



attorney [REDACTED] Defendant [REDACTED] appeared in person and as the representative for Defendant [REDACTED] and both Defendants were represented by attorney [REDACTED]. Plaintiff presented testimony and closing argument in support of its position. Defendants presented testimony and closing argument in support of their positions. The Court took this matter under advisement and upon agreement of the parties, requested Proposed Judgments be submitted to the Court no later than October 15, 2021 with the Court entering Judgments more than thirty days after the close of evidence.

Now on this 29<sup>th</sup> day of December 2021, having reviewed the pleadings and exhibits and heard the evidence and arguments of counsel, the Court is prepared to enter its judgment. The Court makes the following findings of fact and conclusions of law:

#### **FINDINGS OF FACT**

1. Plaintiff [REDACTED] (hereinafter PBF) is a Kansas corporation authorized to conduct business in Missouri where it conduct residential plumbing work. [REDACTED] (hereinafter [REDACTED]) is the president and co-owner of PBF.
2. [REDACTED] (hereinafter [REDACTED]) is a Missouri corporation authorized to conduct business in Missouri where it conducts dry wall work. Defendant [REDACTED] (hereinafter [REDACTED]) is, and at all times herein relevant, was a Missouri resident. [REDACTED] is the owner of [REDACTED]
3. [REDACTED] is the owner of the property located at [REDACTED] Kansas City, MO [REDACTED] (hereinafter the property) located in Jackson County, MO.
4. The Court has jurisdiction over the parties and the subject matter of this action, and venue is proper.
5. The Court has made judgments on the credibility of various witnesses that are consistent

with the findings of fact made in this Judgment.

6. On or about December 11, 2018, [REDACTED] entered into a verbal contract for PBF to perform plumbing installation at the property for \$16,800.00 *See* Plaintiff's Ex. 2. [REDACTED] and [REDACTED] both testified that PBF provided plumbing services from December 2018 through June 2019.

7. Defendants have not paid Plaintiff for the contracted amount.

8. The Contract required PBF to perform waste, water, vent, and gas piping for the Project, and the scope was limited to ground rough and top rough. *See* Plaintiff's Ex. 3.

9. The contract specifically excluded certain items from PBF's scope of work, including utilities, fixtures and shower valves. *See* Plaintiff's Exhibit 3.

10. The parties dispute whether Plaintiff performed the services as outlined in the scope of work. *See* Plaintiff's Ex. 2. The parties also dispute whether Plaintiff provided services in a workman like manner, according to code and as requested by Defendants. Specifically, Defendants offered testimony and evidence in an attempt to prove that PBF: improperly installed water lines beyond the foundation perimeter in the master bedroom; installed the floor drain in the wrong location of the basement laundry room; installed the plumbing stack in the wrong location of the basement laundry room; improperly installed water lines resulting in the improper flow of cold and hot water in the half-bath and guest bedroom; failed to complete installation of all gas lines and hose bibs; failed to adhere to [REDACTED] request to install the property's sewer drain stub to the location closest to the city's existing sewer tap on the East side of the property. *See* Defendant's Ex. 7, 16-24.

11. [REDACTED] incurred expenses of \$6500.00 to connect the property to the city's sewer line from the sewer stub installed by PBF. The estimated costs for connecting the property to the city's sewer

line from the East side of the property was \$2500.00. *See* Defendant's Ex. 25-27.

12. However, the property slopes East to West such that the West side of the property is lower than the East side of the property. *See* Plaintiff's Ex. 8-9.

13. Plaintiff installed the sewer drain stub on the West side of the property to maintain the greatest slope and to avoid future drainage problems. *See* Plaintiff's Ex. 8-9.

14. [REDACTED] testified that the property passed inspection for both the ground rough and top rough installed by PBF.

15. [REDACTED] installed the concrete basement floor on the property after PBF performed the ground rough plumbing to include installing the floor drain and plumbing stack in the basement laundry room. Despite the drain and plumbing stack being installed in what [REDACTED] describes as the wrong location, [REDACTED] did not provide credible evidence that he ever requested the floor drain or the plumbing stack to be placed in a different location. Further, [REDACTED] proceeded with installing the concrete basement floor instead of requesting the relocation of the drain and plumbing stack prior to pouring cement for the basement floor.

16. Other than [REDACTED] testimony that he called [REDACTED] in an attempt to remedy the issues [REDACTED] had with the PBF's workmanship, [REDACTED] did not send any written correspondence, including emails or texts, to PBF or [REDACTED] to complain about alleged defective or incomplete work.

17. Defendants refuted the testimony of [REDACTED] (hereinafter [REDACTED] that [REDACTED] installed color coded PEX to differentiate hot water from cold water. *See* Defendant's Ex. 16-24.

18. On June 18, 2019, PBF invoiced [REDACTED] for \$16,800.00 for 100% of the work completed with Invoice 18-3223. *See* Plaintiff's Ex. 5. Defendants did not respond or pay the invoice.

19. On September 24, 2019, PBF invoiced [REDACTED] for \$12,600.00 for 75% of

the work completed with Invoice 18-3223. *See* Plaintiff's Ex. 11. Defendants did not respond or pay the invoice.

20. On April 3, 2020, PBF emailed [REDACTED] Invoice 18-3223 for \$14,280.00 for 85% of the work completed. *See* Plaintiff's Ex. 10. Defendants did not respond or pay the invoice.

21. On July 24, 2020, PBF emailed [REDACTED] Invoice 18-3223 for \$16,800.00 100% of the work completed plus \$3276.00 in service fees for a total balance due of \$20,076.00. Defendants did not respond or pay the invoice.

22. [REDACTED] testified that the amounts invoiced in September 2019 and April 2020 were in error and should have reflected a total amount due of \$16,800.00 for 100% of the work completed.

23. Both PBF and [REDACTED] were capable entering into the Contract.

24. Both PBF and [REDACTED] had mutual obligations pursuant to the Contract.

25. On September 11, 2021, [REDACTED] sent [REDACTED] with [REDACTED] an email requesting that [REDACTED] perform five items of plumbing work at the Property. *See* Defendant's Ex. 6.

26. On September 13, 2021, Precision provided [REDACTED] an estimate to perform the five items of plumbing work for \$4,750.00. *See* Defendant's Ex. 15.

27. Defendants have not paid [REDACTED] for the items contained in its estimate.

28. Other than the improper installation of the water lines, Defendants have not provided sufficient credible evidence in support of their defense to set-off their claims.

### **Conclusions of Law**

In order to recover on a breach of contract claim, the moving party must prove "(1) the existence of a valid contract; (2) the rights and obligations of each party; (3) a breach; and (4)

damages.” *Warren v. Tribune Broadcasting Co., LLC*, 512 S.W.3d 860, 864 (Mo. Ct. App. W.D. 2017) (quoting *Best Buy Builders, Inc. v. Siegel*, 409 S.W.3d 562, 564 (Mo. Ct. App. 2013).

A valid verbal contract existed between the parties. Plaintiff contracted to perform plumbing services for a contract price of \$16,800.00. Defendants agreed to the terms of the contract and allowed Plaintiff to begin work on the property pursuant to the contract. Plaintiff performed the work within the scope of the contract yet Defendants refused to pay Plaintiff any portion of the contracted amount.

In order for Defendants to prevail on their affirmative defenses of set-off, Defendants must carry the burden of proof. *Taney Cty. Title & Escrow, LLC v. Jensen*, 600 S.W.3d 16, 26. (Mo. App. S.D. 2020).

Defendants have not met the burden of proof for all of its affirmative defenses of set off. Defendants relies on expenses of \$6500.00 incurred to route the property’s sewer line to the city’s tap from the stub PBF installed on the West side of the property. However, [REDACTED] did not persuade this Court that he requested a specific placement of the stub or that PBF’s placement of the stub was contrary to industry standard. In fact, Defendants’ [REDACTED] witness testified that it is the plumber’s responsibility to determine the best place for a stub. The court is unconvinced that PBF’s recommendation, and subsequent installation, of the drain stub exiting the West side of the property constitutes a construction defect. PBF’s placement of the stub is supported by [REDACTED] 40 years of experience as a master plumber. The Court further notes that Defendants failed to contact PBF about any alleged unfinished work or to cure any alleged defects, and is generally unconvinced by [REDACTED] allegations of defective or incomplete work. [REDACTED] estimate is not credible as it was issued more than two years after PBF completed the project. Excluding Defendants affirmative defense for set-off regarding the improper installation of the

water lines resulting in improper flow of hot and cold water, Defendants did not present credible evidence in support of their alleged set-offs. Defendants did, however, adduce credible evidence and testimony regarding the improper installation of the water lines and thus would be entitled to set-off. However, Defendants did not itemize the amount of set-off to switch the hot and cold water lines. Instead, Defendants combined the cost in total plumbing cost for other unsupported set-offs.

Plaintiff is not entitled to pre-judgment interest against Defendants as there was not a written contract between the parties. Creditors are allowed interest at the rate of nine percent per annum, when no other rate is agreed upon, for all moneys after they become due and payable on written contracts. *RSMO*. §408.020 (Effective August 28, 1979).

Plaintiff asserts two additional Counts based in equity in its Petition: Count II is an Unjust Enrichment claim and Count III is a Quantum Meruit claim. Both of these counts seek damages in the same amount as the breach of contract claim in Count I, and appear to be alternative theories of recovery for the same damages caused by the same injury. However, “[t]he law is clear that a party is not entitled to multiple recoveries for one injury.” *KC Excavating and Grading, Inc. v. Crane Construction Co.*, 141 S.W.3d, 401,408 (Mo. App. W.D. 2004). The Court has already awarded Plaintiff the reasonable value of its services under its breach of contract claim. *Quantum meruit* is a remedy based on a contract implied by law, but it does not apply here. The parties had an express contract covering the work that was performed. “No cause or purpose is served in recognizing a contract implied in law and awarding precisely the same damages as were awarded to [the Plaintiff] for its breach of contract claim.” *Id.* at 409. Similarly, unjust enrichment does not apply where “the plaintiff has entered into an express contract for the very subject matter for which he seeks recovery...for the plaintiff’s rights are limited to the express terms of the contract.”

*Howard v. Turnbull*, 316 S.W.3d 431, 436 (Mo. Ct. App. 2010). Here, because the Court has determined that the parties entered into an express contract and has awarded Plaintiff damages that are identical to those sought in these counts, the Court dismisses Count II and Count III.

**JUDGMENT**

**THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the findings of fact contained in this Judgment are hereby accepted and considered factual findings by the Court.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that on Count I for Breach of Contract, judgment be entered in favor of Plaintiff [REDACTED] and against Defendants [REDACTED] and [REDACTED] jointly and severally, in the principal amount of \$16,800.00 plus costs.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Court dismisses Count II and Count III.

**IT IS SO ORDERED.**

Dated this 30th day of December, 2021.

  
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**THE HONORABLE KEA S. BIRD-RILEY**



## Certificate of Service

This is to certify that a copy of the foregoing was hand delivered/faxed/mailed and/or sent through the eFiling system to the following on 12/30/21

[REDACTED]

[REDACTED]

[REDACTED]