QUESTION 6 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II

Fantastic Homes, a contractor specializing in building mansions, contracted with hedge fund manager Mr. Big Money, for construction of Mr. Money's dream home. Fantastic Homes, in turn, solicited bids from its two favorite and most frequently used builders. The bid process specified that Fantastic Homes was soliciting bids on behalf of Mr. Money. The bid process also required submission of a fixed sum bid (i.e., not time and materials) and required work to commence within two months and be completed within eight months of commencement. After some minor back and forth, Owen Outlier submitted a bid of $3.3 million to complete Mr. Money's mansion, and Irvin Insider submitted a bid of $3.1 million to complete the same work. Both bids were within the amounts and other parameters authorized by Mr. Money. Fantastic Homes selected Insider's bid without any changes and notified Insider to commence work. Fantastic Homes also notified Insider that he would receive a $100,000 bonus if his costs were equal to or less than his bid.

While Insider always worked from fixed sum bids, he routinely incurred higher costs than he bid, including on other builds he had done for Fantastic Homes. In the past, when he realized he was going to exceed the bid price, he simply advised Fantastic Homes without comment or further negotiation. In each case, Fantastic Homes had just paid Insider the excess costs at the conclusion of the project.

In this case, as the build progressed, Insider informed Fantastic Homes that the build would cost approximately $200,000 more than the original bid. Fantastic Homes thanked Insider for the "heads up." Insider continued on with the work as planned, although he would have been willing to make some changes that could have reduced the final cost without compromising quality. Insider completed the work by the deadline at a cost of $3.3 million, $200,000 over his bid.

While Fantastic Homes had not mentioned it to Insider, it had tired of Insider always exceeding his bid. Insider's costs ended up within the range authorized by Mr. Money, but Insider's excess costs meant less profit for Fantastic Homes. Therefore, upon finding the work complete, Fantastic Homes informed Insider that he would be paid in accordance with his bid, i.e., the $3.1 million, and would have to cover the $200,000 additional cost himself, since he had not received written authorization from Fantastic Homes to exceed the bid.

What contract theory could Insider utilize to recover the

$200,000? Assuming no contract theory supports recovery of the $200,000, what alternative theory of recovery could Insider argue? What is his chance of success on either theory and how much would he recover if successful? Explain your answers.

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