FILED
APR - 8 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STROH CORPORATION,

Plaintiff-Appellant,

vs.

IMT INSURANCE COMPANY (MUTUAL),

Defendant-Appellee.

IMT INSURANCE COMPANY (MUTUAL),

Cross-Petitioner,

vs.

COST, PLANNING AND MANAGEMENT INTERNATIONAL, INC., an Iowa Corporation,

Defendant to the Cross-Petition/Appellee.

Filed April 8, 1983

2-494
2-68345

Appeal from Polk District Court - J. P. Denato, Judge.

Plaintiff construction company appeals from the judgment entered in this action to reform a contract to perform remodeling work on defendant's building. AFFIRMED.

Joseph Joyce of Adler, Brennan, Joyce & Steger, Des Moines, Iowa, for plaintiff-appellant.

Kent Forney and Shelia K. Tipton-Frink of Bradshaw, Fowler, Proctor & Fairgrave, Des Moines, Iowa, for defendant/cross-petitioner/appellee IMT.

James L. Sayre of Dreher, Wilson, Adams, Jenson, Sayre & Gribble, Des Moines, Iowa, for cross-petition/appellee CPMI.

Heard en banc.

SCHLEGEL, J.

Plaintiff construction company appeals from the judgment entered in this action to reform a contract to perform remodeling work on defendant's building. The trial court reformed the contract in part but then found that plaintiff was not entitled to receive damages. Plaintiff claims that the court should have awarded it damages after purportedly reforming the construction contract to incorporate a "change order" requested by plaintiff. It is also asserted that the court should not have construed the contract to include certain "General Conditions" contained in a separate document. By making such inclusion, the court held that plaintiff was not entitled to damages due to its failure to follow the requirements spelled out in that document for making change order requests. Since this action is in equity, our review is **de novo.** Iowa R. App. P. 4. We affirm.

In early 1978, plaintiff Stroh Corporation ("Stroh"), a mechanical and electrical contractor, entered into a building contract with defendant I.M.T. Insurance Company ("IMT"). The contract provided that Stroh was to provide mechanical and electrical services for a remodeling of IMT's old building and for a new addition to be built onto it. The contract is a standard printed form provided by the American Institute of Architects ("AIA"), a 1978 edition of the version applicable to "cost plus" contracts. There was a great deal of dispute at trial as to whether another set of printed documents provided by the AIA, called "General Conditions of the Contract for Construction" (AIA Document A201), was also part of the contract. The cost plus contract contains a printed provision which states that "[t] he Contract Documents consist of this Agreement, Conditions of the Contract (General, . . .)." Although the relevant copy of the General Conditions for this case is the 1976 version and the cost plus is the 1974 version of that standard form, the latter states on its front page: "[u] se only with the latest Edition of AIA Document A201, General Conditions of the Contract for Construction." Stroh asserts that the General Conditions document could not be

part of the construction contract between the parties because the date of the cost plus contract edition used here (1974) comes before the 1976 General Conditions form. It should be noted, however, that the contract was executed in 1978, when both versions of the forms were in existence. The General Conditions document provides that changes to the project (change orders) can only be accomplished within a time specified and by following certain procedures; these admittedly were not followed in this case.

Testimony at trial suggests that there never was a very specific agreement as to whether IMT would vacate the premises while the remodeling was being carried out. Stroh officers testified that that was the impression they received from IMT's representatives. In any event, the construction was actually carried out without IMT's employees leaving the old building. This evidently caused considerably higher labor costs for Stroh. The work was carried out from April of 1978 until September of 1979. In August of 1979 Stroh informed IMT that it was incurring cost overruns, presumably hoping to obtain additional compensation. On September 12, 1979, Stroh formally requested additional compensation; the amount eventually requested for the labor cost overrun was $62,759.84. IMT refused to pay the bill.

Stroh's petition, filed June 13, 1980, was based upon a request for reformation of the contract to include a change order which would provide that the work was to be done with IMT's employees in place. The result of incorporation of such a change order in the contract would be that under the procedures established for change orders in the "General Conditions" section, Stroh would be entitled to compensation for any additional costs caused by the change. IMT filed an answer generally denying Stroh's claims and raising issues of estoppel. IMT also filed a cross-petition against Cost, Planning and Management International, Inc. ("CPMI"), with whom IMT had a contract to manage the work being done by Stroh. In its cross-petition, IMT alleged that if Stroh's allegations

were upheld and judgment rendered in Stroh's favor, then CPMI breached its duty to IMT and should be liable thereto for contribution or indemnity.

After a nonjury trial, the court handed down its findings and decree on January 20, 1982. Initially, the court referred to the construction contract as including the 1976 General Conditions. With regard to the grounds asserted for reformation, the court found that the contract did not specify whether the remodeling would be done in vacated or partially occupied areas of the existing building. It was further found, however, that Stroh entered into the contract thinking it could do its work in vacated portions of the building and IMT made representations to Stroh to that effect when the parties entered into the contract. The court concluded that, to the extent this was a material part of the contract, this vacancy provision was omitted from the contract by mutual mistake of the parties. The contract was therefore reformed to include that provision. In doing so, the court noted that "[t]he change in the work conditions as aforesaid [such that Stroh was not able to work in vacated areas] thus would constitute a basis for a change order for any additional labor cost caused thereby."

The court went on to note, however, that the General Conditions included specific procedures for obtaining change orders and time limits for requesting them. It was concluded that, since Stroh admittedly did not meet these conditions, it was not entitled to recover any damages under the contract as reformed. Stroh's petition was therefore dismissed, rendering IMT's cross-petition against CPMI moot. Stroh then instituted this appeal.

I. The determinative issue in this appeal is whether the contract between Stroh and IMT incorporates the General Conditions document with its time requirements for filing change orders. Except in cases of ambiguity, we discern the parties' intent strictly from the words of the contract. Iowa R. App. P. 14(f)(14). There is no question that a contract may be composed of more than one instrument. The following language is found in 17 C.J.S. Contracts § 58 (1963):

> A contract may be encompassed in several instruments even though every instrument is not signed by the parties, since it is sufficient if the unsigned instruments are clearly identified or referred to and made part of the signed instrument or instruments.

See, e.g., Joseph L. Wilmotte & Co. v. Rosenman Bros., 258 N.W.2d 317 (Iowa 1977).

We believe the conclusion is inescapable that the General Conditions were intended to be and are in fact a part of the parties' contract. Article 1 of the contract states that "[t]he Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions) . . ." (emphasis added). Numerous references to the General Conditions are made throughout the contract. The cover page of the contract contains the following provision: "[u]se only with the latest Edition of AIA Document A201, General Conditions of the Contract for Construction." Thus, it is clear that the contract was intended to incorporate the terms of the General Conditions although Article 1 admittedly could have been more artfully drafted to make more clear that incorporation. Stroh's sole argument is that the contract could not have incorporated the 1976 General Conditions document since the contract itself was printed on a 1974 form. This argument, however, ignores the fact that the contract was executed in 1978. The critical date is when the contract was executed, not when the form was printed. At that time, the "latest Edition" of the General Conditions was the 1976 edition—the one which the trial court properly concluded was part of the contract.

Since the General Conditions are part of the contract, Stroh was bound by ¶ 12.3 which states in part as follows:

> If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the Architect written notice thereof within twenty days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work.

Although Stroh did not formally submit its change order for the amount claimed in this action until September 12, 1979, it is clear that Stroh was aware of the circumstances leading to its request in the summer of 1978 or in early 1979 at the very latest. Stroh does not argue on appeal that it met the twenty-day deadline with respect to this change order request. Since Stroh failed to make its request within the contractual time limit, it is precluded from recovering thereon.

II. Stroh claims that the trial court's judgment was inconsistent in that it first granted the reformation of the contract requested but then refused to grant damages. The fallacy of Stroh's argument lies in its contention that the court's judgment granted Stroh the requested change order. In fact, the court only stated that the change in work conditions "would constitute a basis for a change order for any additional labor cost caused thereby" (emphasis added). The court went on to conclude that Stroh was not entitled to a change order in this case due to its failure to timely file its request. In other words, Stroh "would" be entitled to a change order if it otherwise satisfied all relevant contractual conditions. Since Stroh did not satisfy the twenty-day requirement, it was not entitled to the change order.

Like the trial court, we conclude that Stroh was not entitled to any damages due to its failure to satisfy the time provisions of the General Conditions for filing the change order request involved in this case. The judgment of the trial court is affirmed.

AFFIRMED.