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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

KUNKLE WATER & ELECTRIC, INC.,

Plaintiff-Appellant,

vs.

CITY OF PRESCOTT, IOWA; JAMES GRAY; DEAN GREEN; DENNIS HOGAN; AL WEST; MICHAEL GRAY; DAROL MITCHELL; and GENE FREEMEYER,

Defendants-Appellees.

Filed November 30, 1983

3-267
2-68988

Appeal from Adams District Court - Thomas E. Bown, Judge.

Plaintiff company appeals from judgment entered on a jury verdict for defendant city in this action to recover for services rendered in the repair of defendant's water system. AFFIRMED.

R. E. Feilmeyer of Taylor, Taylor, Feilmeyer, Miller & Dinkla, Guthrie Center, for plaintiff-appellant.

Dennis W. Johnson of Belin, Harris, Helmick & Heartney, Des Moines, for defendants-appellees.

Heard by Donielson, P.J., and Schlegel and Sackett, JJ.

DONIELSON, P.J.

Plaintiff company appeals from judgment entered on a jury verdict for defendant city in this action to recover for services rendered in the repair of defendant's water system. Plaintiff's numerous contentions are as follows: (1) evidence of plaintiff's work on other municipal water systems should have been excluded as irrelevant and as lacking proper foundation; (2) there was not sufficient evidence to support submission to the jury of defendant's contract defense of fraud in the inducement; (3) the court should have instructed the jury that contracts induced by fraud are voidable, rather than void per se, and that to avoid such a contract the victim must elect to rescind; (4) as a matter of law, the various projects undertaken by plaintiff were separate and distinct, and each was estimated to cost less than $10,000, so the jury should have been instructed that Iowa Code section 384.96 (bids must be taken on public improvements estimated to cost more than $10,000) did not apply; (5) quantum meruit recoveries should now be allowed against municipalities, because the home rule amendment to the Iowa Constitution now gives local governments many powers beyond those specifically granted by the legislature; and (6) the rule that quantum meruit cannot be applied to void contracts with governments should be abandoned as unfair and contrary to the present trend of decision. We affirm.

Plaintiff, a contractor specializing in water systems, was contacted by the defendant city of Prescott in 1979 to help with some problems the city was having with its well and water system. Plaintiff and the city entered into a written contract, dated April 25, 1979, for plaintiff to do various repair work on the system. The contract provides for materials costing about $3,200 and labor to be billed at $34/hour for two men. Although there is no indication of an expected total, plaintiff's president had estimated the total cost at $3,500. He testified that this estimate was for materials only. This contract was the only written agreement entered into by the parties. As plaintiff's men worked on the water

system, however, they kept finding more problems. The city orally authorized repair and replacement of much of the water system. This authority was given at several different times as new problems were uncovered rather than at the start of the project.

The city eventually abandoned much of the water system upon which plaintiff had worked and built a new one. Plaintiff billed the city $53,986.59; when it was not paid, this suit was commenced against the city, the mayor, and the members of the city council. At the close of plaintiff's case in chief, the court sustained defendants' motion for directed verdict in favor of the individual defendants but not for defendant city. Plaintiff does not appeal that ruling. The case was tried to a jury which returned a verdict in favor of defendant city, and plaintiff brought this appeal.

This case involves the competitive bidding statute—Iowa Code § 384.96. At all relevant times, that statute read as follows:

> When the estimated total cost of a public improvement exceeds the sum of ten thousand dollars, the governing body shall advertise for sealed bids for the proposed improvement by publishing a notice to bidders as provided in section 362.3.

Since the events leading up to this case occurred, section 384.96 has been amended in various ways including an increase in the minimum amount requiring bidding to $25,000. See 1980 Iowa Acts ch. 1127, § 1; 1979 Iowa Acts ch. 85, § 5. The rationale behind such statutes "is to procure competitive bidding for public improvement contracts, and thereby to safeguard public funds by preventing fraud, favoritism, and extravagence in their expenditure." 63 C.J.S. Municipal Corporations § 1148 (1950) (footnotes omitted).

I.

Plaintiff first argues that the trial court erred in allowing defendant to introduce evidence that plaintiff had contracted with other small towns and in each case had been paid in excess of $10,000 in possible contravention of section

384.96. Defendant's theory throughout this case has been that its contract with plaintiff is void because of the latter's attempt to circumvent the competitive bidding requirements of section 384.96 by breaking down the entire claim for work done (in excess of $50,000) into alleged "separate projects" each priced at less than $10,000. Defendant's evidence regarding plaintiff's transactions with other towns, of course, was offered to prove that plaintiff had used the same strategy before in circumventing the statutory requirements.

"The determination of the relevancy and similarity of other acts is for the trial court within its exercise of sound judicial discretion." Northrup v. Miles Homes, Inc. of Iowa, 204 N.W.2d 850, 856 (Iowa 1973). We cannot say the trial court here abused its discretion in allowing the challenged testimony. The fact that plaintiff had employed such a strategy in the past is certainly relevant to show that it at least could have been used in this case in an attempt to avoid section 384.96. In any event, we fail to see how plaintiff could have been unduly prejudiced by this evidence. Richard Kunkle, president of plaintiff company, testified without objection under cross-examination that in a past transaction with the town of Truro, he broke down the total bill into segments of less than $10,000 so that he could get paid. The challenged evidence, therefore, is at most merely cumulative. We find no merit in this issue.

II.

Plaintiff next contends that the trial court erred in failing to instruct the jury that section 384.96 was inapplicable to this case because the cost of no individual item of work done for defendant exceeded $10,000. In essence, plaintiff contends that the overall agreement, for which the city was billed in excess of $50,000, must be separated into smaller, distinct projects involving various aspects of the city water system. These separate projects, ten in number, involved the following items: electrical work, water main, filter work, aerator, pitless unit, dirt work on the berm and digging down to water main, well work,

booster pumps, chemical feed systems, and meter repair.

The competitive bidding requirements of section 384.96 come into play in this case if the total estimated cost of "a public improvement" exceeds $10,000. The term "public improvement" is defined in Iowa Code section 384.95 in relevant part as follows: "any building or construction work, either within or outside the corporate limits of a city, to be paid for in whole or in part by the use of funds of the city . . . ."

We think it is clear that plaintiff was involved in only one "public improvement" in this case—the repair of defendant's municipal water system. It cannot be disputed that all ten "items" of work, to use plaintiff's term, were fundamental parts of that one objective of the 1979 contract. Under plaintiff's reading of the statute, no major construction or repair job for a city would ever have to be subject to competitive bidding because such a job could always be broken down into a sufficient number of component parts involving different phases of the construction or repair such that the cost of each part would not exceed the statutory amount. Such a reading of the statute would divest it of any meaning and would do nothing to forestall the evils sought to be prevented. An analogous situation was presented in Horrabin Paving Co. v. City of Creston, 221 Iowa 1237, 262 N.W. 480 (1936). In that case, the city accepted the contractor's proposal to repair four streets. The parties entered into four separate contracts--one for each street. The supreme court rejected this attempt to evade the provisions of the competitive bidding statute and denied recovery to the contractor on the contracts.

Moreover, the record in this case indicates that plaintiff did not consider the water system repair project as a series of separate items until after this lawsuit commenced. During the summer of 1979, when the repair work was done, plaintiff sent defendant monthly bills detailing the work done and the charges involved. These bills contain no indication that plaintiff considered itself to be working on

ten smaller projects instead of one overall job to repair the water system. The same is true of the daily log sheets indicating the work done and materials used. It was not until after plaintiff filed this action that it divided its repair work into ten different areas, the cost of each of which was less than $10,000. This division appears to us to be the same kind of evasion of statutory bidding requirements that the supreme court condemned in Horrabin Paving Co.

Having determined that plaintiff was engaged in only one "public improvement" on defendant's behalf, the conclusion necessarily follows that the trial court properly refused to instruct the jury that the water system repair work involved ten separate items for purposes of section 384.96 and that that statute was inapplicable to this case. It is also clear that the agreement to repair defendant's water system, under which defendant was charged over $50,000, violated the provisions of section 384.96 since no bidding was done on this job which exceeded $10,000, the statutory amount at that time. Plaintiff also claims the statute is inapplicable because it requires bidding only when the "estimated" total cost exceeds $10,000; here, plaintiff argues, the initial estimate was only $3,500 plus labor. We are not persuaded by this argument; were we to accept it, any contractor could easily avoid the bidding requirements simply by giving an estimate under $10,000. Apparently, this could be done even if the contractor had full knowledge that the actual cost would be far above the estimate. We will not countenance the possibility of such a ruse which would obviously render meaningless section 384.96 and its salutary purposes. In addition, the record contains evidence that plaintiff's $3,500 estimate was ignored very soon after it was given, for the bill sent to defendant for the first full month of work on the job (May, 1979) was $14,161.45. Whether the original estimate was made in good faith and was merely inaccurate in the extreme or plaintiff deliberately underestimated the job to avoid the statutory competitive bidding requirements, we need not

determine. It is enough simply to say that the parties' contract violates the terms of section 384.96.

III.

Because the municipal contract here was subject to the mandatory terms of section 384.96 and did not comply with those terms, the contract is void. Everds Brothers v. Gillespie, 256 Iowa 317, 321, 126 N.W.2d 274, 277 (1964). Violation of that statute also means that plaintiff is precluded from recovery from defendant city under any theory, including quantum meruit or quasi-contract. We adopt the following language from Horrabin Paving Co. which is dispositive on this issue:

> In view of the reasons underlying public policy as applied to contracts of municipal corporations, to which reference has heretofore been made, it would, in our opinion, be contrary to public policy to allow one to thus evade provisions which have been enacted by law for the protection of the public, to foist upon the municipality materials and services that could not be returned, and then, when the evasion has been discovered and the contracts declared invalid, to recover on the theory that the municipality has received a benefit for which it should pay. . . . If a recovery be allowed under the facts of this case, we see no reason why contractors will not be encouraged to enter into contracts with municipal corporations which they realize are of very doubtful validity. If contractors may thus evade the provisions requiring competitive bidding, it is not at all improbable that they may be tempted by the prospect of big profits, without competition, to induce municipal officers to enter into unconscionable contracts with them, on the theory that, even if such contracts be invalid, they may not be attacked; or, if attacked, some of the profits may still be saved by way of compromise; or, if the worst happen, and the contracts be held invalid, they may yet recover all but the profits of the undertaking.

221 Iowa at 1249-50, 262 N.W. at 487. We decline plaintiff's invitation to abandon this rule.

We also reject plaintiff's claim that a recovery based on quantum meruit or quasi-contract is no longer precluded by the limitations of section 384.96 due to the Home Rule Amendment to the Iowa Constitution. That amendment provides in relevant part as follows: "Municipal corporations are granted home rule power and authority, not inconsistent with the laws of the General Assembly, to

determine their local affairs and government . . . ." Iowa Const. art. III, § 38A (emphasis added). The very language of that amendment states in no uncertain terms that cities are still bound by the limitations and requirements of Iowa statutory law including section 384.96. That law of the General Assembly was violated by the contract in this case; therefore, that contract is void. The Home Rule Amendment is irrelevant to the rationale, stated above, behind disallowing equitable recovery from cities under such void contracts.

IV.

Because the judgment below denying plaintiff's recovery was justified under the preceding rationale alone, we need not discuss the issues relating to defendant's allegations of fraud. We find no error warranting reversal in this case. The judgment in defendant's favor is affirmed.

AFFIRMED.