Illinois Official Reports

Appellate Court

***Restore Construction Co. v. Board of Education of Proviso Township High Schools District 209*, 2019 IL App (1st) 181580**

Appellate Court Caption	RESTORE CONSTRUCTION COMPANY, INC., and RESTORE RESTORATION, INC., Plaintiffs-Appellants, v. THE BOARD OF EDUCATION OF PROVISO TOWNSHIP HIGH SCHOOLS DISTRICT 209; NETTIE COLLINS-HART; DANIEL J. ADAMS; TRAVELERS INDEMNITY COMPANY; GALLAGHER BASSET SERVICES, INC.; MADSEN KNEPPERS AND ASSOCIATES, INC.; and COLLECTIVE LIABILITY INSURANCE COOPERATIVE, Defendants (The Board of Education of Proviso Township High Schools District 209, Defendant-Appellee).
District & No.	First District, Sixth Division Docket No. 1-18-1580
Filed	June 28, 2019
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 15-L-010904; the Hon. Brigid Mary McGrath, Judge, presiding.
Judgment	Reversed and remanded.
Counsel on Appeal	Michael W. Rathsack, of Chicago, for appellants. William F. Gleason, Eric S. Grodsky, and Raymond A. Hauser, of Hauser Izzo, LLC, of Flossmoor, for appellee.

Panel JUSTICE CONNORS delivered the judgment of the court, with opinion.
Presiding Justice Delort and Justice Cunningham concurred in the judgment and opinion.

OPINION

¶ 1 The dispute at issue here arose between plaintiffs, Restore Construction Company, Inc. (Restore Construction), and Restore Restoration, Inc. (Restore Restoration),[1] and defendant, the Board of Education of Proviso Township High Schools District 209 (the Proviso Board),[2] after the Proviso Board refused to pay for construction and restoration services rendered by plaintiffs after one of the high schools in the Proviso Township High Schools District 209 (District) was damaged by fire. Although plaintiffs were paid for a portion of their work, the Proviso Board refused to tender payment for the remainder after becoming aware that the contracts for restoration services were entered into without proper approval. The Proviso Board moved to dismiss plaintiffs' *quantum meruit* counts, arguing that a school district cannot be held liable under a theory of *quantum meruit* when the contracts purporting to bind the District were never properly approved and were void *ab initio*. The circuit court agreed with the Proviso Board and dismissed plaintiffs' complaint. Plaintiffs appeal, arguing that the court below improperly dismissed the complaint because a finding that the contract was void *ab initio* did not prevent a claim based on a contract implied in law for the value of the work performed in reliance on the presumed contract. For the following reasons, we reverse the circuit court's decision.

¶ 2 BACKGROUND

¶ 3 Facts Taken From Plaintiffs' Third Amended Complaint

¶ 4 Proviso East High School (Proviso East) is a public high school located within the boundaries of the District at 807 South First Avenue in Maywood. The District is an Illinois body politic and is governed by the Proviso Board, which is comprised of seven members and is subject to the authority of a financial oversight panel (FOP) appointed by the State of Illinois. During the time period relevant to this case, Todd Drafall was the FOP's chief financial officer. Defendant Nettie Collins-Hart was the superintendent of the District from approximately July 1, 2008, to June 30, 2016. She was also the District's chief executive officer responsible for the administration and management of the District's schools in accordance with its policies

[1]Plaintiffs are affiliate corporations of one another and share common ownership and management. Restore Construction is engaged in the business of repairing fire damaged structures and providing related construction services. Restore Restoration is engaged in the business of providing disaster mitigation and related restoration services. We refer to them collectively as plaintiffs but refer to them by their individual names, *i.e.*, Restore Construction and Restore Restoration, when necessary.

[2]The Proviso Board was incorrectly sued as "The School Directors of Proviso Township High School District 209." The Proviso Board pointed out this misnomer in its motion to dismiss plaintiffs' third amended complaint, stating that "[a]s this was a mere misnomer, the [Proviso Board] will respond as though properly named."

and state and federal law. Defendant Daniel J. Adams was a member of the Proviso Board until April 11, 2017.[3] Adams was the Proviso Board president from approximately January 15, 2013, to April 30, 2015, and his duties included presiding over the business of the Proviso Board at official meetings and signing official District documents.

¶ 5 The District, at all times relevant, was a member of the Collective Liability Insurance Cooperative, which was insured by Travelers Indemnity Company (Travelers). The excess property policy issued by Travelers to the District stated, "in return for the payment of the premium, [Travelers] agrees with [the District] to provide the insurance afforded by this policy." After the loss payment of $1 million by the underlying lead insurer, Travelers was responsible for the 100% share of the next $1 billion of the loss.

¶ 6 On May 10, 2014, a fire broke out at Proviso East, causing significant property damage and dangerous conditions within the school. The upcoming school year was to begin on August 13, 2014, and the District was in need of prompt remediation and repairs. The District had previously contracted with plaintiffs for flood damage in April 2013. At that time, the District and plaintiffs entered into a contract for plaintiffs' restoration services "without concern, repudiation, dispute or a recorded Board vote, as was [the District's] customary practice for the repair and payment of losses covered by its property loss insurance." Promptly after the fire, the District's representatives contacted Restore Restoration and asked it to provide emergency mitigation services to the District. Plaintiffs were advised that the District would approve a contract with Restore Restoration to mitigate and remediate damage from the fire and with Restore Construction to repair the property loss damage to Proviso East. Immediately thereafter, Restore Restoration provided emergency mitigation services. The District hired Legat Architects, Inc. (Legat), to prepare plans and work specifications for the fire damage and to act as contract administrator for the District on the renovation project.

¶ 7 On May 22, 2014, Collins-Hart signed two contracts on behalf of the District—one with Restore Restoration to mitigate and remediate fire damage and the other with Restore Construction to repair the fire-damaged school. This agreement did not go through the typical competitive bidding process. Further, the Proviso Board was never presented with a copy of the agreement for approval and never conducted a vote to approve it. The value of plaintiffs' work stemming from the initial agreement was $331,109.83.

¶ 8 On June 24, 2014, Legat published the District's project manual, identified as project No. IN14-0001 and titled "Fire Damage Renovations at Proviso East High School for the Board of Education Proviso Township High School District 209" (Specifications Manual). The Specifications Manual set forth the responsibilities of the District, Legat, plaintiffs, and Travelers. On July 9, 2014, Collins-Hart affirmed the hiring of Legat by the District and the adoption of the Specifications Manual.

¶ 9 Thereafter, Drafall attended fire loss project construction meetings regarding the remediation, restoration, and repair of the school in accordance with the Specifications Manual. In addition to Drafall, the following attended these meetings: plaintiffs' personnel; the District's project manager, Ron Anderson; the District's buildings and grounds manager, L.T. Taylor; representatives from Legat, Gallagher Bassett Services, Inc., Madsen Knepper and Associates, Inc., Travelers; and various subcontractors.

[3]To be clear, defendants Collins-Hart and Adams are not parties to this appeal. The Proviso Board is the only defendant named in plaintiffs' third amended complaint that is participating in this appeal.

¶ 10 On August 12, 2014, Adams, who was then the president of the Proviso Board, signed an amended agreement with Restore Construction to repair the school on behalf of the District. The amended agreement signed by Adams was represented by him to be on behalf of the District. Like the initial agreement, the amended agreement was never presented to the Proviso Board for approval and a vote. Pursuant to the amended agreement, plaintiffs performed emergency mitigation and repair work valued at $6,939,890.17.

¶ 11 Between the two agreements, the total value of plaintiffs' work was $7,271,000. Plaintiffs expected to be paid in full for their work through the Travelers policy. Gallagher Bassett Services, Inc., acted as a claims administrator on behalf of Travelers by issuing payments to the District and plaintiffs using funds supplied by Travelers.

¶ 12 On February 20, 2015, Legat issued its cumulative certificate for payment, which certified that Restore Construction[4] had, to date, completed $5,816,223.08 of work. The total value of the mitigation, remediation, and repairs performed by plaintiffs was $7,271,000. In total, plaintiffs were paid $5,816,223.08 by Travelers. The outstanding balance owed plaintiffs was $1,428,553.90 when the District ceased payment.

¶ 13 Procedural History

¶ 14 On October 28, 2015, plaintiffs filed their initial complaint, which contained a single count for breach of contract. Subsequently, on April 11, 2016, plaintiffs amended their complaint to include equitable claims against the Proviso Board for equitable estoppel, unjust enrichment, and *quantum meruit*. Plaintiffs filed a second amended complaint, but that pleading is not contained in the record.[5] On November 4, 2016, the Proviso Board filed a motion to dismiss plaintiffs' second amended complaint pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2016)). The Proviso Board's motion asserted that plaintiff's unjust enrichment and *quantum meruit* counts should be dismissed for failure to set forth sufficient well-pled facts.

¶ 15 On June 7, 2017, the court granted the Proviso Board's motion with prejudice as to all counts of plaintiffs' second amended complaint, except plaintiffs' counts for unjust enrichment, which the court granted without prejudice. The court stated that it was dismissing plaintiffs' breach of contract counts because "the contracts with [the District] are void *ab initio* because a board vote was required to be taken before any sort of expenditure, even in an emergency. But no board vote was taken." The court explained its decision to dismiss plaintiffs' counts for unjust enrichment and *quantum meruit* as follows:

> "First, the *quantum meruit* counts are duplicative of the unjust enrichment claims. Under Illinois law, *quantum meruit* is used as an equitable remedy to provide restitution for unjust enrichment.
>
> That's [*Weydert Homes, Inc. v. Kammes*, 395 Ill. App. 3d 512, 522 (2009)].

[4] In their complaint, plaintiffs allege that Restore Construction was improperly credited for receiving the payment made to Restore Restoration in the amount of $331,109.83. Thus, Restore Construction actually only received $5,512,135.95 of the $5,816,223.08 that was certified completed by Legat, which leaves a payment shortage to Restore Construction in the amount of $304,087.13.

[5] Plaintiffs' brief contains a footnote acknowledging that the second amended complaint was not in the record and stating that it would be supplied in a supplemental record. However, plaintiffs never filed a motion to supplement the record.

Second, the counts incorporate allegations regarding the contracts at issue, which isn't allowed under Illinois law.

Third, they don't allow elements or the facts necessary to state causes of action for *quantum meruit*. And the 'wherefore' clauses appear to request damages that go beyond the damages available for recovery under *quantum meruit*.

So the court is dismissing these counts, the *quantum meruit* counts, without prejudice, with leave to replead, and the unjust enrichment counts with prejudice."

¶ 16 Plaintiffs filed a motion to reconsider, which was denied as to all counts except those for *quantum meruit* because those counts were previously dismissed without prejudice and still pending. At the hearing on the motion to reconsider, the court explained its decision to deny the motion as follows:

"You know, under the plain language and the applicable statutes, the proper steps weren't taken in the formation of this contract. And I have no doubt that all of the parties believe that there was an enforceable contract between the plaintiff, and [the District] during the time periods in question, but that doesn't affect it.

***

As I said, I have no doubt probably every party in this room was working under the illusion that this—there was an enforceable contract between plaintiff and [the District]."

¶ 17 On February 20, 2018, plaintiffs filed their third amended complaint containing amended *quantum meruit* counts and all the counts of plaintiffs' second amended complaint that were dismissed with prejudice for purposes of preserving plaintiffs' rights on appeal.

¶ 18 On April 10, 2018, the Proviso Board filed a motion to dismiss the remaining *quantum meruit* counts pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2016)). The Proviso Board's motion argued that the *quantum meruit* counts should be dismissed because a school district cannot be liable under *quantum meruit* where the agreements purporting to bind the Proviso Board were never properly approved and void *ab initio*, as the court had already determined.

¶ 19 On June 26, 2018, the court entered an order granting the Proviso Board's section 2-619 motion to dismiss and dismissing all counts of the third amended complaint with prejudice.

¶ 20 Plaintiffs filed their timely notice of appeal on July 24, 2018.

¶ 21 ANALYSIS

¶ 22 On appeal, plaintiffs contend that the circuit court erred in granting the Proviso Board's section 2-619 motion to dismiss because where a school district accepts the benefits of work for which it contracted, but the contract is void for procedural reasons, the Proviso Board is subject to a *quantum meruit* claim for the value of the work performed. Plaintiffs assert that the circuit court's finding that the agreements were void *ab initio* did not preempt a claim based on a contract implied in law for the value of the work performed in reliance on the presumed agreements. We agree and reverse the decision of the court below.

¶ 23 "A motion brought pursuant to section 2-619 admits the sufficiency of the complaint, but asserts an affirmative defense or other matter that avoids or defeats that claim." *Lutkauskas v. Ricker*, 2015 IL 117090, ¶ 29. When ruling on such a motion, the court must accept as true all well-pleaded facts, as well as any reasonable inferences that may arise therefrom, but a court

cannot accept as true mere conclusions that are not supported by facts. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. Our review of a dismissal pursuant to section 2-619 is *de novo*. *Id.*

¶ 24 Plaintiffs argue that in scenarios like the one at bar, *i.e.*, where an actual contract does not exist because the agreements were void *ab initio*, a contract implied in law may be enforceable against a municipality. Plaintiffs specifically contend that it is important to recognize the distinction between contracts implied in law and contracts implied in fact and that the circuit court likely conflated the two concepts, which resulted in its erroneous ruling. The record on appeal does not contain an explanation as to why the circuit court dismissed plaintiffs' *quantum meruit* claims. Rather, the court's June 26, 2018, order merely stated that the Proviso Board's motion was granted, and thus, we do not know the circuit court's reasoning. However, "[i]t is a fundamental principle of appellate law that when an appeal is taken from a judgment of a lower court, [t]he question before [the] reviewing court is the correctness of the result reached by the lower court and not the correctness of the reasoning upon [which it relied]." (Internal quotation marks omitted.) *Slovinski v. Elliot*, 237 Ill. 2d 51, 61 (2010). Therefore, although we find that the circuit court improperly granted dismissal, we make no determinations regarding its reasoning.

¶ 25 Initially, we clarify that although the parties agree that, at some point, they may have believed otherwise, no express contract ever existed in this case. According to the Illinois School Code, "[o]n all questions involving the expenditure of money, the yeas and nays shall be taken and entered on the records of the proceedings of the board." 105 ILCS 5/10-7 (West 2016). Further, when a vote is taken upon any measure before the board when a quorum, *i.e.*, a majority of the full membership of the board, is present, the outcome shall be determined by a majority of the votes of the members voting. 105 ILCS 5/10-12 (West 2016). Each board member takes an oath of office that requires him to recognize that "a board member has no legal authority as an individual and that decisions can be made only by a majority vote at a public board meeting." 105 ILCS 5/10-16.5 (West 2016). For all contracts involving the purchase of supplies or services over $25,000, the board is required to award the contract "to the lowest responsible bidder, considering conformity with specifications, terms of delivery, quality and serviceability, after due advertisement." 105 ILCS 5/10-20.21 (West 2016). Our supreme court recently reiterated that "[w]here a party lacks the legal authority to form a contract, the resulting contract is void *ab initio*," and specifically, "where a municipality exceeds its statutory authority in entering into a contract, the municipality's act is *ultra vires*, and the resulting contract is void *ab initio*." *1550 MP Road LLC v. Teamsters Local Union No. 700*, 2019 IL 123046, ¶ 28.

¶ 26 The two intended contracts at issue here were the agreement signed by superintendent Collins-Hart on May 22, 2014, and the amended agreement signed by Proviso Board president Adams on August 12, 2014. Both of these intended contracts were void *ab initio* because the Proviso Board never took a vote on either intended contract, and neither of the intended contracts were ever subject to the bidding process.

¶ 27 The Proviso Board argues that because purchases by an Illinois school district must be approved by its board of education, it cannot incur contractual liability or debt where the underlying approval was not in conformity with the purchasing process required by law. Conversely, plaintiffs argue that even though the agreements at issue here were void *ab initio*, they may still recover from the Proviso Board in equity, specifically, under the theory of

quantum meruit based on a contract implied in law. The Proviso Board asserts that in addition to not being liable in contract, it also cannot be liable in equity. We disagree with the Proviso Board and find that despite not being able to bring a contract-based claim against the Proviso Board, plaintiffs' *quantum meruit* claims were improperly dismissed.

¶ 28 Although the terms "contract implied in law" and "contract implied in fact" both contain the word "contract," only a contract implied in fact actually involves a claim based on an implied contract. "A contract implied in law, or a quasi contract, is not a contract at all. Rather, it is grounded in an implied promise by the recipient of services or goods to pay for something of value which it has received." *Karen Stavins Enterprises, Inc. v. Community College District No. 508*, 2015 IL App (1st) 150356, ¶ 7. "A quasi-contract, or contract implied in law, is one in which no actual agreement between the parties occurred, but a duty is imposed to prevent injustice." (Internal quotation marks omitted.) *Archon Construction Co. v. U.S. Shelter, L.L.C.*, 2017 IL App (1st) 153409, ¶ 30. "The term *quantum meruit* means literally as much as he deserves and is an expression that describes the extent of liability on a contract implied in law (also called a quasi-contract); it is predicated on the reasonable value of the services performed." (Internal quotation marks omitted.) *Id.*

¶ 29 The Proviso Board contends that it is longstanding jurisprudence in Illinois that a public entity shall not be liable, even in equity, to pay for debts allegedly incurred in violation of law. In support, the Proviso Board cites two supreme court cases from the early 1900s that do not apply here. In *Hope v. City of Alton*, our supreme court held that "[a] municipal corporation is not estopped from denying the validity of a contract when there was no authority for making it." 214 Ill. 102, 106 (1905). Such a holding has no impact here, where a valid contract did not exist and plaintiffs are not seeking recovery based on any such contract. The Proviso Board similarly relies on *Roemheld v. City of Chicago*, wherein our supreme court held "[w]here there is a statute or ordinance prescribing the method by which an officer or agent of a municipal corporation may bind the municipality by contract, that method must be followed, and there can be no implied contract or implied liability of such municipality." 231 Ill. 467, 470-71 (1907). This case differs from *Roemheld* because, here, plaintiffs' claims are brought pursuant to a contract implied in law, and in *Roemheld*, the claims stemmed from work performed in excess of the terms of an express contract, and thus were premised on a contract implied in fact. *Id.* at 470. Thus, the claims at issue were all based in contract, not equity, as they are here.

¶ 30 The Proviso Board also cites *Gregg v. Town of Bourbonnais*, 327 Ill. App. 253 (1945), as support for its contention that *Hope* and *Roemheld* also apply in the *quantum meruit* context. In *Gregg*, the Second District held that the town supervisor did not have the corporate authority to authorize expenditure of town funds for an engineering contract without prior approval of the town electors at a town meeting. *Id.* at 265. We do not find *Gregg* controlling because the holding in *Gregg* was superseded by statute. See *Evers v. Collinsville Township*, 269 Ill. App. 3d 1069, 1073 (1995) (recognizing that in 1973 the legislature effectively overruled *Gregg* by giving a township board of trustees exclusive power over the expenditure of township funds); see also 60 ILCS 5/13-20 (West 1992). Further, even if *Gregg* is still good law, it does not apply here because its holding was limited to situations where a plaintiff was attempting to hold a municipality liable for *quantum meruit* "for services furnished *** on the theory that the services were of some benefit to the needy inhabitants." *Gregg*, 327 Ill. App. at 267. Such is not the case here, and thus, *Gregg* does not apply.

¶ 31 The Proviso Board most heavily relies on *South Suburban Safeway Lines, Inc. v. Regional Transportation Authority*, 166 Ill. App. 3d 361 (1988), to assert that dismissal was proper. Specifically, the Proviso Board cites *South Suburban*'s holding that "no contract or liability may be implied against a municipal corporation where there has been a failure to comply with a statute or ordinance prescribing the method by which an officer or agent can bind such corporation by contract." *Id.* at 366. On first look, this holding appears to prohibit *any* type of implied contract, *i.e.*, implied in law and implied in fact, because the court stated generally that "no contract or liability may be implied" and did not expressly limit its holding to contracts implied in fact. However, a closer review of the analysis in *South Suburban* makes clear that the court's holding only applied to contracts implied in fact, and thus does not apply here.

¶ 32 In *South Suburban*, the trial court entered judgment for the plaintiff and against the defendant transportation authority despite its finding that the agreement sued upon did not provide for the payment of monies to the plaintiffs, and that any recovery " 'must be predicated on a theory of implied contract or estoppel.' " *Id.* at 363. However, on appeal, the court reversed the trial court's decision and entered judgment for the defendant. *Id.* at 368. The appellate court's decision was based on its determination that "a municipal corporation cannot be obligated upon an alleged implied contract which is *ultra vires*, *contrary to statutes or charter provisions*, or contrary to public policy." (Emphasis in original and internal quotation marks omitted.) *Id.* at 366. Although the appellate court used broad language in its holding, when referencing the trial court proceedings, the appellate court stated, "[t]he court [below] examined the rules pertaining to contracts implied in fact and to contracts entered into by municipal corporations." *Id.* at 363. Despite recognizing that the trial court's analysis was limited to contracts implied in fact, the appellate court did not expressly state that its holding was limited to contracts implied in fact—*i.e.*, the only form of liability before the court. Further, the court did not once mention a contract implied in law or quasi-contract. Thus, the holding in *South Suburban* was limited to cases involving contracts implied in fact.

¶ 33 Beyond the underlying facts and analysis in *South Suburban*, further support for our reading of that case is found in *Matthews v. Chicago Transit Authority*, 2016 IL 117638, a recent decision from our supreme court. In *Matthews*, 2016 IL 117638, ¶ 98, our supreme court cited *South Suburban* and recited its holding as follows: "A municipal corporation cannot be held liable under a contract *implied in fact* where there has been a failure to comply with a statute or ordinance prescribing the method by which an officer or agent can bind such corporation by contract." (Emphasis added.) (citing *South Suburban*, 166 Ill. App. 3d at 366). That our supreme court included the words "implied in fact" when citing the holding in *South Suburban* is significant. As previously stated, the court in *South Suburban* did not expressly limit its holding to contracts implied in fact, and instead broadly referenced implied contracts. However, *Matthews* makes clear that the holding of *South Suburban* was actually limited to cases involving contracts implied in fact, not contracts implied in law.

¶ 34 In this case, plaintiffs are not trying to enforce a contract implied in fact against the Proviso Board. Plaintiffs seek to hold the Proviso Board liable in quasi-contract, or a contract implied in law, which is not a contract at all. See *Stavins*, 2015 IL App (1st) 150356, ¶ 7. The issue before us is not whether the Proviso Board can be held liable under a void contract, but whether the principles that preclude the enforcement of a void contract also preclude the application of *quantum meruit*. As such, we do not find *South Suburban* applicable to the facts of this case.

¶ 35 Instead, we find case law cited by plaintiffs guides our decision. In *Woodfield Lanes, Inc. v. Village of Schaumburg*, 168 Ill. App. 3d 763, 765 (1988), the plaintiff sued the defendant village, seeking to recover, *inter alia*, on a contract implied in law. The defendant appealed from the trial court's order granting summary judgment in the plaintiff's favor on that count. *Id.* The case arose after the plaintiff sought to build a bowling alley on its property in Schaumburg and constructed a sewer and water main under Golf Road that connected its property with the defendant's sewer and water lines in a manner that readily allowed connections for four other parcels of property with frontage on that road. *Id.* The plaintiff's claim stemmed from the defendant village's enactment of an ordinance that allowed the plaintiff to recover part of its cost for construction of the sewer and water main. *Id.* Three of the four owners of the other parcels developed their properties and paid the defendant the amounts mandated by the ordinance and the defendant, in turn, paid those amounts to the plaintiff. *Id.* at 766. The owner of the fourth parcel sought to develop his property but preferred to connect his lines to the defendant's lines under another road, not under Golf Road. *Id.* The defendant approved the plans of the owner of the fourth parcel and did not require that owner to pay any part of the plaintiff's costs for sewer construction. *Id.*

¶ 36 On appeal, the defendant argued that the plaintiff had not established grounds for the court to imply a contract at law. *Id.* This court recognized that "[t]he essence of a cause of action for a contract implied in law, or quasi-contract, is the defendant's failure to make equitable payment for a benefit which it voluntarily accepted from the plaintiff" and that such a cause of action "is predicated on the fundamental principle that no one should unjustly enrich himself at another's expense." (Internal quotation marks omitted.) *Id.* The court found that the defendant had accepted the sewer and water main as improvements and assumed ownership of the sewer when it enacted the ordinance. *Id.* The plaintiff's improvements facilitated development of the defendant's property, which increased the defendant's tax base. *Id.* As a result, this court concluded that the defendant received a benefit when the plaintiff constructed the sewer. *Id.* at 766-67. The court rejected the defendant's contention that it could not be liable for accepting the benefit from the plaintiff's improvements pursuant to common law immunity because it did not request the benefit by recognizing that "a party may be liable in quasi-contract even if it did not request the benefit received." *Id.* at 768. The court expressly recognized that "Illinois courts have held municipalities and other governmental units liable on contracts implied in law despite the absence of proper contractual forms." *Id.* at 769.

¶ 37 In this case, the Proviso Board brought its motion to dismiss pursuant to section 2-619 of the Code, arguing that plaintiffs' *quantum meruit* claims were barred due to noncompliance with the requisite procedures necessary to create an enforceable contract. In *Woodfield Lanes*, the defendant similarly asserted it was not liable because "a municipality may not be held liable on an implied contract." *Id.* at 768. The argument from the defendant in that case and the Proviso Board here are nearly identical. Thus, we reject the Proviso Board's argument, as the court in *Woodfield Lanes* did, based on its recognition that Illinois courts have held governmental units, like a school district, liable on contracts implied in law even where proper contractual forms were not followed. *Id.* at 769 (citing *Great Lakes Dredge & Dock Co. v. City of Chicago*, 353 Ill. 614, 627 (1933), *Town of Montebello v. Lehr*, 17 Ill. App. 3d 1017, 1021-22 (1974), and *Welsbach Traffic Signal Co. v. City of Chicago*, 328 Ill. App. 467, 480 (1946)). The court in *Woodfield Lanes* noted that the aforecited cases found actionable contracts implied

in law even though claims based on express contract or contracts implied in fact were not viable. *Id.*

¶ 38 We also find convincing plaintiffs' reliance on *Stavins*, 2015 IL App (1st) 150356, a case that is substantially similar to the one at bar. *Stavins* is also the most recent decision from this court to rely upon *Woodfield Lanes*. In *Stavins*, the plaintiff, a talent agency, sought to recover the value of the services of nine actors who performed in a commercial produced for the defendant, a community college district. *Id.* ¶ 1. According to the plaintiff's complaint, the defendant hired each of the actors, the actors performed their parts, and the commercial was repeatedly broadcast on TV and the Internet. *Id.* ¶ 2. The plaintiff's complaint sought the reasonable value of the services and specifically alleged that the defendant did not have an express contract with the plaintiff but accepted the services without objection. *Id.* The defendant moved to dismiss pursuant to section 2-615 of the Code, asserting that, as a body politic, the defendant was required to comply with policies and procedures governing contracts and purchase orders and that the plaintiff had not alleged that an individual with authority to enter contracts accepted the plaintiff's services. *Id.* ¶ 3. The circuit court granted the motion to dismiss and the plaintiff appealed, arguing that it was not seeking recovery based on either an express contract or a contract implied in fact. *Id.* ¶ 6.

¶ 39 On appeal, this court set forth the law applicable to contracts implied in law as follows:

> "A contract implied in law is one in which no actual agreement exists between the parties, but a duty to pay a reasonable value is imposed upon the recipient of services or goods to prevent an unjust enrichment. [Citation.] The essence of a cause of action based upon a contract implied in law is the defendant's failure to make equitable payment for a benefit that it voluntarily accepted from the plaintiff. [Citation.] No claim of a contract implied in law can be asserted where an express contract or contract implied in fact exists between the parties and concerns the same subject matter. [Citation.] In order to state a claim based upon a contract implied in law, a plaintiff must allege specific facts in support of the conclusion that it conferred a benefit upon the defendant which the defendant has unjustly retained in violation of fundamental principles of equity and good conscience. [Citation.] Stated otherwise, to be entitled to a remedy based on a contract implied in law, a plaintiff must show that it has furnished valuable services or goods which the defendant received under circumstances that would make it unjust to retain without paying a reasonable value therefore. [Citation.]" *Id.* ¶ 7.

¶ 40 The defendant in *Stavins* argued that dismissal was proper because it could not be liable to the plaintiff absent compliance with its policies and that a contract cannot be implied if the prescribed method of executing contracts is not followed. *Id.* ¶ 8. The court rejected the defendant's argument, stating that such an argument "would have merit if the plaintiff were seeking to recover on the theory of an express contract or a contract implied in fact." *Id.* (citing *Woodfield Lanes*, 168 Ill. App. 3d at 768-69). The court further explained, "when as in this case, a plaintiff seeks recovery based upon a contract implied in law, recovery may be had from a governmental unit despite the absence of compliance with its policies and procedures for awarding contracts." *Id.* The court concluded that the plaintiff's complaint stated a cause of action, but expressed no opinion "as to the plaintiff's standing to seek a recovery for the reasonable value of the actors' services or whether there may be factual matters outside of the allegations in the complaint which may defeat the plaintiff's right to recover." *Id.* ¶ 10.

¶ 41 In this case, the Proviso Board argues that *Stavins* is inapplicable because that case dealt with a section 2-615 motion to dismiss and this case involves a section 2-619 motion to dismiss. We reject the Proviso Board's argument. *Stavins* expressly found that the plaintiff's complaint stated a claim based on a contract implied in law against a municipal entity that failed to follow proper procedures for awarding contracts, which mirrors the instant case. Here, the Proviso Board's motion to dismiss was brought pursuant to section 2-619 and made reference to subsection (a)(9) (735 ILCS 5/2-619(a)(9) (West 2016)), which allows dismissal when an affirmative matter bars or defeats the plaintiff's claim. *Smith v. Waukegan Park District*, 231 Ill. 2d 111, 121 (2008). The Proviso Board argued that lack of compliance with contracting policies was the affirmative matter that defeated plaintiffs' claims. However, this contention has no merit because *Stavins* expressly recognized that the plaintiff could state a claim based on a contract implied in law against a municipal entity despite lack of compliance with its policies, which is essentially the affirmative matter that the Proviso Board argues defeats plaintiffs' claims. A section 2-619(a)(9) motion "otherwise admits the legal sufficiency of the plaintiff's cause of action." *Id.* Thus, assuming the legal sufficiency of plaintiffs' allegations and because *Woodfield Lanes* and *Stavins* recognized that recovery may be had against a municipality for a contract implied in law despite failure to abide by its contracting policies, we find that the Proviso Board has not presented any affirmative matter that would defeat plaintiffs' claims.

¶ 42 The parties have not cited, and we have not found, any case that holds that recovery under *quantum meruit* is barred where the intended contract with a municipal unit has been determined to be void *ab initio*. We decline to make such a holding for the first time here. We find that allowing plaintiffs' claims to proceed is consistent with principles of equity and the well-settled reasoning that a contract implied in law "exists independent of any agreement or consent of the parties" and that "no one may unjustly enrich himself at another's expense." *Marque Medicos Farnsworth, LLC v. Liberty Mutual Insurance Co.*, 2018 IL App (1st) 163351, ¶ 16. The Proviso Board suggests that plaintiffs "are seeking the assistance of this [c]ourt to validate and reward them for engaging in conduct which was not permitted as a matter of law and to allow them the opportunity to siphon public funds from the [District] on remand." Such a suggestion is meritless where, as here, plaintiffs and the District believed they were acting pursuant to a valid contract. The Proviso Board does not dispute that it accepted all of plaintiffs' services without objection. Further, plaintiffs are not seeking to recover more than the value of their work, and as they have pointed out, the amount owed is not in dispute. It would be unjust to allow the Proviso Board to retain said services without paying a reasonable value for them. See *Stavins*, 2015 IL App (1st) 150356, ¶ 7.

¶ 43 Here, plaintiffs' claims are based on the theory of *quantum meruit*, which means literally " ' "as much as he deserves" and is an expression that describes the extent of liability on a contract implied in law (also called a "quasi-contract"); it is predicated on the reasonable value of the services performed.' " *Archon*, 2017 IL App (1st) 153409, ¶ 30 (quoting *Barry Mogul & Associates, Inc. v. Terrestris Development Co.*, 267 Ill. App. 3d 742, 749 (1994)). "To recover under a *quantum meruit* theory, a plaintiff must prove that (1) it performed a service to the benefit of the defendant, (2) it did not perform the service gratuitously, (3) defendant accepted the service, and (4) no contract existed to prescribe payment for the service." *Id.* ¶ 31. Plaintiffs' third amended complaint contains factual allegations establishing these four elements, and the Proviso Board has not presented any affirmative matter that defeats these

claims. Plaintiffs provided restoration and construction services to the District for the District's benefit. These services were not to be performed gratuitously, and the District accepted the services. Finally, the parties agree that no contract ever existed because the agreements were void *ab initio*. Because more recent case law than that cited by the Proviso Board establishes that a municipal entity may be sued under the equitable theory of a contract implied in law even when the proper procedures for incurring contractual debt were not followed, and taking as true the well-pled facts from plaintiffs' third amended complaint, we find that the Proviso Board has not presented any affirmative matter that defeats plaintiffs' *quantum meruit* claims. Therefore, we reverse the trial court's decision and remand for further proceedings.

¶ 44 CONCLUSION

¶ 45 Based on the foregoing, we reverse the trial court's order granting the Proviso Board's section 2-619 motion to dismiss as to plaintiffs' *quantum meruit* counts and remand for further proceedings consistent with this opinion.

¶ 46 Reversed and remanded.