

Quasi-Contract Claims: Florida

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A Q&A guide to understanding quasi-contract claims available under Florida common law.

Promissory Estoppel

1. What are the elements of promissory estoppel in your jurisdiction?

To prevail on a promissory estoppel claim in Florida, the plaintiff must plead and prove that:

- A promise which the promisor (defendant) should reasonably expect to induce action or forbearance.
- The plaintiff's action or forbearance in reliance on the promise.
- Injustice if the court does not enforce the defendant's promise.

(*DK Arena, Inc. v. EB Acquisitions I, LLC*, 112 So. 3d 85, 93 (Fla. 2013).)

2. How, if at all, is promissory estoppel different from a breach of contract claim?

In Florida, promissory estoppel differs from a breach of contract claim in that consideration, a necessary element for the formation of a contract, is absent. The plaintiff's detrimental reliance on the defendant's promise substitutes for consideration and creates the conditions necessary to recover damages (*Elgin Nat'l Indus., Inc. v. Howard Indus., Inc.*, 264 So. 2d 440, 441 (Fla. 3d DCA 1972).)

3. What are the most common defenses to a promissory estoppel claim in your jurisdiction?

In Florida, defendants commonly plead the following defenses in response to a promissory estoppel claim:

- An enforceable contract exists that covers the parties' dispute and there was no separate promise

independent of that contract (*Coral Reef Drive Land Dev., LLC v. Duke Realty Ltd. P'ship*, 45 So. 3d 897, 902 (Fla. 3d DCA 2010)).

- The alleged promise was illusory or ambiguous (*Leonardi v. City of Hollywood*, 715 So. 2d 1007, 1009-10 (Fla. 4th DCA 1998)). For example, the promise was indefinite regarding terms and time (*Bergman v. Delulio*, 826 So. 2d 500, 504 (Fla. 4th DCA 2002)).
- As a matter of law, the plaintiff could not have detrimentally relied on the alleged promise, such as where an oral representation directly contradicts a written agreement (*Coral Reef Drive Land Dev., LLC*, 45 So. 3d at 902).
- The parties resolved the dispute through an accord and satisfaction (*St. Mary's Hosp., Inc. v. Schocoff*, 725 So. 2d 454, 455 (Fla. 4th DCA 1999)).
- The plaintiff had a mere expectation based on oral representations regarding the future rights of the parties (*W.R. Grace & Co. v. Geodata Servs., Inc.*, 547 So. 2d 919, 925 (Fla. 1989)).
- The statute of frauds applies and the parties did not have a written agreement (see Question 4).

4. Please describe, if applicable, how the statute of frauds affects a promissory estoppel claim in your jurisdiction.

Under Florida law, a plaintiff **may not** plead a promissory estoppel claim to enforce an oral agreement where the statute of frauds requires the parties to memorialize the agreement in writing (*DK Arena, Inc. v. EB Acquisitions I, LLC*, 112 So. 3d 85, 97 (Fla. 2013)).

5. What is the measure of damages for a promissory estoppel claim?



Florida “appears to follow” an approach that correlates promissory estoppel damages with reliance damages (*Devon Med., Inc. v. Ryvmed Med., Inc.*, 60 So. 3d 1125, 1130-32 (Fla. 4th DCA 2011) (Gross, C.J., concurring)). That is, the court attempts to place the plaintiff in the position it would have been in had the defendant not made the promise (see, for example, *Young v. Johnston*, 475 So. 2d 1309, 1314-15 (Fla. 1st DCA 1985) (awarding reliance damages and rejecting benefit of the bargain damages); see also *W.R. Grace & Co. v. Geodata Servs., Inc.*, 547 So. 2d 919, 924 (Fla. 1989) (remedy should not be substantially greater than the alleged promise)).

A prevailing plaintiff also may recover:

- Prejudgment interest (see, for example, *City of Cape Coral v. Water Servs. of Am., Inc.*, 567 So. 2d 510, 514 (Fla. 2d DCA 1990); *Young*, 475 So. 2d at 1314).
- Post-judgment interest from the time of judgment to the time that the liable party pays the damages (*Becker Holding Corp. v. Becker*, 78 F.3d 514, 516-17 (11th Cir. 1996) (applying Florida law)).
- Costs (§ 57.041(1), Fla. Stat.; Fed. R. Civ. P. 54).

6. How, if at all, does pleading a breach of contract claim affect a party’s ability to bring a promissory estoppel claim?

In Florida, a plaintiff may bring both breach of contract and promissory estoppel claims in the alternative in the same complaint (Fla. R. Civ. P. 1.110(g); see also *Baptist Hosp. of Miami, Inc. v. Medica Healthcare Plans, Inc.*, 385 F. Supp. 3d 1289, 1293 (S.D. Fla. 2019) (applying Florida law)). However, a party cannot recover under both theories. The establishment of a valid and enforceable contract covering the subject matter of the dispute generally precludes recovery under promissory estoppel. (*Coral Reef Drive Land Dev., LLC v. Duke Realty Ltd. P’ship*, 45 So. 3d 897, 902 (Fla. 3d DCA 2010).) When drafting the complaint, therefore, counsel must allege one of the claims in the alternative (*Shibata v. Lim*, 133 F. Supp. 2d 1311, 1317 (M.D. Fla. 2000) (applying Florida law)).

When pleading promissory estoppel in the alternative to a breach of contract claim counsel should:

- Plead promissory estoppel as a separate cause of action, separate and apart from the breach of contract claim.
- Not incorporate by reference, in the promissory estoppel cause of action, any allegation elsewhere in the complaint that alleges a valid and enforceable contract.

- Allege that the plaintiff is entitled to recover under promissory estoppel if the court determines that:
 - the existing contract does not govern the dispute; or
 - the contract is invalid or unenforceable.

(See, for example, *RHS Corp. v. City of Boynton Beach*, 736 So. 2d 1211, 1212-13 (Fla. 4th DCA 1999); *Shibata*, 133 F. Supp. 2d at 1317.)

7. What is the statute of limitations for promissory estoppel claims in your jurisdiction?

Limitations Period

In Florida, the statute of limitations for a promissory estoppel claim is four years (§ 95.11(3)(k), Fla. Stat.).

Accrual Date

A promissory estoppel claim typically accrues when the promisor (the person making the promise) breaches its promise to the promisee (the person the promise is made to) (*Friends of Lubavitch/Landow Yeshivah v. N. Tr. Bank of Fla.*, 685 So. 2d 951, 952 (Fla. 3d DCA 1996)).

Quantum Meruit

8. What are the elements of a quantum meruit claim in your jurisdiction?

To prevail on a *quantum meruit* claim in Florida, the plaintiff must plead and prove that:

- The plaintiff conferred a benefit on the defendant in the form of goods or services.
- The defendant agreed to and received the benefit.
- A reasonable person receiving the benefit would expect to pay for it under the circumstances.

(*W.R. Townsend Contracting, Inc. v. Jensen Civil Constr., Inc.*, 728 So. 2d 297, 305 (Fla. 1st DCA 1999).)

9. How, if at all, is quantum meruit different from a breach of contract claim?

Florida courts consider *quantum meruit* an enforceable contract. Therefore, there are few distinctions between a *quantum meruit* claim and a breach of contract claim. The distinction between the two relates to how the parties

reached the agreement to provide goods or services. The parties reach an express contract by an oral or written agreement. A contract implied in fact, or *quantum meruit*, is a contract inferred in whole or part by the parties' conduct, not solely their words. (*Commerce P'ship 8098 Ltd. P'ship v. Equity Contracting Co.*, 695 So. 2d 383, 385 (Fla. 4th DCA 1997).)

However, the damages available in a *quantum meruit* claim are different from breach of contract damages. A plaintiff may recover general, consequential, or liquidated damages in a traditional breach of contract claim. In contrast, a *quantum meruit* plaintiff may only recover general damages, which are measured by the reasonable value of the goods or services that the plaintiff provided to the defendant. (*Wynfield Inns v. Edward LeRoux Grp., Inc.*, 896 F.2d 483, 488 (11th Cir. 1990) (applying Florida law); *Christian Tennant Custom Homes of Fla., Inc. v. EBSCO Gulf Coast Dev., Inc.*, 2016 WL 11511584, at *5 (N.D. Fla. Aug. 26, 2016) (narrow relief offered in *quantum meruit*)).

10. What are the most common defenses to a *quantum meruit* claim in your jurisdiction?

In Florida, defendants commonly plead the following defenses in response to a *quantum meruit* claim:

- A valid and enforceable contract governs the subject matter of the *quantum meruit* claim (*Sea Byte, Inc. v. Hudson Marine Mgmt. Servs., Inc.*, 565 F.3d 1293, 1301 (11th Cir. 2009) (applying Florida law)).
- The defendant did not expressly or impliedly request or consent to receive the plaintiff's goods or services (*GVB MD v. Aetna Health Inc.*, 2019 WL 6130825, at *7-8 (S.D. Fla. Nov. 19, 2019) (applying Florida law)).
- The plaintiff delivered the goods or services gratuitously without an expectation of compensation (*Babineau v. Fed. Express Corp.*, 576 F.3d 1183, 1194-95 (11th Cir. 2009)).

11. Please describe, if applicable, how the statute of frauds affects a *quantum meruit* claim in your jurisdiction.

Under Florida law, the statute of frauds does not bar a *quantum meruit* claim. *Quantum meruit* is a common law restitution remedy that courts do not consider an action on a contract within the meaning or purpose of the statute of frauds. (*Harrison v. Pritchett*, 682 So. 2d 650, 652 (Fla. 1st DCA 1996).)

12. What is the measure of damages for a *quantum meruit* claim?

Under Florida law, the measure of damages in a *quantum meruit* claim is generally limited to the reasonable value of the goods or services that the plaintiff provided to the defendant (*Wynfield Inns v. Edward LeRoux Grp., Inc.*, 896 F.2d 483, 488 (11th Cir. 1990)). A plaintiff cannot recover punitive or special damages in a *quantum meruit* claim (*CCCS Int'l v. Fontainebleau Resorts, LLC*, 2009 WL 10667775, at *4 (S.D. Fla. Sept. 18, 2009); see also *Christian Tennant Custom Homes of Fla., Inc. v. EBSCO Gulf Coast Dev., Inc.*, 2016 WL 11511584, at *6-7 (N.D. Fla. Aug. 26, 2016) (narrow relief offered in *quantum meruit*)).

A prevailing plaintiff also may recover:

- Prejudgment interest (*McCarthy v. Estate of Krohn*, 16 So. 3d 193, 195 (Fla. 4th DCA 2009)).
- Post-judgment interest from the time of judgment to the time that the defendant pays the damages (*Becker Holding Corp. v. Becker*, 78 F.3d 514, 516 (11th Cir. 1996) (applying Florida law)).
- Costs (§ 57.041(1), Fla. Stat.; Fed. R. Civ. P. 54).

13. How, if at all, does pleading a breach of contract claim affect a party's ability to bring a *quantum meruit* claim?

In Florida, a plaintiff may bring both breach of contract and *quantum meruit* claims in the same complaint (Fla. R. Civ. P. 1.110(g); *Banks v. Steinhardt*, 427 So. 2d 1054, 1056 (Fla. 4th DCA 1983)). However, a party cannot recover under both theories. A valid and enforceable contract covering the subject matter of the dispute generally precludes recovery under *quantum meruit*. (*Sea Byte, Inc. v. Hudson Marine Mgmt. Servs., Inc.*, 565 F.3d 1293, 1301 (11th Cir. 2009) (applying Florida law).) When drafting the complaint, therefore, counsel must allege one of the claims in the alternative (*Banks*, 427 So. 2d at 1056.)

When pleading *quantum meruit* in the alternative to a breach of contract claim counsel should:

- Plead *quantum meruit* as a separate cause of action, separate and apart from the breach of contract claim.
- Not incorporate by reference, in the *quantum meruit* cause of action, any allegation elsewhere in the complaint that alleges a valid and enforceable contract, unless the plaintiff is alleging it partially performed under an express contract.

- Allege that the plaintiff is entitled to recover under *quantum meruit* if the court determines that:
 - the existing contract does not govern the dispute;
 - the contract is invalid or unenforceable; or
 - the plaintiff partially performed under the contract.

(*Banks*, 427 So. 2d at 1056.)

14. What is the statute of limitations for a *quantum meruit* claim?

Limitations Period

In Florida, the statute of limitations for a *quantum meruit* claim is four years (§ 95.11(3)(k), Fla. Stat.; *Beltran v. Vincent P. Miraglia, M.D., P.A.*, 125 So. 3d 855, 859 (Fla. 4th DCA 2013)).

Accrual Date

A *quantum meruit* claim generally accrues on the last date the plaintiff provided compensable services or materials to the defendant (*Beltran*, 125 So. 3d at 859).

Unjust Enrichment

15. What are the elements of an unjust enrichment claim in your jurisdiction?

To prevail on an unjust enrichment claim in Florida, the plaintiff must plead and prove that:

- It conferred a benefit on the defendant.
- The defendant knew of the benefit.
- The defendant accepted or retained the benefit.
- Under the circumstances, it would be inequitable for the defendant to retain the benefit without paying fair value for it.

(*14th & Heinberg, LLC v. Terhaar & Cronley Gen. Contractors, Inc.*, 43 So. 3d 877, 881 (Fla. 1st DCA 2010) (citations omitted).)

16. Please describe how, if at all, unjust enrichment is different from:

- A breach of contract claim.
- A *quantum meruit* claim.

Breach of Contract Claims

Under Florida law, unjust enrichment is different from a breach of contract in that unjust enrichment does not require an actionable wrong. Unjust enrichment arises when the defendant obtained a benefit from the plaintiff to which it is not entitled and for which, in equity and good conscience, the plaintiff should be compensated. Unjust enrichment is available whether the defendant wrongfully obtained a benefit (such as by fraud) or passively obtained a benefit (such as an overpayment). (*Cleveland Clinic Fla. v. Children's Cancer Caring Ctr., Inc.*, 274 So. 3d 1102, 1104 (Fla. 4th DCA 2019); *Tooltrend, Inc. v. CMT Utensili, SRL*, 198 F.3d 802, 806 (11th Cir. 1999) (applying Florida law).)

The measure of damages for unjust enrichment also is different than the measure of damages for a breach of contract claim (see Question 19).

Quantum Meruit Claims

There are a few key distinctions between an unjust enrichment claim and a *quantum meruit* claim, including:

- *Quantum meruit* requires that the defendant affirmatively consent to the benefit conferred. Unjust enrichment requires only knowledge of the benefit. (*Rite-Way Painting & Plastering, Inc. v. Tetor*, 582 So. 2d 15, 17 (Fla. 2d DCA 1991).)
- Unlike the expectation of compensation element of a *quantum meruit* claim, an unjust enrichment plaintiff **does not** need to show it had any expectation of compensation after it conferred the benefit on the defendant (*Melton v. Century Arms, Inc.*, 243 F. Supp. 3d 1290, 1307 (S.D. Fla. 2017) (applying Florida law)).
- *Quantum meruit* involves a contract implied in fact, which is considered an enforceable contract. Unjust enrichment involves a contract implied in law, which is considered a legal fiction (*Commerce P'Ship 8098 Ltd. P'Ship v. Equity Contracting Co.*, 695 So. 2d 383, 386 (Fla. 4th DCA 1997); see also *Tooltrend*, 198 F.3d at 806 (applying Florida law)).

17. What are the most common defenses to an unjust enrichment claim in your jurisdiction?

In Florida, defendants commonly plead the following defenses in response to an unjust enrichment claim:

- A valid and enforceable contract governs the subject matter of the dispute (*Alhassid v. Nationstar Mortg. LLC*, 771 Fed. App'x 965, 969 (11th Cir. 2019) (applying Florida law)).
- The defendant provided adequate consideration in exchange for the benefit received (*Am. Safety Ins. Serv., Inc. v. Griggs*, 959 So. 2d 322, 331-32 (Fla. 5th DCA 2007)).

18. Please describe, if applicable, how the statute of frauds affects an unjust enrichment claim in your jurisdiction.

Under Florida law, the statute of frauds does not bar an unjust enrichment claim. Unjust enrichment is a common law restitution remedy that courts do not consider an action on a contract under the statute of frauds. (*Green Lumens LLC v. Green Lumens NE LLC*, 2016 WL 8808767, at *4 (S.D. Fla. Aug. 25, 2016) (applying Florida law); *Kolski ex rel. Kolski v. Kolski*, 731 So. 2d 169, 172 (Fla. 3d DCA 1999).)

19. What is the measure of damages for an unjust enrichment claim?

Under Florida law, unjust enrichment is a restitution-based claim. Therefore, the measure of damages is generally limited to the reasonable value of the benefit conferred on the defendant. (*14th & Heinberg, LLC v. Terhaar & Cronley Gen. Contractors, Inc.*, 43 So. 3d 877, 881-82 (Fla. 1st DCA 2010); *Ala v. Chesser*, 5 So. 3d 715, 718 (Fla. 1st DCA 2009).) The court must measure the benefit from the perspective of the recipient of the benefit (that is, the defendant) (*Kane v. Stewart Tilghman Fox & Bianchi, P.A.*, 85 So. 3d 1112, 1115 (Fla. 4th DCA 2012)). A plaintiff may not recover punitive damages in an unjust enrichment claim (*Engelke v. Athle-Tech Computer Sys., Inc.*, 982 So. 2d 3, 9 (Fla. 2d DCA 2008)).

A prevailing plaintiff may also recover:

- Prejudgment interest (*Montage Group., Ltd. v. Athle-Tech Computer Sys., Inc.*, 889 So. 2d 180, 199 (Fla. 2d DCA 2004)).
- Post-judgment interest from the time of judgment to the time that the defendant pays the damages (*Becker Holding Corp. v. Becker*, 78 F.3d 514, 516 (11th Cir. 1996) (applying Florida law)).
- Costs (§ 57.041(1), Fla. Stat.; Fed. R. Civ. P. 54).

20. How, if at all, does pleading a breach of contract claim affect a party's ability to bring an unjust enrichment claim?

Under Florida law, a plaintiff can bring both breach of contract and unjust enrichment claims in the same complaint (Fla. R. Civ. P. 1.110(g); see also *Baptist Hosp. of Miami, Inc. v. Medica Healthcare Plans, Inc.*, 385 F. Supp. 3d 1289, 1293 (S.D. Fla. 2019)). However, a party cannot recover under both theories. A valid and enforceable contract covering the subject matter of the dispute generally precludes recovery under unjust enrichment. (*Alhassid v. Nationstar Mortg. LLC*, 771 Fed. App'x 965, 969 (11th Cir. 2019) (applying Florida law).) When drafting the complaint, therefore, counsel should allege one of the claims in the alternative (*Shibata v. Lim*, 133 F. Supp. 2d 1311, 1317 (M.D. Fla. 2000) (applying Florida law)).

When pleading unjust enrichment in the alternative to a breach of contract claim counsel should:

- Plead unjust enrichment as a cause of action that is separate and apart from the breach of contract claim.
- Not incorporate by reference, in the unjust enrichment cause of action, any allegation elsewhere in the complaint that alleges a valid and enforceable contract.
- Allege that the plaintiff is entitled to recover under an unjust enrichment claim if the court later determines that:
 - the existing contract does not govern the dispute; or
 - the contract is invalid or unenforceable.
- Plead facts with particularity if the unjust enrichment claim is based on mistake or the defendant's fraud.

(*Baptist Hosp. of Miami, Inc.*, 385 F. Supp. 3d at 1293 (emphasizing that unjust enrichment and breach of contract claims must be pursued in the alternative and in separate counts); see also *B&C Inv'rs, Inc. v. Vojak*, 79 So. 3d 42, 48 (Fla. 2d DCA 2011) (unjust enrichment claim survived after alleged oral contract was found unenforceable under the statute of frauds).)

21. What is the statute of limitations for an unjust enrichment claim?

Limitations Period

In Florida, the statute of limitations for an unjust enrichment claim is four years (§ 95.11(3)(k), Fla. Stat.; *Beltran v. Vincent P. Miraglia, M.D., P.A.*, 125 So. 3d 855, 859 (Fla. 4th DCA 2013)).

Accrual Date

An unjust enrichment claim generally accrues on the last date the plaintiff provided compensable services or materials to the defendant (*Beltran*, 125 So. 3d at 859 (Fla. 4th DCA 2013)).

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