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STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF ANOKA **TENTH JUDICIAL DISTRICT**

CASE TYPE: Contract

Court File No. 02-CV-22-2664
Judge John P. Dehen

Local Property Management, Inc. dba Clear Choice Restoration,

Plaintiff,

v.

Marcus Sarazin, Katina Sarazin,

Defendants.

DEFENDANT'S MEMORANDUM IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT

INTRODUCTION

Plaintiff Local Property Management, Inc. dba Clear Choice Restoration ("CCR") and Defendants Marcus Sarazin and Katina Sarazin (collectively the "Sarazins") entered into various contracts for improvements of Defendants' property located at 120875 Evergreen Steet Northwest, Coon Rapids, Minnesota 55448 (the "Property).

On December 6, 2021, Defendants brought a Conciliation Court claim against Plaintiff in the amount of $15,000.00 for breach of contract for window and siding work claiming Plaintiff failed to perform the work according to the terms and specifications of the contract, work was not performed according to the product specifications, work was performed poorly and in an unworkmanlike manner, and Plaintiff failed to complete all the work specified in the contract. On January 4, 2022, Plaintiff's counsel filed an Affidavit of Counterclaim in Excess of Court's Jurisdiction and Defendants' Conciliation Court case was dismissed. On January 25, 2022,

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Plaintiff served its Summons and Complaint on Defendants for breach of contract, account stated, and quantum meriut/unjust enrichment claiming damages of at least $15,356.90 plus contract service charges, statutory interest, attorney fees, costs and disbursements. On February 15, 2022, Defendants served their Answer and Counterclaims for Breach of Contract, Breach of Warranty, Promissory Estoppel, and Negligence.

Defendants now brings this motion for partial summary judgment to dismiss Plaintiff's claims for one of the contracts Plaintiff claims Defendants breached in its Breach of Contract claim, Plaintiff's Account Stated claim, and Plaintiff's Quantum Meriut/Unjust Enrichment claim.

STATEMENT OF ISSUES

1. Whether the record contains factual and legal support that the Defendant's claim for Breach of Contract for the Insurance Contract.

2. Whether Defendants have any legal or factual basis for asserting their claim for Account Stated.

3. Whether Defendants have any legal or factual basis for asserting their claim for Quantum Meriut/Unjust Enrichment.

RECORD

1. Pleadings on file with the court;

2. Affidavit of Timothy LaCroix ("LaCroix Aff.") and attached Exhibits.

3. Affidavit of Marcus Sarazin ("Sarazin Aff.").

STATEMENT OF UNDISPUTED FACTS

1. On June 10, 2021, the Parties entered into a contract ("Window Contract") wherein Plaintiff agreed to supply Defendants certain labor and materials for replacing windows and casings ("Window Work") at the Property and Defendants would pay Plaintiff $30,100 plus the

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cost of the permit. The terms of the contract state that 50% of the total cost would be paid at the time of signing and the balance due would be paid when the work was completed and the permit is closed out. Pl.'s Compl. Ex. A.

2. On June 17, 2021, the Parties entered into a contract ("Insurance Contract") wherein Plaintiff agreed to supply Defendant's with certain labor and materials pursuant to the scope and price of the repairs approved by Defendants' insurer. Defendants' insurer initially approved Defendants' claim relating to the Insurance Contract in the amount of $26,244.05. Pl.'s Compl. Ex. C.

3. According to the scope of Defendants' insurer, the work Defendant agreed to perform included tear off, replacement, and disposal of roofing materials, valleys, flashing, vents, and caps and removal and replacement of gutters and downspouts on the Property. See Pl.'s Compl. Ex. C.

4. Defendants' insurer initially approved Defendants' claim relating to the Insurance Contract in the amount of $26,244.05 on April 21, 2019. Pl.'s Compl. Ex. D.

5. On June 29, 2021, Defendants' insurer agreed to increase the replacement costs by an additional $4,841.03 over the April 21, 2019 Loss Statement. LaCroix Aff. Ex. A.

6. The terms of the Insurance Contract state, "THIS AGREEMENT IS SUBJECT TO THE PARTIES' APPROVAL OF INSURANCE COMPANY SCOPE, PRICING, AND PAYMENT TERMS. This agreement does not obligate you or CLEAR CHOICE RESTORATION in any way unless, CLEAR CHOICE RESTORATION accepts the scope, pricing, and payment terms offered by your insurance company." Pl.'s Compl. Ex. C.

7. Plaintiff never requested nor was never informed by Defendants' insurer of the exact amount of increased replacement costs. See Pl. Compl. at ¶ 13.

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8. There is no evidence that the Parties ever expressly accepted Defendants' insurer's scope, pricing, and payment terms as required by the Insurance Contract. Sarazin Aff. at ¶ 2.

9. According to Plaintiff's Complaint, Plaintiff did not know the exact amount of any increase in replacement costs. See Pl. Compl. at ¶ 13.

10. On August 31, 2021, the Parties entered into a contract ("Siding Contract") wherein Plaintiff agreed to supply Defendants certain labor and materials for siding and miscellaneous construction work including the installation of gutters and downspouts on the Property and Defendants would pay Plaintiff $13,010.94. Pl.'s Compl. Ex. B.

11. Plaintiff never requested from Defendants any specifics regarding the color, style, or other specifics regarding the roofing materials, valleys, flashing, vents, caps, gutters, and downspouts to fulfill its terms under the Insurance Contract. Sarazin Aff. at ¶ 3.

12. Plaintiff never attempted to fulfill its terms under the Insurance Contract. Sarazin Aff. at ¶ 4.

13. Plaintiff never invoiced, requested, nor demanded from Defendants liquidated damages in the amount of 25% of the "agreed price" of the Insurance Contract or any amount pursuant to the Insurance Contract prior to its Complaint served in this litigation. Sarazin Aff. at ¶ 5.

14. Nether under the Insurance Contract or even under the Siding Contract did Plaintiff ever install any gutters and downspouts on Defendants' Property. Sarazin Aff. at ¶ 6.

15. Defendants have paid Plaintiffs $30,000 toward the Window Contract which Plaintiff's acknowledge they did not complete all of the work under the terms of the Window Contract. See Pl.'s Compl. Ex. E.

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16. On October 15, 2022, Plaintiff emailed Defendants stating that "CCR is done[.] We wish you the best with your project and we can meet next week to settle up on what was completed on both contracts and figure out fair final amount due." Defs. Answer and Countercl. Ex. A.

17. Plaintiff's invoice dated October 20, 2021, Invoice # MN-5547 does not include a charge for 25% of the "agreed price" of the Insurance Contract as liquidated damages. See Pl.'s Compl. Ex. E.

18. Plaintiff seeks liquidated damages in the amount of 25% of the "agreement price" under the Insurance Contract which includes gutters and downspout removal and installation for which Plaintiff also contracted with Defendants to install gutters at a cost of $1,910.60 and downspouts at a cost of $425 under the Siding Contract. See Pl.'s Compl. ¶¶ 14, 25, and Ex. B.

19. According to Plaintiff's invoice dated October 20, 2021, Invoice # MN-5547, Plaintiff charged $297.00 for gutter and downspout removal as a change order under the Siding Contract. Pl. Compl. Ex. E.

20. On October 20, 2021, Plaintiff emailed to Defendants its invoiced dated October 20, 2021, Invoice # MN-5547 in the amount of $7,545.89. Sarazin Aff. at ¶ 7 and Pl.'s Compl. Ex. E.

21. Prior to October 20, 2021, nor subsequently to October 20, 2021, Plaintiff made no other demand then said Plaintiff's invoice dated October 20, 2021, Invoice # MN-5547 in the amount of $7,545.89. Sarazin Aff. at ¶ 8.

22. On October 29, 2021, Defendants through counsel to Plaintiff objected to the invoice and the amount demanded. Def. Answer and Countercl. Ex. B.

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23. On November 19, 2021, Defendants through counsel to Plaintiff made further objection, argument, and offer to settle through Minn. Stat. § 327A warranty claims process. LaCroix Aff. Ex. B.

ARGUMENT

I. SUMMARY JUDGMENT STANDARDS

Summary judgment is properly granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.03. "A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (citation omitted).

"[T]here is no genuine issue of material fact for trial when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). "[T]he party resisting summary judgment must do more than rest on mere averments." *Id.* No genuine issue for trial exists "[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party." *Id.* at, 69. Summary judgement is appropriate where there are no material fact issues for trial and determination of applicable law will resolve controversy. *Boulevard Del, Inc. v. Stillman*, 343 N.W.2d 50 (Minn. Ct. App. 1984); 2 Minn.

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Prac., Civil Rules Annotated R. 56.03 (5th ed.). Interpretation of a contract is a question of law and is proper for summary judgment. *Associated Ind. Dealers v. Mutual Sero. Ins.*, 229 N.W.2d 516, 519 (Minn. 1975); *Iowa Kemper Ins. Co. v. Stone*, 269 N.W.2d 885, 887 (Minn. 1978).

II. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT DISMISSING PLAINTIFF'S BREACH OF CONTRACT OF THE INSURANCE CONTRACT SHOULD BE GRANTED BECAUSE THE PARTIES NEVER APPROVED TERMS OF THE INSURANCE CONTRACT, AND EVEN IF THEY DID, THE PARTIES SUBSEQUENTLY RESCINDED THE INSURANCE CONTRACT.

Defendants' motion for summary judgment dismissing Plaintiff's Breach of Contract claims for breach of the Insurance Contract because according to the unambiguous terms of the Insurance Contract, contract formation was subject to the Parties further approval of terms of the contract which were never agreed to. However, even if the undisputed facts support that the Insurance Contract was formed, the Parties subsequently rescinded the Insurance Contract as evidenced by the Parties mutual consent.

A. The Insurance Contract Was Not Formed Because the Parties Never Approved Essential Terms of the Agreement.

Claims for breach of contract require proof of three elements: 1) the formation of a contract, 2) the performance of conditions precedent by plaintiff, and 3) the breach of the contract by defendant. *Thomas B. Olson & Assoc., P.A., v. Jay & Polglaze, P.A.*, 756 N.W.2d 907, 917 (Minn. Ct. App. 2009). The formation of a contract requires communication of specific and definite offer, acceptance, and consideration. *Id.* Formation of a contract is judged by the objective conduct of the parties rather than their subjective intent. *Id.*

Where substantial and necessary terms are specifically left open for future negotiation, the purported contract is fatally defective. *King v. Dalton Motors, Inc.*, 109 N.W.2d 51, 52 (Minn. 1961). Generally, the existence of a contract, as well as the terms of that contract, are

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questions of fact to be determined by a fact-finder. *TNT Properties, LLD. V. Tri-Star Developers LLC*, 677 N.W.2d 94, 101 (Minn. Ct. App. 2004). However, where the relevant facts are undisputed, the existence of a contract is a question of law. *Id.* Whether a term is essential to the formation of a contract is an issue of law. *Id.*

The construction and effect of a contract is a question of law unless the contract is ambiguous. *Denelsbeck v. Wells Fargo & Co*, 666 N.W.2d 339, 346 (Minn. 2003). A contract is ambiguous is based on its language alone, it is reasonably susceptible of more than one interpretation. *Id.* If a contract is unambiguous, the contract's language must be given its plain and ordinary meaning and shall be enforced by the courts even if the result is harsh. *Id.*

Here the Parties undisputedly executed written contract dated June 17, 2021 wherein Plaintiff agreed to perform certain roof replacement and gutter and downspout replacement. The terms of the agreement expressly state,

> THIS AGREEMENT IS SUBJECT OT THE PARTIES' APPROVAL OF INSURANCE COMPANY SCOPE, PRICING, AND PAYMENT TERMS. This Agreement does not obligate you or CLEAR CHOICE RESTORATION in any way unless CLEAR CHOICE RESTORATION accepts the scope pricing, and payment terms offered by your insurance company.

See Pl.'s Compl. Ex. C. In Plaintiff's complaint, it acknowledges that Defendant did not immediately perform the repairs in identified in the Loss Statement dated August 21, 2019. Upon executing the Insurance Contract on June 17, 2021, Defendants submitted the Insurance Contract for the purposes of requesting a supplemental amount to cover the increased costs of labor and materials which occurred over the two years from Defendants submitting the original claim.

At the time the Insurance Contract was executed by the parties, the pricing of the project was still unknown and according to the express terms of the Insurance Contract and still subject

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to Defendants' AND Plaintiff's approval of the insurance company's pricing. The Parties never approved the pricing of the insurance work based on the increased costs estimate provided by Defendants' insurance company. While Plaintiff had authority to discuss the scope and price of the work with Defendants' insurance company, Plaintiff did not request or receive from Defendants' insurance company any information regarding the increased costs of labor and materials. Because of Plaintiff's lack of knowledge regarding an essential term of the agreement – the pricing – there was no "meeting of the minds" or agreement as to an essential term of the Insurance Contract which was subject to Plaintiff's approval. Plaintiff claims in its complaint that "Defendants informed Plaintiff that their insurer increased the replacement cost value by at least $5,000," Plaintiff does not claim it agreed to this amount, nor that it actually knew the exact increased amount Defendants' insurance company agreed to pay. As of the date of Plaintiff's Complaint, it still did not know the exact amount Defendant's insurer agreed to pay as increased costs. There is no evidence Plaintiff ever accepted the scope, pricing, and payment terms of Defendants' insurer which are express and open terms of the Insurance Contract without which, "This Agreement does not obligate [Defendants] or Clear Choice Restoration in any way." Furthermore, Defendants never approved their insurance company's increased cost payment as required by the Insurance Contract.

Therefore, while the Insurance Contract purports to be a binding contract between Plaintiff and Defendants with liquidated damages terms, because the Parties never agreed to the price to be paid by Defendants' insurer which is an open term for negotiation and for which the contract is expressly subject to, no contract was formed. As a result, Plaintiff's breach of contract claim for breach of the Insurance Contract must be dismissed.

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B. Even if the Insurance Contract Was Formed, the Parties Rescinded the Contract by Mutual assent.

Parties to a bilateral contract may rescind the contract by mutual consent. *Minnesota Ltd., Inc. v. Pub. Utilities Comm'n of Hibbing*, 208 N.W.2d. 284, 285 (Minn. 1973). Recission of a contract by agreement or abandonment requires an offer and acceptance or, in other words, the mutual consent of the parties. *Id.* Mutual recission requires an intent to rescind on the part of both parties. *Id.* Mutual assent to form one, may be inferred from the attendant circumstances and conduct of the parties. *Id.* A repudiation of a contract by one party, acquiesced in by the other, is tantamount to a recission. *Id.* A party seeking to prove abandonment of a contract must present clear and convincing evidence of an intention by the other party to abandon its rights. *Republic Nat. Life Ins. Co. v. Marquette Bank & Trust Co.*, 295 N.W.2d 89, 93 (Minn. 1980). Such intention may be ascertained from the facts and circumstances surrounding the transactions and may be implied from the acts of the parties. *Id.*

Here, Defendants never expressly cancelled or terminated the Insurance Contract which in addition to replacing roofing and associated materials included removal and replacing of gutters and downspouts. Rather, the Defendants offered to enter into a new contract, the Siding Contract, wherein Plaintiff agreed to replace siding, add various trim and blocking pieces, modify the garage door opening and other elements of the Property, and replace gutters and downspouts, including adding a leaf guard protection on the gutters. Pl.'s Complt. Ex. B. Plaintiff willingly entered into the Siding Contract with Defendants to perform some the identical work identified in the Insurance Contract. Plaintiff even charged Defendant a change

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order amount of $297 for removal of the gutters and downspouts which Plaintiff ultimately never replaced under the Siding Contract. Pl.'s Complt. Ex. E.

Again, while Defendants never expressly cancelled the Insurance Contract, Plaintiff never took any action to perform the terms of the Insurance Contract. Plaintiff never requested or demanded from Defendants any specifics regarding Defendants' color choices, style options, or other specifics regarding the roofing materials, valleys, flashing, vents, caps, gutters, and downspouts to fulfill its terms under the Insurance Contract. Even if it is conceded the Defendants repudiated the Insurance Contract, Plaintiffs acquiesced by taking no action to fulfill their obligations under the contract, made no demands for performance from the Defendants, did not notify Defendants of a potential breach of contract, and made no demand for payment of liquidated damages under the Insurance Contract.

Plaintiff's actions clearly indicate that they were willing to complete the Window Contract in an amount of more than $30,000 and enter a new contract for siding, structural modification, gutter and downspout replacement with leaf guard protection for an additional $13,010.94 rather than perform under the Insurance Contract.

On October 15, 2021, prior to completing the work identified in both the Window Contract and the Siding Contract, Steve Olson on behalf of Plaintiff expressly intended to terminate any contractual obligations between Plaintiff and Defendants except for payment by Defendants to Plaintiff for work Plaintiff actually completed under the Window Contract and Siding Contract by stating "CCR is done[.] We wish you the best with your project and we can meet next week to settle up on what was completed on both contracts and figure out a fair final amount due." Defs. Answer and Countercl. Ex. A. Plaintiff makes no claim for any amount due under a third contract, the Insurance Contract. In this email, Plaintiff does not even

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identify that there is an outstanding third contract, the Insurance Contract, under which Defendants have amounts owing. In fact, five days later, on October 20, 2021 when Plaintiff sent its "Final Clear Choice Payment" invoice # 38 or alternatively invoice MN-5547, no charge is added for liquidated damages on the Insurance Contract. Pl.'s Complt. Ex. E.

Plaintiff claims there was a valid, enforceable Insurance Contract which includes gutter and downspout replacement, yet willingly entered into a Siding Contract which includes gutter and downspout replacement. Then when Plaintiff attempts to terminate its contractual obligations under all its valid contracts, the Window Contract and Siding Contract, it actually charges Defendants as a change order for removal of the gutters and downspouts which cost is included in both the Insurance Contract and the Siding Contract.

Clearly, at minimum, Plaintiff had acquiesced to Defendants' repudiation of the Insurance Contract which is tantamount to recission of the Insurance Contract. However, given the undisputed facts, the actions of both parties indicated that they mutually agreed to rescind the Insurance Contract in lieu of completing the Window Contract and entering the Siding Contract for some of the same work under the Insurance Contract.

Therefore, Defendants' motion for summary judgment dismissing Plaintiff's breach of contract claim for breach of the Insurance Contract should be granted.

III. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT DISMISSING PLAINTIFF'S CLAIM FOR ACCOUNT STATED SHOULD BE GRANTED BECAUSE PLAINTIFF'S ACCOUNT STATED CLAIM FAILS DUE TO THE DEFENDANTS' TIMELY AND REPEATEDLY OBJECTION TO PLAINTIFF'S SINGLE INVOICE.

To establish an account stated claim, the plaintiff must prove that the defendant kept invoices for unreasonable period of time without objection. *Reese Design, Inc. v. I-94 Hwy 61*

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Eastview Ctr. P'ship, 428 N.W.2d 441, 444 (Minn. Ct. App. 1988); *Toyota-Lift of Minn., Inc. v. Am. Warehouse Systems, LLC, 868 N.W.2d 689, 698* (Minn. Ct. App. 2015). The existence of an account stated claim requires mutual examination of claims of each other by parties and mutual agreement between them as to the correctness of allowances and disallowances of respective claims and of balance. *Id.* at 445.

Plaintiff sent its "Final Clear Choice Payment" invoice #38 or alternately Invoice # MN-5547 on October 20, 2021 in the amount of $7,545.89. Pl.'s Complt. Ex. E and LaCroix Aff. Ex. C. Nine days later, on October 29, 2021, Defendants through counsel sent a letter specifically objecting to Plaintiff's Invoice #38 sent October 20, 2021 in the amount of $7,545.89 for the reasons that Plaintiff failed to perform all of its work pursuant to contracts Plaintiff entered with Defendants dated June 9, 2021 and August 31, 2021 and that Plaintiff performed its work in an unworkmanlike manner. Furthermore, said correspondence also informed Plaintiff that Defendants would prepare a formal Notice of Claim pursuant to Minn. State. § 327a for defective work. Defs. Answer and Countercl. Ex. B. Plaintiff responded to Defendants counsel on the same day, October 29, 2002, stating, "Got it and I look forward to hearing your "further correspondence on what the Sarazin family feels is fair compensation for the work completed.["] LaCroix Aff. Ex. D. Thirty days after Plaintiff sent is "Final Clear Choice Payment" invoice #38, on November 19, 2021, Defendants' counsel provided a three-page objection to Plaintiff's Invoice with two pages of identified defects in Plaintiff's work dated November 18, 2021. LaCroix Aff. Ex. B. Plaintiff responded the same day, November 19, 2021 stating, "HA HA HA HA HA ….. $30,000 or $25,000 to caulk a couple windows and paint the interior of the windows and hang new gutters and downspouts. Bring on the Lawsuit!!!! You are all a HUGE JOKE and Waste of time." LaCroix Aff. Ex. E.

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Under any reasonable assessment, Defendants timely and repeatedly objected within 9 days and again 30 days after Plaintiff sent its single invoice for $7,545.89. On both occasions, Plaintiff acknowledge receipt of Defendants' objection to Plaintiff's invoiced amount.

Therefore, Defendants' motion for summary judgment dismissing Plaintiff's Account Stated claim should be granted.

IV. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT DISMISSING PLAINTIFF'S CLAIM FOR QUANTUM MERUIT/UNJUST ENRICHMENT SHOULD BE GRANTED BECAUSE THE PARTIES HAVE AN EXPRESS WRITTEN CONTRACT.

It is fundamental that proof of an express contract precludes recovery in quantum meruit. *Breza v. Thaldorf*, 149 N.W.2d 276, 279 (Minn. 1967). Where a plaintiff is party to a valid contract, a court cannot grant relief under unjust enrichment for conduct governed by the contract. *U.S. Fire Ins. Co. v. Minn. State Zoological Bd.*, 307 N.W.2d 490, 497 (Minn. 1981).

Plaintiff's Complaint expressly states on or about June 9, 2021, Plaintiff and Defendants entered into a contract whereby Plaintiff agreed to supply Defendants certain labor and materials for replacing windows and casings at the Property. Pl.'s Compl. at ¶ 4. Plaintiff submitted a copy of the Window Contract as Plaintiff's Complaint Exhibit A wherein Defendants agreed to pay Plaintiff $30,100.00 plus the cost of the permit for the work described therein. Pl.'s Compl. Ex. A. Plaintiff's Complaint expressly states on or about August 31, 2021, Plaintiff and Defendants entered into a contract whereby Plaintiff agreed to supply Defendants labor and materials for siding and miscellaneous construction work, including gutters and downspouts at the Property. Pl.'s Compl. at ¶ 6. Plaintiff submitted a copy of the Siding Contract as Plaintiff's Complaint Exhibit B wherein Defendants agreed to pay Plaintiff $13,010.94 for the work described therein. Plaintiff's Complaint expressly states on or about August 31, 2021, Plaintiff and Defendants

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entered into a contract whereby Plaintiff agreed to supply Defendants certain labor and materials pursuant to the scope and price of the repairs approved by Defendant's insurer. Plaintiff submitted a copy of the Insurance Contract as Plaintiff's Complaint Exhibit C.

Plaintiff's claims are wholly based on facts which state that Defendants' breached either of three contracts, the Window Contract, the Siding Contract, or the Insurance Contract. Plaintiff makes no claim that it performed any work on Defendants' Property which was not a part of these three contracts.

Based on Plaintiff's own statement of facts which Defendants to not conceed, Plaintiff and Defendants entered various contracts and these contracts, and the work Plaintiff performed according to thereto is the sum and substance of their claims. In fact, Plaintiff does not provide a separate statement of facts apart from its Count I, Breach of Contract claims.

Therefore, Defendants' motion for summary judgment denying Plaintiff's Quantum Meriut/Unjust enrichment claims must be dismissed as a matter of law.

CONCLUSION

For the reasons stated herein, Defendants respectfully requests the Court grant their motion for partial summary judgment against the Plaintiff and enter an Order accordingly.

LACROIX LAW, PLLC

Dated: September 13, 2022. By: /s/ Timothy M. LaCroix

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