Indiana Law Journal

Volume 6 | Issue 2 Article 8

11-1930

Implied-In-Fact Contracts--Recovery of Additional Compensation

IMPLIED-IN-FACT CONTRACTS—RECOVERY OF ADDITIONAL COMPENSATION—Appellant sues to recover on implied contract for services rendered by him in the management of certain trust property of which he had peculiar knowledge. He was paid for a time by appellee trust company (trustee) and for a time by other defendants who were acting as a committee for the protection of bondholders, and then later by both trust company and committee. He now claims he is entitled to further compensation although such claim was not made until several months after the services were furnished, and he accepted compensation without objection, and appellees understood they were paying him in full. *Held.* an implied contract is not unlike an express contract in that it grows out of the intentions of the parties, and there must be a meeting of the minds. Under the facts of the case here, there is created a conclusive presumption that the appellant was fully paid for his services. *Starbuck v. Fletcher Savings and Trust Co.*, Indiana Appellate Court, April 3, 1930, 170 N. E. 863.

Obligations usually termed contracts divide into two categories:

I. Contracts.
   a. Express.
   b. Implied-in-fact (inferred).

II. Quasi-contracts (sometimes called implied-in-law).

The Indiana courts seem to make little distinction between the implied-in-fact contract and the quasi-contract (implied-in-law), speaking of both groups of "implied" contracts. Some writers place the distinction on the assent element, while others take as a distinction the measure of damage. 33 Harv. L. Rev. 376, 19 Yale L. J. 609. A good definition of the implied-in-fact contract may be found in *Addison on Contracts* (11th Ed., 447):

"A contract is said to be inferred where the intention of the parties is not expressed in words, but may be gathered from their acts and surrounding circumstances. In these cases the law enforces what it deems to have been the intention of the parties." Professor Corbin in an excellent article in the *Yale Law Journal* (21-533) defines a quasi-contract as being a "legal obligation not based upon agreement, enforced either specifically or by com-

pelling the obligor to restore the value of that by which he was unjustly enriched." Several recent cases also give good definitions, outlining the distinction. See *First Natl. Bank v. Matlock*, 99 Okla. 150, 226 Pac. 328, 36 A. L. R. 1088; *Caldwell v. Missouri State Life Ins. Co.*, 148 Ark. 474, 230 S. W. 566; *City of N. Y. v. Davis* (CCA, N. Y.), 7 Fed. (2) 566, 573; *Lombard v. Rahilly*, 127 Minn. 449, 149 N. W. 95. It can be readily seen that there should be more of a distinction made by the courts of this state involving these different obligations.

An *inferred* contract is a matter of inference and deduction. *Indianapolis Coal Traction Co. v. Dalton*, 43 Ind. App. 330, 87 N. E. 552. An *inferred* contract is an agreement arrived at from the acts and conduct of parties, viewed in the light of surrounding circumstances and not from words, either oral or written; it differs from an express contract only in the mode of proof. *Western Oil Refining Co. v. Underwood*, 83 Ind. App. 488, 149 N. E. 85. These are cases of the implied-in-fact contracts.

The following cases seem to be in quasi-contract. Where one party to an entire contract has not complied with its terms, but professing to act under it, has delivered something of value to the other party, no action on the contract will lie; but the party who has benefited by the labor and services of the other will be liable in *quasi-contract* arising under the circumstances, to the extent of the value received. *Lomax v. Bailey*, 7 Blackford 599. Numerous Indiana cases are to be found which raise a quasi-contractual obligation where there are such circumstances to imply an obligation to pay for the rendition of the services. *C. C. C. & St. L. R. R. Co. v. Shrum*, 24 Ind. App. 96, 55 N. E. 515. Where one is employed in the services of another, the law imposes the duty to pay, and where one accepts and retains the beneficial results of another's services, the judges say that a previous request is implied for the services and a promise implied to pay for them. (This previous request, of course is a pure fiction.) *Chamness v. Cox*, 2 Ind. App. 485, 28 N. E. 777. However, recovery cannot be had for services voluntarily rendered where there is no expectation of compensation at the time the services were rendered. *McClure v. Lenz*, 40 Ind. App. 56. Nevertheless, if special circumstances appear, there can be a recovery. *Waechter v. Walters*, 41 Ind. App. 408, 84 N. E. 22. When there is a family relation existing between the parties no promises will be raised on the ground that the services were presumed to be gratuitous. *Kings' Admr. v. Kelly*, 28 Ind. 89; *Daubenspeck v. Powers*, 32 Ind. 42; but if such services were rendered with the hope of compensation on the one hand and the expectation of awarding it on the other, there will be an implication that an agreement to pay has arisen. *Huffman v. Wyrick*, 5 Ind. App. 183, 31 N. E. 823. This case may be considered as a borderline case.

As to the rendition of additional services, the character of the work requested and the circumstances attending the request and performance must be shown to be of such a nature as to justify the inference that extra compensation was intended by employer and employee. *Middlebrook v. Slocum*, 152 Mich. 286, 116 N. W. 422; *Carrere v. Dun*, 18 Misc. 18, 41 N. Y. S. 34. Where services have been performed and the party has accepted compensation therefor without objection on his part and thereafter claims for additional compensation, he will not be allowed recovery on the grounds that such services have been compensated for. *Grissell v. Noel Bros. Flour &*

Feed Co., 9 Ind. App. 251, 36 N. E. 352; *Pittsburgh Etc. Co. v. Marable*, 81 Ind. App. 46, 140 N. E. 443 (also 189 Ind. 278). The right of an employee to recover additional compensation for service rendered at the request of his employers depends on the existence of a contract to that effect, either express or implied. *Pittsburgh Etc. Co. v. Marable, supra; Pittsburgh Etc. Co. v. Baker*, 73 Ind. App. 332, 125 N. E. 233. Somewhat different from this case is that of *Pittsburgh Etc. Co. v. Henderson*, 9 Ind. App. 480, 36 N. E. 376, where recovery was allowed in the absence of express contract where such services were not in line of the regular duty of the employee.

It would seem that the obligation to pay for the services had been completely discharged by the payment of the amount to the employee and there is an accord and satisfaction of the debt, and there is nothing upon which to base an implied-in-fact contract. From the facts of the instant case, it would seem that it is wholly in accord with previous Indiana decisions.

A. W. E.