COMMONWEALTH OF PENNSYLVANIA

C.B. HONEYWELL	:	BEFORE THE BOARD OF CLAIMS
	:	
VS.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
STATE SYSTEM OF HIGHER EDUCATION,	:	
BLOOMSBURG UNIVERSITY	:	DOCKET NO. 1810

FINDINGS OF FACT

I. THE PARTIES

1. Plaintiff, C.B. Honeywell (hereinafter referred to as "Honeywell"), is a Pennsylvania sole proprietorship owned by Colleen B. Honeywell and located at RR #1, P.O. Box 82, Shickshinny, Pennsylvania 18655. (Pltf's Second Amended Complaint)

2. Defendant, Bloomsburg University of Pennsylvania of the Commonwealth of Pennsylvania, State System of Higher Education (hereinafter referred to as "Bloomsburg"), is an instrumentality of the Commonwealth of Pennsylvania with principle offices in Bloomsburg, Pennsylvania at 400 East Second Street, Bloomsburg, Pennsylvania 17815.

II. THE CONTRACT

3. On or about July 16, 1993, the State System of Higher Education (hereinafter referred to as "SSHE"), issued specifications for Contract No. SSHE-401-BL 438-General Construction for a Student Recreation Center at Bloomsburg University. (R-65)

4. The low bidder was Miller Brothers Construction, Inc. (hereinafter referred to as "Miller") and Miller became the general contractor on the job. (N.T. 13-14, 583-584)

5. The firm of Bohlin-Cywinski-Jackson was the construction professional of record for the Bloomsburg Student Recreation Center Project. (N.T. 539)

6. The architect for the project was Bohlin-Cywinski-Jackson, Architecture, Planning, Interior Design, 182 North Franklin Street, Wilkes-Barre, Pennsylvania 18701. (R-65)

7. Mr. Edwin J. Gunshore, Jr., an employee of Bohlin-Cywinski-Jackson, was the project manager for the construction administration of the Student Recreation Center Project. (N.T. 540)

8. Hunt Engineering was hired by Bohlin-Cywinski-Jackson as consultants to Bohlin-Cywinski-Jackson. Hunt Engineering was paid directly by Bohlin-Cywinski-Jackson. (N.T. 540-541)

9. The project managers for the project were Lehrer-McGovern-Bovis, a consulting firm hired by, and paid by, Bloomsburg. (N.T. 542-543)

10. Mr. Veto Talanca was Bloomsburg's quality assurance inspector for the project. (N.T. 100)

11. Mr. Rick Lettich, Executive Vice President of Miller, was the project manager for the Student Recreation Project. His duties involved oversight of the operations of the project, hiring of subcontractors, attendance at meetings and discussion of issues with Bloomsburg and the architect. (N.T. 583)

12. Mr. Lettich, on behalf of Miller, hired subcontractor Honeywell. (N.T. 584)

13. Miller directed Honeywell's work on the project. (N.T. 587-588, 590)

14. Change order requests for extra work performed by Honeywell were submitted to Miller rather than to Bloomsburg. (N.T. 590-591)

15. Miller entered into a contract with Honeywell to perform work on the Student Recreation Center Project. (N.T. 585; R-1)

16. The Student Recreation Center Project consisted of construction of a new student recreation center for Bloomsburg, all associated site work and extension of all utilities to serve the project, including extension of the campus storm sewer system to serve the new recreation center and other buildings at the eastern end of the lower campus. (R-65; Notice to Contractors, page 1 of 4)

17. The building consists of a one-story gymnasium with a clear-span masonry, multi-purpose building. The approximate dimensions of the gymnasium are 120 feet by 260 feet. The approximate dimensions of the attached multi-purpose building are approximately 70 feet by 372 feet. (R-65)

18. A description of the work for the general construction contractor reads as "demolition of existing site improvements noted to be removed; relocation of existing site improvements noted to be relocated; site grading; construction of new site improvements, parking areas, sidewalks and other paved areas; site stairs and other site structures; landscaping, extension of campus storm and sanitary sewer lines to serve new student recreation center; building layout, construction of new one-story student recreation center, including foundations, foundation drainage systems, substructure, superstructure, building envelope, interior partitions and finishes, hardware and accessories, stairs and ladders; and furnishing and installing equipment as shown in construction documents." (R-65,

page 01010-1)

19. Specifications identify the contractor for general construction as having the responsibility to "establish and plainly mark center lines for each building and such other lines and grades that are reasonably necessary to properly shore that location, orientation and elevations established for each structure in accordance with lines and elevations shown on contract drawings." (R-65; page 01010-11, 1.16.A)

20. Contract specifications require that the general contractor "establish and maintain a minimum of two permanent bench marks on the site, referenced to date established by survey control points." (R-65; 01050-2)

21. The contract specifications require the general contractor to "investigate and verify the existence and location of underground utilities and other construction." The specifications expressly indicate that the owner does not guarantee the existence and location of underground utilities. (R-65, page 01050-2)

22. Under the specifications of the contract, the contractor had a responsibility to "locate, identify, shut off and disconnect utility services that are not indicated for removal or replacement." (R-65, page 01010-10, 1.11.A)

23. Contract specifications require the general contractor to "furnish information necessary to adjust, move or relocate existing structure, utility poles, lines, services or other appurtenances located in, or affected by construction. Coordinate with local authorities have jurisdiction." [sic] (R-65, page 01050-3)

24. Contract specifications require the general contractor to "enforce the use of tarpaulin covered dump trucks and avoid overfilling so that spillage of earth and other matter onto roadways does not occur." (R-65, page 01560-3,3.8.A)

25. Contract specifications require the general contractor to make certain that "all truck wheels shall be cleaned of mud and debris before trucks leave the site. Provide a crushed stone gravel entry area for this purpose." (R-65; page 01560-3,3.8.B)

26. Contract specifications require the general contractor to "install wash stations approved by general contractor and institute a policy of daily street cleaning which shall be approved by general contractor." (R-65, page 01560-3,3.8.C)

27. A geotechnical subsurface report was prepared for this project. That report concluded that rock was encountered at shallow depth and rock excavation would be required. (Geotechnical Subsurface Report, page 10)

28. Contract specifications indicate that rock excavation measurement shall be the volume of rock actually removed, measured in original position, and that unit prices for rock excavation shall include replacement with approved materials. (R-64, page 02200-1)

29. Contract specifications define excavation to include the removal of material encountered and the reuse or disposal of materials removed. (R-65, page 02200-2)

30. Contract specifications classify rock in open excavation that cannot be removed by a 973 heavy-duty track-mounted loader, rated at not less than 210-HP flywheel power and developing minimum of 45,000 lb break out force, measured according to S.A.E. standard J732c-69. (R-65, page 02200-5)

31. The general contract at the time of the bid award was $3,188,000.00. (N.T. 640)

32. During the project, twenty-one (21) change orders were issued to the general contractor, which totaled $344,000.00, bringing the total payments to the general contractor of $3,533,000.00. (N.T. 640)

33. The subcontract between Miller and Honeywell for the project was $339,350.00. (N.T. 612; R-1)

III. MILLER-HONEYWELL SUBCONTRACT DISPUTE

34. Miller only paid Honeywell approximately $70,000.00 on the subcontract. (N.T. 612-613)

35. The remaining payments were withheld as Honeywell did not complete the work required in the subcontract. (N.T. 613)

36. Mr. Gunshore, with Bohlin-Cywinski-Jackson, testified that Honeywell always had plenty of construction equipment on site, but not enough operators to use it. (N.T. 558, 618)

37. All work under the Miller-Honeywell subcontract was within the scope of work of the original Miller-Bloomsburg Contract. (N.T. 613)

38. Honeywell's correspondence to Miller confirmed that Honeywell was working under the direction of Miller personnel. (R-7, R-8, R-13, R-17, R-18, R-19, R-22)

39. Miller sent a letter terminating Honeywell because of Honeywell's refusal to complete their project work. (N.T. 615; R-28)

40. Miller never put in a claim for delayed damages against Bloomsburg because Miller determined they had no delay claim because the cause of the delay was their own subcontractor,

Honeywell. (N.T. 618)

41. Honeywell invoiced Miller directly when seeking payment. (R-61)

42. The record is silent as to any invoices sent directly to Bloomsburg from Honeywell.

43. Honeywell and Miller entered into an Arbitration Agreement dated October 5, 1993, to have their disputes over the recreation project heard by the American Arbitration Association. The result of that hearing was that all Honeywell's claims against Miller were denied. Miller's claims against Honeywell was allowed in the amount of $51,316.00. (R-48)

44. The case before the American Arbitration Association, between Honeywell and Miller, arose from the contract between those parties for the Bloomsburg University Student Recreation Center Project. Honeywell's claim involved two basic items: wrongful termination of its contract by Miller and delaying the ability of Honeywell to perform its work. (Transcript of testimony before American Arbitration Association, Volume I, October 10, 1995, page 7-8)

45. Before the American Arbitration Association, Honeywell admitted that the site utilities work, including hooking into work being performed by another contractor on the lower campus, was within the scope of its work with Miller. (Transcript of testimony before American Arbitration Association, Volume I, October 10, 1995, page 19)

46. Honeywell's claim against Miller before the American Arbitration Association included claims for the following:

a. 6,000 sy over excavation
b. overfill due to no survey
c. Loss of Efficiency
d. Eqpt Delay - CAT D8N
e. Eqpt Delay - CAT 977
f. Eqpt Delay - CAT D4H
g. Eqpt Delay - Bomag Roller
h. Eqpt Delay - John Deere 310C
i. Eqpt Delay - Trench Box
j. Eqpt Delay - Pipe Laser
k. Eqpt Delay - Site Laser
l. Eqpt Delay - Case Skidsteer
m. Nov 15, 1993 Utility Work
n. Eqpt Delay - Cutoff Saw
o. Overhead - Additional Due to Delay
p. Oct 26, 1993, Unloading Steel
q. Nov 11, 1993, Unloading Steel
r. Extra Work for Electrical Contractor

s. Re-sawcut for Electrical Trench
t. Lost Profit
u. Balance Due on Original Contract
v. Premature Demobilization
w. Materials Left on Site - Precast
x. Materials Left on Site - Stone
y. Contract Work - Sawcut Swisher Circle
z. Contract Work - Sawcut for 8" Sanitary
aa. Electrical Excavation 20%
bb. Contract Work - West Parking Lot
cc. Loss of Dillon Profit
dd. Loss of Business Estimate

(R-49-60, Arbitration Transcripts various, See also Critique of Honeywell Claim, Qualification of Miller Counterclaim, page 8)

IV. ROCK AND OVER-EXCAVATION CLAIMS

47. Bloomsburg paid Miller for bulk rock removal in the footprint of the building. The bulk rock removal was approved by a change order signed by Mr. Gunshore. The actual amount eventually taken out was 1,895 cubic yards as measured by Miller. (N.T. 561-562)

48. The original cross section of possible bulk rock identified in the area had a volume of 3,200 cubic yards. However, this 3,200 cubic yard figure was determined before demonstration that it was actually rock. (N. T. 573)

49. The 3,200 cubic yard figure was arrived at when Honeywell thought they had hit rock, but Miller determined that it was not rock. (N.T. 598)

50. Contract documents defined “rock” as rock that a 973 tractor was not able to remove. (N.T. 562, 572)

51. Miller directed Honeywell to secure a 973 Caterpillar for bulk rock demonstration. (R-8)

52. A D-8 bulldozer exceeds the specifications for 973, but if the vehicle was able to remove the materials, the materials were not classified as rock. (N.T. 574)

53. Mr. Gunshore eventually approved the classification of the material being rock, even though he was not there, because Mr. Talanca and Mr. Reitmeyer of Bloomsburg both verified to him that the 973 was unable to remove the material. (N.T. 562, 563)

54. Mr. Gunshore did observe Mr. Honeywell remove material with the D-8. Since the

D-8 removed the material, he did not classify it as rock. (N.T. 574)

55. Miller first lowered the 3,200 figure to 2,217 cubic yards. Miller determined the 2,217 cubic yard figure shooting elevations using a laser. (N.T. 597)

56. Miller billed Bloomsburg for the final figure of 1,895 cubic yards volume of rock excavation. (N.T. 567)

57. According to a letter from Rick Lettich of Miller to Honeywell, Mr. Honeywell was present and agreed when Miller calculated 1,895 cubic yard volume of rock excavation. (R-26)

58. Bulk rock removal in the footprint of the building was within the scope of the Miller contract with Bloomsburg. (N.T. 597)

59. Miller's profit margin was greater on rock removal than general material removal. (N.T. 598)

60. As a result of the profit margin of rock, Miller had no incentive to minimize the amount of rock to be billed to Bloomsburg. (N.T. 599)

61. Miller had to complete some of the rock excavation that they had contracted for Honeywell to perform. (N.T. 602, 604)

62. Miller also had to complete additional portions of Honeywell's work. The unit price included disposal of rock. Honeywell never disposed of the rock; instead, Miller had to dispose of the rock. (N.T. 604, 605)

63. Mr. Veto Talanca affixed his signature to Honeywell Exhibit 20, intending that signature to indicate he witnessed that Rick Lettich gave the memo to Honeywell. (Claimant Exhibit 26, Deposition Testimony of Veto Talanca, page 91)

64. It is unclear what Honeywell is describing when it uses the term "footing rock" in the claim. Mr. Lettich of Miller testified that it could be trench excavation. That trench excavation was part of the scope of the work in the contract between Miller and Bloomsburg. (N.T. 605, 606)

65. Mr. Veto Talanca of Bloomsburg testified at his deposition that rock encountered in the stairway was part of the building footprint. (Claimant Exhibit 26, Deposition of Veto Talanca, page 98)

66. In his deposition, Mr. Veto Talanca of Bloomsburg testified that he was not sure if he could recall rock being encountered in the area of the footings for the buildings, as he could not recall how much of the footings were dug before Honeywell left the project. (Claimant Exhibit 26, Deposition of Veto Talanca, pages 98-99)

67. In a letter from Rick Lettich of Miller to Honeywell, Miller agreed to include rock excavation from the descending stairs at the north of the project site in a future change order. (R-26)

68. During the project, there was a bench mark error that resulted in the site being over excavated by 2,177 cubic yards. Miller was compensated for the additional work necessitated by the error in the benchmark through construction change order number GC-7. (R-67)

69. At trial, Chairman Palumbo noted that Honeywell was unable to present evidence as to how much rock it actually removed. (N.T. 341-342)

V. TOPSOIL CLAIM

70. The University owned the topsoil on the project and Miller had no claim to any excess topsoil. (N.T. 607)

71. Miller did not have any written or oral contract transferring ownership of the topsoil to Honeywell. (N.T. 608)

72. Honeywell removed topsoil from the project and stored it at Reichart's Garage. After Honeywell was dismissed from the project, Miller was required to buy some of that topsoil from Reichart to finish the project. (N.T. 607-608)

73. Colin Reitmeyer, by way of sworn deposition, stated he did not have an oral contract with Don Honeywell regarding the Dillon property. (N.T. 641)

74. Miller entered into an agreement with Dillon Floral Corporation to conduct grating operations on the Dillon property adjacent to the student recreation center. According to the agreement, this work had been initiated, but not finished, by Honeywell. (R-47)

CONCLUSIONS OF LAW

1. The Board of Claims has jurisdiction over the parties and over the subject matter asserted in this claim pursuant to the Act of May 20, 1937, P.L. 728, as amended by the Act of October 5, 1978, P.L. 1004, 72 P.S. §4651-1, et seq.

2. By Order dated May 24, 1996, the Board of Claims dismissed Count I, Negligence, and Count IV, Contractual Interference, of Honeywell's Second Amended Complaint. The May 24, 1996 Order held that the Board of Claims did not have jurisdiction over negligence matters.

3. The remaining Counts of Plaintiff's Second Amended Complaint, which are now before the Board of Claims, are Count II, Oral Contract and Count III, Quantum Meruit.

4. The burden is on Honeywell to prove by a preponderance of the evidence the existence of an oral contract between Honeywell and Bloomsburg University.

5. Honeywell has not proven by a preponderance of the evidence all the essential elements to prove that an oral contract existed between Honeywell and Bloomsburg University.

6. The burden is on Honeywell to prove by a preponderance of the evidence its claim for unjust enrichment ; that Bloomsburg has wrongfully secured or passively received a benefit that it would be unconscionable for it to retain.

7. Honeywell has not proven by a preponderance of the evidence its claim for unjust enrichment; that Bloomsburg wrongfully secured or passively received a benefit that it would be unconscionable for it to retain.

8. Honeywell is not entitled to punitive damages.

OPINION

This matter was called to hearing before the Eastern Panel, composed of Frank Palumbo, Attorney Member, and Louis G. O'Brien, Engineer Member. The Panel Report was submitted on April 12, 2000 and has been reviewed for purposes of issuing these Findings of Fact, Opinion and Order.

This matter originated by the filing of a Complaint on April 14, 1994, on behalf of the Plaintiff, C. B. Honeywell, (hereinafter referred to as "Honeywell"), a Pennsylvania sole proprietorship owned by Colleen B. Honeywell. On May 16, 1994, Preliminary Objections were filed by Defendant, Commonwealth of Pennsylvania, State System of Higher Education, Bloomsburg University (hereinafter referred to as "Bloomsburg"). After briefs were filed by the parties, the Board of Claims rendered an Opinion and Order on August 29, 1994, directing Honeywell to file an Amended Complaint, within thirty (30) days, in accordance with Pennsylvania Rules of Civil Procedure.

An Amended Complaint was filed by the Plaintiff on October 21, 1994. Bloomsburg filed Preliminary Objections to the Amended Complaint on November 16, 1994. The parties filed Briefs in Support of their respective positions.

By Opinion and Order dated May 17, 1995, the Board of Claims granted and denied various Preliminary Objections and further ordered that Honeywell engage counsel and file a Second Amended Complaint which complied with the Pennsylvania Rules of Civil Procedure and the procedural rules of the Board of Claims.

Plaintiff filed a Second Amended Complaint seeking the amount of One Million Eight Hundred Ninety Four Thousand Three Hundred Eleven Dollars and Fifty-Five Cents. ($1,894,311.55). On July 17, 1995, Bloomsburg filed Preliminary Objections to the Second Amended Complaint and Preliminary Objections in the nature of a Motion to Strike for Failure to Conform to Rule of Court. Bloomsburg filed a Brief in Support of Preliminary Objections on August 31, 1995.

By Order dated May 24, 1996, the Board of Claims struck Count I of Honeywell's Complaint, negligence, and Count IV, contractual interference. The remaining two counts of the Second Amended Complaint, oral contract and quantum meruit, remained intact.

As a result of the May 24, 1996, Opinion and Order, Bloomsburg filed an Answer to Plaintiff's Second Amended Complaint and New Matter on June 13, 1996. Plaintiff's Answer to New Matter in Defendant's Answer to Plaintiff's Second Amended Complaint was filed on July 15, 1996.

In July of 1997, an Order was entered setting the matter for trial before the Board of Claims beginning November 3, 1997 and continuing through November 14, 1997, if necessary. The Board

of Claims entered an Order on October 28, 1997 granting Honeywell's request for a continuance.

A panel hearing was finally held on this matter from June 22, 1999 through June 24, 1999. The parties subsequently filed their respective Findings of Facts and Conclusions of Law and Supporting Memorandum to the Board thereby setting the matter for decision.

This case involves the construction of a new Student Recreation Center for Bloomsburg University of Pennsylvania. The general contractor on the job was Miller Brothers Construction (hereinafter referred to as "Miller"). Miller entered a contract with Honeywell to perform work on the Student Recreation Center Project. The subcontract between Miller and Honeywell was for Three Hundred Thirty Nine Thousand Three Hundred and Fifty Dollars ($339,350.00). Miller terminated Honeywell because of Honeywell's refusal to complete the work pursuant to the subcontract. Approximately Seventy Thousand Dollars ($70,000.00) of the subcontract total was paid to Honeywell.

After many convoluted pleadings, the remaining two counts before the Board are for breach of oral contract and quantum meruit theory.

A. **Plaintiff has failed to meet its burden of proving that an oral contract existed between itself and Miller Brothers.**

It is a requisite of every contract that there be an offer and an acceptance and if a distinct offer and an unqualified acceptance is not shown, there is no contract. Triffin v Thomas 316 Pa. Super. 273, 462 A.2d 1346 (1983). Stated by the Court in Hahnemann Medical College and Hospital of Philadelphia vs. Hubbard 267 Pa. Super. 436, 406 A.2d 1120 (1979):

> It is settled that for an agreement to exist, there must be a 'meeting of the minds,' Northwestern Consolidated Mining Co. v. Campbell & Campbell, 78 Pa. Super. 96 (1921); the very essence of an agreement

> is that the parties mutually assent to the same thing, Alcorn Combustion Co. v. M. W. Kellogg Co., 311 Pa. 270, 166 A. 862 (1933). Without such assent there can be no enforceable agreement. Rissmiller v. Evangelical Lutheran Congregation, 268 Pa. 41, 110 A. 740 (1920). The principle that a contract is not binding unless there is an offer and an acceptance is to ensure that there will be mutual assent. See Farren v. McNulty, 277 Pa. 279, 121 A. 501 (1923).

(406 A.2d at 1122)

The burden of proving the existence of a contact lies with the party relying on its existence. Viso v. Werner, 471 Pa. 42, 369 A.2d 1185 (1977).

In the instant action, Honeywell is alleging that an oral contract existed between Bloomsburg and Honeywell. In the case of an oral contract, the proponent of the contract must prove that the contract was clear and precise. Edmondson v. Zetusky Pa. Cmwlth., 674 A.2d 760 (1996). Therefore, Honeywell must prove that it had a valid contract with Bloomsburg and Honeywell must also prove that the contact was clear and precise.

The Board has carefully reviewed the almost six hundred fifty pages of testimony that was taken during the Panel Hearing. In particular, the Board paid very close attention to Plaintiff's witnesses which included Colleen Honeywell, Donald Honeywell and Stanley Mera. Careful review of the testimony reveals that Honeywell has failed to meet its burden of proving the existence of an oral contract. Honeywell has not shown where Bloomsburg has made an offer to Honeywell to enter in a separate oral contract. There is a failure on the part of Honeywell to show that there was a " meeting of the minds" between Honeywell and Bloomsburg. 406 A.2d at 1122. A clear showing of an offer by Bloomsburg and an acceptance by Honeywell indicating mutual assent cannot be found. While the Board is cognizant of the difficulties Honeywell experienced on this project, and as a result of this project, the Board does not find that Honeywell met its burden of proving that an oral

contract existed between Honeywell and Bloomsburg.

While it appears from the post hearing document filed by Honeywell that it is claiming an oral contract, or contracts, for numerous items including bulk rock excavation, footing rock, stairway rock, sanitary manhole No. 4, 973 track loader rental, Dillon property, inlet No. 1, gas line and weekend work, the Board does not deem it necessary to discuss each item in that the Board finds Honeywell failed to meet its burden of showing that any oral agreement existed between Honeywell and Bloomsburg. Nor will the Board discuss the issue of damages allegedly suffered by Honeywell in that the analysis needs not reach that point since there were no oral agreements. While the Board is cognizant of the difficulties Honeywell experienced on this project, and as a result of this project, the Board does not find that Honeywell met its burden of proving that an oral contract existed between Honeywell and Bloomsburg.

B. **Plaintiff has failed to meet its burden of proving it is entitled to any recovery under a quantum meruit theory.**

The remaining Count of Plaintiff's Second Amended Complaint is on a theory of Quantum Meruit. Quantum Meruit or Unjust Enrichment is essentially an equitable doctrine. This Board has both law and equity jurisdiction and is, therefore, able to decide both remaining Counts of Plaintiff's Second Amended Complaint. Miller v. Department of Environmental Resources, 133 Pa. Cmwlth 327, 578 A.2d 550 (1990).

The elements of unjust enrichment are:

> "[B]enefits conferred on defendant by plaintiff, appreciation of such benefits by defendant, and acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefits without payment of value." Wolf v. Wolf , 356 Pa. Super. 365, 514 A.2d 901 (1986),

> overruled on other grounds, Van Buskirk v. Van Buskirk, 527 Pa. 218, 590 A.2d 4 (1991); see also Burgettstown-Smith Township Joint Sewage Authority v. Langeloth Townsite Co., 403 Pa. Super. 84, 588 A.2d 43 (1991).

Styer v. Hugo, 422 Pa. Super. 262, 619 A.2d 347, 350 (1993).

In determining if unjust enrichment applies the focus is not on the intention of the parties but rather is on whether the Defendant has been unjustly enriched. 619 A.2d at 350 (citations omitted). "Where unjust enrichment is found, the law implies a contract between the parties pursuant to which the plaintiff must be compensated for the benefits unjustly received by the defendant. This contract, referred to as either a quasi-contract or a contract implied in law, requires that the defendant pay the plaintiff the value of the benefits conferred, i.e. that the defendant make restitution to the plaintiff in Quantum Meruit." 619 A.2d at 350 (citations omitted).

In order to determine whether the Doctrine applies, the specific factual circumstance of each case must be reviewed.

In the instance action the general contract for the Bloomsburg University Project was Three Million One Hundred Eighty-Eight Thousand Dollars ($3,188,000.00). The Vice President for Administration at Bloomsburg University, in essence the Chief Financial Officer for the University, testified that there were twenty-one change orders on the Project which increased the original contract price to Three Million Five Hundred Thirty Three Thousand Dollars ($3,533,000.00). This was the total payment made to the General Contractor, Miller Brothers Construction.

Based upon the testimony of the witnesses, as well as the contract specifications, it appears that all work performed by Miller, as well as Honeywell, was within their respective contracts. As stated previously, Bloomsburg made a total payment to Miller in the amount of Three Million Five

Hundred Thirty-Three Thousand Dollars (3,533,000.00) . As a result, regardless of the intention of the parties, it does not appear that Bloomsburg has been unjustly enriched. Conversely, it appears that the work which Bloomsburg contracted to have done was performed and was paid for, in full, by Bloomsburg. There has been no unjust enrichment of Bloomsburg. Without any unjust enrichment to Bloomsburg, Honeywell cannot prevail on an Unjust Enrichment or Quantum Meruit Theory. The Board does not find that Honeywell met its burden of proving that it is entitled to any recovery under a Quantum Meruit Theory.

C. **Plaintiff is not entitled to recover Punitive Damages.**

The Plaintiff states in its Findings of Fact that "Claimant believes she is entitled to recover punitive damages from Bloomsburg because their careless disregard in following and enforcing their own specification caused Claimant to be terminated from the project and because Bloomsburg was and continues to be unjustly enriched at the Claimants [sic] expense since December of 1993." (Plaintiff's Findings of Fact, p. 15, paragraph 1 - Punitive Damages). The cases establish that exemplary damages, or punitive damages, are allowed in addition to compensatory damages only where there has been malice, fraud, oppression, or gross negligence. Feld v Merriam, 506 Pa. 383, 485 A.2d 742 (1984). Where the injuries suffered by the Plaintiff has not been willfully or wantonly inflicted, only compensatory damages can be recovered. In addition, the law is clear that punitive damages are not recoverable in an action for breach of contract. Thorsen v Iron and Glass Bank, 328 Pa. Super 135, 476 A.2d 928 (1984).

Applying the law to the facts in the instant action, Honeywell is not able to recover punitive damages on a breach of contract claim. In addition, the Board has found that the Plaintiff did not meet its burden regarding recovery under a quantum meruit theory and, therefore, Bloomsburg

certainly did not act with malice, fraud, oppression or gross negligence toward Plaintiff. As a result, Honeywell is not entitled to punitive damages.

ORDER

AND NOW, this day of August, 2000, for the foregoing reasons and in light of the authority cited in support thereof, the Board of Claims finds in favor of Defendant, Commonwealth of Pennsylvania, State System of Higher Education, Bloomsburg University, and against the Plaintiff, C.B. Honeywell.

Each party shall bear its own costs and attorney fees.

BOARD OF CLAIMS

_____
David C. Clipper
Chief Administrative Judge

_____
Louis G. O'Brien
Engineer Member

_____
James W. Harris
Engineer Member