N.C.P.I.—Civil 736.00
QUANTUM MERUIT—QUASI CONTRACT—CONTRACT IMPLIED AT LAW.
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736.00 *QUANTUM MERUIT*—QUASI CONTRACT—CONTRACT IMPLIED AT LAW.

> *NOTE WELL: An express contract precludes an implied contract with reference to the same matter.*[1] *Therefore,* quantum meruit *is not an appropriate remedy when there is an actual agreement between the parties unless there is evidence to support a jury finding that the parties have abandoned some or all of the provisions of their express contract.*[2]

This issue reads:

"Did the plaintiff [(*describe service rendered*)] [deliver (*describe goods*)] to the defendant under such circumstances that the defendant should be required to pay for [it] [them]?"

The burden of proof on this issue is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, the following six things:

First, that the plaintiff did [render a service by (*describe act*)] [deliver goods by (*describe act*)].[3]

Second, that this [(*describe service*)] [(*describe goods*)] had some value to the defendant.

Third, that at the time the [(*describe service*) was rendered] [(*describe goods*) was delivered], the plaintiff expected payment. The law presumes that a person expects to be paid whenever *he* [renders a service] [delivers goods] unless *he* does so as a gift, or in repayment or satisfaction of a debt or obligation.[4]

All of the circumstances existing at the time, including the relationship between the plaintiff and defendant, and their present or previous dealings,

should be considered. Furthermore, the plaintiff's expectation to be paid must arise at the time the [service was rendered] [goods were delivered], and not thereafter.[5]

Fourth, that the plaintiff's expectation of payment was reasonable. A person's expectation of payment is reasonable when, under all the facts and circumstances existing at the time, a person of ordinary prudence and intelligence would have expected to be paid.[6]

Fifth, that the defendant received the [(*describe service*)] [(*describe goods*)] with the knowledge or reason to know that the plaintiff expected to be paid.[7] To "know" something requires actual knowledge of it.[8] A person "has reason to know" something when the circumstances existing at the time are such that a reasonable person at the time would have acquired knowledge of it.

And Sixth, the defendant voluntarily accepted the [(*describe service*)] [(*describe goods*)], that is, that *he* kept [it] [them] after having a realistic opportunity to refuse [it] [them] or to return [it] [them] to the plaintiff.[9]

So I instruct you that if the plaintiff has proved, by the greater weight of the evidence, that *he* [rendered a service by (*describe act*)] [delivered a good by (*describe act*)], and that this [(*describe service*)] [(*describe goods*)] had some value to the defendant, and that the plaintiff expected to be paid at the time the [(*describe service*) was rendered] [(*describe goods*) were delivered], and that the plaintiff's expectation of payment was reasonable, and that the defendant received the [(*describe service*)] [(*describe goods*)] with knowledge or reason to know that the plaintiff expected to be paid, and that the defendant voluntarily accepted the [(*describe service*)] [(*describe goods*)], then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

On the other hand, if after considering all the evidence, you are not so persuaded, then it would be your duty to answer this issue "No" in favor of the defendant.

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1 *Ron Medlin Constr. v. Harris*, 364 N.C. 577, 580, 704 S.E.2d 486, 489 (2010) (quoting *Paul L. Whitfield, P.A. v. Gilchrist*, 348 N.C. 39, 42, 497 S.E.2d 412, 415 (1998), *Vetco Concrete Co. v. Troy Lumber Co.*, 256 N.C. 709, 713, 124 S.E.2d 905, 908 (1962)).

2 *Geoscience Grp., Inc. v. Waters Constr. Co., Inc.*, 234 N.C. App. 680, 690, 759 S.E.2d 696, 702 (2014). But an implied contract cannot be substituted for an express contract rendered unenforceable by public policy. *See Johnson v. Starboard Ass'n*, __ N.C. App. __, __, 781 S.E.2d 813, 821 (2016) (citing *Thompson v. Thompson*, 313 N.C. 313, 314-15, 328 S.E.2d 288, 290 (1985) for the proposition that "if there can be no recovery on an express contract because of its repugnance to public policy, there can be no recovery on *quantum meruit*").

3 Actions for recovery based on *quantum meruit* need not be limited to "goods" and "services" situations. For example, an action to recover the value of a patent or trademark would not be one to recover the value of a "good" or "service". Under North Carolina law, patents and trademarks are intangible property rights. This charge uses "goods" and "services" because practically all North Carolina cases on the subject of *quantum meruit* involve these two categories. However, any type of property can be the subject of a *quantum meruit* action.

4 The law will not imply a promise to pay fair compensation when property and services are rendered gratuitously or in discharge of an obligation. *Atl. Coast Line R.R. Co. v. State Highway Comm'n*, 268 N.C. 92, 96, 150 S.E.2d 70, 73 (1966). Payment must be expected, and this is a question of fact for the jury. *Johnson v. Sanders*, 260 N.C. 291, 293, 132 S.E.2d 582, 584 (1963).

Two legal presumptions have developed pertaining to a plaintiff's *prima facie* case.

Generally, the law presumes that a person who delivers property or renders services of value expects to be compensated. *Id.*; *Burns v. Burns*, 4 N.C. App. 426, 429, 167 S.E.2d 82, 83-84 (1969). This presumption may be overcome by evidence that the property or service was rendered gratuitously or in discharge of some obligation. *Atl. Coast Line*, 268 N.C. at 95-96, 150 S.E.2d at 73. When certain family relationships exist, services performed by one family member for another or property delivered from one family member to another, within the unity of the family, are presumed to have been rendered in obedience to a moral obligation and without expectation of compensation. *Allen v. Seay*, 248 N.C. 321, 323, 103 S.E.2d 332, 333 (1958). A relationship does not give rise to this presumption unless it is within the unity of the family. A relationship is not within the unity of the family simply because persons live in the same house or take meals together. There must be a mutual and cooperative interchange of property and services like that which might be expected of a typical unbroken family. *Landreth v. Morris*, 214 N.C. 619, 619, 200 S.E. 378, 381 (1939). Some relationships have been determined not to give rise to such a presumption. *Brown v. Hatcher*, 268 N.C. 57, 59, 149 S.E.2d 586, 588-89 (1966) (mother-in-law/daughter-in-law); *Johnson*, 260 N.C. at 293, 132 S.E.2d at 584 (father/emancipated daughter); *Landreth*, 214 N.C. at 619, 200 S.E. at 381-82 (father-in-law/daughter-in-law). This presumption may be overcome by proof of an agreement to pay or of facts or circumstances permitting the inference that payment was expected on the one hand and intended on the other. *Francis v. Francis*, 223 N.C. 401, 402, 26

S.E.2d 907, 908 (1943).

5 *Twiford v. Waterfield*, 240 N.C. 582, 585, 83 S.E.2d 548, 551 (1954); *Everitt v. Walker*, 109 N.C. 129, 129, 13 S.E. 860, 861 (1891).

6 *Johnson v. Sanders*, 260 N.C. at 293, 132 S.E.2d at 584 (finding that plaintiff bears the burden of showing "circumstances from which it might be inferred that services were rendered and received with the mutual understanding that they were to be paid for, or, as it is sometimes put, 'under circumstances calculated to put a reasonable person on notice that the services are not gratuitous.'") (citations omitted).

7 *McEachern v. Rockwell International Corp.*, 41 N.C. App. 73, 78, 254 S.E.2d 263, 267 (1979); *Johnson*, 260 N.C. at 293, 132 S.E.2d at 584.

8 *Brown*, 268 N.C. at 61-62, 149 S.E.2d 586, 589-90.

9 *See Johnson v. Starboard Ass'n*, __ N.C. App. __, __, 781 S.E.2d 813, 821 (2016) (evidence that individual unit owners voted against renovations and paid first assessment to condominium association under protest found sufficient to submit issue of voluntary acceptance to the jury); *McCoy v. Peach*, 40 N.C. App. 6, 9, 251 S.E.2d 881, 883 (1979); *Everitt v. Walker*, 109 N.C. 129, 129, 13 S.E. 860, 861 (1891).