STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. BCD-23-440

CORE FINANCE TEAM AFFILIATES, LLC,

Appellee,

v.

MAINE HOSPITAL ASSOCIATION,
MAINE MEDICAL CENTER,
SOUTHERN MAINE HEALTH CARE,
and
FRANKLIN MEMORIAL HOSPITAL,

Appellants.

On Appeal from Decision of the Superior Court (Cumberland County),
Business and Consumer Docket

REPLY BRIEF OF APPELLANTS MAINE MEDICAL CENTER, SOUTHERN MAINE HEALTH CARE, *and* FRANKLIN MEMORIAL HOSPITAL

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I. INTRODUCTION

Maine Medical Center, Southern Maine Health Care, and Franklin Memorial Hospital ("Appellants" or "Hospitals") reply as follows to the submission ("Red Brief") of Core Finance Team Affiliates LLC ("Appellee" or "Core"). The fundamental legal error of Core's argument and the Business Court's judgment is that Core had a right to any equitable remedy in these circumstances. That error generated subsidiary legal errors, erroneous evidentiary rulings, and unsupported inferences or factual determinations. That error also led to the constitutional error of depriving the Hospitals of their right to a jury trial by overriding the unanimous jury verdict and imposing a higher percentage fee than Core had claimed, the kind of huge fee that the jury found Core had no right to receive under its contract.

The fundamental error was compounded by the Business Court's misidentification of the benefit received by the Hospitals leading to the erroneous conclusion that the Hospitals were "unjustly enriched." The only benefit the Hospitals received from Core was the occupational mix survey ("OMS") service. The money received by the Hospitals from the government was money earned by the Hospitals for serving their patients.

Because Core explicitly waived its right to seek an available legal remedy in *quantum meruit,* and because the Business Court explicitly approved Core's waiver of that right, there should be no remand for further proceedings. The only just result consistent with Maine law is judgment for the Hospitals on the jury's verdict.

II. ANALYSIS AND RESPONSES

A. History Matters.

The Red Brief dismisses centuries of English and American legal history saying only, "the background may be fascinating, but really has no bearing on the question of whether *quantum meruit* had any role to play in this case." (Red. Br. 9.) It is understandable that Core would try to ignore the history summarized at pages 11-18 of the Blue Brief. That history is irrefutable and demonstrates that a party with an available remedy at law had no recourse to any equitable remedy. (*See* Blue Br. 11-18.) That principle has not changed. *See WahlcoMetroflex, Inc. v. Baldwin*, 2010 ME 26, ¶22, 991 A.2d 44; *see also* Blue Br. 17-19. That settled doctrine is dispositive on this appeal. Core had two legal remedies available to it, one of which it lost (breach of express contract) and one of which it waived (*quantum meruit*). The *availability* of those legal remedies is fatal to Core's equitable claim. The Court's adoption of Core's equitable theory is an error of law that precludes affirmance of this judgment. The judgment has no support in precedent. That is apparent from the paucity of apposite authority cited by Core as discussed further below.

B. Applicable Law Court Precedent.

The Red Brief and the Blue Brief both identify *Paffhausen v. Balano*, 1998 ME 47, 708 A.2d 269, as applicable Law Court precedent. Footnote 3 in *Paffhausen* acknowledged that there has been "considerable confusion between unjust enrichment and quantum meruit." *Id.* ¶6, n.3, 708 A.2d at 271. *Paffhausen* holds that

the carpenter was entitled to a recovery in *quantum meruit* for the work he did on a building because he did not intend those services to be gratuitous. *Id.* ¶10. Significantly, the Law Court also held that the Probate Court—like the Business Court here—had erroneously awarded a recovery on the theory of unjust enrichment. *Id.* ¶11. *Paffhausen* provides no support for the judgment. Instead, it requires that the judgment be vacated, and that judgment be entered for the Hospitals.

Core cites *Sweet v. Breivogel*, 2019 ME 18, ¶17, 201 A.3d 1215, for the proposition that *quantum meruit* is not applicable to this case. (Red. Br. 9.) It was certainly applicable in *Sweet*, though that case is primarily about statutory obligations under the Home Construction Contracts Act (10 M.R.S.A. §§ 1486-1490) and the Unfair Trade Practices Act (5 M.R.S. §§ 205-A-214). If *Sweet* is applicable here, it means that this judgment must be vacated because, as in *Paffhausen,* Core's remedy was at law in *quantum meruit,* and Core had no remedy in equity.

This point is reinforced by contrasting and comparing *Paffhausen* with *Bowden v. Grindle*, 651 A.2d 347 (Me. 1994), where the services did generate a claim for an equitable remedy in unjust enrichment, not in *quantum meruit.* That work was done by a person who believed that he was the legal owner of the property, working to improve his own property without any expectation of any compensation from anyone. In that circumstance, *quantum meruit* was not applicable but unjust enrichment was available. The controlling precedent is *Paffhausen*, reinforced by distinguishing *Bowden.*

Although it is unusual, from time to time, an important footnote in a Law Court opinion states the law as authoritatively as any holding. When a common law court makes a careful statement like *Paffhausen's* footnote 3, it is a message intended to clarify the law on a recuring problem, e.g., "to overcome considerable confusion between unjust enrichment and *quantum meruit*." *Paffhausen*, 1998 ME 47, ¶6 n.3, 708 A.2d 269. As a basic matter of *stare decisis*, any Maine Law Court opinion written before *Paffhausen* that is at odds with *Paffhausen* or that supports Core's arguments is at best now questionable. The teaching of footnote 3 in *Paffhausen* is consistent with the history in the Blue Brief. The judgment in this case cannot be reconciled with *Paffhausen*. That point is reinforced in Horton & McGehee, *Maine Civil Remedies* §§ 7-3, 7-3(a), 7-4, 11-1 at 174-178, 227-229 (4th ed. 2004).

Probably the most specifically applicable Maine decision is *Nadeau v. Pittman,* 1999 ME 104, 731 A.2d 863, discussed on pages 19-20 of the Blue Brief. Where a written contract addresses a plaintiff's claimed entitlement, as here to a percentage success fee, the contract determines the validity of the claim and there is no alternative equitable end-around route for the claimant to get that same money despite the contract. *See id.* ¶1 (holding that "a contract governed the financial arrangements between the parties, barring application of the unjust enrichment doctrine.").

In short, Core cites ten Maine Law Court decisions. Not one of them requires or even supports affirmance of the judgment. The Red Brief devotes only a page and a half to Core's crucial argument that unjust enrichment was a valid basis for this

judgment. Core's sparse argument misapplies Rule 8(e)(2) as shown in Sections C and D below. Core cites only one Maine case, *June Roberts Agency, Inc. v. Venture Properties, Inc.*, 676 A.2d 46 (Me. 1996). That decision vacated a summary judgment because there were genuine disputes as to material facts concerning a commission or finder's fee demanded by the plaintiff and resisted by the defendant. Here, there was no summary judgment, although there might have been on the unjust enrichment count. Here, the case went to trial resulting in a verdict for the Hospitals. Citing only *June Roberts* and no other Maine authority, Core states in half a sentence that the jury's verdict "did not preclude the Court, sitting in equity, from ruling on the alternative unjust enrichment theory." Because that is the central issue and because there was no similar post-verdict bench trial in *June Roberts*, one would expect citation of some other Maine authority to support that proposition. The absence of any such citation is tantamount to an admission that there is no such authority.

C. Changes in the Pleading Rules did not Change the Substantive Law or the Law of Remedies.

Rule 8(e)(2) of the Maine Rules of Civil Procedure is immaterial to the current analysis. It permits the pleader to assert multiple inconsistent claims, but all the claims are potentially subject to dismissal or judgment as a matter of law for failure to state a claim upon which relief can be granted. The liberty to assert claims is not an assurance of winning them or even getting to try them. It would not have been a violation of Rule 8(e)(2) for Core to have asserted a claim for breach of express contract, a claim

in *quantum meruit*, and a claim in unjust enrichment. Having forgone *quantum meruit* and refused to include it, *quantum meruit* is now out of the case, but only because Core strategically refused to use it, not because Core could not have properly alleged it.

The *pleading* for relief in unjust enrichment is permissible under Rule 8 because a cautious pleader at that stage may be uncertain it is untenable. After discovery under Rules 26-37, a claim that may properly be asserted under Rule 8 may be vulnerable to summary judgment under Rule 56. As shown in this Brief and the Blue Brief, Core's unjust enrichment count could have been dismissed before trial for failure to state a claim upon which relief can be granted and, if not, the Hospitals should have won judgment as a matter of law by the end of the jury trial. *See* Rule 12(h)(2) and Rule 50. The settled legal principles demonstrated in the Blue Brief concerning the availability of equitable remedies are unaffected by Rule 8. Equitable remedies remain unavailable to parties who have available legal remedies.

The Maine Rules of Civil Procedure are modeled on the Federal Rules that were promulgated in 1938, as authorized by the Rules Enabling Act of 1934, 28 U.S.C. §§ 2071-2077. The Maine Rules also rest upon authorizing legislation. P.L. 1957, ch. 159, amended by P.L. 1959, ch. 309 (current version at 4 M.R.S. § 8). Rules "…may neither abridge, enlarge nor modify the substantive rights of any litigant." 4 M.R.S.A. § 8. If Rule 8 operated as broadly as Core argued, the Rule would exceed the explicit statutory limitation on the Court's authority to make rules. Core's reading of Rule 8 is statutorily invalid because it would empower a pleader to nullify an

opponent's constitutional right to trial by jury and it would override the principle that a plaintiff with an adequate remedy at law has no right to a remedy in equity.

D. The Hospitals did not Waive or Fail to Plead an Affirmative Defense.

On page 11 of the Red Brief, Core renews the erroneous argument that the Hospitals waived their dispositive legal defense to Core's unjust enrichment claim by not asserting an affirmative defense in their answers. The unjust enrichment count fails to state a claim upon which relief can be granted. That is a Rule 12 defense, not a Rule 8(c) affirmative defense. The Rules do not require any defendant to assert an affirmative defense to be permitted to argue a defense. Except apparently in one intermediate appellate court in Texas, a defendant may argue that a count fails to state a claim upon which relief can be granted as a matter of law without first asserting an affirmative defense specifying what the pleader should have done instead. (*See* Appendix 0037 (in which the Business Court cites *Protocol Technologies, Inc. v. J.B. Grand Canyon Dairy, L.P.*, 406 S.W.3d 609, 614 (Tex. App. 2013).)

There is no obligation in any Maine Rule of Civil Procedure to assert an affirmative defense to be permitted to argue a defense. As suggested in the Blue Brief, the ruling of one intermediate appellate court in Texas may be correct under Texas law, or not, but it is not a correct reading of the Maine Rules of Civil Procedure. (*See* Blue Br. 24-25.) All the Maine cases cited on this point by the Business Court do not support it. For example, in *Inniss v. Methot-Opel, Inc.*, 506 A.2d 212, 218 (Me. 1986), the

trial court wrongly reduced a verdict where the defendant had never mentioned recoupment and had disclaimed any damages demand in its pre-trial memorandum. That plaintiff had no notice of any recoupment issue through the trial. Here, the issue was discussed early and often as shown in the Appendix, the Transcripts, and the Blue Brief.

Throughout the proceedings in the Business Court, the Hospitals correctly argued without success that Core's only remedy "off the contract" would be in quasi contract or implied contract properly denominated as *quantum meruit*. That argument illustrated the error of Core's reliance on unjust enrichment by identifying the correct restitutionary remedy (at law) if the contract claim failed, as it did. It was an invitation to try this case correctly. On appeal, it is not necessary to say more about *quantum meruit* because Core rejected the invitation and waived that remedy.

E. The Contract and the Verdict.

The written contract did not entitle Core to receive a fee calculated as a percentage of increased reimbursements received by the Hospitals for treating their patients. Notwithstanding Core's deliberate and calculated failure to comply with the contract and notwithstanding the jury's verdict, the Business Court awarded a result that the contract and the verdict did not allow. The correct understanding of the contract, and the verdict in combination is: (1) that there was a contract, specifying what it would take for Core to realize a percentage fee; (2) that, as unanimously found by the jury, Core did not comply with the conditions in the contract; and (3) that the

Hospitals therefore had no duty to pay any percentage fee. The meaning of that verdict on that contract cannot be that the Business Court was free to ignore both the verdict and the contract and award such a fee. The final paragraph on page 8 of the Red Brief states the opposite of the law of Maine. The verdict denying Core relief on the contract claim does not create a right to seek and receive the same relief in unjust enrichment. The contract, as determined by the verdict, protects the Hospital from such liability.

As the history recounted in the Blue Brief and *Paffhausen's* footnote 3 show, English and American commercial law evolved over time to provide a restitutionary remedy at law in *quantum meruit* where the parties had engaged in transactional behavior but had not established a legally complete contract (hence the term quasi contract). At law, not in Chancery, relief was available by way of implied contract or quasi contract if a party performed a service expecting compensation for a party who understood that the service was not a gift because the situation was similar to a contractual arrangement. The absence of a contract is the basis for quasi contract or implied contract in *quantum meruit* at law to avoid injustice in transaction-like circumstances. *Paffhausen*, 1998 ME 47, ¶ 9, 708 A.2d 269; *Danforth v. Ruotolo*, 650 A.2d 1334, 1335 (Me. 1994) (citing *Bourisk v. Amalfitano*, 379 A.2d 149 (Me, 1977)); *Colvin v. Barrett*, 151 Me. 344, 348-54, 118 A.2d 775, 778-81 (1955). And note that *Colvin* was an action at law in assumpsit commenced and decided before the 1959 Rules were promulgated. Plaintiff's exceptions to the directed verdict were sustained as proper. *Id.*

at 354. The evidence was sufficient to allow the jury to decide whether there was an implied contract to compensate that plaintiff. *Id.* at 353-54. Nothing in the 1959 Rules changed that substantive law, nor could any substantive law be changed by Rule under the Rules Enabling Act as shown in Section C above.

In the Red Brief, in the first full paragraph on page 10, Core's argument is backwards. Because the Hospitals did not opt-in to the contract for a percentage fee, the Hospitals had neither a legal duty *nor* an equitable duty to pay a contingent or percentage fee. The Business Court was without any power to impose such a duty. After Core did the OMS work anyway, there would have been, if not expressly waived by Core, an implied contract for a reasonable non-contingent fee unrelated to the Hospitals' reimbursements.

The judgment before the Court gives no effect to the jury's verdict or the contract's terms. The jury found that Core failed to comply with conditions precedent to the Hospitals' alleged obligation to pay Core on a percentage basis for the OMS services. Despite the verdict, the Business Court, after a bench trial, decreed that Core can recover a very substantial percentage fee. This combination of verdict and judgment is legally impossible. It cannot stand. If the judgment is affirmed, Core winds up in a better position than if the verdict had been unanimous in its favor. If this judgment is affirmed, it means that courts are free to deny jury trials by mischaracterizing the theory of the case and that claimants may deny defendants their

right to trial by jury simply by electing to seek an equitable remedy. The reasons that all of this is impossible are more fully addressed in the Blue Brief.

F. Legal Errors are not Findings of Fact; Findings of Fact Predicated Upon Legal Errors are Entitled to No Deference.

Core's mischaracterization of its rights and the Court's acceptance of that mischaracterization might have been a harmless vocabulary error if Core and the Court had correctly analyzed the case on unjust enrichment principles. The only value of the only benefit the Hospitals received from Core was the amount they would have paid to Core or somebody else on an hourly or flat fee basis for the OMS service. These Hospitals were never going to agree to a percentage arrangement with any OMS vendor. *See* Tr. 08/24/23, 60-65, 82. That aside, the point is that the Hospitals received only payments due to them from the government; it was not money received from Core or money that should have been paid to Core instead of the Hospitals. The only way that Core or any of its competitors could get a percentage of that money was to persuade the Hospitals to agree to a percentage arrangement. The verdict is that no such agreement occurred because the contractual conditions precedent did not occur.

Every evidentiary ruling the Business Court made was infected by the legal error about the benefit to be litigated, i.e., the baseline for determining the materiality of any piece of evidence. All the Business Court's characterizations or evaluations of testimony, whether admitted or excluded, were distorted by the Business Court's misconception about what was legally material. It viewed every legal argument, every

exhibit, all the testimony, and every objection through the wrong lens. Every explicit or implicit inference made by the Business Court was tainted by its error of law. Appellees, including this one, must not be allowed to miscast erroneous legal rulings as fact findings. Fact findings or judicial characterizations of events or circumstances that rest on a legal error are entitled to no deference on appellate review of the legal error. No deference is due to findings based on evidence that is not legally material.

For example, choices by other, generally smaller, hospitals to pay some percentage of some amount instead of litigating to establish the *quantum meruit* alternative amount prove nothing about the legality of imposing a percentage fee, contrary to a jury verdict, on a party that has refused to agree to pay a percentage. The business decisions of other hospitals are immaterial. They certainly are not more probative than the course of dealing between these parties or the customs and usages of the industry.

The Court's "findings" about the extent, or difficulty, or effect of Core's work were made without evidence-based consideration of whether what Core did might have been accomplished by anyone who does OMS work. There is no evidence that the appropriate OMS adjustments were not plainly evident. There is no evidence that Core is more skilled at the work than the other parties that do it. There is evidence that OMS work almost always requires many fewer hours of work than the average hourly wage ("AHW") work. Tr. 08/24/23, 86-88. In Core's proposals to do both jobs, as shown in Def's Ex, 19, App, 0108-0110, the time and effort required for

OMS is materially less than the time and effort required for AHW. That exhibit, for Maine Medical Center, shows four times as many hours for AHW than for OMS. For the three Hospitals, the document shows a total of 144 hours to do their OMS work. The judgment is for $566,582.25. That is an imputed hourly rate of $3,934.60. This number is untethered to any evidence suggesting it is reasonable or equitable for a basic consulting service customarily the subject of flat-fee or hourly-fee engagements.

The volume of Medicare and Medicaid work done by a large tertiary care hospital is a measure of its size and patient mix. It is not relevant evidence to establish the relative skill or diligence of a contractor. The Business Court's fundamental error concerning the availability of an unjust enrichment model and its error in determining the benefit to be appraised, assuming *arguendo* unjust enrichment is the correct analysis, militate against any deference for statements characterized as findings of fact.

III. CONCLUSION

In response to the Red Brief, it is legally erroneous to suppose that a party who unsuccessfully claims breach of an express contract has no right to relief in *quantum meruit* but, instead, does have a right to choose relief in unjust enrichment. The settled law is otherwise. The existence of a contract with process requirements for establishing a second scope of work does not preclude *quantum meruit* as an alternative form of relief for a service rendered without being added to the contract. When parties do business without a completed contract encompassing the work, *quantum meruit* is the vehicle for recovering a fair price for services rendered. If the express

contract had included OMS services within its scope, then the contract would have determined the rights and liabilities of the parties. An express contract that does not include the work done allows *quantum meruit* as the alternative measure of relief for services provided in good faith with an expectation of compensation. The Hospitals do not concede good faith given the way Core procured the data needed to perform the OMS services but that is not material for this argument. If an equitable remedy is considered, however, then Core's behavior is material to it.

Core consciously waived the *quantum meruit* claim in a strategic or tactical effort to secure the windfall the Business Court awarded. Having made that choice, *quantum meruit* is no longer available. Unjust enrichment was never available in this case. Accordingly, the only proper outcome is judgment for the Hospitals on the verdict.

Respectfully Submitted,

MAY 28, 2024
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CERTIFICATE OF SERVICE

I, Gerald F. Petruccelli, Esq., hereby certify that on this 28 day of May 2024, two copies of the Reply Brief of Appellants Maine Medical Center, Southern Maine Healthcare, and Franklin Memorial Hospital, were served by depositing same in United States Mail, postage prepaid, addressed as follows, and, as set forth below, by electronic mail:

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