked for and accepted. The lesson there is that trial courts can address all levels of equity to assure that the legislature's intent to protect municipal units from misconduct or inadvertent error with respect to agreements and contracts is met, so that recovery under *quantum meruit* occurs only where it is equitable.

There is yet one further factor weighing in favor of recognizing a right to seek recovery in equity, a factor not raised in any of the cases denying

recovery. Payment here will come from insurance, not the District unit. Restore was principally paid by Travelers Insurance, after the District paid its self-insured retention, and the disputed final payment was to come from the insurance company. Barring a right to seek recovery here would only create a million-dollar windfall for the District's carrier, rather than furthering a legislative intent to protect the public purse from unintended contracts. C2057 (¶ 39), C2062.

A New York court explained why *quantum meruit* should apply in a case like this. *Vrooman v. Vill. of Middleville*, 91 A.D.2d 833, 834, 458 N.Y.S.2d 424, 426 (1982). After acknowledging that in New York, *quantum meruit* will generally not lie where the original contract is void, the court noted there are exceptions. It said:

> "A plaintiff is entitled to recover from a municipality where, as here, he has entered into a contract in good faith, the municipality possesses the authority to enter into the contract, the contract is not violative of public policy and the circumstances indicate that if plaintiff is not compensated, the municipality would be unjustly enriched (citation omitted)."

Id. at 426.

Here, the court will see the same elements that led the *Vrooman* court to apply *quantum meruit*. Restore entered into the contract in good faith, the District had authority to enter into such contracts, a contract to rebuild a school could hardly violate public policy, and the District will be unjustly enriched if it is not required to pay. *Vrooman* noted that the policy underlying

the rule against allowing implied contracts was to safeguard taxpayers against "extravagance and collusion on the part of public officials" by requiring municipalities to abide by statutory restrictions. Allowing recover under *quantum meruit* would not contravene that policy there or here.

The village in *Vrooman* had to provide sewer treatment and the District must provide schools. In each case, there was no dispute about value and no harm to taxpayers. And the *Vrooman* court noted that allowing a *quantum meruit* recovery actually promoted another public policy. Barring use of *quantum meruit* and thus absolving municipalities from liability where they have significantly benefited by a vendor's services would encourage municipal officials to disregard statutory safeguards, knowing they would benefit. *Id.* That should be discouraged, not encouraged.

The District argues that allowing *quantum meruit* claims would reward those who fail to conform to the law. Def. br. at 24. However, here it was the District that failed to conform with the law. By its own admission, the District failed to vote on the contract, not Restore. Dist. br. at 10. Therefore, and directly contrary to the District's hypothesis, granting the relief sought by the District would produce the very consequence the District argues should not be allowed because it would reward municipal units for not following the law on contracting.

Conclusion

For the reasons stated, Plaintiffs-Appellees Restore Restoration and Restore Construction request that the decision of the appellate court be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, I certify that this document conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 10,831 words.

/s/ ***Michael W. Rathsack***

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SUPPLEMENTAL APPENDIX

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

RESTORE CONSTRUCTION COMPANY, INC. and RESTORE RESTORATION, INC.,	
Plaintiffs,	
v.	**Case No. 2015 L 010904**
THE SCHOOL DIRECTORS OF PROVISO TOWNSHIP HIGH SCHOOLS DISTRICT 209, NETTIE COLLINS-HART, DANIEL J. ADAMS, TRAVELERS INDEMNITY COMPANY, GALLAGHER BASSETT SERVICES, INC., MADSEN KNEPPERS AND ASSOCIATES, INC., and COLLECTIVE LIABILITY INSURANCE COOPERATIVE,	Calendar U Judge Brigid Mary McGrath
Defendants.	

PLAINTIFFS' THIRD AMENDED COMPLAINT

NOW COME the Plaintiffs, RESTORE CONSTRUCTION, INC. and RESTORE RESTORATION, INC., by and through their attorneys, WOLIN & ROSEN, LTD., and for their Third Amended Complaint[1] against THE SCHOOL DIRECTORS OF PROVISO TOWNSHIP HIGH SCHOOLS DISTRICT 209, NETTIE COLLINS-HART, DANIEL J. ADAMS, and TRAVELERS INDEMNITY COMPANY, state as follows:

PARTIES

1. Restore Construction, Inc. ("Restore Construction") is an Illinois corporation with

[1] On June 7, 2017, this Court on Defendants' The School Directors of Proviso Township High Schools District 209, Nettie Collins-Hart, Daniel J. Adams, Travelers Indemnity Company, Gallagher Bassett Services, Inc., Madsen Kneppers and Associates, Inc., and Collective Liability Insurance Cooperative, motions to dismiss, ruled that Plaintiffs' Second Amended Complaint (SAC) Counts 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21 and 22 were dismissed *with prejudice*. Counts 6, 7, 8, 14 and 15 against remaining Defendants Proviso, Collins-Hart and Adams were dismissed with leave to amend. On December 19, 2017, following argument on Plaintiffs' Motion To Reconsider This Court's June 7, 2017 Ruling, the Court denied Plaintiffs' Motion To Reconsider and affirmed leave to plead and re-plead counts in quantum meruit and fraud. The Counts of Plaintiffs' SAC *dismissed with prejudice* are being repleaded herein solely for preservation of Plaintiffs' rights on appeal. In re-pleading, the Plaintiffs are not "pleading over" their SAC and are expressly preserving all of their claims for purposes of appeal.

its principal place of business at 11241 Melrose Avenue, Franklin Park, Cook County, Illinois 60131. It is engaged in the business of, among other things, repairing fire damaged structures and providing related construction services. It has a common ownership and management with its affiliate Restore Restoration, Inc.

2. Restore Restoration, Inc. ("Restore Restoration") is an Illinois corporation with its principal place of business at 11241 Melrose Avenue, Franklin Park, Cook County, Illinois 60131. It is engaged in the business of, among other things, providing disaster mitigation and related restoration services. It has a common ownership and management with its affiliate Restore Construction, Inc.

3. The School Directors of Proviso Township High Schools District 209 and Proviso Township High Schools District No. 209 (collectively "Proviso" or "District") is an Illinois body politic and corporate, governed by a Board of Education comprised of seven (7) members (the "Proviso Board"), and is named in the style authorized by the Illinois School Code, 105 ILCS 5/10-2. Since 2008, Proviso has been subject to the oversight of a statutory school finance authority, the Financial Oversight Panel for Proviso Township High School District 209 ("FOP").

4. Netti Collins-Hart, Ed.D, ("Collins-Hart") was the Superintendent of Schools of Proviso from approximately July 1, 2008 to June 30, 2016. In her capacity as Superintendent, Collins-Hart, was Proviso's chief executive officer responsible for the administration and management of Proviso's schools in accordance with Proviso's policies and state and federal law.

5. Daniel J. Adams ("Adams") was a member of the Proviso Board at all times relevant herein. He left the Board on or about April 11, 2017. Adams was the duly elected President of the Proviso Board from approximately January 15, 2013 to April 30, 2015. Among

the duties of Board President is to preside over the business of the Board at official meetings and sign official District documents.

6. Travelers Indemnity Company ("Travelers") is an insurance company that provides, among its various policy offerings to its Named Insureds, an excess property policy with loss coverage. Travelers does business in Illinois and insures Collective Liability Insurance Cooperative ("CLIC") members, including Proviso. Travelers processed coverage claim(s) made by Proviso on its property fire loss of May 10, 2014 insured with Travelers.

JURISDICTION AND VENUE

7. Jurisdiction is proper in this Court pursuant to 735 ILCS 5/2-209(a)(1),(3),(7) and (10), in that Defendants transacted business, entered into agreements and committed the acts and omissions relating to the matters complained of herein in the County of Cook and State of Illinois.

8. Venue is proper in this Court pursuant to 735 ILCS 5/2-101 & 735 ILCS 5/2-102, in that the conduct giving rise to this Amended Complaint occurred in Cook County, Illinois.

ALLEGATIONS COMMON TO ALL COUNTS

9. On or about May 10, 2014, Proviso was the owner of, and remains the owner of, certain real estate commonly known as Proviso East High School located at 807 South First Avenue in Maywood, Cook County, Illinois. Said property is the High School (the "School").

10. On or about May 10, 2014, a destructive fire disaster occurred at the School causing significant property loss (the "Fire Loss").

11. The Fire Loss also created dangerous conditions within the School and an emergent concern of Proviso was to have prompt remediation, restoration and repairs of the School to the extent necessary to safely reoccupy and re-open on-time, on or about August 13, 2014, for scheduled events and the start of the upcoming scheduled student 2014-2015 school

year.

12. Proviso recognized Restore Restoration and Restore Construction (collectively "Restore") as possessing a high degree of professional skills in their specialized service areas and the ability and fitness to mitigate and repair the Fire Loss.

13. Proviso had previously contracted with Restore Restoration on April 22, 2013 to provide emergency mitigation services to Proviso for flood damage in excess of Three Hundred Thousand Dollars ($300,000.00). Proviso contracted and paid Restore Restoration in 2013 for said services without concern, repudiation, dispute or a recorded Board vote, as was Proviso's customary practice for the repair and payment of losses covered by its property loss insurance.

14. Proviso was not prohibited by law from entering into contracts with professionals for loss mitigation, repairs and renovations to the School. Such contracts are not void *per se,* if approved by a board majority.

15. Restore Restoration was contacted by representatives of Proviso promptly after the Fire Loss and asked to provide emergency mitigation services to Proviso due to the fire. Restore was advised that Proviso would approve contracting with Restore Restoration to mitigate and remediate damage due to the fire and with Restore Construction to repair the property loss damage to the School.

16. Restore Restoration immediately provided emergency mitigation services to Proviso to mitigate the damage caused by the Fire Loss.

17. Proviso hired Legat Architects, Inc. ("Legat"), an Illinois corporation engaged in the business of providing professional architectural services, to prepare plans and work specifications for Proviso's fire damage renovations (the "Project Manual") and to act as contract administrator and/or for Proviso on the renovation project (the "Fire Loss Project").

18. On May 22, 2014, Collins-Hart signed two contracts, one with Restore Restoration to mitigate and remediate fire damage and the other contract with Restore Construction to repair the fire damaged School. Both contracts were signed by Collins-Hart and represented by her to be on behalf of Proviso. Copies of those executed contracts are attached hereto and made a part hereof as **Group Exhibit 1**.

19. In 2008, the Illinois State Board of Education found Proviso to be in financial difficulty and by resolution created and thereafter impaneled a Financial Oversight Panel ("FOP") to exercise financial control over Proviso under the Financial Oversight Panel Law. 105 ILCS 5/1H-5 et seq.

20. Todd Drafall ("Drafall") was hired as an employee of the FOP under Article 1H of the Illinois School Code from May 27, 2014 to June 30, 2016. He served as the FOP's Chief School Business Official for the District. He also held the position of Chief School Business Official for Proviso. In those dual capacities, he managed Proviso's fiscal and business activities to ensure financial health, cost-effectiveness, and protection of the District's assets. Affidavits of Todd Drafall, dated July 21, 2016 and October 5, 2016 are attached hereto and made a part hereof as **Group Exhibit 2**.

21. Drafall, pursuant to the Illinois School Code, Financial Oversight Panel Law and Proviso policy, was authorized to act on behalf of both the FOP and Proviso and was the dual agent of both.

22. On June 24, 2014, Legat published Proviso's Project Manual identified as Project Number IN14-0001 and titled, Fire Damage Renovations at Proviso East High School for the Board of Education Proviso Township High School District 209. The repair and renovation specifications ("Specifications") set out the responsibilities of all participants in the repairs of the Fire Loss,

including but not limited to Proviso, Legat, Restore and Travelers in their capacities as owner, architect, contractor and special consultants. The Project Manual is attached hereto and made a part hereof as **Exhibit 3**.

23. The Specifications prepared and issued by Legat incorporated at the direction of Proviso the statutory labor wage standards and rates that the Proviso Board adopted on June 10, 2014. Those Specifications and rates were never changed in the Project Manual throughout the repair work of the Fire Loss.

24. Collins-Hart, on July 9, 2014, affirmed the hiring of Legat by Proviso and the adoption of the published Specifications. Said Specifications lists the duties of Legat, including but not limited to, to review all Project submittals by contractor and subcontractors to architect, and, with Owner's (Proviso) concurrence, to respond to said requests and submittals.

25. Drafall attended Fire Loss Project construction meetings ("Construction Meetings"), in-person or via telephone conference or through a designee, on the remediation, restoration and repair of the Fire Loss in accordance the Specifications. Also, attending these Construction Meetings were Restore personnel, Proviso's Project Manager Ron Anderson ("Anderson"), Proviso's Buildings and Grounds Manager L. T. Taylor ("Taylor"), Legat, Gallagher Bassett Services, Inc. ("GBS"), Madsen Knepper and Associates, Inc. ("MKA"), Travelers and various subcontractors.

26. Drafall accepted and approved the following subcontracts, quotations, bids, sales orders, change orders and invoices as fair and reasonable for subcontracted work on the Project by signing or initialing them:

a. July 12, 2014 change order to base contract by subcontractor Prime Electric Co., Inc. in the amount of $17,750.00;

b. July 17, 2014 quotations (311489456 and 311469459) by subcontractor Tyco Simplex Grinnell LP in the amounts of $88,883.00 and $49,775.00, respectively;

c. July 18, 2014 sales order acknowledgment by subcontractor LaForce Inc. in the amount of $106,854.00;

d. July 22, 2014 revision to prime proposal #21360 by subcontractor Prime Electric Co., Inc. in the amount of $148,894.00;

e. July 23, 2014 invoice by subcontractor GMP Development, LLC in the amount of $422,840.00;

f. July 25, 2014 contract by subcontractor Final Touch Decorating Inc. in the amount of $132,000.00;

g. July 25, 2014 pricing by subcontractor O'Malley Construction Co. in the amount of $287,900.00;

h. July 25, 2014 change orders (CO-FA-001 and CO-8D-001) to contracts (979319401 and 979319501) by subcontractor Tyco Simplex Grinnell LP in the amounts of $21,018.00 and $9,816.00, respectively;

i. August 2, 2014 invoices (000124, 000125 and 000126) by subcontractor VK Construction Services, Inc., in the amounts of $11,692.08, $8,500.00 and $7,100.00, respectively;

j. August 7, 2014 contract by subcontractor ABM Janitorial Services Inc. in the amount of $30,605.00;

k. August 11, 2014 extra to prime contract #21316 by subcontractor Prime Electric Co., Inc. in the amount of $3,096.50;

l. September 22, 2014 quotation by subcontractor Kewaunee Scientific Corporation in the amount of $197,500.00; and

m. September 26, 2014 contract by subcontractor Capitol Glass & Architectural Metals, Inc. in the amount of $139,082.00.

27. Ron Anderson, Proviso's Project Manager executed and approved the following subcontractor bid and sales order as fair and reasonable at the direction of Drafall:

a. July 17, 2014 bid by subcontractor DePue Mechanical, Inc. in the amount of $312,500.00; and

b. July 21, 2014 sales order by subcontractor Better Blinds Inc. in the amount of $27,800.00.

28. Upon information and belief, L.T. Taylor, Proviso's Buildings and Grounds Manager executed and approved the following subcontractor invoices as fair and reasonable with Proviso's knowledge and consent:

a. July 30, 2014 invoice (91092) by subcontractor Service Drywall & Decorating Inc. in the amount of $62,900.00; and

b. July 30, 2014 invoices (9397 and 9437) by subcontractor Absolute Production Services Co. in the amounts of $6,000.00 and $9,560.00, respectively.

29. On August 12, 2014, Adams, then President of the Proviso Board, signed an Amended Agreement with Restore Construction to repair the fire damaged School. The Agreement signed by Adams was represented by him to be on behalf of Proviso. A copy of the executed Amended Agreement is attached hereto and made a part hereof as **Exhibit 4.**

30. Restore Restoration and Restore Construction, respectively, performed emergency mitigation work and repair work of Fire Loss damage to the School.

31. Restore Construction repaired and replaced Fire Loss damage sustained by Proviso in accordance Specifications prepared by Legat, as approved, adopted and implemented by Proviso for the repair of the Fire Loss, and utilized by its insurance carriers, including Travelers, to adjust the Fire Loss Project.

32. Legat reviewed submitted applications for contractor payment and issued Architect's Certificates for Payment based upon on-site observations and data reviewed, that certified, that "Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED."

33. Legat, during the course of all work under the Fire Loss Project, beginning with

Application No. 1, dated July 15, 2014, through Application No. 5, dated February 20, 2015, certified and distributed to Proviso, Restore and Proviso's Insurers each Architect's Certification For Payment it issued.

34. The Excess Property Policy issued by Travelers to Proviso, states, "in return for payment of the premium, the Company [Travelers] agrees with the Named Insured [Proviso] to provide the insurance afforded by this policy." After the loss payment of One Million Dollars ($1,000,000.00) by the underlying lead insurer, Travelers was responsible for the 100% share of the next One Billion Dollars ($1,000,000,000.00) of loss (the "Travelers Policy"). Policy Number KTK-XSP-545D521-1-13 is attached hereto and made a part hereof as **Exhibit 5.**

35. Restore was paid in part and expected to be paid in full for its Fire Loss Project work by and through the Travelers Policy.

36. GBS acted as a claims administrator on behalf of Travelers by issuing payments to Proviso and Restore from funds supplied by Traveler to GBS.

37. Michael Becich ("Becich"), a Senior Claims Adjuster, employed by GBS and assigned to Proviso's insurance claim, was the agent of and acted on behalf of GBS, CLIC, Proviso and Travelers.

38. On June 12, 2014, and again on June 17, 2014, Becich, on behalf of GBS, CLIC and Travelers, directed Restore that the chain of command on the Project was that "only GBS" was to deal and communicate with Travelers.

39. On June 13, 2014, Becich, on behalf of GBS, CLIC and Travelers, told Restore that Proviso was not the party paying Restore on the Fire Loss Project, rather payments were coming from GBS, CLIC and Travelers.

40. Travelers, at Construction Meetings, directly and through its agent, gave Restore

directives and demanded performance under the Specifications of the Project Manual prepared by Legat as Proviso's architect for the Fire Loss Project.

41. On June 26, 2014, during a Construction Meeting, conducted by conference call, attended by Proviso, GBS, MKA, and others, Michael Berlin of MKA stated that MKA would not authorize payment to Restore of prevailing wages under the Prevailing Wage Act, 820 ILCS 130.0.01, et seq. GBS, MKA, Proviso, CLIC and Travelers did approve prevailing wage payments to all of Restore's subcontractors whose employees were not mostly minorities. Restore, who employed mostly minorities on the Fire Loss Project, was denied reimbursement and/or payment of prevailing wages at the wage rates adopted by Proviso and paid to subcontractors by Proviso, CLIC and Travelers.

42. CLIC and Travelers accepted Legat and Proviso's Architect's Certifications For Payment for Fire Loss Project services performed by Restore, in accordance with adopted Specifications, and caused to be issued payment checks for Fire Loss work.

43. On or about the following dates, Proviso endorsed checks issued to it by its insurance carriers on the Fire Loss, including Travelers, by stamping the District's name on those checks listed below:

Date of Check	Payor	Payee	Check No.	Amount
07/01/14	Gallagher Basset Services, Inc. For Collective Liability Insurance Cooperative	Proviso Twnshp District 209 and Restore Restoration	110745066	$ 500,000.00
07/22/14	Gallagher Basset Serv, Inc. As Claims Administrator	Proviso Twnshp District 209 and Restore Restoration	105396060	$1,448,708.38

07/30/14	Gallagher Basset Serv, Inc. As Claims Administrator	Proviso Twnshp District 209 and Restore Restoration	105396068	$ 972,156.21
08/14/14	Gallagher Basset Serv, Inc. As Claims Administrator	Proviso Twnshp District 209 and Restore Restoration	105396081	$1,062,329.50
10/06/14	Gallagher Basset Services, Inc. For Collective Liability Insurance Cooperative	Proviso Twnshp District 209 and Restore Restoration	113098436	$ 331,109.83
03/06/15	Gallagher Basset Services, Inc. For Collective Liability Insurance Cooperative	Proviso Twnshp District 209 and Restore Restoration	116894025	$ 920,000.00
04/08/15	Gallagher Basset Services, Inc. For Collective Liability Insurance Cooperative	Proviso Twnshp District 209 and Restore Restoration	117740861	608,941.86
				$5,843,245.78

44. After Proviso's endorsements were affixed to the checks listed in paragraph 43 above, Proviso delivered the checks to Restore in payment for Fire Loss mitigation, remediation, restoration and repairs.

45. Check No. 113098436 in the amount of Three Hundred Thirty-One Thousand One Hundred Nine and 83/100 Dollars ($331,109.83) was paid towards emergency mitigation and remediation services performed by Restore Restoration. Check and claim adjustment detail are attached hereto and made a part hereof as **Group Exhibit 6.**

46 Legat, on February 20, 2015, issued its cumulative Certificate for Payment certifying that Restore Construction had completed to date, Five Million Eight Hundred Sixteen Thousand Two Hundred Twenty-Three and 08/100 Dollars ($5,816,223.08) of work on the Fire

Loss Project. A copy of Application No. 5 Certificate is attached hereto and made a part hereof as **Exhibit 7.**

47. Proviso accepted the services and work performed by Restore described in **Exhibits 6 and 7** herein, once through Legat and again by its own business office, and authorized and delivered the payments detailed in paragraphs 43, 45 and 46 to Restore, as being fair and reasonable value for the services and work provided and completed.

48. Restore Construction was improperly credited with receiving the payment made to Restore Restoration of Three Hundred Thirty-One Thousand One Hundred Nine and 83/100 Dollars ($331,109.83), in **Exhibit 6** herein, towards performed emergency mitigation and remediation services. As a result, Restore Construction only received Five Million Five Hundred Twelve Thousand One Hundred Thirty-Five and 95/100 Dollars ($5,512,135.95) of the Five Million Eight Hundred Sixteen Thousand Two Hundred Twenty-Three and 08/100 Dollars ($5,816,223.08) certified in **Exhibit 7** herein as completed, leaving a payment shortage of Three Hundred Four Thousand and Eighty-Seven and 13/100 Dollars ($304,087.13) to Restore Construction.

49. The total value of the mitigation, remediation and repairs performed by Restore Restoration and Restore Construction to the damage from the Fire Loss exceeds Seven Million Two Hundred Seventy-One Thousand and no/100 Dollars ($7,271,000.00). Restore Restoration was paid Three Hundred Thirty-One Thousand One Hundred Nine and 83/100 Dollars ($331,109.83). Restore Construction was paid Five Million Five Hundred Twelve Thousand One Hundred Thirty-Five and 95/100 Dollars ($5,512,135.95). An outstanding unpaid balance for performed services of approximately One Million Four Hundred Twenty-Eight Thousand Five Hundred Fifty-Three and 90/100 Dollars ($1,428,553.90) remains.

50. Legat, Proviso, CLIC and Travelers accepted the Fire Loss Project services performed by Restore, in accordance with adopted Specifications and their Fire Loss Project participation contracted with Proviso.

51. Drafall gave regular updates to the Proviso Board and/or to the FOP on the Fire Loss Project at meetings held on May 13, 2014, June 10, 2014, July 15, 2014, August 12, 2014, September 16, 2014, October 14, 2014, November 18, 2014, December 9, 2014, January 13, 2015, February 10, 2015, March 10, 2015 and May 12, 2015.

52. At the regular meeting of the Proviso Board held January 13, 2015, Drafall updated the Proviso Board that:

> "the general contractor of the fire project [Restore] informed the District that the fire damaged area was not ready on January 5, 2015 due to issues with the installer of the lab casework. The installer did not complete the installation in time thus pushing back work that would have followed installation. The general contractor explored multiple options to make up time but at this point in the process no option seemed viable. Terminating the subcontractor was not an option as the general contractor would have been starting from scratch and thus further delaying the project. With the holidays behind, the new anticipated date of completion is January 19, 2015."

53. Drafall, Anderson and Taylor reported to the Proviso Board on the progress of Proviso's Fire Loss Project. Drafall reported regularly to both the Proviso Board and the FOP on the progress of the Fire Loss Project, including actions taken by him, Anderson and Taylor. Neither the Proviso Board nor the FOP ever disapproved of any actions taken by Anderson, Taylor or Drafall on the Fire Loss Project. All actions of Drafall on the Fire Loss Project were accepted by both the Proviso Board and FOP, and were within the scope of Drafall's authority.

54. The Proviso Board participated in the Project by its actions, including but not limited to having its school employees, Legat and other hires attend Construction Meetings and report back to it.

55. No less than a majority of the Proviso Board knew and informally approved that Restore provide mitigation, remediation, restoration and repairs to the School.

56. Proviso, by and through its school counsel, Scott A. Hadala of the Del Galdo Law Group, LLC, opined in 2015 that "the District signed a contract with Restore understanding that Restore would do the work for what the insurance company agreed to reimburse for the project." Correspondence between Restore's legal counsel and Proviso's school counsel, dated June 1, 2015, July 7, 2015 and September 1, 2015 is attached hereto and made a part hereof as **Group Exhibit 8**.

57. Restore performed Fire Loss mitigation, remediation, restoration and repairs to the School.

58. Restore was not paid for all services it performed and materials it provided in mitigation, remediation, restoration and repairs to the School.

59. Restore paid Fire Loss Project workers statutory prevailing wages in accordance with Proviso's June 10, 2014 vote approving mandatory prevailing wage standards and rates for construction work in the Cook County, Illinois area, as set by statute and incorporated into the Specifications prepared by Legat. The Specifications and prevailing wages therein, during all times relevant hereto, were never amended or withdrawn by Legat and Proviso. Restore was not fully repaid for wages it paid pursuant to the Specifications, Proviso's formally adopted resolution on prevailing wages and Illinois' Prevailing Wage Act .

60. Legat, CLIC, GBS, MKA, Restore and Defendants Proviso and Travelers believed that there were enforceable work contracts between Restore and Proviso for the mitigation, remediation, renovation and repair of the Fire Loss covered by the Travelers Policy, each and all were mutually mistaken. Whereas, the Proviso Board had failed to properly approve

Restores' contracts, despite approving and accepting provided mitigation, remediation, restoration and repairs to the School for which all of them knew Restore was expecting full payment.

61. The last day that Restore performed work on the Fire Loss was July 3, 2015.

RESTORE CONSTRUCTION, INC.
COUNT I
QUANTUM MERUIT (PROVISO)[2]

As and for this Count I of its Third Amended Complaint, Restore Construction complains against Proviso and states:

1-61. Paragraphs 1-61 of this Third Amended Complaint are here incorporated as Paragraphs 1-61 of this Count I, respectively, and they are hereby made a part hereof.

62. *Quantum meruit* is an available remedy against a municipality and other public bodies.

63. Restore Construction performed renovation and repair work and provided labor, materials and supplies under the Fire Loss Project to the benefit of Proviso.

64. The work performed and the materials and supplies provided by Restore benefited Proviso by repairing Fire Loss damage, readying the School to the extent necessary to safely re-open on-time for the student school year 2014-2015, and making permanent and valuable improvements to the School.

65. Restore Construction did not perform the work gratuitously, and expected to be compensated for the value of its work.

66. Proviso knew Restore expected payment and with such knowledge accepted the work performed and the materials and supplies provided by Restore on the Fire Loss Project.

[2] Formerly Count VI of the SAC.

67. The Proviso Board knew and approved that Restore was providing restoration and repairs to the School, and expected payment.

68. Though a majority of Board Members knew and approved of the hiring of Restore, there was no recorded vote and no contract between Proviso and Restore.

69. At all times relevant herein, Proviso believed that there were enforceable work contracts between it and Restore Construction.

70. Proviso failed to properly approve Restores' contracts, despite approving and accepting the restoration and repairs made to the School by Restore.

71. Restore has not been paid for and given reasonable value for all work it performed, from which Proviso received benefit.

72. Restore Construction did not receive the payment of Three Hundred Thirty-One Thousand One Hundred Nine and 83/100 Dollars ($331,109.83) earmarked by insurance for Restore Restoration. This resulted in a payment shortage to Restore Construction of Three Hundred Four Thousand and Eighty-Seven and 13/100 Dollars ($304,087.13). Proviso has benefited and been unjustly enriched by receiving the reasonable value of this completed work of $304,087.14 without payment to Restore Construction.

73. Restore Construction did not receive payment for work yet to be finished described in **Exhibit 7** herein that was subsequently completed by Restore in the amount of Four Hundred Eight-Four Thousand Five Hundred Thirty-Three and 68/100 Dollars ($484,533.68). Proviso has benefited and been unjustly enriched by receiving the reasonable value of this completed work of $484,533.68 without payment to Restore Construction.

74. Restore Construction did not receive payment for work completed in the amount of Four Hundred Fifty-Three Thousand Four Hundred Seventy-Seven and 21/100 Dollars

($453,477.21) that came after **Exhibit 7** and was not reflected on the February 20, 2015 Payment Application No. 5 Certificate. Proviso has benefited and been unjustly enriched by receiving the reasonable value of this completed work of $453,477.21 without payment to Restore Construction.

75. The fair and reasonable value for the work that Restore Construction performed and completed for Proviso and for which Restore has not been paid is in the amount of One Million Two Hundred Forty-Two Thousand Ninety-Eight and 02/100 Dollars ($1,242,098.02).

WHEREFORE, the Plaintiff, RESTORE CONSTRUCTION, INC., respectfully requests that this Honorable Court enter judgment in its favor and against Defendant The School Directors of Proviso Township High School District 209, in *quantum meruit* in the amount of One Million Two Hundred Forty-Two Thousand Ninety-Eight and 02/100 Dollars ($1,242,098.02), and for any other relief this Honorable Court deems just and proper. Or, in the alternative, direct Defendant to submit same for review and payment under the Travelers Policy.

RESTORE RESTORATION, INC.
COUNT II
QUANTUM MERUIT (PROVISO)[3]

As and for this Count II of its Third Amended Complaint, Restore Restoration complains against Proviso and states:

1-61. Paragraphs 1-61 of this Third Amended Complaint are here incorporated as Paragraphs 1-61 of this Count II, respectively, and they are hereby made a part hereof.

62. *Quantum meruit* is an available remedy against a municipality and other public bodies.

[3] Formerly Count XIV of the SAC.

63. Restore Restoration performed emergency mitigation and remediation work to the Fire Loss to the benefit of Proviso.

64. The work performed and the materials and supplies provided by Restore benefited Proviso by mitigating and remediating the Fire Loss damage to the School and readying the School to the extent necessary to safely re-open on-time for the student school year 2014-2015.

65. Restore Restoration did not perform the work gratuitously, and expected to be compensated for the value of its work.

66. Proviso knew Restore expected payment and with such knowledge accepted the work performed and the materials and supplies provided by Restore on the Fire Loss.

67. The Proviso Board knew and approved that Restore was providing mitigation and remediation of Fire Loss damage to the School, and expected payment.

68. Though a majority of Board Members knew and approved of the hiring of Restore, there was no recorded vote and no contract between Proviso and Restore.

69. At all times relevant herein, Proviso believed that there was an enforceable work contract between it and Restore Restoration.

70. Proviso failed to properly approve Restore Restoration's contract, despite approving and accepting the restoration and repairs made to the School by Restore Restoration.

71. Restore Restoration has not been paid for and given reasonable value for all work it performed, from which Proviso received benefit.

72. Restore Restoration billed Proviso Five Hundred Seventeen Thousand Five Hundred Sixty-Five and 71/100 Dollars ($517,565.71) for performed emergency services.

73. Restore Restoration received a partial payment of Three Hundred Thirty-One Thousand One Hundred Nine and 83/100 Dollars ($331,109.83). See, **Group Exhibit 6.**

74. Restore Restoration did not receive payment for work completed in the amount of One Hundred Eighty-Six Thousand Four Hundred Fifty-Five and 88/100 Dollars ($186,455.88).

75. Proviso has benefited and been unjustly enriched by receiving the reasonable value of this work of $186,455.88 without payment.

76. The fair and reasonable value for the work that Restore Restoration performed for Proviso and for which Restore Restoration has not been paid is in the amount of One Hundred Eighty-Six Thousand Four Hundred Fifty-Five and 88/100 Dollars ($186,455.88).

WHEREFORE, the Plaintiff, RESTORE RESTORATION, INC. respectfully requests that this Honorable Court enter judgment in its favor and against Defendant The School Directors of Proviso Township High School District 209, in *quantum meruit* in the amount of One Hundred Eighty-Six Thousand Four Hundred Fifty-Five and 88/100 Dollars ($186,455.88), and for any other relief this Honorable Court deems just and proper. Or, in the alternative, direct Defendant to submit same for review and payment under the Travelers Policy.

RESTORE CONSTRUCTION, INC. and RESTORE RESTORATION, INC.
COUNT III (in the alternative to Counts I and II)
QUANTUM MERUIT (TRAVELERS)

As and for this Count III of its Third Amended Complaint, Restore Construction, Inc. and Restore Restoration, Inc. complain against Travelers and states:

1-61. Paragraphs 1-61 of this Third Amended Complaint are here incorporated as Paragraphs 1-61 of this Count III, respectively, and they are hereby made a part hereof.

62. *Quantum meruit* recovery is an available remedy available against Travelers.

63. Travelers insured the property loss of its insured, Proviso under the Travelers Policy.

64. Under the Travelers Policy, Proviso could elect to either take a lump sum

NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

RESTORE CONSTRUCTION COMPANY, INC., AND RESTORE RESTORATION, INC.,	)	
Plaintiffs-Appellees,	)	
vs.	)	No. 125133
BOARD OF EDUCATION OF PROVISO TOWNSHIP HIGH SCHOOLS DISTRICT 209, sued as The School Directors of Proviso Township High School District 209,	)	
Defendant-Appellant.	)	

The undersigned, being first duly sworn, deposes and states that on December 11, 2019, there was electronically filed and served upon the Clerk of the above court the Brief of Plaintiffs-Appellees Restore Construction Company, Inc. and Restore Restoration, Inc.. Service of the Brief will be accomplished by email as well as electronically through the filing manager, Odyssey EfileIL, to the following counsel of record:

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Within five days of acceptance by the Court, the undersigned states that 13 paper copies of the Brief bearing the court's file-stamp will be sent to the above court.

/s/ Michael W. Rathsack
Michael W. Rathsack

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Michael W. Rathsack
Michael W. Rathsack