

Note

The Supreme Court has defined an implied-in-fact contract as "an agreement ... founded upon a meeting of minds, which, although not embodied in an express contract, is inferred, as a fact, from conduct of the parties showing, in the light of the surrounding circumstances, their tacit understanding." *Balt. & Ohio R.R. v. United States*, 261 U.S. 592, 597, 58 Ct.Cl. 709, 43 S.Ct. 425, 67 L.Ed. 816 (1923). Compared an implied in law or "quasi-contract".

COGLAN v. WELLCRAFT MARINE, 240 F.3d 449

"The district court properly dismissed the Coghlan's unjust enrichment claim. In Texas, unjust enrichment is based on quasi-contract and is unavailable when a valid, express contract governing the subject matter of the dispute exists. Unjust enrichment is an equitable remedy in Florida as well, used to strip ill-begotten, non-contractual benefits from a defendant. An express contract governed the Coghlan's purchase of their boat, and no implied or quasi-contract will be found where an express contract exists."

MURRAY HILL PUBLICATIONS, INC. V. ABC COMMUNICATIONS 2001 WL 995181

ALICE M. BATCHELDER, Circuit Judge.

Plaintiffs Murray Hill Publications, Inc. and Rosary Take-One Productions Ltd. ("plaintiffs") brought this action against ABC Communications d/b/a WJR Radio ("WJR") raising federal claims of copyright infringement and and state law claims of conversion, unjust enrichment, quantum meruit, and unfair competition. The district court granted summary judgment to WJR on all of plaintiffs' claims. We affirm the judgment of dismissal.

I. BACKGROUND

The plaintiff corporations are owned by Detroit composer and producer Bobby Laurel. This story involves Laurel, his now-deceased friend, Detroit radio personality J.P. McCarthy, and Detroit radio station, WJR. For 30 years, McCarthy hosted a popular morning radio program on WJR. Because they were friends, McCarthy often promoted Laurel's various music and film projects on his morning radio show.

In the early 1980's, Laurel began producing a movie called the Rosary Murders ("the Movie"). The Movie was based upon a novel, written by a Detroit novelist and set in Detroit. The Movie itself was filmed in Detroit. In one scene of the movie, as actor Donald Sutherland enters a diner early in the morning, a radio can be heard playing in the background, and J.P. McCarthy's voice is heard saying, "Good morning, Detroit. This is J.P. on JR in the A.M. Have a swell day." ("the Line"). The Line was said over a song that was an original composition of Laurel's named *Jeanette*. Laurel registered both *Jeanette* and the Rosary Murders with the United States Copyright Office.

After the film was completed, Laurel re-recorded *Jeanette* with some simple lyrics for McCarthy to use as a theme song for his morning radio show ("J.P.'s Theme" or "the Song"). It is undisputed that Laurel appeared on McCarthy's show the day the Song was unveiled. It is undisputed that Laurel received royalties under WJR's "per program" license with the American Society of Composers, Authors and Publishers ("ASCAP"), although under the terms of WJR's ASCAP license, WJR did not specifically instruct ASCAP to pay those royalties to Laurel. ASCAP distributed a portion of WJR's flat rate payment to Laurel after Laurel advised ASCAP that the Song (*Jeannette* revised and

renamed as *J.P.'s Theme*) was being played daily on WJR. WJR claims that Laurel gave both McCarthy and WJR a non-exclusive license to use the Song or the theme song, and that no payment terms were discussed. Laurel, on the other hand, claims that the license was limited to McCarthy's own personal use on his morning show, that the royalties were a critical part of the deal, and that the license necessarily expired upon McCarthy's death.

McCarthy died unexpectedly in August, 1995. On the day of McCarthy's death, WJR producers, faced with the prospect of the next day's morning show and no host, compiled a "tribute" show consisting of memorable bits and pieces from McCarthy's programs over the years. The broadcast that next morning opened with the familiar theme song that had opened and closed McCarthy's morning show for nearly five years.

The tribute show was broadcast the morning after McCarthy's death. Public interest in the broadcast was immediate and pervasive. In the weeks following his death, McCarthy's wife and son and WJR executives concluded that the tribute show had significant market potential and could be a powerful fund-raising tool for the newly formed J.P. McCarthy Foundation ("the Foundation")....

WJR employees worked on their own time to edit the broadcast--eliminating news, weather and commercials--and to obtain the releases required to convert the broadcast into a 90-minute recording for distribution ("the Recording"), which was available for sale just in time for the Christmas season in 1995. WJR actively promoted sales of the Recording, and a mail-order firm was employed to distribute the Recording. The Recording had significant sales, totaling around 400,000 copies. All of the proceeds were turned over to the Foundation. It is undisputed that WJR did not earn any profits for its role in distributing the Recording; however, Laurel argues that WJR did receive something of value-- public acclaim, notoriety, and goodwill--for its role in this charitable endeavor. It is also undisputed that no one sought Laurel's permission to include the Song in the Recording and that Laurel was not credited with authorship of the Song on the insert packaged with the cassette tapes and CD's, while other artists and producers were credited on the insert for their respective contributions.

Plaintiffs also complain about an advertising campaign mounted by WJR from mid-1992 until McCarthy's death in August, 1995, in which WJR commissioned an artist to create a series of billboards to promote McCarthy's morning show. The billboards were designed with a graffiti-style print on a plain background, sporting one of two slogans--"J.P. on JR in the A.M." and "J.P. Makes My Morning." According to plaintiffs, the Line, "J.P. on J.R. in the A.M." was an original line, specifically created by Laurel for the Movie. WJR disputes Laurel's claim that he authored the Line ...

II. THE CLAIMS

Plaintiffs filed a six-count complaint in federal district court, alleging claims under federal statutory law and Michigan common law.

III. ANALYSIS

[The court held that no copyright claim existed because the works were not protected by copyright law.]

Laurel brings a number of state-law claims relating to WJR's use of the Song, the Line and the Artwork. As we discuss more fully below, we believe that each of plaintiffs' state-law claims has been preempted by § 301 of the Copyright Act. Section § 301 of the Copyright Act defines the scope of the Act's preemptive reach. In pertinent part, it provides:

- (a) [A]ll legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 in works of

authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright as specified by sections 102 and 103, whether [...] published or unpublished, are governed exclusively by this title. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State. 17 U.S.C. § 301.

We held in *Taco Bell* that

[e]quivalency exists if the right defined by state law may be abridged by an act which in and of itself would infringe one of the exclusive rights. Conversely, if an extra element is required instead of or in addition to the acts of reproduction, performance, distribution or display in order to constitute a state-created cause of action, there is no preemption, provided that the extra element changes the nature of the action so that it is qualitatively different from a copyright infringement claim.

Each of plaintiffs' state law claims must be evaluated in light of this standard.

Unjust Enrichment and Quantum Meruit.

Plaintiffs denominate Count IV of the complaint "Unjust Enrichment," and Count V "Quantum Meruit." In Count IV, plaintiffs allege that WJR "was unjustly enriched as a result of Defendant's intentional and wrongful appropriation, and improper use of: (i) the original ideas and concepts contained in Plaintiff, Rosary Take-One's, feature motion picture; and (ii) Plaintiffs' proprietary ideas, concepts, strategies, and tie-ins for marketing and exploiting the feature film and the Musical Composition, including, but not limited to, the use of the Art Work." In Count V, the plaintiffs allege that WJR "was aware that Plaintiffs intended to be fully compensated in the event that Defendant desired to make use of Plaintiffs' original ideas, concepts, strategies, and tie-ins in any manner," and that WJR did, in fact, make use of those ideas, concepts, strategies and tie-ins by appropriating them without compensating plaintiffs.

For at least 70 years, Michigan law has distinguished between contracts implied in law and contracts implied in fact:

There are two kinds of implied contracts; one implied in fact and the other implied in law. The first does not exist, unless the minds of the parties meet, by reason of words or conduct. The second is quasi or constructive, and does not require a meeting of minds, but is imposed by fiction of law, to enable justice to be accomplished, even in case no contract was intended. In order to afford the remedy demanded by exact justice and adjust such remedy to a cause of action, the law sometimes indulges in the fiction of a quasi or constructive contract, with an implied obligation to pay for benefits received. The courts, however, employ the fiction with caution, and will never permit it in cases where contracts, implied in fact, must be established, or substitute one promisor or debtor for another.

Cascaden v. Magryta, 247 Mich. 267, 225 N.W. 511, 512 (Mich.1929). The Michigan courts have explained that the equitable doctrine of unjust enrichment may provide the remedy for a claim of breach of an implied-in-law contract, or quasi-contract. Further, the Michigan courts have held that where a party seeks to enforce an oral agreement, the court will equate "recovery under the equitable theory of contract implied in law with recovery in quantum meruit."

Recognizing the importance of the distinction between contracts implied in fact and those implied in law, we held in *Taco Bell*:

For the purpose of the preemption analysis, there is a crucial difference between a claim based on *quasi-contract*, *i.e.*, a contract implied in law, and a claim based upon a contract implied in fact. In the former, the action depends on nothing more than the unauthorized use of the work. Thus, an action based on a contract

implied in law requires no extra element in addition to an act of reproduction, performance, distribution or display, whereas an action based on a contract implied in fact requires the extra element of a promise to pay for the use of the work which is implied from the conduct of the parties.

Contracts implied in law, we concluded, meet the equivalency requirement of the preemption analysis, while contracts implied in fact may not. The contract claimed in *Taco Bell* included the extra element of a promise to pay, requiring proof of an enforceable promise, which in turn would require proof of the mutual assent of the parties, and a breach of that promise. *Id.*

Here, plaintiffs have pled two implied-in-law contract claims. Plainly, Count IV, the claim for unjust enrichment, depends on nothing more than WJR's unauthorized use of plaintiffs' work. Because that claim meets the equivalency requirement of the preemption analysis, we hold that it is preempted. And unless the language of expectation in Count V is sufficient to add an element--namely the element of a promise to pay--to the acts of reproduction, performance, distribution or display that constitute the unauthorized use of plaintiffs' work, the claim denominated quantum meruit likewise depends on nothing more than that unauthorized work and is preempted.

We think that plaintiffs' allegation that WJR knew of plaintiffs' intention to be paid for the use of plaintiffs' work is not an allegation that WJR promised to pay, and does not purport to raise a claim of an implied-in-fact contract. A claim that one party was aware of the expectations of the other is a far cry from a claim that the first party agreed to a course of conduct that would fulfill those expectations. We therefore hold that plaintiffs' claim in Count V is exactly what plaintiffs denominated it--a claim for recovery in quantum meruit for a contract plaintiffs contend should be implied in law. We hold that this claim, like the claim for unjust enrichment, is preempted.

The Merits of the Claim Designated "Quantum Meruit"

Even if we were to disregard Michigan's well-established law distinguishing between contracts implied in law and contracts implied in fact, such that we could construe Count V as pleading a claim for breach of a contract implied in fact, ... we would be constrained to conclude that the claim, although not preempted, could not survive defendants' motion for summary judgment. We have searched the entire record of this case for some evidence that would permit a jury to conclude with regard to any promise by WJR to pay plaintiffs for the Song, the Line or the Art Work, that "the minds of the parties [met], by reason of words or conduct,". We have found not even a scintilla of evidence to that effect. Plaintiffs do not dispute that they did in fact receive the royalties they expected for J.P. McCarthy's use of the Song on the morning program. Bobby Laurel testified in his deposition that he composed the Song for J.P.; that he intended that J.P. would use the Song as his theme song on the morning program; that he understood from a meeting with Mr. Long of WJR that the Song would be used that way and WJR would pay royalties to Laurel through ASCAP. Laurel was explicitly asked, "Was there ever an expressed discussion of the payment of royalties?" Laurel responded:

Yes, because we did not charge--I remember that because we did not charge him for production. I didn't intend to do that. I didn't charge him a creative fee and what was in it for us would be that we would receive royalties through ASCAP.

That was the only thing in it for us.

Nowhere in Laurel's deposition or in any other part of the record is there any evidence that plaintiffs discussed with anyone associated with WJR any other use of or payment for the Song. In the absence of any such evidence, there is simply no basis upon which a jury could conclude that the minds of the plaintiffs and WJR ever met with regard to payment to the plaintiffs for any use of the Song other than the use as J.P. McCarthy's

theme on the morning show, for which plaintiffs received the expected royalties. ...

CONCLUSION

For the foregoing reasons, we affirm the district court's judgment dismissing the plaintiffs' action, but we reverse the district court's award of attorneys fees to WJR.

Lucent Technologies v. Mid-West Electronics 2001 WL 725372 (Mo. App. 2001)

THOMAS H. NEWTON, Judge.

I. Factual and Procedural History

Lucent Technologies, Inc. (Lucent), [FN1] by and through its predecessor AT & T Corporation (AT & T) and Mid-West Electronics, Inc. (Mid- West) entered into a purchase agreement on September 13, 1995, by which Mid- West agreed to purchase Kansas City Works for \$45 million. Kansas City Works was a large manufacturing facility located in Lee's Summit, Missouri. Lucent also entered into a written license agreement granting Mid-West access to a portion of the property. Lucent also gave Mid-West express authorization to access a portion of the facility that is now the subject to this dispute, known as the KC-1 clean room for the purpose of making improvements to the area and obtaining the proper certification.

Mid-West made a down payment of \$250,000 as a deposit. And if on January 5, 1996, Midwest was not satisfied with the clean room, it could terminate the purchasing agreement and receive a full refund of the entire down payment. The purchasing agreement had an initial closing date thirty days after November 13, 1995, but several extensions were granted.

In order to prepare for closing, Mid-West contacted Air Filtration Engineering Company in Tucson (AFECT) to renovate the KC-1 clean room. Lucent recommended AFECT to Mid-West because Lucent had hired AFECT to do some work in the past. AFECT recommended replacing all of the filters at a cost of approximately \$700,000. Mid-West accepted AFECT's bid. The work continued until January 5, 1996, when the due diligence period expired, and Mid-West was not prepared to close on the property. Again, the parties executed an extension agreement where Mid-West agreed to continue its repairs to the facility and pay the costs out of its own funds requiring a deposit in an escrow account of \$750,000. Midwest entered into an escrow agreement with Old Republic Title Company (Old Republic). As the escrow agent, Old Republic would disburse the funds after a request from Midwest and final approval by Lucent. If Mid-West purchased the property, the remaining escrow funds would be returned; but if the sale did not close, Lucent would retain the deposit and the improved clean room. The contract was silent as to who was responsible for costs incurred above the \$750,000 set aside in the escrow account.

The extension agreement also required Mid-West to supply copies of all third-party purchase orders or repair agreements executed by Mid-West, and further reserved Lucent the reasonable right to approve payments made out of the escrow account. Lucent approved all AFECT's transactions to improve and complete the required work to repair the KC-1 clean room via Mid-West. All but the four following invoices were paid (1) \$72,277.18 for filters, installation, and repairs at the facility, invoice number 8665, request for payment made to Mid- West on June 14, 1996; (2) \$52,250.00 for certification of the KC-1 facility as a Class 1 clean room, invoice number 8650, request for payment made to Mid-West July 23, 1996; and (3) and (4) \$7,700.00 for repairs and

services to the defective filters, invoice numbers 8739 dated August 2, 1996, and 8792 submitted September 6, 1996.

A new closing date was scheduled requiring Mid-West to either purchase the property or Lucent would obtain an improved clean room and all remaining funds in the escrow account. Leakage problems, however, caused a delay in the renovation process and more extensions were granted. AFECT hired Donaldson Company (Donaldson) to supply and repair the filters for the clean room, but during the course of installing the filters, leaks were discovered. Donaldson was responsible for 87.5% of the defective filters, which caused the leaks. AFECT attributed 12.5% fault to the installers that Mid-West hired. AFECT sent Mid-West invoices to cover the costs of the additional repairs totaling \$61,606.70. Mid-West did not reimburse AFECT for any of the costs associated with the faulty filtration system. AFECT eventually reached an agreement with Donaldson, and, therefore, AFECT is only seeking damages for \$7,700 of that amount to cover the 12.5% in installation costs.

After resolving the leakage problems, AFECT certified that the room was a KC-1 clean room in October 1996. A new closing date of December 13, 1996, was scheduled. Mid-West failed to close, defaulting on its agreement with Lucent. This was the final closing date, and Lucent would not agree to any more extensions. AFECT submitted the invoices for payment to Mid West prior to this final closing date, but Lucent did not reimburse AFECT out of the remaining \$12,402.00 in escrow funds.

Lucent broke off all negotiations with Mid-West and obtained the KC-1 clean room. Lucent also kept the remaining funds in the escrow account. Lucent then entered a purchasing agreement with Townsend Summit, LLC (Townsend) for the sale of Kansas City Works, including the clean room. Lucent used the certified status of the KC-1 clean room as a marketing tool to draw potential buyers. Townsend purchased the facility and acquired the clean room. Lucent advised Townsend that a dispute existed as to the ownership of the new filters, but Lucent agreed to hold Townsend harmless of all claims and damages arising from that dispute. Lucent collected \$28 million from this sale, and collected \$12,402 from the escrow account.

AFECT's claims include damages in *quantum meruit* against Lucent for receiving the benefit of the filters and the clean room, without compensating the supplier or laborer. AFECT demanded payment on September 24, 1997, but Lucent refused to pay.

A bench trial was held on the matter, and the trial court found that AFECT was entitled to \$72,277.18 for filters, installation, and repairs at the facility and \$52,250.00 for certification of the KC-1 facility as a Class 1 clean room for a total of \$124,527.18 in damages. Lucent brought this appeal, and AFECT filed a cross-appeal.

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III. Legal Analysis

A. Elements of Quantum Meruit

Lucent's first and third points on appeal focus on the elements of *quantum meruit* so we will address those points simultaneously. Lucent argues that AFECT failed to prove that Lucent received a benefit from AFECT and that Lucent accepted and retained the renovated clean room under inequitable circumstances. Further, Lucent argues that because Mid-West was not Lucent's agent, Lucent created no expectation of payment. Moreover, AFECT looked only to Mid-West for payment. Therefore, AFECT was not entitled to the recovery of the invoices from Lucent that the trial court awarded.

"*Quantum meruit* is a remedy for the enforcement of a quasi- contractual obligation and is generally based on the principle of unjust enrichment." [FN6] The essential elements of a quasi-contract or *quantum meruit* claim are (1) benefit conferred by one party on another, (2) appreciation or recognition by the receiving party of the fact that what was conferred was a benefit, and (3) acceptance and retention of the benefit in

circumstances that would render that retention inequitable. [FN7] When one party has been unjustly enriched at the expense of another, the beneficiary can be compelled to make restitution to the one conferring that benefit. [FN8]

Lucent's third point on appeal focuses on the lack of evidence to support the trial court's finding with regards to the first element of quantum meruit, whether a benefit was conferred. [FN9] It contends that it did not receive a benefit from the renovated clean room because it was never used and it added no value to the property. The trial court made specific findings, supported by the evidence, that AFECT conferred a benefit to Lucent by constructing and installing a new filter system in its KC-1 clean room. Through AFECT's efforts and expense, Lucent received a certified clean room, which was a valuable improvement to the Lucent facility. The fact that Lucent is not using the improvement is irrelevant. AFECT improved the facility as it was directed. The clean room made the property more marketable, the improvements were necessary to complete the purchasing agreement with Mid-West, and Lucent used the certified clean room as a selling point when negotiating the sale with Townsend. Thus, the trial court's finding was supported by the evidence. Point denied.

Lucent's first point on appeal contends that the trial court lacked substantial evidence to find that it accepted and retained the benefits of the clean room under circumstances that would render the retention inequitable. In other words, Lucent claims that AFECT failed to prove the third element of unjust enrichment. Lucent relies on *Graves v. Berkowitz* in support of its contention that in order to recover in *quantum meruit* against a property owner who did not contract for the work on that property, a contractor must show either that the entity that did contract for the work was acting as the agent of the owner or that the owner knowingly attempted to take undue advantage of the contractor. Lucent, further, argues that no evidence was presented at trial indicating that Lucent and Mid-West operated within an agency relationship, that Lucent was at fault, or that Lucent was at an undue advantage.

In *Graves*, a contractor brought an action for unjust enrichment against the landowner/ landlord when the tenant, who contracted with the contractor, failed to pay. [FN12] The tenant leased the premises to open a restaurant, but shortly after opening, the restaurant closed and the contractor was unable to collect its debt from the tenant. [FN13] This court held in *Graves* that the contractor could not recover from the landlord on a claim of unjust enrichment because it was not inequitable for the landlord to retain the benefit of the improvements without paying for it. [FN14] *Graves* denies recovery from a landlord where he has been a passive beneficiary. [FN15] Furthermore, *Graves* establishes that the landlord must be at fault, or put the contractor at an undue disadvantage, or have "some agency relationship between the tenant and the landlord *something more* than passive acquiescence in the improvement to the premises" [FN16] in order to be liable.

This court found that the landlord was a passive beneficiary because (1) no agency relationship existed; (2) the landlord was aware of the construction, approved it, and had the right to object to the construction design, but never exercised that right; (3) the contractor never looked to the landlord for payment; (4) the contractor never made any demand on the landlord prior to filing a formal action; and (5) the contractor knew early on that the tenant was in default, yet it continued the project without seeking any assurances from the landlord.

The facts in the case before us share some similarities with *Graves*. AFECT knew that Lucent and Mid-West entered into a purchasing agreement, and AFECT was aware that the escrow account only contained \$750,000. Furthermore, Lucent agreed to the renovation of the clean room, was very aware of it, and the contract required Lucent to approve of all invoices submitted by AFECT before Old Republic could release the

funds in the filter escrow account. Like the landlord in *Graves*, Lucent had the authority to object to any of the invoices but chose not to exercise that right.

Graves, however, is distinguishable. AFECT demanded payment from Lucent in September 1997, prior to the filing of the formal action, and AFECT was compensated for all of its invoices until June 1996. The clean room was completed in October 1996, while Mid-West was still on the property. Between approximately September 1996 and August 1997, before submitting a final invoice to Lucent, AFECT negotiated an agreement with Donaldson concerning the faulty equipment. Upon reaching that agreement, AFECT, in August 1997, learned that Mid-West was ejected from the premises in March 1997. Within one month of receiving this information, AFECT demanded payment from Lucent for the unpaid invoices. Again, AFECT's work was completed at the time AFECT discovered that Mid-West was removed from the premises.

The case at hand can be decided within the scope of *Graves*. *Graves* rejects claims in *quantum meruit* unless the receiving party is "something more" than a passive beneficiary. [FN18] We find that Lucent affirmatively sought out AFECT's services and initiated AFECT's relationship with Mid-West.

AFECT and AT & T had established a twelve-year business relationship prior to this transaction. AT & T had contacted AFECT on several occasions to perform work at the Kansas City Works location. In fact, AFECT constructed a class 10 clean room for AT & T in 1984. Later that same year, AT & T contacted AFECT to construct two more clean rooms at this same facility. AFECT also did testing and certification on a series of smaller clean rooms at the facility in 1985. Then, around 1988, AFECT was hired to construct other special clean rooms in the facility. In 1993, AT & T contacted AFECT and requested information and the certification report regarding the clean rooms constructed in 1984 because AT & T was interested in selling the clean room or the entire facility.

More importantly, in October of 1995, just after Mid-West entered into a purchasing agreement with AT & T, AT & T contacted AFECT again to inquire about how much it would cost to recertify the rooms because AT & T was in the process of selling the facility. AFECT provided the requested information and faxed it to AT & T at AT & T's request. The quote that AFECT sent to AT & T contained a paragraph indicating that if AT & T elected to employ AFECT to test the filters in the clean room, it could complete the testing by November 15, 1995, if AT & T authorized the transaction by October 16, 1995. A representative from Mid-West then requested AFECT's clean room testing and certification references for projects AFECT completed from 1989 through 1995, and AFECT provided the information via facsimile on November 7, 1995. AFECT was told by the representative at Mid-West to fax the references to AT & T because AT & T requested the information. On that same day, AFECT faxed Mid-West a copy of the quote for integrity leak testing and filters for the KC-1 clean room, which was previously faxed to AT & T on October 6, 1995.

AFECT's understanding at this point was that AT & T was trying to sell their Kansas City Works facility, and in order to effectuate this transaction, AT & T had to conform to existing codes. At the same time, AT & T was responsible for delivering a working clean room facility. On November 8, 1995, Mid-West submitted a purchase order from Mid-West to AFECT directing it to perform the tests. After the tests, AFECT sent its recommendations to AT & T indicating that 57% of the filters tested failed and that AFECT could either test and repair the existing filters, which would be very time consuming, or it could replace all existing filters with new ones. AT & T approved the replacement of all of the filters. The invoices were sent to Mid-West, which were forwarded to Old Republic, the escrow agent. The funds were released after Lucent's approval.

In accordance with *Graves*, this court finds that Lucent was something more than a passive beneficiary. Even though we do not find the existence of an agency relationship between Lucent and Mid-West, Lucent initiated the relationship between AFECT and Mid-West and promoted AFECT for this renovation project based on its prior dealings. Furthermore, there was substantial evidence presented for the trial court to conclude that Lucent gave permission to Mid-West and AFECT to enter into a contract to construct the improvements and complete the necessary repairs in the KC-1 clean room. Thus, the trial court properly decided as a matter of law that Lucent received a benefit of the clean room inequitably. Point denied.

IV. AFECT's Cross-Appeal

AFECT raises two points in its cross-appeal. The first point alleges that the trial court erred by not awarding AFECT \$7,700.83 for its work and activities associated with improving the clean room at Lucent's facility. AFECT brought this claim under *quantum meruit*.

Again, the essential elements of a quasi-contract or *quantum meruit* claim are: (1) benefit conferred by one party on another, (2) appreciation or recognition by the receiving party of the fact that what was conferred was a benefit, and (3) acceptance and retention of the benefit in circumstances that would render that retention inequitable.

In order to award AFECT its recovery in the amount of \$7,700.83 for repairs and replacement costs associated with the installation of the leaking filters, we must find that Lucent received a benefit from the installation. AFECT hired Donaldson to produce the filters for the clean room, and Midwest employed the subcontractor who installed these filters. The filters leaked, and AFECT had to repair and replace the leaking filters in order to certify the clean room. The total amount to repair the leaks was \$61,606.00. AFECT determined that 87.5% of the problems with the leaking filters was attributable to Donaldson, and 12.5% of the problems were the result of installation activities caused by the contractors Mid-West employed. AFECT negotiated with Donaldson and did not request payment from Lucent for the 87.5% attributable to Donaldson. AFECT, however, submitted the invoice for \$7,700.83 to Lucent for payment to cover the 12.5% costs attributed to the faulty installation of the filters. Lucent did not participate in any of the negotiations with Donaldson or AFECT in determining the percentages of fault involved with the leaking filters.

The leaking filters were removed and are no longer within the clean room. It is apparent that the trial court concluded that Lucent did not receive the benefit of the leakage problem. The trial court's findings are supported by the record. The leaking filters were removed from the clean room and replaced with new filters that functioned properly. Lucent received the benefit of the new filters and their installation, which is represented in the \$124,527.18 awarded by the trial court. Lucent is not responsible for the faulty filtration system that was removed from its facility. Lucent, however, is liable for damages associated with receiving the benefit of the new filtration system as outlined *supra*. Therefore, because Lucent has received no benefit from the leaking filters or the faulty installation, AFECT's action in *quantum meruit* to recover the costs incurred for the repairs and replacement of the leaking filters must fail.....

V. Conclusion

We affirm the trial court's judgment awarding AFECT \$124,527.18 for its *quantum meruit* claim. We reverse and remand the cause to the trial court to compute and award AFECT prejudgment interest on that amount.