

Insights

UNJUST ENRICHMENT IN CONSTRUCTION

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SUMMARY

Claims based on restitution and unjust enrichment are not common in a commercial context when there will almost always be some form of agreement that governs the parties' rights and obligations. But in October 2025 there were two decisions that dealt with claims for unjust enrichment, one of which concerned the FIDIC form of contract. This is therefore a useful opportunity to look again at when and how such claims might exist in a construction context.

RMK MARITIME (EUROPE) LTD V CMB.TECH NV

At the end of October 2025, the decision in **RMK Maritime (Europe) Ltd v CMB.Tech NV** [2025] EWHC 2739 (Comm) was handed down. This concerned advice provided in relation to mergers and acquisitions work and the claimant sought to pursue a claim in restitution for quantum meruit, alleging the defendant was unjustly enriched by the receipt of services which fell outside the scope of an Advisory Agreement.

The judgment includes a useful review of the legal principles and the relationship between a claim for unjust enrichment and a contract. On the facts, it was held that the services provided did fall within the agreement, especially as it included a provision that allowed scope to be varied by consent. As the judge stated:

"A party in [the Defendant]'s position would be presumed, in the light of the contractual provisions, to take the view that the services being provided fell within the scope of the Advisory Agreement unless [the Claimant] sought a written change/revision."

GORDON WINTER COMPANY LTD V NH INTERNATIONAL (CARIBBEAN) LTD (TRINIDAD AND TOBAGO)

Earlier that month, on 9 October 2025, the Privy Council handed down its decision in **Gordon Winter Company Ltd v NH International (Caribbean) Ltd (Trinidad and Tobago)** [2025] UKPC 52, which concerned a dispute dating back to 2006, about a FIDIC 1999 subcontract for piling works.

After departing the site the sub-contractor put forward a claim for damages based on quantum meruit and unjust enrichment.

The project involved a ten-storey government building, where Gordon Winter Company Ltd (“**GW**”), a piling subcontractor, was appointed by the main contractor NH International (Caribbean) Ltd (“**NH**”), to carry out works.

Unexpected ground conditions meant that work was more difficult than expected and the piling specifications had to be changed. GW was paid up to April 2006, but then then stopped work and left site in early June. NH therefore had to engaged another contractor to complete the piling.

On 1 December 2006 the subcontractor commenced proceedings, seeking damages on a quantum meruit basis (unjust enrichment), arguing that there was no contract to govern the new works. NH claimed GW was in repudiatory breach.

In 2017, at first instance, the judge found the works were covered by the contract and awarded payment to GW, but also that NH was entitled to recover the additional costs as damages for breach of contract. The unjust enrichment claim was rejected.

THE COURT OF APPEAL DECISION

The judgment of the Court of Appeal of the republic of Trinidad and Tobago held that the contract between the parties incorporated by the reference the FIDIC 1999 standard terms. It also found that the variations to the works were covered by the contract and that there was an entitlement to a reasonable sum at market rates as a matter of general principle as well as under clause 12.3 which governed how variations are assessed.

What is interesting is that the Court of Appeal considered the heads of claim and held that GW’s claims for standby auguring, standby piling and standby static testing arose directly under the contract and were incidental to its performance. That meant GW was contractually entitled to a reasonable sum, in other words a contractual quantum meruit claim.

In contrast, the claims for manufacturing standby and storage of piles and other materials fell outside the contract and therefore could only be recovered as a quantum meruit claim based on unjust enrichment. That head of claim however failed as there was no evidence of enrichment to NH, as opposed to losses to GW.

THE PRIVY COUNCIL

The appeal to the Privy Council was on a narrow ground, namely that the Court of Appeal should not have decided that payment was due on a contractual quantum meruit basis, when the claim was presented on the basis of unjust enrichment.

The appeal was rejected and the Privy Council's view was that it was "*mere formalism*" to say a claimant who pleaded unjust enrichment could not succeed on a contractual quantum meruit where the defendant had run, and succeeded on, a defence that a contract governed the works. If the work was requested and performed, the law should not let the claimant "*fall between the two closely connected stools of unjust enrichment and contract so as to recover nothing*". It was also relevant that GW had in fact identified earlier that it may also rely on a contractual quantum meruit as an alternative.

Importantly, the Privy Council confirmed that a contractual quantum meruit claim i.e. to be paid a reasonable price, does not depend only on an implied term. Express provisions can provide for a reasonable sum where rates are absent, as is the case with clause 12.3 of the FIDIC 1999 form.

PRACTICAL TAKEAWAYS

This decision, as well as the earlier decision in **RMK Maritime**, highlight the difficulty in pursuing a claim based on quantum meruit and unjust enrichment when there is a contract in place, and all the more so where there is an express provision that allows for the scope of the contract to change. In such circumstances, it will be difficult to argue that part of the performance fell outside the contract and could not be paid for other than on an unjust enrichment basis.

Nonetheless, while the case turns on its own facts, it is interesting that the Court of Appeal drew a distinction between, on the one hand, additional works that arose under the contract and were incidental to its performance and, on the other hand, manufacturing standby and storage which were held to fall outside the contract. This also serves to highlight the need in such claims to show the defendant being enriched i.e. receiving a benefit, not just a loss to the claimant. Claims for quantum meruit may not be straightforward but can be raised in certain circumstances.

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