FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

HOWARD R. GREEN COMPANY,
Plaintiff-Appellee,
vs.
CITY OF CEDAR RAPIDS, IOWA,
Defendant-Appellant.

Filed March 23, 1982

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2-16
2-66357

Appeal from Linn District Court, Ansel J. Chapman, Judge.

Defendant appeals from a declaratory judgment construing the terms of a contract, contending the trial court erred in (a) failing to construe the ambiguous contract strictly against the plaintiff, who drafted the contract; (b) interpreting the contract; (c) admitting certain exhibits over proper objection; (d) failing to find the existence of a confidential relationship between plaintiff and defendant (e) finding no credible evidence that plaintiff was bound by the interpretation given to the contract by the EPA and (f) awarding interest on amounts withheld by defendant. AFFIRMED.

David F. McGuire and Benjamin W. Blackstock of Eells, Blackstock, Affeldt & Harms, Cedar Rapids, for defendant-appellant.

Robert C. Tilden and Iris E. Muchmore of Simmons, Perrine, Albright & Ellwood, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

Defendant appeals from a declaratory judgment construing the terms of a contract, contending the trial court erred in (a) failing to construe the ambiguous contract strictly against the plaintiff, who drafted the contract; (b) interpreting the contract; (c) admitting certain exhibits over proper objection; (d) failing to find the existence of a confidential relationship between plaintiff and defendant; (e) finding no credible evidence that plaintiff was bound by the interpretation given to the contract by the EPA and (f) awarding interest on amounts withheld by defendant. We affirm the judgment of the trial court in all respects.

Plaintiff, Howard R. Green Company, contracted with defendant, City of Cedar Rapids, to provide several types of consulting engineer services to improve the City's municipal waste water treatment facilities. After partial performance of the contract, plaintiff submitted a bill to defendant that contained three components: salaries, service fee and expenses. The City objected to the amount of service fee charged by plaintiff. Plaintiff claimed the service fee was authorized by the contract.[1] The contract defined "service fee" as an amount

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[1]The dispute centers around the meaning of the following two-payment schedule clauses of the contract:

> As full compensation for the foregoing services, the City agrees to pay the Engineer on the following basis:
> 1. work covered under Paragraph 1, Scope of Engineering Services, in connection with the preliminary engineering reports on additions and/or improvements to the municipal treatment facilities, monthly reimbursement of actual out-of-pocket costs, including salaries, supplies, communication expense and other direct costs involved in the work, plus a service fee equal to one hundred percent (100%) of the total actual salary costs to cover payroll taxes, overhead, office expense, use of Engineer's equipment and profit.
> . . .
> 3. After award of construction contract, and resident supervision and inspection of the work becomes necessary, such services shall be performed by the Engineer on the basis of actual out-of-pocket costs, including salaries, supplies, subsistence and travel costs, where subsistence shall be only for that period of time outside of Cedar Rapids, Iowa; plus a service fee equal to one hundred percent (100%) of the total actual salary cost to cover payroll taxes, overhead, office expense, use of Engineer's equipment and profit for said Engineer.
> All records and accounts of the Engineer, applicable to this Agreement, shall be open to inspection and audit by the City at any reasonable time.

"equal to one hundred percent (100%) of the total actual salary costs." Plaintiff's accountant defined "salary costs" as:

> the costs of salaries (including sick leave, vacation, holiday and incentive pay applicable thereto) of engineers, technicians, draftsmen, stenographers, survey men, clerks, etc.for time directly chargeable to the projects; plus employment, excise, and payroll taxes; and contributions for social security, employment compensation insurance, retirement, medical and insurance benefits.

Defendant claimed salary costs, as used in the contract, should not include indirect salary costs, such as payroll taxes, social security employment compensation insurance and retirement benefits, since the service fee was included to "cover payroll taxes, overhead, office expense, use of Engineer's equipment and profit for said engineer." As a result of the dispute, the City began withholding payment on plaintiff's billings to offset the amounts allegedly overpaid.

In a declaratory action, the trial court concluded the contract was not ambiguous, the term "salary cost" was to be given its ordinary meaning as used in the accounting profession, the service fee was to include salary costs, not just direct salaries, the contract did not contemplate the EPA would have authority to bind the parties to the interpretation it placed on the contract and Green was not in a confidential relationship with the City. The trial court required the City to pay interest at seven percent on the amounts of payments withheld by the City.

**I. Ambiguity and Interpretation**

Defendant initially argues the contract was ambiguous and for that reason, the trial court erred in failing to construe the contract terms strictly against the plaintiff as drafter of the contract. Relying on extrinsic evidence, the trial court found the contract was susceptible to only one reasonable construction and therefore, was not ambiguous. The trial court concluded the contract was ambiguous only if "one gives it a twisted and strained construction, refuses to give effect to all of its terms and places disproportionate emphasis on particular words." Consequently, the trial court refused to utilize the rule of construction that would require strict construction against the drafter. See Kinney v. Capitol-

Strauss, Inc. 207 N.W.2d 574, 577 (Iowa 1973).

The court proceeded in the interpretation of the terms of the contract, with the aid of extrinsic evidence, see Pappas v. Hauser, 197 N.W.2d 607, 612 (Iowa 1972), to ascertain the intent of the parties. Id. Under those circumstances, the interpretation of the contract terms is not a question of law and will be reviewed by this court as a finding of fact. See Fashion Fabrics of Iowa v. Retail Investors Corporation, 268 N.W.2d 22, 25 (Iowa 1978).

We find substantial support in the record for the trial court's conclusion on the meaning the parties intended to place on the term "salary costs." The term has a generally accepted meaning in accounting circles. Defendant's expert witness's testimony supported that position but he also indicated the contract in this case modified the more or less standard definition. However, we consider only evidence tending to support the trial court's decision. Grefe v. Ross, 231 N.W.2d 863, 865 (Iowa 1975). Given the testimony of plaintiff's expert witness and the language of the contract viewed as a whole, there is substantial evidence supporting the court's determination to accept plaintiff's definition of salary costs as used in the contract.

**II. Admission of Evidence**

Defendant argues the trial court erroneously admitted two of plaintiff's exhibits, which summarized various items of salary costs and fringe benefits incurred between 1969 and 1980. Without reaching the merits of defendant's argument on the admissibility of plaintiff's evidence, which summarized salary and payroll expenses over the past eleven years, we decline to reverse and order a new trial. Although prejudice may be presumed from the admission of inadmissible evidence, Vine Street Corp. v. City of Council Bluffs, 220 N.W.2d 860, 863 (Iowa 1974), assuming, without deciding, the evidence in this case was inadmissible, we do not believe exclusion of the evidence would alter the result in this case. The

primary dispute revolved around the meaning of "salary costs." The exhibits did not affect the intention of the parties as to the meaning of"salary costs." We find no reversible error on this issue. See Baysinger v. Haney, 261 Iowa 577, 583, 155 N.W.2d 496, 499 (Iowa 1968); Blake v. City of Beford, 170 Iowa 128, 133, 151 N.W. 74 (Iowa 1915) 174 Iowa 397, 408, 156 N.W. 415 (Iowa 1916).

**III. Confidential Relationship**

Defendant claims there was a confidential relationship between plaintiff and defendant, which created an obligation in plaintiff to "act in such a manner as to qualify charges made for engineering services and to maintain such records as required... to qualify for grant reimbursements [from the EPA] to the City." Defendant claims the City relied upon plaintiff to the extent plaintiff became a dominant force in the relationship. See In re Estate of Herm, 284 N.W.2d 191, 199 (Iowa 1979). Defendant contends the long-standing business relationship between plaintiff and the City and the "trust" the City placed in plaintiff established the confidential relationship and gave rise to plaintiff's duty to indemnify the City for the amounts EPA refused to provide reimbursement. Defendant's claim of injury stems from the fact the EPA refused to grant reimbursement for the service fees as defined by the contract using the accepted definition of salary costs.

The trial court found plaintiff was an agent of the City for the limited purpose of providing engineering services and discussing, with the EPA, compliance with federal regulations. Any trust the City placed in plaintiff was the result of a long-standing good business relationship. Not all relationships in which one party trusts the other party engender the confidential relationship discussed in Herm. Plaintiff does not stand in a dominant position relative to defendant. Thus, there is no way plaintiff could have exerted undue influence in its negotiations with defendant. Further, defendant was at all times adequately represented by the City's legal staff. Defendant's argument is rejected.

**IV. EPA As Interpreter of Contract Terms**

Defendant claims the EPA's interpretation of the contract should bind plaintiff. Essentially, EPA is involved in this case as an outside financier. EPA had agreed to reimburse the City for certain costs connected with the city's water project. When EPA refused to reimburse the City for a portion of the bill plaintiff submitted because EPA believed the bill was not in compliance with the contract, the City in turn contended it should not have paid plaintiff. The trial court found no evidence to support the assertion plaintiff agreed to abide by EPA's interpretation of the contract, or that plaintiff agreed to condition its right to receive payment on the City's receipt of reimbursement by EPA. We agree with the trial court. The record is void of any evidence except a self-serving memorandum from the Mayor of Cedar Rapids to plaintiff indicating the dispute was really between EPA and plaintiff. Further, defendant cites no authority for its proposition. Accordingly, the trial court's conclusion on this issue is affirmed.

**V. Interest**

Defendant claims the trial court erred in awarding interest at seven percent from the date the contract payments became due. The City claims the interest should be five percent pursuant to section 535.2, The Code 1979, and run from the date of judgment. Section 535.2, The Code 1979, does not apply where there is no written instrument creating an enforceable right to payment of principal and interest. There being no such instrument in this case, section 535.2, The Code 1979, is not applicable. In Vorthman v. Keith F. Meyers Enterprises, 296 N.W.2d 772, 778-79 (Iowa 1980), the court held interest is assessable from the date the claim becomes liquidated, which means the date the damage is complete. In Stromberg v. Crowl, 257 Iowa 348, 353, 132 N.W.2d 462, 465 (Iowa 1965) the court assessed statutory interest beginning on the date money was wrongfully withheld. The trial court in this case assessed a seven percent interest charge, which is in accord with section 535.3, The Code 1979, from the date the payments became due. We conclude the trial court acted properly and its judgment is affirmed.

AFFIRMED.