

ORIGINAL DOCUMENTS IN SAFE

Case No. 185

Date of filing: 2 sept 1983

\*\* AWARD - Type of Award \_\_\_\_\_  
- Date of Award \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* DECISION - Date of Decision \_\_\_\_\_  
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\*\* CONCURRING OPINION of Mr Richard U. Mosk.  
- Date \_\_\_\_\_  
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\*\* SEPARATE OPINION of \_\_\_\_\_  
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\*\* DISSENTING OPINION of \_\_\_\_\_  
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Case No. 185  
CHAMBER THREE  
AWARD No. 70-185-3

CHAS. T. MAIN INTERNATIONAL, INC.,  
Claimant,

and

MAHAB CONSULTING ENGINEERS, INC.  
and THE MINISTRY OF ENERGY OF THE  
ISLAMIC REPUBLIC OF IRAN,  
Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داری دعوی ایران - ایالات متحدہ
ثبت شد - FILED	
۱۳۶۲ / ۶ / ۱۱	۱۸۵
2 SEP 1983	۱۸۵

CONCURRING OPINION OF RICHARD M. MOSK

In order to form a majority for the Award in this case, I have concurred in it. The Award may be justified by a technical and formalistic view of the contractual relationship. I believe, however, that there is justification for awarding Claimant Chas. T. Main International, Inc. ("Main") the full amount of its claim, a result which, under the circumstances, is far more equitable than that provided by the Award.

There is no dispute that Main performed work which benefited Mahab Consulting Engineers, Inc. ("Mahab") and for which Mahab has been invoiced and that Mahab has not made payment for that work. Mahab's only defence is that Main had no direct contractual right to the payments, even though Main might ultimately be entitled to such payments. Mahab

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has not provided adequate justification for its failure to make the payments in question to either Parsmain, Inc. ("Parsmain") or Main.

The agreement between Parsmain and Mahab left open the nature of work to be done and the prices to be paid. Thereafter, Mahab directly solicited work from Mahab, and Main communicated directly with Mahab in accepting to do the work. Main then supplied the services and materials directly to Mahab, and Mahab, at least on one occasion, made direct payment to Main. It is important to recognize that Main was ultimately entitled to most of the fees charged to Mahab. Normally, a general contractor has a wider scope of duties and greater responsibility than one of its subcontractors. In the instant case, however, Parsmain, if it actually was a general contractor, performed negligible work and was entitled only to a small percentage of the fee as compared with the alleged subcontractor, Main.

In view of the questionable validity of the Mahab-Parsmain contract because of its indefiniteness and in view of the dealings between Mahab and Parsmain, one could conclude that Main had a direct contractual relationship with Mahab. Even if Main was a subcontractor, that should not preclude it from recovering under theories of quasi-contract or unjust enrichment.

The lack of privity between a subcontractor and the beneficiary of the work should not be determinative of the subcontractor's right to recover from that beneficiary when the beneficiary is unjustly enriched at the expense of the subcontractor. When, as in the instant case, there is no showing that the beneficiary of the work will be exposed to double payment -- i.e., to the contractor and to the subcontractor -- and when there are circumstances showing a direct relationship between the contractor and subcontractor, it is not unreasonable to compel the beneficiary to pay the subcontractor.

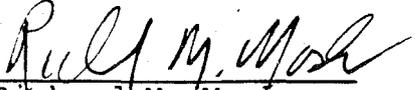
The doctrines of quasi-contract and unjust enrichment constitute general principles of law (3 Whiteman, Damages in International Law 1732-61 (1943); 12 Williston on Contract §§1459-1459A (3d Ed. 1970); Civil Code of Iran 301-306, 336; Zweigert and Müller-Gindullis, "Quasi-Contracts" in 3 Int'l Ency.Comp. Law, Chapter 30 (1973); Dawson, Unjust Enrichment: A Comparative Analysis (1951); 8 Whiteman, Digest of International Law 1035-36 (1967)) and have been recognized by this Tribunal. Tribunal Award No. 35-219-2 (Isaiah). Those doctrines are applicable to the instant case.

For the most part, Parsmain was merely a conduit through which payments were to be made to Main. Since Main is a principle owner of Parsmain and because of the agreed-upon allocation in amounts between Parsmain and Main, Main is ultimately entitled to the amounts in issue. Mahab even

authorized and requested that payments be made directly to Main. Mahab has benefited from the work without making payment therefor. Finally, the circumstances are such that Main has no realistic means to obtain a recovery for its work.

The Tribunal has not been presented with any direct authority supporting Claimant's position that it is entitled to the full recovery sought. There are suggestions that, faced with a factual situation as that in this case, a municipal court might provide the Claimant with a remedy directly against Mahab. See Annot., "Building and Construction Contracts: Right of Subcontractor Who Has Dealt Only With Primary Contractor to Recover Against Property Owner in Quasi Contract," 62 ALR 3d ed. 288, 294-295 (1975). Whether or not there are adequate legal authorities for such a remedy, it is certainly arguable that it should be available in situations similar to the one in the instant case. Moreover, if the Tribunal is to apply equitable considerations, this case is a compelling one for such application. Nevertheless, I concur in the Tribunal Award awarding Claimant the amount of \$378,340 plus interest thereon and costs in the amount of \$15,000.

Dated, The Hague  
2 September 1983

  
Richard M. Mosk