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found, on appeal, that the attachment was validly dissolved. On the other hand, if he chooses not to appeal suspensively, jurisdiction over the action is lost and the creditor's suit terminated.

Joseph W. Milner

QUASI CONTRACTS —THE FUND DOCTRINE

Plaintiffs in the instant proceeding were attorneys who, in a prior suit, had been employed to represent a relatively small group of depositors opposing a tableaux for distribution of funds held by a bank in liquidation. The basis of the depositors' opposition was that interest from the date of liquidation had not been included in the proposed distribution. The trial court had awarded interest not only to the claiming depositors represented by plaintiffs but also to *all* depositors. On appeal of the depositors' case, the appellant, the banking commissioner, contended that the lower court had erred in awarding interest to the depositors from the inception of the liquidation. He also contended that the lower court had erred in awarding interest to depositors who failed to oppose the distribution. During that appeal, the attorneys had sought affirmance of the judgment of the lower court which had allowed interest from the inception of the liquidation; they *also* had sought to have the judgment affirmed with respect to the unrepresented depositors. The Supreme Court had affirmed the lower court in allowing interest to all depositors from the inception of the liquidation.¹ The attorneys then sought compensation for professional services rendered to all depositors. The bases of their claim are: first, in answering the appeal of the depositors' case, they had sought affirmance of the judgment allowing interest from the inception of the liquidation for their clients, and also had sought affirmance of the judgment allowing interest to the unrepresented depositors; and second, if the proposed distribution had not been opposed, the depositors as a class would have received no interest. The lower court rejected this claim; the Supreme Court, on rehearing, *held*, reversed. These attorneys have brought themselves within the "fund doctrine," and they should recover attorneys' fees, on a quantum meruit, out of the funds so created. *In re Interstate Trust and Banking Company*, 235 La. 825, 106 So.2d 276 (1958).

1. *In re Interstate Trust and Banking Co.*, 222 La. 979, 64 So.2d 240 (1953).

As a general rule, the right to remuneration for services rendered depends upon an express contract.² However, both common law and civil law jurisdictions have exceptions to this general rule. In common law jurisdictions a contract for services rendered may be express, implied in fact, or implied in law. The distinction between express contracts and contracts that are implied in fact is merely that in the former the will and intention of the parties are expressed in words, while in the latter the mutual intent of the parties is manifested by particular acts and circumstances.³ Under a contract implied in fact the party rendering the services may recover from the other the value thereof; this valuation is determined on a quantum meruit.⁴ The law implies an agreement to pay the reasonable value of services performed which may include a claim for reasonable profits.⁵ Contracts which are implied in law must not be confused with express contracts or contracts implied in fact. Contracts implied in law, more properly called quasi contracts, are obligations imposed by law on grounds of justice and equity to prevent unjust enrichment.⁶ Here recovery is based on the benefit received by the defendant and not on the reasonable market value of the services.⁷

The "fund doctrine" is a theory by which a court exercising equitable jurisdiction may allow an attorney a reasonable fee out of a fund created or preserved, when the party the attorney rep-

2. 1 CORBIN, CONTRACTS § 18 (1950); 2 BLACKSTONE, COMMENTARIES * 443; 1 WILLISTON, CONTRACTS § 3 (2d ed. 1936).

3. Woods v. Ayres, 39 Mich. 345, 33 Am. Rep. 396 (1878); McCormick v. City of Niles, 81 Ohio St. 246, 90 N.E. 803 (1909); RESTATEMENT, CONTRACTS § 5 (1932); 1 CORBIN, CONTRACTS § 19 (1950); 1 WILLISTON, CONTRACTS § 3 (2d ed. 1936).

4. Goddard v. Foster, 84 U.S. (17 Wall.) 123 (1873); McGuire v. Hughes, 207 N.Y. 516, 101 N.E. 860 (1913); Johnson County Sav. Bank v. City of Creston, 212 Iowa 929, 231 N.W. 705, 84 A.L.R. 926 (1930); RESTATEMENT, CONTRACTS § 107 (1932); Note, 18 LOUISIANA LAW REVIEW 209 (1957); BLACK, LAW DICTIONARY (4th ed. 1951): "Quantum meruit: Founded on an implied assumpsit or promise on the part of the defendant to pay the plaintiff as much as he reasonably deserves to have for his labor."

5. Johnson County Sav. Bank v. City of Creston, 212 Iowa 929, 231 N.W. 705, 84 A.L.R. 926 (1930); 1 CORBIN, CONTRACTS §§ 19-20 (1950); 1 WILLISTON, CONTRACTS § 3 (2d ed. 1936).

6. Rotea v. Izuel, 14 Cal.2d 605, 95 P.2d 927, 125 A.L.R. 1424 (1939); Taulbee v. McCarty, 114 Ky. 199, 137 S.W. 1045 (1911); Minneapolis, St. P. & S.S.M. Ry. v. Washburn Lignite Coal Co., 40 N.D. 69, 168 N.W. 684, 12 A.L.R. 744 (1918); 3 BLACKSTONE, COMMENTARIES * 161; 1 CORBIN, CONTRACTS § 20 (1950); SHIPMAN, COMMON LAW PLEADING 220-23 (2d ed. 1895); WOODWARD, QUASI CONTRACTS §§ 2-4 (1913). BLACK, LAW DICTIONARY (4th ed. 1951): "Unjust enrichment: Doctrine permits recovery in certain instances where a person has received from another a benefit retention of which would be unjust. Doctrine is not contractual but equitable in nature."

7. See note 6 *supra*.

resented has maintained at his own expense a suit for the preservation or creation of a common fund in which others are entitled to share.⁸ The attorney must have been employed by his client either to represent the particular client's interest or to represent the class.⁹ If the employment is solely to represent a particular client, and a fund is created or preserved for a class, the attorney is allowed to recover not only upon the express contract with his client, but also a reasonable compensation for his services from the fund in which the class is entitled to share. In such cases the court implies a contract between the class and the attorney and allows recovery of a reasonable compensation for services performed.¹⁰

Civil law jurisdictions also provide for quasi contracts.¹¹ The French Civil Code provides that a quasi contract is that lawful and voluntary act of man from which an obligation of restitution arises.¹² The French Code categorizes implied contracts as: (1) those arising from the payment of a thing not due,¹³ and (2) those arising from the management of another's affairs, or *negotiorum gestio*.¹⁴ The only limitations on *negotiorum gestio* under the French Code are:¹⁵

- (1) At the time of the undertaking it was to the owner's advantage;
- (2) The *negotiorum gestor* must undertake the affairs voluntarily;
- (3) The *negotiorum gestor* must not act purely for his own interest;
- (4) The owner must not have prohibited the management.

As the French Code specifically states, the management may be done with or without the owner's knowledge,¹⁶ and the *negotiorum gestor* is entitled to be reimbursed.¹⁷ Under a literal inter-

8. *Sprague v. Ticonic National Bank*, 307 U.S. 161 (1939); *Central Railroad & Banking Co. v. Peltus*, 113 U.S. 116 (1885); *Trustees v. Greenough*, 105 U.S. 527 (1881); *Bishop and Collin v. Macon Lumber Co.*, 149 F. Supp. 46 (W.D. Ky. 1957); Annots., 49 A.L.R. 1149 (1927), 107 A.L.R. 727 (1937).

9. 107 A.L.R. 749 (1937).

10. Annot., 49 A.L.R. 1149 (1927), 107 A.L.R. 727 (1937).

11. LA. CIVIL CODE arts. 2292-2314 (1870); FRENCH CIVIL CODE arts. 1370-1381; CHALLIES, UNJUSTIFIED ENRICHMENT IN QUEBEC 104 (1940).

12. FRENCH CIVIL CODE art. 1370.

13. *Id.* arts. 1376-1381.

14. *Id.* arts. 1371-1375.

15. *Ibid.*; AMOS & WALTON, INTRODUCTION TO FRENCH LAW 203 (1935).

16. FRENCH CIVIL CODE art. 1372.

17. *Id.* art. 1375.

pretation of the French Code the *negotiorum gestor* may recover only useful and necessary expenses, and he is not entitled to remuneration for services.¹⁸ However, the French courts have granted remuneration for the reasonable value of services where the *negotiorum gestor* renders professional or technical services in the ordinary line of his profession or trade, holding that they may be reasonably regarded as an expense to the gestor.¹⁹ In addition to applying the code provisions on implied contracts, the French courts have developed the doctrine of *enrichissement sans cause*.²⁰ This doctrine is based on the equitable theory that no person should benefit at the expense of another. According to this doctrine, recovery is not based upon the expenses involved but rather upon the benefit received by the owner.²¹

With few exceptions, the Louisiana courts have placed the same limitations on *negotiorum gestio* as have the French courts.²² The requirement that the gestor undertake the affairs voluntarily gave the court some trouble in the case of *Weber v. Granguard*²³ because the gestor had managed the affairs at the request of a third party who in fact had no authority. In this case the court held the request was of no moment, and said that the management was nonetheless within the provisions of the Code.

A search of the Louisiana cases has revealed no case in which recovery was allowed for services rendered under the theory of *negotiorum gestio*, and, in fact, the articles of the Code on *negotiorum gestio* have been seldom used in deciding cases.²⁴ A num-

18. *Ibid.*

19. AMOS & WALTON, INTRODUCTION TO FRENCH LAW 204 (1935); BAUDRY-LACANTINERIE ET BARDE, TRAITÉ DES OBLIGATIONS § 2821 (1905); Lorenzen, *Negotiorum Gestio in the Civil Law*, 13 CORN. L.Q. 204 (1928).

20. CHALLIES, UNJUSTIFIED ENRICHMENT IN QUEBEC 20 (1940).

21. See note 20 *supra*. The amount of recovery would be different if *negotiorum gestio* were applied. See page 902 *supra*.

22. See page 904 *infra*; LA. CIVIL CODE arts. 2295-2299 (1870); Comment, 7 TUL. L. REV. 257 (1932); Lorenzen, *Negotiorum Gestio in the Civil Law*, 13 CORN. L.Q. 190 (1928).

As to the gestor acting in his own interest, see *DeBlanc v. Texas Co.*, 121 F.2d 774 (5th Cir. 1941); *Tate v. Dupuis*, 195 So. 810 (La. App. 1940); *Toler v. Bunch*, 34 La. Ann. 997 (1882); *Becnel v. Becnel*, 23 La. Ann. 150 (1871).

As to gestor acting against the owner's wishes, see *Succession of Kernan*, 105 La. 592, 30 So. 239 (1901); *Mulligan v. Kenny*, 34 La. Ann. 50 (1882); *O'Hara v. Krentz*, 26 La. Ann. 504 (1874).

He may act even though the owner has no knowledge of the facts. LA. CIVIL CODE art. 2295 (1870). He is entitled to be reimbursed for all useful and necessary expenses. *Id.* art. 2299; *Eyless v. Roly Motor Co.*, 11 La. App. 442, 123 So. 477 (1929).

23. 173 La. 653, 138 So. 433 (1931); Comment, 7 TUL. L. REV. 254 (1937).

24. Comment, 7 TUL. L. REV. 256, 257 (1932); Note, 24 TUL. L. REV. 141 (1950).

ber of Louisiana cases have held a defendant liable under the common law theory of quasi contract where he had received beneficial services for which it is customary to compensate the person performing the work.²⁵ In Louisiana, as in common law, recovery is based on the benefit conferred upon the defendant, or unjust enrichment. As early as 1842 the Louisiana courts also applied the doctrine of implied in fact contracts and allowed recovery on a quantum meruit based on the reasonable value of services rendered.²⁶ Even though the courts have allowed recovery for services rendered under the theories of unjust enrichment and quantum meruit, they have in the past, with the exception of one relatively old case,²⁷ refused to extend any of these concepts to an attorney whose services have benefited others besides his particular clients.²⁸ In a recent case on this subject the Supreme Court held that under the jurisprudence of this state it is well settled that attorneys representing particular claimants in a suit may only look to their clients for compensation no matter how valuable the services were to other parties.²⁹

In the instant case the court reviewed the jurisprudence and found that only one earlier case had allowed attorneys to recover under similar circumstances,³⁰ but this had not been followed.

25. Doll v. Albert Weiblen Marble & Granite Co., 207 La. 767, 22 So.2d 59 (1945); Beall v. Van Bibber, 19 La. Ann. 434 (1867); Camfrancq v. Pilie, 1 La. Ann. 197 (1846).

26. Sugar Field Oil Co. v. Carter, 214 La. 586, 38 So.2d 249 (1948); Kernaghan and Cordill v. Uthoff, 180 La. 791, 157 So. 595 (1934); Dunbar v. Butler, 2 Rob. 32 (La. 1842); Succession of Berthelot, 24 So.2d 185 (La. App. 1945); Succession of Peres, 174 So. 130 (La. App. 1937).

According to Louisiana and common law jurisprudence recovery can be had under the theories of unjust enrichment or quantum meruit depending on the circumstances. Recovery under unjust enrichment is determined by the benefit to the defendant; under quantum meruit it is determined by the reasonable value of the plaintiff's services. In addition to these theories the Louisiana Civil Code provides for the recovery of useful and necessary expenses when one manages the affairs of another. Here recovery is based on depletion of patrimony. The French courts achieve the same results through the code articles on the management of another's affairs and the theory of *enrichissement sans cause*. Under the French Code a gestor may recover useful and necessary expenses based on depletion of patrimony, and if he renders services in the line of his profession the courts have allowed recovery for the reasonable value thereof. Under the theory of *enrichissement sans cause* he may recover that by which the defendant is benefited.

27. McGraw v. Andrus, 45 La. Ann. 1073, 13 So. 630 (1893).

28. Succession of Russell, 208 La. 213, 23 So.2d 50 (1945); Price v. Foster, 182 La. 79, 161 So. 161 (1935); Dreifus v. Colonial Bank and Trust Co., 127 La. 1086, 54 So. 358 (1911); Forman v. Sewerage and Water Board of New Orleans, 119 La. 491, 43 So. 908 (1907); Succession of Kernan, 105 La. 592, 30 So. 239 (1901); Wailes v. Succession of Brown, 27 La. Ann. 411 (1875); Michon v. Gravier, 11 La. Ann. 596 (1856); Cooley v. Cecile, 8 La. Ann. 51 (1853); Roselion v. Delachaise, 5 La. Ann. 481 (1850).

29. Succession of Guichard, 225 La. 315, 77 So.2d 744 (1954).

30. See note 27 *supra*.

After discussing the application of the fund doctrine in other states and noting that the appeal in the instant case was on behalf of the unrepresented depositors as well as the attorneys' original clients, the court applied the fund doctrine basing recovery on a quantum meruit. In determining the amount to be awarded as reasonable attorneys' fees the court held that the following factors should be considered: "the extent and nature of services rendered; the labor, time and trouble involved; the result achieved; the character and importance of the matter; the amount of money involved; the learning, skill and experience exercised; and the difficulty of the legal problem involved."³¹ Justice McCaleb, in a concurring opinion, stated that the case should be decided under the Civil Code articles applying to the management of another's affairs.

In the light of common law jurisprudential development, the fund doctrine seems nothing more than applying the theory of quasi contracts to the services of an attorney which have created or preserved a fund benefiting others. Courts applying this fund doctrine simply hold that when a party has benefited from an attorney's services a quasi contract comes into existence. The contract between the attorney and the group is quasi contractual in nature as there is no intention on the part of the group to contract with the attorney. This being the case, it is submitted that if recovery is allowed on this theory it should not be based on the reasonable value of the services to the person rendering the services,³² but rather on unjust enrichment.³³ That is, the services should be valued in the light of the benefit received from the services.

Under Article 21³⁴ a court should proceed in equity only when the law is not expressed as to that point. In Justice McCaleb's concurring opinion he states that when an attorney has performed valuable services for another without expressed or implied authority he should recover pursuant to the articles on the management of another's affairs.³⁵ In order to apply these articles the following questions would have to be answered in the affirmative. First, should useful and necessary expenses be con-

31. In a note the court added that attorneys could not recover from the original clients on a quantum meruit as the express contract between the parties determined their legal relationship. *In re Interstate Trust and Banking Co.*, 235 La. 825, 843, 106 So.2d 276, 292 (1958).

32. See page 904 *supra*; note 26 *supra*.

33. See page 904 *supra*; note 25 *supra*.

34. LA. CIVIL CODE (1870).

35. *Id.* arts. 2295-2299.

strued to include the gestor's services? Apparently the court could justify an affirmative answer by looking to the French jurisprudence and holding that where the gestor renders professional or technical services in the ordinary lines of his profession or trade these services may be regarded as a reasonable and necessary expense.³⁶ Second, should his services be regarded as voluntary? Apparently so, under the holding of *Weber v. Granguard*. The fact that the gestor acted at the request of one who in fact had no authority should make no difference. The third question and undoubtedly the most difficult is: should an attorney be allowed to undertake, of his own accord, the management of another's affairs. The Civil Code makes no distinction between an attorney and any other gestor; however, the Canons of Professional Ethics provide that an attorney should not voluntarily impose his service upon another. Under the fund doctrine an attorney must have been employed by at least one interested party,³⁷ but the articles on *negotiorum gestio* have no such limitation. It is submitted that since the law is adequately expressed as to this point the court might decide the case within the bounds of the code articles on the management of another's affairs.³⁸ However, since the legal profession has chosen to limit the capacity of its members to act as gestors, the court should consider this and apply the articles only when the attorney has acted at the request of a third party, as in the *Weber* case; or when the circumstances are such, as in the instant case, that if no action is taken the group would stand to lose the entire fund.

Gordon A. Pugh

TORTS — DUTY OF OCCUPIER TO SOCIAL GUESTS

Plaintiff brought an action to recover damages sustained when she slipped on a rug in the home of her son-in-law. The plaintiff was a guest in the home and she brought this action against the son-in-law's insurer. The rug sometimes stretched, thereby causing it to slip or wrinkle. The plaintiff maintained that the host negligently maintained premises unsafe for his

36. Under the French holdings on *negotiorum gestio* and the French doctrine as applied at common law, recovery would be the same as the reasonable value of the attorney's services. See note 19 *supra* and page 903 *supra*.

37. See page 901 *supra*.

38. See note 35 *supra*.