



## [Reminder: Quantum Meruit and Breach of Construction Contract Don't Mix](#)



Construction contracts ([preferably written ones](#)) are near and dear to my heart here at Construction Law Musings. In a world where [the contract is king](#), having a written construction agreement is a key component of any properly run construction project. However, even with the best construction contract there are claims ([Murphy was an optimist](#) after all).

When making these claims, we [construction lawyers](#) tend to plead both the breach of contract and *quantum meruit* (or in non lawyer speak- unjust enrichment) when drafting a complaint in a construction dispute. A recent case out of the [Western District of Virginia](#) federal district court reminds us all that these two counts *must* be plead alternatively because they simply cannot exist in a lawsuit from beginning to end.

In [Suleyman Ciliv v. UXB Int'l Inc.](#), the Virginia Court considered a motion to dismiss certain counts of a complaint by a subcontractor based upon breach of the written contract, unjust enrichment in the amount alleged to be owed to the subcontractor, and an alleged implied right of action due to the general contractor's alleged violation of the [Federal Acquisition Regulations](#) (FAR). After determining that the subcontractor stated a cause of action for breach of contract and with a determination that there is no implied private right of action under the FAR, the Court stated:

The rule in Virginia is settled: One cannot obtain quantum meruit relief from another if he has expressly delineated the contractual obligations the two will have on the subject in question. However, it is only after a valid and binding express contract is acknowledged by the parties or the court that this rule attaches.

The Court further reasoned that the only reason for pleading the quantum meruit claim was to have a backstop in the unlikely instance that a Virginia court would find the written contract void or somehow invalid. Based upon this reasoning the unjust enrichment count was dismissed.

In short, don't rely on unjust enrichment as anything aside from just such a backstop to what I hope is a solidly drafted written construction contract.

I would love to hear your thoughts on this or any other Musings so please comment below.

Image via [Wikipedia](#).

*Please check out my [Construction Law Musings Blog](#) for more on Virginia construction law and other topics.*