IN THE COURT OF APPEALS OF IOWA

FILED
AUG 29 1985
CLERK SUPREME COURT

ASPRO, INC.,	)	
Plaintiff/Appellant,	)	
vs.	)	
CITY OF GRUNDY CENTER,	)	Filed August 29, 1985
Defendant/Third-Party Plaintiff/Appellee,		5-331 84-1475
vs.	)	
CLAPSADDLE-GARBER ASSOCIATES,	)	
Third-Party Defendant/Appellee.	)	

Appeal from the Iowa District Court for Grundy County - James L. Beeghly, Judge.

Plaintiff appeals from the district court's dismissal of its petition to recover the remaining balance under a written contract with defendant. AFFIRMED.

Barton L. Schwieger, Waterloo for plaintiff/appellant.

Vaughn D. Hulse, of the Goodman Law Office, Grundy Center, for defendant/third-party plaintiff/appellee.

James C. Ellefson, of Lundy, Butler and Lundy, Eldora, for third-party defendant/appellee.

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

Plaintiff and defendant city entered into a highway improvement contract. The contract stated that work was to be completed in 60 days. The contract provided that plaintiff pay liquidated damages of $50 for each day after the contract time for completion had expired. The contract also required plaintiff to pay extra engineering costs caused by the delay in completion. The contract further incorporated the Iowa State Highway Commission standard specifications for construction which included provisions regarding the issuance of weekly reports of working days.

Plaintiff began construction in August 1979. When construction closed in November for the winter, plaintiff had used 65-1/2 working days. Third party defendant engineer issued working day reports for the construction which took place in 1979. Many of the reports were not issued promptly. Over the winter, defendant city and plaintiff agreed to modify the contract giving plaintiff an additional 15 days to complete the work. Defendant engineer sent a letter to plaintiff stating that under the modified contract, plaintiff had 9-1/2 days to complete work on the project. All parties to this law suit agreed that if the weather permitted, work would start on April 14, 1980. The plaintiff did not recommence work until May 5 and did not complete the project until May 22, 1980. Defendant engineer issued working day reports for the 1980 construction three months later.

The city withheld $6,762.87 of its payment to plaintiff which included liquidated damages of $1,350 assessed for the completion 27 days after the contracted time had expired and included extra engineering costs of $5,412.87. Plaintiff filed a petition to recover the amount withheld on the contract claiming that the completion delay was caused by the late issuance of work day reports by defendant engineer. However, at trial the vice president, who is also the

general manager for plaintiff, testified that construction delays were due to weather and not due to a delay in the issuance of work day reports. Weather observations for the months of April and May were submitted into evidence. The trial court found that no unusual weather conditions excused plaintiff from resuming work on April 14, 1980. The trial court dismissed plaintiff's petition.

Since this case was tried to the court, the scope of our review is for correction of errors of law. Iowa R. App. P. 4. The trial court's findings of fact have the force of a special verdict and are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1).

On appeal, plaintiff states that the highway improvement contract required that the engineer issue weekly reports of working days to the contractor. Plaintiff contends that it relied upon receipt of these weekly reports as a necessary part of the total construction project, but did not receive them until several months subsequent to the project's completion. The trial court found that the contractor did not rely on the weekly working day reports and that these reports did not cause delay in the project. Evidence reviewed for its substantiality is to be viewed in the light most favorable to the judgment. Blunt, Ellis & Loewi, Inc. v. Ingram, 319 N.W.2d 189, 192 (Iowa 1982). We find the trial court's determination to be supported by substantial evidence in the record and affirm the trial court.

AFFIRMED.