SUPREME COURT OF QUEENSLAND

CITATION:	*Len Lichtnauer Developments P/L v James Trowse Constructions P/L* [2005] QCA 214
PARTIES:	**LEN LICHTNAUER DEVELOPMENTS PTY LTD** ACN 010 610 330 (plaintiff/respondent/respondent) **v** **JAMES TROWSE CONSTRUCTIONS PTY LTD** ACN 060 390 347 (defendant/applicant/appellant)
FILE NO/S:	Appeal No 442 of 2005 DC No 4354 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	Application for leave s 118 DCA (Civil)
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	17 June 2005
DELIVERED AT:	Brisbane
HEARING DATE:	10 June 2005
JUDGES:	McPherson and Keane JJA and McMurdo J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Time is extended for making the application for leave to appeal, and the application and leave are allowed;** **2. The order of the District Court in no 4354 of 2003 dismissing the appeal from the judgment of the Magistrates Court in no 14516 of 2000 is set aside, and the appeal is allowed to the extent only of reducing the amount for which judgment was given in that Court for the plaintiff against the defendant from $14,345 to $9,119.69.**
CATCHWORDS:	CONTRACTS – CONTRACT IMPLIED FROM CONDUCT OF PARTIES – whether liquidated damages term was part of contract CONTRACTS – DISCHARGE, BREACH AND DEFENCES TO ACTION FOR BREACH – REPUDIATION AND NON-PERFORMANCE – REPUDIATION – whether contract wrongly repudiated – whether *quantum meruit* claim could be made for work carried out by another

CONTRACTS – EXECUTED CONTRACTS AND ACTIONS FOR QUANTUM MERUIT – magistrate assessed award on percentage basis that 5½ days out of eight days of work completed – payment partly in kind in form of materials removed from site – whether payment in kind should also have been calculated as a percentage

District Court Act 1967 (Qld), s 118(3)

Balfour Beatty Power Construction Australia Pty Ltd v Kidston Goldmines Ltd [1989] 2 Qd R 105, considered
Brenner v First Artists' Management Pty Ltd [1993] 2 VR 221, considered
GEC Marconi Systems Pty Ltd v BHP Information Technology Pty Ltd (2003) 128 FCR 1, cited
Planché v Colburn (1831) 8 Bing 14; 131 ER 305, cited
Summers v Commonwealth (1918) 25 CLR 144, 152; affirmed (1919) 26 CLR 180, applied

COUNSEL: J P Murphy for the applicant/appellant
W J Tolton for the respondent

SOLICITORS: Porter Davies for the applicant/appellant
Burchill & Horsey Lawyers for the respondent

[1] **McPHERSON JA:** This is an application under s 118(3) of the *District Court Act 1967* for leave to appeal against a decision of the District Court dismissing an appeal from the Magistrates Court. The appeal was brought against a judgment for $14,345 given in favour of the plaintiff Len Lichtnauer Developments Pty Ltd (trading as All Demolitions) against the defendant James Trowse Constructions Pty Ltd, which is the applicant for leave to appeal. The proceedings arose out of an agreement between those two companies for the plaintiff to carry out certain demolition work involving removal of buildings and site clearance of land in Sylvan Road, Toowong, in preparation for the erection of a new office building. The work was begun on 6 April 2000, and was about two-thirds finished, when on the morning of Thursday 13 April the defendant in writing ordered the plaintiff off the site and engaged instead another contractor to complete the work for some $13,000.

[2] The judgment sum of $14,345 was the magistrate's assessment of the value of the work done (*quantum meruit*) at the date when the plaintiff was ordered off the site. It was based in part upon the amount of the plaintiff's original quotation of $13,265 on which the parties had agreed. That was a good deal less than others had quoted or tendered; but Mr Lichtnauer explained in evidence that the plaintiff's method of estimating for a job was to cover its costs and outlays (labour, hire of equipment, trucks, etc) in the tender figure, and secure its profit out of the demolition materials, which the plaintiff removed, stored on a 14 acre site which it owned, and then recycled and resold.

[3] In this instance, there was evidence that about $10,000 worth of materials had been removed by the plaintiff before the agreement was terminated; and that the materials that remained on site were worth about $3,634. From this the magistrate inferred that the whole of the work was worth $26,899, consisting of materials at $13,634 plus the value of the work quoted to be done at $13,265. Her worship

calculated that 68.75% of the work had been carried out by the plaintiff at the time when the job was brought to an end. She arrived at this percentage on the basis that 5½ days of work had been completed out of an estimated total of 8 days for the job. There was evidence in the cross-examination of the defendant's director Mr James that the entries of hours worked in the defendant's own site diary tallied approximately with those recorded and claimed by the plaintiff. Mr James's own assessment was that 60% to 65% of the work had been completed by the plaintiff. Allowing some downward adjustments in the hours for supervision claimed by Mr Lichtnauer and other matters in ex 16, the magistrate arrived at the figure of $14,345 for which she gave judgment, which she found to be a reasonable sum for the work done by the plaintiff.

[4] Mr Murphy of counsel for the appellant submitted that there were several things wrong with the assessment. In particular, the plaintiff had failed properly to prove the items claimed in ex 16 and in some instances had "double charged" the defendant. This, however, is immaterial if one adopts her worship's approach of valuing as she did the whole contract using 68.75% of it based on the time worked. This would have produced a total of $18,493.07 (68.75% of value of materials = $9,373.38 plus 68.75% of work done = $9,119.69), which is in fact larger than the amount of $14,345 for which judgment was given against the defendant. No doubt that is because of the adjustment or deductions which the magistrate made from that total because of the plaintiff's "double charging", etc. Mr Murphy also complains that no allowance was made for the value of the material already removed by the plaintiff when the work stopped on 12 April.

[5] In my opinion the basic "percentage" approach adopted by the magistrate in valuing the plaintiff's claim for work done was appropriate in principle. In a claim of the nature and amount involved in these proceedings, there is, on an application for leave to appeal such as this, no justification for examining the assessment of quantum in minute fashion. In my view the magistrate's approach was a valid method in this instance of arriving at an assessment of the plaintiff's claim. Once adopted, however, this method had to be applied consistently. There was no basis for resorting to deductions or allowances attributable to overclaiming for work done or not done. If the percentage basis of assessing work done had been applied to the total contract value of $26,899 it would have produced the figure of $18,493.07 instead of $14,345 for which judgment was given.

[6] Mr Murphy is, however, on stronger ground in urging that the plaintiff had already received some $10,000 in the form of assets removed from the site, and that the magistrate failed to take account of this in arriving at her assessment. In principle, this appears to be correct. Viewing the contract as one for payment partly in cash and partly in kind, the plaintiff when work stopped had received nothing in cash but a considerable amount in kind for materials taken from the site. Mr Lichtnauer is proved at one stage to have conceded that materials worth about $10,000 had been removed before work stopped. This figure was, however, only an offhand estimate of the value of materials removed and the plaintiff should not be held to it with great strictness. Consistently with the percentage method of assessment adopted below the value of materials removed was 68.75% of the total "materials" content of the contract which produces a figure of $9,373.38 (68.75% of $13,634). It is this, rather than the sum of $10,000 that should be allowed for in the amount awarded. When subtracted from the sum of $18,493.07 referred to earlier, the plaintiff's claim should have been allowed at a total of $9,119.69, which is in

fact the assessed value of the work done by it, treating the plaintiff as already having been paid "in kind" in the form of materials removed from the site by 12 April. If in fact this means that the plaintiff has the benefit of having removed and so received the value of something more in materials than 68.75%, it remains a reasonable method of arriving at the value of its claim for damages or a quantum meruit having regard to the plaintiff's unusual method of tendering for the job and conducting its business. A sum of $9,119.69 is therefore the amount, if any, that it is entitled to recover in these proceedings.

[7] In the proceedings there was a claim by the plaintiff and a counterclaim by the defendant for damages for breach of contract. However, the magistrate decided that, although a price of $13,265 and other elements had been agreed by the parties, there was never a concluded contract between the parties. She came to this conclusion because of a dispute between them about whether a term providing for liquidated damages at the rate of $5000 per week was part of the contract. The plaintiff said it was not, while the defendant has said it was.

[8] At most times the parties communicated with each other by facsimile. The negotiations leading to the agreement began with a written quotation dated 29 February 2000 (ex 1, which perhaps meant to refer to March) from the plaintiff to do certain specified work on the site for $13,265.00. It contained no reference to liquidated damages. It was followed up by a one-page printed document (ex 2, at A194) headed "Sub Contract Agreement" coming from the defendant. About three-quarters of the way down the face of this single page the printed words "Liquidated damages … per week" appear. When the plaintiff received it from the defendant, the space represented here by the row of dots had now been filled in with a figure of $5000 inserted in handwriting. On receipt of the document by Mrs Lichtnauer, who looked after the administration of the plaintiff's affairs, she crossed out $5000 and wrote "nil". She added her initials to a number of alterations on the document, which was dated 29/3/00, and signed it before sending it back. On the original version of ex 2, the word "nil" written in by Mrs Lichtnauer has since been crossed out and "$5000" has been inserted after it. This was done by the defendant; but the document as altered was not returned to the plaintiff before the demolition work started on 6 April 2000. The plaintiff was simply told then that the job was "ready to go". It took possession of the site with the consent of the defendant and began the work, which continued until midday on Wednesday 12 April.

[9] It is submitted by Mr Murphy for the defendant, and in my opinion it is evident, that a contract came into existence between the parties. It was a contract on the terms of ex 2 as submitted by the plaintiff, which was a counter-offer by it of the defendant's combined printed and written offer, but with the provision for liquidated damages at $5000 per week struck out of it. That contract came into existence when the plaintiff's counter-offer sent in those terms by Mrs Lichtnauer was accepted by the act of the defendant in directing the plaintiff on to the site saying that the job was ready to start, and by letting the plaintiff proceed with the work until midday 12 April. See *Brogden v Metropolitan Ry Co* (1877) 2 App Cas 666; applied in *Empirnall Holdings Pty Ltd v Machon Paull Partners Pty Ltd* (1988) 14 NSWLR 523. The compelling inference from the conduct of the parties is that there was a contract between them which did not provide for payment of the amount of $5000 weekly or any other sum as liquidated damages.

[10] To this extent Mr Murphy's submissions should be and are accepted in this Court. It is the legal analysis of what happened next that is more controversial. A dispute broke out between the parties which was in part about an extension of time for carrying out the contract work. The work was, as ex 2 shows, to have been completed by Friday 14 April 2000. When the dispute occurred, Mrs Lichtnauer asked the defendant for a copy of ex 2 which she had returned to the defendant after making the alteration and signing the document. At that time some strong words passed between them. A copy was not at first provided, so on Wednesday 12 April Mrs Lichtnauer wrote (ex 8) saying that work would be discontinued until the copy of the Sub-Contractor's Agreement (ex 2) was provided. Some time later on Wednesday 12 April a copy of ex 2 was provided to her. It was accompanied by a faxed handwritten memorandum (ex 9) from the defendant saying:

> "1. Contracts have been posted for re-signature and witnessing
> …
> 2. Liquidated damages was not deleted or agreed to be deleted
> …
> 3. We have recovered a copy of the contract faxed by yourself, copy of which is attached …
>
> 5. Should works not proceed at an acceptable rate to ensure completion by Saturday [15 April] latest, we will engage others to take over all or part of your contracted works and the costs of same will be deducted from your account balance …".

The copy contract document (ex 2) forwarded on this occasion had the reference to $5000 liquidated damages per week (which Mrs Lichtnauer had crossed out) reinserted in it.

[11] Late on the same day 12 April another faxed memorandum (ex 10) was received by the plaintiff. It came from the defendant and said:

> "Again we confirm the contracts have been returned for completion.
>
> … I consider there is ample evidence of the contract, scope of work and price.
>
> As stated previously if works do not proceed diligently, we will have others complete the works at your cost."

The reference to proceeding diligently with the work is to the fact that the plaintiff had, as it had proposed in ex 8, stopped work at midday on Wednesday 12 April pending receipt of a copy of the Sub-Contract Agreement. Now the plaintiff had a copy of it, but it was one that purported to show the provision for liquidated damages as being reinstated.

[12] On Thursday 13 April the plaintiff responded to the defendant by letter of that date (ex 5) which, after dealing with various matters which "have hampered progress" of the works, went on:

> "With regards to the deletion of the Liquidated Damages, we point out that discussions were held on about 29 March, 2000 and it was agreed to delete this, as confirmed in our letter of 29.3.00 [ex 1] in our fax and posted with the original copies of the Sub-Contract

> Agreements. However on 12.4.00, some 14 days later, you supplied a "faxed copy" of the Sub-Contract Agreement with the Liquidated Damages re-included. We do not accept this change."

Later on the same day, Thursday 13 April 2000, the defendant sent and the plaintiff received a letter (ex 12) in which it was said: 1. that the plaintiff's application for an extension of time had "no contractual standing and is considered vexatious" and was "therefore rejected"; and 2. "We reiterate there was no agreement to delete liquidated damages". The letter continued -

> "Further you have made no attempt to proceed diligently with the works since midday 12th April, 2000. In accordance with our previous advice pursuant to the agreement stating that if you did not proceed diligently we would take over all or part of the works. You are now notified that in order to mitigate further losses to our company occasioned by your delinquence we are taking over the works. This is effective immediately. You are hereby instructed to remove all of your plant, equipment and labour from [the] site forthwith."

[13] The question is whether the defendant's conduct amounted to a wrongful repudiation of the contract, which the plaintiff was entitled to accept, and so terminate the contract. The plaintiff had not unreasonably suspended work until it received a copy of the Sub-Contract Agreement it had signed (ex 8). When it did receive a copy later on Wednesday 12 April, it found that an attempt had been made by the defendant to "re-instate" the provision for liquidated damages which had been crossed out by Mrs Lichtnauer along with the word "Nil" she had written there. As can be seen from its letter of Thursday 13 April (ex 12), the defendant was at this stage seeking to justify its action of "reinstating" the liquidated damages provision by saying that the alteration accorded with an earlier oral agreement which the defendant had made with the plaintiff. The plaintiff denied there was any agreement to that effect.

[14] The magistrate made a finding that is opposed to that explanation by the defendant. Speaking of ex 2 in its original form, what she said in her reasons was:

> "This proposed contract was not accepted by the plaintiff, who amended it in part, signed it as amended and forwarded [it] back to the defendant. The defendant did not accept the proposed amended contract and further amended it and signed it. They did not at that stage forward the amended contract back to the plaintiff. In the meantime, the plaintiff commenced work on the site …"

The defendant does not now put forward any such oral agreement for or to include liquidated damages. In para 7 of its written outline on this application, the defendant concedes that, although it "altered the respondent's [plaintiff's] counter-offer, reinstating the liquidated damages clause that the respondent [plaintiff] had removed, it did not communicate those changes to the respondent [plaitniff], so they had no legal effect". In para 8 of the outline, the defendant refers to its "attempt on about 12 April to re-introduce the liquidated damages provision after the dispute arose" as having "no effect" because it was an attempt to re-introduce a further term into a concluded contract. Far from having no effect, its attempt to do so, and the manner in which it was done, is, however, relevant to the question whether it repudiated the contract that it now admits was made.

[15] Looking at its actions overall, it may be difficult to acquit the defendant of a degree of sharp practice or at least of an attempt at it. But it is not necessary to resolve that matter. The fact is that the defendant was, on Wednesday 12 April and Thursday 13 April 2000, asserting that the contract embodied a term including payment of liquidated damages which it did not in fact or law contain, and it altered the contractual document to accord with its assertion to that effect. In consequence, the plaintiff, to whom it was plainly important that it not be liable for liquidated damages in the weekly sum of $5000, was in my opinion justified in refusing to continue working while the defendant maintained that assertion, which in this Court it now no longer pursues. Without withdrawing its assertion to that effect, the defendant then repudiated the contract by ordering the plaintiff off the site and engaging someone else to finish the work. This amounts to a plain repudiation on the part of the defendant of the contract falling within the principle of *Summers v Commonwealth* (1918) 25 CLR 144, 152; affd (1919) 26 CLR 180. As such, it gave the plaintiff the right to put an end to the contract, which it did.

[16] It follows that in law the plaintiff is entitled to recover the value of the work done at the date when the contract was terminated: see, for example, the well known case of *Planché v Colburn* (1831) 8 Bing 14; 131 ER 305. Alternatively, it is entitled to recover the value of that work as damages flowing from the defendant's breach by repudiating the contract. The choice of remedy or the basis for giving a judgment against the defendant may, however, possibly have some relevance to another point advanced by the defendant at trial and repeated before this Court. It is that the work at the site was done not by the plaintiff Lichtnauer Developments Pty Ltd but by another company Enviro Site & Civil Pty Ltd, with the consequence that the plaintiff itself cannot recover restitution or a quantum meruit for work that has been done by someone else. I am far from supposing that this is the law; but, rather than debate the question in that context, it is enough to say that it affords no defence to a claim by the plaintiff for damages for breach of contract by the defendant.

[17] The contract was not one in which the personality or attributes of the contracting party entered as a factor into the performance of the contract. The plaintiff was therefore entitled to arrange for the work to be carried out by another, and to recover damages from the defendant for its refusal to go on with the contract and pay the plaintiff for the work already done. In fact, the point relied on by the defendant was entirely adventitious. Enviro Site & Civil Pty Ltd was, it seems, a recent creation of the Lichtnauers' accountant, who advised them to form another company, evidently for taxation or other purposes, and to transfer to it the services of the employees and, it may be, the assets as well. Mrs Lichtnauer seemed uncertain about exactly what the new arrangement involved. But the work was in fact carried out and supervised by the same individuals using the same equipment as it would have been if performance of the work had remained with Len Lichtnauer Developments Pty Ltd. That company was the party which entered into the contract and it was entitled to claim and recover damages under it irrespective of the precise arrangements between it and Enviro Site & Civil Pty Ltd for carrying out or being paid for the work to be done.

[18] The result will therefore be that the judgment in the Magistrates Court given, it appears, on 14 November 2003 in favour of the plaintiffs must be varied by reducing it from $14,345.00 to $9,119.69. If, as may be the case, the plaintiff has been paid the full amount of that judgment, it will, interest apart, be liable to repay

the difference to the defendant. It is not intended to disturb the existing orders for costs made in the Magistrates Court and the District Court.

[19] The resulting improvement in the defendant's position to the extent I have indicated is possible only if an extension of time is granted to the appellant. That is so because the application for leave to appeal required by s 118(3) of the *District Court Act* 1967 (Qld) has been made out of time.

[20] The judgment in favour of the respondent plaintiff was given by the learned District Court judge on 17 December 2004. On 14 January 2005, the applicant defendant filed a notice of appeal, and subsequently, filed an outline of argument on 7 February 2005 in accordance with the timetable furnished under cover of a letter dated 17 January 2005 by the registry of the Court of Appeal. The applicant defendant prepared and filed a draft appeal record book index on 5 April 2005. No application for leave to appeal had been made at that time.

[21] On 11 April 2005, an articled clerk in the employ of the applicant's solicitors was informed by an officer of the registry that on 17 February 2005 a letter had been sent from the registry informing the applicant that it was required to file an application seeking leave to appeal pursuant to s 118 of the *District Court Act*. The applicant's solicitors have no recollection of receiving this correspondence and were unaware of the need to file an application for leave to appeal until they had been so informed.

[22] The delay in question occurred as a result of confusion on the part of the applicant's solicitors, and the respondent was promptly alerted to the applicant's intention to appeal. Because I am of the opinion that there is some, albeit limited, merit in the appeal, I would, therefore, grant an extension of time to allow the merits of the appeal to be determined in the manner provided in these reasons.

[23] On the other hand, so far as the costs of the applications for extension of time and leave to appeal and the appeal itself is concerned, the appellant has enjoyed only limited success. The respondent is, for the reasons given, entitled to succeed on most of the principal substantive issues. Such success as the applicant defendant has now enjoyed results from the grant of an indulgence by the Court. In these circumstances I would make no order in respect of the costs of the appeal.

[24] The orders will be as follows:

(1) Time is extended for making the application for leave to appeal, and the application and leave are granted.

(2) The order of the District Court in no 4354 of 2003 dismissing the appeal from the judgment of the Magistrates Court in no 14516 of 2000 is set aside, and the appeal is allowed to the extent only of reducing from $14,345 to $9,119.69 the amount for which judgment was given in that Court for the plaintiff against the defendant.

[25] **KEANE JA:** I agree with the reasons of McPherson JA and with the orders which he proposes.

[26] **McMURDO J:** I agree with the orders proposed by McPherson JA and, save for one matter, I agree with his reasons. That matter is that the plaintiff should recover $9,119.69 upon a quantum meruit rather than as damages for breach of contract.

[27] As McPherson JA has explained, there was a contract between the parties, which was discharged by the plaintiff for the defendant's repudiation of it. The plaintiff then had alternative remedies, which were a claim upon a *quantum meruit* for the value of its work or a claim for damages for breach of contract: see the discussion in Mason & Carter *Restitution Law in Australia* (1995) at [1168] and the cases there cited, including the judgments of the New South Wales Court of Appeal in *Renard Constructions (ME) Pty Ltd v Minister for Public Works* (1992) 26 NSWLR 234 and of this Court in *Iezzi Constructions Pty Ltd v Watkins Pacific (Qld) Pty Ltd* [1995] 2 Qd R 350. The correctness of these judgments has been doubted by some text writers and commentators, on the basis that they do not accord with the basis for restitutionary claims being unjust enrichment:[1] see for example Mason & Carter at p 444 and Mulheron: *Quantum Meruit upon Discharge for Repudiation* (1997) 16 Aust Bar Rev 150. It is suggested that a plaintiff cannot claim upon a quantum meruit absent some benefit to the defendant, but as Finn J said in *GEC Marconi Systems Pty Ltd v BHP Information Technology Pty Ltd* (2003) 128 FCR 1, 157 (citing *Brenner v First Artists' Management Pty Ltd* [1993] 2 VR 221) a party in breach may be deemed to have received a benefit where it has received part of the agreed return. And in the present case the defendant did benefit from the work performed and does not contend otherwise.

[28] In the proceedings as originally filed and pleaded, the plaintiff claimed $24,689.60 "as a debt due and owing … for the … works performed by the plaintiff …". It later amended to claim the same amount upon the alternative basis of damages for breach of contract. The learned magistrate held that the parties had not made a contract and gave judgment upon the quantum meruit basis. The plaintiff did not cross appeal, and in particular it did not argue, in the District Court or in this Court, that it should recover instead damages for breach of contract. By now it has elected to claim upon a quantum meruit.

[29] I agree then with McPherson JA that the learned magistrate erred in the assessment of the claim, and that the judgment should be reduced to $9,113. The defendant submits that the judgment should be lower still, because it is said that the plaintiff should not recover for such of the work as was said to be performed by another company Enviro Site & Civil Pty Ltd. There are two reasons why that submission should be rejected. The first is that, as a matter of fact, the magistrate accepted that the plaintiff would bear the ultimate cost of such of the work as was performed by employees of that company. Secondly, the plaintiff's entitlement is to recover the value of the services which it has performed or caused to be performed. That value is often fixed by reference to a market rate without reference to the plaintiff's costs. A court is entitled to value the work by taking into account the plaintiff's costs, but it is not obliged to value upon that basis: Mason & Carter at [1416]. As Dowsett J said in *Balfour Beatty Power Construction Australia Pty Ltd v Kidston Goldmines Ltd* [1989] 2 Qd R 105 at 135:

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1. *Pavey & Matthews Pty Ltd v Paul* (1987) 162 CLR 221.

> "In calculating a reasonable price, it is permissible to seek to show what a reasonable price for the physical work done would be, or alternatively to show what the actual cost is of the work in terms of hours spent and materials supplied. In this latter approach, it may also be appropriate to take into account profit factors and overheads. However, what must be kept in mind is that it is a reasonable price which is to be calculated."

Similarly, in *Brenner v First Artists' Management Pty Ltd* Byrne J said at 262:

> "Where the services have been performed at the request of a defendant or under an ineffective contract, the fair value of the work of the party will ordinarily be the remuneration calculated at a reasonable rate for the work actually done, for the defendant having obtained the benefit of a plaintiff's work ought not be permitted to enjoy this work without having paid for it. The assessment, then, must have regard to what the defendant would have had to pay had the benefits been conferred under a normal commercial arrangement. The enquiry is not primarily directed to the cost to the plaintiff of performing the work since the law is not compensating that party for loss suffered. … [T]his is not to ignore these costs for the reasonable remuneration for work must have some regard to the cost of its performance."

It was unnecessary for the plaintiff to prove its costs to recover on a quantum meruit, and if it be the fact, contrary to the magistrate's finding, that the plaintiff will not bear the costs of all of the work which it caused to be performed, that provides no sufficient reason to alter what is otherwise a proper valuation.