

Quantum Meruit Claims

John B Molloy, LLB (Hons), BSc (Hons), FHKIS, FRICS, FInstCES, MCI Arb, RPS (QS)

In recent articles we have looked at the valuation provisions in most standard forms of contract. However there are situations where the valuation provisions are not applicable and the contractor's works have to be valued on the basis of 'quantum meruit'? But what does this really mean? When would such a claim be applicable, and how should it be assessed.

The recent case of *Serck Controls Ltd v Drake & Scull Engineering Ltd* (May 2000) may give some assistance in this respect.

But first, some basics. The term 'quantum meruit' literally means 'as much as he has earned', but it is often used synonymously with the term 'quantum valebant'? meaning 'as much as it is worth', and it is these two quite different assessments that were the subject of dispute in the *Serck Controls* case.

There are three common situations in the construction industry where a quantum meruit claim is applicable. These are:-

1. Where a contract is entered into without an agreement as to how the works will be paid for.
2. Where the contract expressly provides that the contractor will be paid a reasonable price.
3. Where works are done at the wish of one party before a contract is entered into.

This third situation is perhaps the most common and usually occurs where a contractor commences work after receiving a letter of intent, but then subsequently the contract is never signed.

A further situation where a quantum meruit claim may be made is where the contractor carries out works that are substantially different to what he was originally required to do. This type of claim is predictably very popular with contractors who argue that changed circumstances, such as ground

conditions, have meant that the works that they are now carrying out are substantially different to those they contracted to do, and on this basis they are entitled to be paid on a quantum meruit basis. Such a claim is however extremely difficult to succeed with because it is rare for the different conditions to be sufficient to make the works substantially different to those contracted for.

But assuming a quantum meruit claim is valid in principle, how should it be assessed? This was the question before the court in the above-referred *Serck Controls* case.

In this case, *Serck* carried out design and installation work for control systems forming part of the construction of a nuclear research facility for British Nuclear Fuels Limited. *Drake & Scull Engineering Ltd* were responsible for the mechanical and electrical installation of which the control systems were a part.

On 1 December 1994 *Drake & Scull* issued a letter of intent to *Serck Controls*. In common with many letters of intent the letter went beyond simply being a statement of intention and also contained instructions to proceed with the works.

The letter included the following provision:

"In the event that we are unable to agree satisfactory terms and conditions in respect of the overall package, we would undertake to reimburse you with all reasonable costs incurred, provided that any failure/default can reasonably be construed as being on our part"

At a preliminary hearing it was established that the parties had reached no formal contract beyond the letter of intent.

However in negotiations there was agreement as to the price and scope of the works, but not as to the programme or terms and conditions.

It was common ground therefore that Serck Controls was entitled to be paid on a quantum meruit basis, and the purpose of the trial was to ascertain what was a reasonable sum.

The court considered three main points:-

1. Was a reasonable sum Serck's reasonable costs incurred in executing the works carried out, or was it the value of the works to Drake & Scull?

The barrister for Drake & Scull contended it should be the value of the works to his client, and he drew reference to Hudson's Building and Engineering Contracts, 11th Edition at paragraph 1.264 where the author said:

"the resulting obligation of the defendant is not to pay a reasonable price or remuneration based on cost, but to reimburse for the value of the advantage, if any received by the defendant"

However in this situation the court did not accept this approach. It considered that a quantum meruit claim could arise in a wide range of circumstances. At one extreme was an express contract to do work at an unquantified price which would be valued

on the basis of a reasonable price, whilst at the other extreme was an uninvited intruder who carries out works which benefit the recipient and which it would be unjust to retain without making payment where the assessment must be value to the defendant.

Here the court held the situation was clearly at the former end of the range and Serck's reasonable costs was the correct measure.

2. Was the 'agreed' tender price relevant in assessing the sum?

No, the court held it was not a starting point to be used to assess the reasonable sum because that would treat it as a contractual term, which it was not. The sum could be used as a check but no more.

3. Is the conduct of the party relevant in a quantum meruit claim?

The court held that a party could not claim payment for extra time, which was its own fault, or for its own defective works.

Accordingly, if a contractor's claim for payment on a quantum meruit basis is valid in principle the answers of the court in this case should provide some guidance as to how the quantum of the claim should be assessed.

(Adopted from the HKIS Newsletter 9(11) December 2000)