

**4.30C BUILDER FAILS TO PROVE SUBSTANTIAL
PERFORMANCE AND SUES IN QUASI-CONTRACT**
(Approved 5/98)

Even if the builder in a construction contract fails to prove substantial performance, (even if his/her default under the contract is willful) he/she may recover compensation if the benefit which he/she conferred upon the owner exceeds the harm which he/she caused the owner, provided the owner accepted or retained the benefit of the partial performance. In such case the builder is entitled to recover the reasonable value of the work performed by the builder after deducting from it the loss caused by the builder's breach which can include increases in the cost of completion, losses resulting from delays, or harm caused by below-par performance. However, the reasonable value may not be greater than the proportion of the contract price which the reasonable value of the work completed bears to the reasonable value of all the work contemplated by the contract.

Cases:

Kutzin v. Pirnie, 124 N.J. 500 (1991); *Power-Matics, Inc. v. Ligotti*, 79 N.J. Super. 294 (App. Div. 1963); and *Restatement (Second) of Contracts*, Sec. 374 (1981).