Circuit Court for Baltimore County
Case No. C-03-CV-19-3310

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 423

September Term, 2022

TONY D. DIJULIO

v.

CHARLES R., INC.

Friedman,
Zic,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Wright, J.

Filed: April 17, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

**This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

This appeal arises from a payment dispute in a construction project for the interior renovation of a bowling alley. Tony DiJulio, appellant, contracted with Charles R., Inc. ("CRI"), appellee, to perform much of the renovation work. DiJulio paid CRI for the first phase of that work under the terms of a lump sum contract and made incremental payments for additional work above the lump sum price. CRI later filed suit in the Circuit Court for Baltimore County, alleging that DiJulio owed it more than $100,000 for time and materials work performed at DiJulio's direction. CRI pled, in the alternative, that DiJulio breached an express contract to pay for work outside the original scope; that DiJulio was unjustly enriched by its retention of the benefit of that work; that CRI was entitled to quantum meruit relief in the amount of the reasonable value of that work; and that DiJulio breached the Maryland Prompt Payment statute.

After a three-day bench trial, during which CRI withdrew its statutory claim, the circuit court entered judgment in favor of DiJulio on the breach of contract and unjust enrichment counts and entered judgment in favor of CRI on the quantum meruit count. DiJulio's motion to alter or amend the judgment was denied. He appeals, presenting two questions,[1] which we have rephrased as one:

[1] As posed by DiJulio, the questions are:

> I. Is the Circuit Court's judgment in Plaintiffs [sic] favor on its Quantum Meruit action legally correct when that decision is irreconcilably inconsistent with its judgment in favor of Defendant DiJulio as to Plaintiff's Unjust Enrichment action and its findings that Defendant DiJulio was a project manager and not the general contractor for the Project and

(continued…)

I. Did the circuit court err by granting judgment to CRI on its quantum meruit claim based upon an implied-in-fact contract?

We answer, "No," to that question and shall affirm the judgment of the circuit court.

BACKGROUND

CRI is a construction contracting company based in Baltimore City. Charles R. Sipe is the owner and sole director of the corporation, which he has operated for over 20 years. DiJulio, who trades as Accu-Enterprises, Inc., also is a construction contractor, with a principal place of business in Baltimore County. DiJulio and Sipe have known each other since 1999 and have worked on multiple projects together.

The project that gives rise to this appeal was the renovation of an AMF-owned bowling alley in Columbia, Maryland ("the Project"). Greg Lilley,[2] owner and operator of Lilley Construction Group, works exclusively on bowling alley renovations for AMF. AMF had purchased numerous bowling alleys in Maryland and began rebranding them as "Bowlero," a "nightclub bowling center, entertainment center." Lilley worked with

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that the Plaintiff failed to meet its burden of proving that Defendant DiJulio benefitted from the Plaintiffs [sic] Additional Work?

II. Is the Circuit Court's Quantum Meruit in Plaintiff's favor is [sic] clearly erroneous because there was no evidence that there was a meeting of the minds that the Plaintiff was entitled to bill anyone an unlimited amount of worker hours and money for Alleged Additional Work?

[2] Lilley's name appears as "Lilliu" throughout the trial transcripts. We use the spelling that appears on the construction permits, which also is the spelling used by the parties in their briefs.

DiJulio on several Bowlero renovations within Maryland, most recently on a Timonium "Bowlero" project in 2017 in which CRI also participated.

In summer 2018, Lilley contracted with DiJulio for him to act as a "subcontractor/project manager" for the Project, which was an interior remodel of the Columbia Bowlero. The bowling alley was to continue operating throughout the Project and the renovation needed to be completed by Thanksgiving because end-of-year holiday parties were essential to the business. DiJulio was tasked with hiring and managing most of the subcontractors, including CRI, though Lilley hired some.[3] DiJulio paid the subcontractors he hired directly through his company. Lilley paid DiJulio an "hourly rate" and reimbursed him for work performed by subcontractors hired by him. Lilley did not have a written contract with DiJulio because their working relationship was "[b]ased on trust."

In July 2018, DiJulio met with Sipe at the Project site. He provided Sipe with two pages of drawings created by an architect hired by Lilley. Sipe told DiJulio that the drawings did not provide sufficient detail for him to bid the entire Project.

On July 24, 2018, Sipe sent DiJulio a proposal for a "corner" of the Project, known as the Arcade, which we shall refer to as "Phase I." Phase I included building new walls, furnishing and installing doors, and constructing a bulkhead. The total proposed

[3] Lilley contracted directly with a painting subcontractor to paint the ceiling of the bowling alley. He also brought in a subcontractor to install floors.

cost was $19,970. Though never signed by either party, there is no dispute that the proposal was a binding written contract. CRI began the Phase I work in August 2018.

While CRI was engaged in that work, it received a "visualization packet" from DiJulio's site manager, Michael Quinn, detailing additional work ("Phase II"). The Phase II work included graphic painting in the Arcade; painting the bowling ball returns; building out the bar area and installing metal on the front of it; installing cabinets supplied by DiJulio; building and installing shoe boxes; installing lockers; and repair work in the bathroom. CRI did not provide a bid for this work and there was no written contract for it.

Sipe testified that he understood that the Phase II work was to be completed on a "time and materials" basis. DiJulio testified that he asked Sipe for a price for the work, but never received it. In his view, it was a "lump sum job" and he paid CRI for that work.

CRI's "large crew" showed up at the site daily from August through November 2018 and also completed some punchwork in December 2018. The crew typically worked from 6 a.m. until 2 p.m. Quinn let them in and told them "what . . . needed [to be] done." The workers called CRI's office each day to report their hours, which were logged on timesheets. Sipe came to the site at least once or twice a week. DiJulio came to the site every Friday and often a second day. Lilley was there about once every other week.

During the Project, DiJulio, under his trade name, issued five checks to CRI totaling $46,000,[4] which included $26,030 in payments above the Phase I contract price. During that same period, Accu-Enterprises invoiced Lilley for at least $77,750. Lilley testified that the entire Project cost around $300,000. There was no testimony or evidence about the total amount DiJulio was paid.

After the Project was complete, Sipe compiled all of CRI's time sheets, work orders, and job breakdowns into a binder and calculated the total cost for Phase II to be $129,640.57, with labor costs of $117,855 comprising the majority of that sum. The labor was billed at a rate of $50 per hour. Sipe testified that CRI paid its workers between $25 and $30 per hour, plus full benefits.

On February 5, 2019, about two months after CRI completed the final punchwork, Sipe delivered the binder to DiJulio at his home. DiJulio was "very upset" and Sipe told him that he understood that it was "a lot of money[.]" DiJulio testified that he told Sipe that the number was "absurd" and that they needed to sit down with Lilley to discuss it.

Seven months later, CRI filed suit against DiJulio seeking $103,394.57 in damages, asserting four alternative theories of relief. In Count I, it alleged the breach of an express contract for CRI to complete the Phase II work on a time and materials basis. In Count II, CRI alleged that DiJulio was unjustly enriched because it retained the benefit of the additional work but failed to pay CRI for the value of the work. In Count III, CRI

[4] The checks were as follows: $10,000 on August 8, 2018; $4,000 on August 22, 2018; $10,000 on September 2, 2018; $10,000 on September 25, 2018; and $12,000 on November 4, 2018, for a total of $46,000.

alleged that it rendered services and supplied materials on Phase II of the Project under circumstances that made DiJulio aware that it expected to be paid, entitling it to quantum meruit relief. In Count IV, CRI alleged that DiJulio failed to make prompt payment on amounts due and owing under the contract, in violation of the Maryland Prompt Payment Statute. As mentioned, CRI withdrew Count IV at trial.

CRI's claims were tried to the court over three days in November 2021. In CRI's case, it called six witnesses: Sipe, four employees who worked on the Project, and Thomas Helt, a CRI estimator. Sipe was qualified as an expert in the field of construction, including valuation, and opined that the work performed by CRI was workmanlike and appropriate, and that the labor and materials charged for that work were reasonable.

Helt was qualified as an expert in estimating and construction contracts. He testified about the differences between a lump sum contract and a time and materials contract, explaining that in the first scenario the contractor bears the risk of underbidding the job and in the latter scenario the owner bears the risk of the "open-ended cost." An owner might agree to a time and materials contract if the job did not "lend itself" to a lump sum bid, such as when there was a tight timeline that did not allow for bidding, or if the work was being performed in an occupied facility because it was "difficult to do a production type estimate" in that setting.

Helt opined that in this case, the "base plan" received by Sipe before the Phase I proposal amounted to a floorplan and included no specifications. The subsequent

"visualization packet" provided significantly more detail but was not a "complete construction drawing set" and could not serve as the basis for a "bonafide construction estimate[.]"

Helt explained that the base contract for Phase I covered an area of approximately 1,800 square feet, but the additional work on Phase II covered a 4,200 square foot service area, a 4,890 square foot open concourse area, and the 14,512 square foot bowling lanes. His "Case Notes," which were introduced into evidence, reflect that the Phase I work involved "a limited scope of work" to perform four items: construction of sheetrock partitions, installation of associated doors, construction of a new sheetrock bulkhead, and installation of a suspended acoustical ceiling. In contrast, Phase II involved 150 different work items, reflected on 36 work tickets. The Phase II work was more complex, such as graphic wall painting, casework, and tear out and repair items. He opined that the work was completed based upon verbal direction from DiJulio's employees on a time and materials basis.

In his case, DiJulio testified and called two witnesses: Lilley and Wesley Burton. Burton is a registered architect who was qualified as an expert in architecture, building design and construction cost estimating, commercial as-built surveying, and the valuation of as-built construction work and building improvements. Two reports prepared by Burton, an initial report, and a supplemental report, were introduced into evidence. In his supplemental report, Burton calculated the square footage of the Phase I work as 2,507 square feet and specified nine items of work that he considered included in that phase of

the Project, including painting of the walls, ceiling, and bulkheads in the Arcade. The resulting price per square foot was $7.97. Burton also itemized the Phase II work and calculated that CRI charged $30.72 per square foot for that work, more than three times the cost for Phase I. Burton determined the reasonable cost for that work by extrapolating from the cost per square foot for Phase I, applying a multiplier to account for the slightly larger square footage and some additional complexity. He opined that the maximum total cost for the additional work was $35,000, of which $8,970 remained due and owing.

At the end of the trial, the court took the matter under advisement, reconvening a little over a month later to rule from the bench. The court found that DiJulio hired CRI to work on the Project. CRI and DiJulio entered into a written contract for Phase I but understood at the time they entered into that contract that there "was more work to be done," which was later fleshed out by the "visualization package" that Quinn provided to CRI. CRI completed the Phase I and Phase II work "in a timely, professional, [and] workmanlike manner." CRI was paid in full for Phase I and was paid $26,030 towards the Phase II work. The parties disputed "the scope and the value of the additional work[.]"

The court ruled that the parties did not enter into an express contract for Phase II, nor did they modify the Phase I contract to include that scope of work. It reasoned that the parties could not have agreed to a time and materials contract for the additional work during the initial meeting because the scope of the additional work was unknown until the

visualization packet was provided. For those reasons, the court entered judgment in favor of DiJulio on Count I.

Next, the court set out the elements of an unjust enrichment claim as outlined by this Court in *Alternatives Unlimited, Inc. v. New Baltimore City Board of School Commissioners*, 155 Md. App. 415 (2004), which, as we shall discuss in greater detail *infra*, required a showing of a benefit to the defendant, not just a loss to the plaintiff. The court noted that DiJulio testified that he received no benefit from CRI's additional work and that upon receiving the binder, he told Sipe that they should sit down with Lilley to go over the invoices. Though Lilley testified that the Project cost about $300,000, there was no testimony or other evidence about how much DiJulio was paid, how much he and Lilley anticipated the Project costing, how DiJulio's fee was determined, or how he was paid. The court reasoned that though Lilley "may have benefitted from the work done by [CRI]," he was not a party, and CRI did not meet its burden of showing that DiJulio "benefitted from [its] work[.]" The court thus found in favor of DiJulio on Count II.

On Count III, the court returned to *Alternatives Unlimited*, explaining that quantum meruit relief may be available under one of two theories: an implied-in-fact contract or an implied-in-law contract. An implied-in-law contract, also known as a quasi-contract, was not a true contract, but an obligation imposed by law based upon "something which came into the [d]efendant's hands but belongs to the [p]laintiff in some sense." The measure of damages under that theory was identical to an unjust enrichment claim: the value of the gain to the defendant, not the loss to the plaintiff. For

the same reasons as under Count II, the court ruled that CRI did not show entitlement to that relief.

The court found, however, that there was an implied-in-fact contract between the parties for the Phase II work. It explained that an implied-in-fact contract is a "true contract," but one that is not expressed in words but instead "can be seen from the[parties'] conduct[.]" In this case, the court found that DiJulio was at the job site at least once a week and his employee, Quinn, was there daily; that DiJulio paid for work beyond Phase I and observed CRI workers performing that work; that the visualization packet provided detail on the scope of that work and that Quinn also verbally directed the work; and that CRI completed that work in a professional manner before Thanksgiving, aside from some punchwork. On this evidence, DiJulio "understood that an obligation to pay [CRI] existed" and though he may have asked Sipe to provide a price, he did not stop him from working when he did not receive a price. Thus, though DiJulio "may not have used the words to agree to a time and materials contract[,] . . . his actions and conduct gave rise to an implied contract in fact." The court concluded that the measure of damages was "the reasonable value of the work performed" by CRI.

On damages, the court was not persuaded by Burton's expert testimony. First, the court determined that Burton mistakenly included painting in the Phase I scope of work when it was not mentioned in the written contract and its scope was unknown when CRI sent its proposal to DiJulio. Second, Burton failed to account for the differences between the Phase I and Phase II work when he extrapolated from the square footage to calculate

the value of the work in Phase II. Phase II was "broader and more complex" and "[t]o simply compare square footage of each area is to deny the difference between the two phases."

The court credited Helt's testimony that time and materials was a reasonable method of assessing the value of the work given the time constraints and the design revisions on the Project. The court found that the hourly rate of $50 was not unreasonable given Sipe's testimony that his workers, most of whom have been with CRI for over a decade, earn between $25 to $30 an hour, plus benefits. The court agreed with DiJulio that time and materials work should not include a lunch break, however, and calculated damages based upon a seven-hour workday. The court reviewed all the time sheets and work orders and found some double billing, which it deducted during its calculations. The court found that the total value of the Phase II work was $106,919.57, of which $80,889.59 remained due and owing.

The court entered judgment in favor of CRI in that amount on January 6, 2022, with a spreadsheet detailing its calculations attached to its order.

Within ten days, DiJulio moved to alter or amend the judgment, arguing that the court's finding that CRI failed to meet its burden to show a benefit to him occasioned by the Phase II work foreclosed quantum meruit relief. Alternatively, he argued that there was no evidence that the parties reached a meeting of the minds on the Phase II work, and that CRI was not entitled to recover its profit margin over and above the hourly rate it paid its workers.

By order entered February 23, 2022, the court denied the motion to alter or amend on DiJulio's liability but set the matter for a hearing on the issue of damages only.

The court heard argument on CRI's entitlement to damages on March 24, 2022. DiJulio argued that there was no evidence that DiJulio agreed to be billed at a rate of $50 per hour for the labor. He maintained that contrary to the court's finding, Sipe testified that he paid his laborers $25 to $30 per hour "*inclusive of benefits*." (Emphasis added.) Beyond that testimony, there was no evidence of the "customary or market price" for the services provided by CRI. CRI responded that the court appropriately calculated damages based on the rate billed, which was reasonable considering the wages, benefits, insurance, overhead, and profit margin.

On April 6, 2022, the court issued a memorandum opinion and order denying the motion to alter or amend. This timely appeal followed.

STANDARD OF REVIEW

When a case is tried to the court, an appellate court shall "review the case on both the law and the evidence." Md. Rule 8-131(c). We "will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." *Id*. "If there is any competent material evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous." *YIVO Inst. for Jewish Rsch. v. Zaleski*, 386 Md. 654, 663 (2005) (citing *Solomon v. Solomon*, 383 Md. 176, 202 (2004)).

DISCUSSION

DiJulio challenges the circuit court's ruling on two primary bases. First, he maintains that the court's finding that CRI failed to meet its burden of showing a benefit to DiJulio foreclosed any restitutionary relief and that its ruling in favor of CRI on its quantum meruit count is thus legally inconsistent with the denial of relief for unjust enrichment.[5] Second, he argues that the circuit court clearly erred by inferring from the conduct of the parties that there was a meeting of the minds for a time and materials contract.

CRI responds that there is no inconsistency between the circuit court's ruling on the unjust enrichment and quantum meruit counts and that it met its burden of proof under Count III. It maintains that the circuit court did not clearly err by crediting Helt's testimony that the hours expended on Phase II were reasonable and appropriate, and by rejecting Burton's testimony to the contrary.

[5] DiJulio argues in his brief that CRI "chose neither to sue or join the real party in interest." He did not move to dismiss the complaint on this basis or to join Lilley. As the circuit court found and the record reflects, CRI contracted directly with DiJulio, through its trading as name, Accu-Enterprises, Inc. Because CRI had no contract with Lilley (and Lilley was not the owner of the Bowlero), CRI had no remedy against him.

To the extent that DiJulio has a claim against Lilley for contribution, he could have asserted crossclaims against him or may pursue that relief in a separate action. We emphasize, however, that even if Lilley should have been joined as a necessary party, he clearly falls within the exception to the joinder requirement given that he was aware of the litigation, was a witness at trial, and attended mediation. *See City of Bowie v. Mie, Props., Inc.*, 398 Md. 657, 703-04 (2007) (identifying the "controlling principles" of the non-joinder exception as "the non-joined party's knowledge of the litigation affecting its interest and its ability to join that litigation, but failure to do so" (emphasis omitted)).

For the reasons to follow, we hold that the trial court correctly applied the law relative to quantum meruit relief based upon an implied-in-fact contract and that its finding was not inconsistent with its resolution of CRI's unjust enrichment claim. We further hold that the court's calculation of damages was supported by the record and was not clearly erroneous. We explain.

a.

In *Mogavero v. Silverstein*, 142 Md. App. 259, 263 (2002), this Court addressed the contours of a claim for quantum meruit, explaining that the plaintiff's entitlement to relief in that case turned upon whether he was "required to prove what the defendants gained by the services he rendered or whether [he] needed only to show the value of his services." After concluding under the facts of that case that the parties never entered into an express employment contract, we turned consequently to the plaintiff's claim for quantum meruit relief. *Id*. at 271-73. We explained that "[*q*]*uantum meruit* refers to either an implied-in-fact contractual duty or an implied in law (quasi-contractual) duty requiring compensation for services rendered." *Id*. at 274. Distinct remedies exist depending upon which variety of the claim is advanced. *Id*. at 275.

"An implied-in-fact contract is a 'true contract' and 'means that the parties had a contract that can be seen in their conduct rather than in an explicit set of words.'" *Id*. (quoting *Mass Transit Admin. v. Granite Constr. Co.*, 57 Md. App. 766, 774 (1984)). Thus, like an express contract, it is "'dependent on mutual agreement or consent, and on the intention of the parties; and a meeting of the minds is required.'" *Id*. (quoting 17

C.J.S. *Contracts* § 6(b) at 422). The measure of damages "is based on the amount that the parties intended as the contract price or, if that amount is unexpressed, the fair market value of the plaintiff's services." *Id*. at 276.

Conversely, a contract implied in law is "'no contract at all,'" but "'simply a rule of law that requires restitution to the plaintiff of something that came into defendant's hands but belongs to the plaintiff in some sense.'" *Id*. at 275 (quoting *Mass Transit Admin.*, 57 Md. App. at 775). In that scenario, the measure of damages is "the 'gain to the defendant, not the loss by the plaintiff.'" *Id*. at 276 (quoting *Cnty. Comm'rs of Caroline Cnty. v. J. Roland Dashiell & Sons, Inc*., 358 Md. 83, 95 n.7 (2000)).

After reviewing numerous Maryland cases addressing both varieties of quantum meruit relief, we distilled the following principles:

> if specific services are requested by the defendant, the contract is treated as one implied in fact and recovery is allowed for the reasonable value of the plaintiff's services; but if there is no meeting of the minds as to what services are to be rendered, the contract is treated as one implied in law, where the measure of damages is the amount, if any, of the defendant's gain – not the reasonable value of plaintiff's services.

Id. at 281. In *Mogavero*, we held that there was no evidence that the parties reached a meeting of the minds as to the nature and extent of the duties undertaken by the plaintiff on behalf of the defendant and, consequently, he only could pursue quantum meruit relief under a quasi-contractual theory. *Id.* at 281-82. Because he had not shown a gain to the defendant, however, he was not entitled to any relief. *Id*. at 282.

In *Alternatives Unlimited*, 155 Md. App. at 477, the case relied upon by the circuit court, this Court commented that though the implied-in-fact contract and the implied-in-

law contract "resemble each other linguistically," they are "diametrically different in terms of the respective legal relationships they denote." The first "is actually a contract" whereas the second is "no contract at all." *Id*. at 478-79. Equally confusing was that quantum meruit was "sometimes employed to measure damages in the case of an implied-in-fact contract and sometimes employed to assess reasonable restitution in the case of a quasi-contract." *Id*. at 483. As explained in *Mogavero*, however, the remedies were not the same, because if there was a true, but implied, contract for services to be performed, the measure of damages was the "value of the work done and the services performed by the plaintiff for which he has not been compensated[.]" *Id*. at 484. In the context of a quasi-contract, however, the measure of restitution was "the gain or enrichment unjustly conferred on the defendant." *Id*. at 485. In the first case, the aim is to compensate the plaintiff for his loss, but in the second the aim is to force the defendant to disgorge benefits unjustly retained. *Id*.

b.

With these principles in mind, we return to the instant case. As a threshold matter, the circuit court's ruling that CRI was not entitled to relief for unjust enrichment under Count II is not inconsistent with its ruling that CRI was entitled to quantum meruit relief under Count III. On Count II, the court concluded that CRI had not shown a gain to DiJulio occasioned by the additional work performed by CRI considering the lack of

evidence about the details of DiJulio's compensation from Lilley.[6] Absent proof of the value of the benefit retained by DiJulio, CRI could not be entitled to relief under an unjust enrichment theory.

As discussed above, however, the law in Maryland does not require proof of a quantifiable benefit to the defendant when quantum meruit relief is pursued under an implied-in-fact contract theory. Rather, the plaintiff must show that the conduct of the parties demonstrates that they reached a meeting of the minds relative to the services that the defendant desired the plaintiff to perform, and that the plaintiff performed the services, but was not compensated, in whole or in part. The cases relied upon by DiJulio do not hold to the contrary. *See, e.g., Hirsch v. Yaker*, 226 Md. 580, 582 (1961) (builder awarded damages for "the fair and reasonable value of the work done and materials installed" during a kitchen remodel as quantum meruit relief where the court credited the builder's testimony that he was directed to perform the work); *Kantsevoy v. LumenR, LLC*, 301 F. Supp. 3d 577, 598 (D. Md. 2018) (plaintiff stated a claim for which relief could be granted in an implied-in-fact contract theory of quantum meruit because he

[6] Because DiJulio contracted with Lilley to hire and manage the subcontractors on the Project, he was obligated to ensure that the subcontractors completed their work. CRI's performance of the Phase II work was a benefit to him in that it fulfilled the terms of DiJulio's contract with Lilley. *See, e.g.*, Restatement (First) of Restitution, § 1 *Unjust Enrichment*, cmt. b ("A person confers a benefit upon another if he gives to the other possession of or some other interest in money, land, chattels, or choses in action, *performs services beneficial to or at the request of the other, satisfies a debt or a duty of the other, or in any way adds to the other's security or advantage*." (emphasis added)). We understand the court's finding that CRI did not meet its burden to show a benefit to DiJulio occasioned by the Phase II work to mean that it did not adduce evidence to *quantify the value* of the benefit to DiJulio.

alleged that he provided services to the defendant with the expectation that he would be paid consistent with the parties' prior course of dealing).

The evidence in this case supported the trial court's finding that the parties reached a meeting of the minds relative to Phase II of the Project and, thus, had a true contract for the completion of that work. This court's decision in *Dolan v. McQuaide*, 215 Md. App. 24 (2013), which DiJulio relies upon, is instructive. There, we explained that an implied-in-fact contract "arises from *actions* implying *definite terms*[.]" *Id*. at 37 (emphasis in original). We gave the following example to explain the difference between express, implied-in-fact, and quasi-contracts:

> [I]magine that a homeowner's lawn and garden are in disrepair, and his neighbor is a landscape architect. The homeowner and his neighbor could state – orally or in writing – that the neighbor will cut the homeowner's lawn in return for $25, laying the foundation for an oral or written contract to perform definite terms. Later, if the neighbor notices that the yard has again fallen into disrepair and undertakes to cut it, and if the homeowner manifests his assent with, *e.g.*, a friendly wave, then the parties' non-verbal actions could form a contract implied-in-fact because their actions communicate agreement to the definite obligations they undertook in the past. If, on the other hand, the neighbor sets about performing a full suite of landscape architecture services, then even a friendly wave in acknowledgment would not bind the homeowner to a contract implied-in-fact, because unlike the discrete task of mowing a lawn in return for a customary payment, landscape architecture is an amorphous service and there could be no manifest intent to the undiscussed scope of the neighbor's work. In that case, the neighbor may be able to recover the value of his services through a claim for unjust enrichment, but the indefinite nature of those services prevent the parties' conduct from forming a contract implied-in-fact.

Id. at 37 n.5. In DiJulio's view, CRI's performance of the Phase II work without an agreed upon price was no different than the neighbor performing a full suite of landscape architecture. We disagree.

When DiJulio and Sipe agreed to a lump sum contract for Phase I, they both understood that it was a small part of the total job. Thereafter, DiJulio, through Quinn, provided CRI with the visualization package for the remainder of the job. Given that DiJulio had asked CRI to perform all the major trade work for the interior renovation, his conduct in providing the specifications for that work amounted to a definite request for performance of Phase II. The evidence likewise showed that DiJulio knew that the work was being performed and that his employee, Quinn, was at the job site directing it on a daily basis. Unlike the homeowner who did not anticipate that his neighbor would undertake extensive landscaping, here DiJulio's actions could only be understood as a request for performance of the extensive work.

DiJulio nevertheless argues that even if there was a meeting of the minds relative to performance, there were no definite terms as to the price to be paid and that the circuit court clearly erred by finding that he assented to CRI "assign[ing] any number of workers to run-up nearly 2,000 additional hours of claimed work[.]" The court made no such finding. It found that the contract price for Phase II was unexpressed, but that because CRI was performing the work without having bid it out for a lump sum, was performing it on a tight timeline, and was performing it in an occupied facility, the reasonable inference to be drawn was that the parties had agreed by their conduct to a time and

materials contract for Phase II. The court did not credit Burton's testimony that the hours were excessive for the work performed. The court discounted the hours to correct for double billing and to eliminate the workers' lunch hour from the bill. The court found that the hours reflected in the time sheets and job breakdowns otherwise reflected the reasonable time necessary to complete the work. *See Dolan*, 215 Md. App. at 38 ("Actions creating a contract implied-in-fact signal the defendant's agreement to pay a customary price for definite services."). These findings were supported by the record and were not clearly erroneous.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.