IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

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| **MIDWEST PAVING COMPANY,** A Corporation, Plaintiff-Appellee, vs. **TOWN OF LAWTON,** A Municipal Corporation, Defendant-Appellant. | ) | Filed May 25, 1982 338 2-52 2-66483 |

Appeal from Woodbury District Court - Charles R. Wolle, Judge.

Defendant-town appeals from an adverse judgment in an action arising from its refusal to pay plaintiff-contractor for resurfacing of a city street, asserting: 1) there was not substantial evidence to support trial court's findings that defendant approved the paving project; and 2) since the paving project was not approved by the city council, any contract made between plaintiff and a city officer was void for illegality, and this infirmity could not be circumvented by an action based on quantum meruit. AFFIRMED IN PART; REVERSED AND REMANDED IN PART.

Robert C. Hart of Creasey, Metcalf & Thompson, Moville, Iowa, for defendant-appellant.

Charles T. Patterson of Gleysteen, Harper, Eidsmoe, Heidman & Redmond, Sioux City, Iowa, for plaintiff-appellee.

Heard en banc.

**JOHNSON, J.**

Defendant, town (city) of Lawton, appeals from an adverse judgment in this action arising from its refusal to pay plaintiff, Midwest Paving Company, for the resurfacing of a city street. Defendant asserts: (1) there was not substantial evidence to support trial court's findings that defendant approved the paving project; (2) since the paving project was not approved by the city council, any contract made between plaintiff and a city officer was void for illegality, and this infirmity could not be circumvented by an action based on quantum meruit. We affirm in part and reverse and remand in part.

In March, 1979, the Woodbury County engineer advised the mayor of the city of Lawton, Iowa, that the county intended to pave the center 22 feet of the main street in Lawton, known as Cedar Street. The engineer estimated that the city would be able to pave the remainder of the street for a cost of about $3,000 to $3,500. On April 2, 1979, the Lawton city council discussed this matter and "suggested the mayor get estimates from Midwest [plaintiff] and Brower [another contractor] for this work." No estimate was obtained, but on April 18, 1979, the city council passed a motion approving the county project and approving the city's repaving the remaining area on each side of the street at a cost of approximately $3,000. On May 7, 1979, the city council authorized the mayor to make arrangements with plaintiff to do this work. Thereafter, there was some discussion between the mayor and plaintiff's general manager concerning the construction. The parties made no formal agreement as to price or other specifications.

On or about June 21, 1979, plaintiff placed approximately 240 tons of asphalt paving on that portion of the city street which was not part of the county project. Plaintiff billed defendant for 240 tons of asphalt at $40 per ton, a total of $9,600. Defendant refused to pay this bill. Plaintiff then commenced this action on

December 11, 1979. Trial to the court commenced on January 14, 1981, and on February 27, 1981, trial court entered its judgment against defendant, finding that the city council approved the project and understood that the mayor would make arrangements for its undertaking. The court further found that the fair and reasonable value of the work was $7,500 and that, if defendant were not required to pay that amount, it would be unjustly enriched. Judgment was thus entered for the plaintiff in the amount of $7,500. Defendant appeals from this judgment.

**I. Scope of Review.** Since this is an action at law, our review is for correction of errors only. Iowa R. App. P. 4. The principles governing our review of trial court's findings are well settled. Trial court's findings of fact have the effect of a special verdict and are equivalent to a jury verdict; if supported by substantial evidence they are binding upon us and the judgment will not be disturbed on appeal. Iowa R. App. P. 14(f)(1). A finding of fact is supported by substantial evidence if the finding may reasonably be inferred from the evidence. Briggs Transp. Co. v. Starr Sales Co., 262 N.W.2d 805, 808 (Iowa 1978). The record is reviewed in a light most favorable to the judgment. Pillsbury Co. v. Ward, 250 N.W.2d 35, 38 (Iowa 1977). We will not weigh the evidence or pass on the credibility of the witnesses. Thomas Truck & Caster Co. v. Buffalo Caster & Wheel Corp., 210 N.W.2d 532, 536 (Iowa 1973); Northrup v. Foster, 204 N.W.2d 889, 890-91 (Iowa 1973).

**II. Discussion.** Defendant argues that the Lawton city council did not, by motion or resolution, approve a contract with defendant for the paving of Cedar Street. Defendant also asserts that the city council did not authorize the mayor to so contract. Plaintiff argues that the city council approved, by motion, the paving project, and authorized the mayor to enter into a contract to complete the paving. From our review of the record, we conclude that both parties have misconstrued the city council's actions.

The motion approved by the Lawton city council on April 18, 1979, states:

> The blacktopping to be done on Cedar Street by the County was discussed. The County will pay for the 22 feet down the center. Motion made and seconded that the city approve this project (County project #FN 30341-51-97) and that the City should blacktop the remaining area on each side of the street from Maple to Main on Cedar Street, with the cost to be approximately $3,000. Motion carried.

We conclude this language clearly indicates that the city council approved the project at a cost of $3,000. The minutes of the city council meeting on May 7, 1979, state:

> Mayor Jansen discussed the estimate on the blacktopping to be done this summer. He will make arrangements with Midwest to do Lawton's share of Cedar Street when the County is doing their work on Cedar.

These minutes provide adequate support for the trial court's finding that the city authorized the mayor to arrange the paving of the remainder of Cedar Street. However, we conclude that the minutes of the April 18 and May 7 meetings only authorized the mayor to contract with plaintiff to do the paving for a cost of approximately $3,000.

It is well settled that a municipality must exercise its power to make a contract only through its council, by motion, resolution, amendment or ordinance. § 364.3, The Code 1979; Baird v. Webster City, 256 Iowa 1097, 1104, 130 N.W.2d 432, 436 (1964).

> Municipal corporations are the creatures of the legislature. They have such powers to contract, and only such powers, as the legislature grants to them. When the legislature withholds power to contract, or permits the exercise of the power in a given case only in accordance with imposed restrictions, the corporation may no more bind itself by implied contract than by the forbidden express contract. All persons dealing with the municipal corporation are charged with notice of the limitation upon its power. Those limitations may not be exceeded, defeated, evaded or nullified under guise of implying a contract.

Johnson County Sav. Bank v. City of Creston, 212 Iowa 929, 933-34, 231 N.W. 705, 707 (1931).

It is clear to us that section 364.3, The Code, acts as a restriction upon the municipality's power to contract, and that a contract entered into exceeding the terms of the city council's motion, resolution, amendment or ordinance is void. Further, it would be violative of public policy to allow plaintiff to evade these restrictions, enacted by law for the protection of the public, through an action based on implied contract or quantum meruit. Id.; Horrabin Paving Co. v. City of Creston, 221 Iowa 1237, 1249-50, 262 N.W. 480, 487-88 (1936).

We thus conclude that plaintiff is prohibited from recovering an amount in excess of that authorized by the city council. We remand this case for trial court's entry of an order for remittitur reducing plaintiff's judgment to $3,000.

AFFIRMED IN PART; REVERSED AND REMANDED IN PART.

All judges concur, except Donielson, J., who dissents.

DONIELSON, J., (dissenting).

I respectfully dissent.

I believe there is ample evidence in the record to support the trial court's findings. I would find that the city council approved the contract by motion on April 18, 1979, as required by section 364.3, The Code. Admittedly, this approval was indefinite as to the cost of the project. However, the May 7, 1979, city council minutes appear to give Mayor Jansen permission to proceed with the project despite the fact that a price had not been formally approved.

The fact that the city council failed to settle all the details of the contract before voting to approve the project should not bar plaintiff's recovery for the reasonable value of its work. Any uncertainty in this case was created by the city or its agents. Therefore, I would not interpret the words "cost to be approximately $3000" as a limit on price. When a contract is ambiguous, vague, or unclear, it is normally construed against the party drafting the instrument. Kinney v. Capitol-Strauss, Inc., 207 N.W.2d 574 (Iowa 1973). While there was no written contract in this case, I believe the city should not be unjustly enriched by the uncertainty they created. Nor do I see any policy reason that this rule should not be applied against a municipal corporation once it has formally voted to approve a project.

I would affirm the trial court.