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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

490

TINER COMMUNICATIONS SERVICES, INC.,

Plaintiff-Appellee,

vs.

UNIVERSITY OF NORTHERN IOWA, and STATE BOARD OF REGENTS OF THE STATE OF IOWA,

Defendants-Appellants.

Filed February 23, 1983

2-374
2-67677

Appeal from Linn District Court - Larry J. Conmey, Judge.

Defendants appeal the trial court's ruling awarding plaintiff unpaid portions of a bill allegedly due under a written contract for certain emergency repairs performed on a radio station owned by defendants. REVERSED.

Thomas J. Miller, Attorney General, and Howard O. Hagen, Lynn M. Walding, and Merle Fleming, Assistant Attorneys General, for defendants-appellants.

Roger J. Hudson and David D. Nelson of Stewart, Wimer, Hudson & Flynn, P.C., Des Moines, for plaintiff-appellee.

Heard en banc.

DONIELSON, J.

Defendants appeal the trial court's ruling awarding plaintiff unpaid portions of a bill allegedly due under a written contract for certain emergency repairs performed on a radio station owned by defendant. On appeal the defendants contend that the court misconstrued the parties' contract. We reverse.

Our review of this law action tried to the court is on assigned errors. Iowa R. App. P. 4. Herman v. Ford-Mercury, Inc. v. Betts, 251 N.W.2d 492, 493 (Iowa 1977).

I.

The defendants were the operators of a radio station, KUNI, which is associated with the University of Northern Iowa. On December 21, 1978, defendants called plaintiff, Tiner Communications Services, Inc., to perform emergency repair work on the KUNI broadcasting antenna. Shortly thereafter a contract drafted by plaintiff was sent to defendants who, by an authorized agent, signed the contract on January 8, 1979. The contract consists of the parties' agreement to six enumerated provisions, the two most pertinent of which provide that:

> 5. Payment is to be made at the completion of the above workto (sic) the satisfaction of the station according to the attached Rate Sheet dated November 1, 1978.
>
> 6. An eight hour minimum charge per man per day will apply to these emergency repairs.

The attached rate sheet, incorporated by provision 5, set forth, inter alia, the labor charges, work schedules, and included a specific provision addressed to jobs which are curtailed due to bad weather:

> Jobs in process that are delayed by weather will be charged a 2 hour minimum per day for each man that is held over for job completion.

Plaintiff commenced work on the antenna on December 24th. This particular job was completed January 18th. With the exception of December 25th,

December 27th and January lst, plaintiff charged defendants at least an eight hour minimum per man for these twenty-three days even though there were days when the workmen were unable to work on the antenna due to bad weather conditions. The final bill for these repairs, dated January 23rd, requested payment of over $38,386. The antenna required additional emergency repair service beginning January 26th. There is no dispute concerning the additional $8,702 labor charge for these latter repairs. The defendants made payments totalling approximately $27,500, but objected to the labor charges of 8 hours per man for days when plaintiff's employees were sidelined by bad weather. Specifically, the defendants contended that the labor charges for days of inclement weather should have been governed by the provision specifically addressed to such weather conditions; that the eight-hour provision relied on by the plaintiff applies to all situations arising during emergency repairs except inclement weather.

The plaintiff filed the present lawsuit seeking to recover the portion of its total bill which the defendants refused to pay (about $18,000). The trial court ruled in the plaintiff's favor and defendants then instituted this appeal.

II.

The defendants urge us to find that the contract is ambiguous on the subject of labor charges during inclement weather and, therefore, should be construed against the drafter. The plaintiff argues that the phrase "[a]n eight hour minimum charge per man per day will apply to these emergency repairs" is clear on its face and applies to all of the time necessary to complete such repairs, regardless of weather conditions.

In Farm Bureau Mutual Insurance Co. v. Sandbulte, 302 N.W.2d 104, 108 (Iowa 1981), the court made clear that "the fact that parties disagree on the meaning of a phrase does not establish ambiguity for the purpose of [applying the rules of construction]." There, the court found that the parties' conflicting interpreta-

tions of the phrase "ways immediately adjoining" does not establish an ambiguity. Id. The court noted that the test for the existence of an ambiguity is an objective one: whether the language is "fairly susceptible to two interpretations." Id., (citing Central Bearings, Co. v. Wolverine Insurance Co., 179 N.W.2d 443, 445 (Iowa 1979)). We conclude, as did the trial court, that the contract here is not ambiguous. This case is not like Yager v. Farmers' Mutual Telephone Co., 323 N.W.2d 245, 248 (Iowa 1982), where the court noted that when the contract "can be understood only by examining what it does not say, it is not ambiguous." Nor are the words used "of doubtful nature or meaning," "uncertain" or "equivocal" which would render them ambiguous. Id., (quoting McCarthy v. McCarthy, 162 N.W.2d 444, 448 (Iowa 1968)). Further, the rules of construing contractual language do not apply if the parties' intent is "expressed in clear and unambiguous language." State v. Starzinger, 179 N.W.2d 761, 764 (Iowa 1970). Thus the real issue we face is whether the trial court correctly construed the contract by looking at the plain meaning of the words used and the intent of the partes. Iowa R. App. P. 14(f)(14); see also Starzinger, 179 N.W.2d at 763-64.

III.

"Construction" of a written contract refers to the determination of its legal effect which is "always a matter of law to be resolved by the court." Sandbulte, 302 N.W.2d at 107; see also Fashion Fabrics of Iowa v. Retail Investors, 266 N.W.2d 22, 26 (Iowa 1978). Since this is an issue of law, we are not bound by the trial court's conclusion. Sandbulte, 302 N.W.2d at 108. Taking provisions 5 and 6 together with the provision relating to jobs which are delayed by weather, we conclude that the trial court incorrectly construed the contract to provide that the eight hour minimum charge per man would apply to all emergency repairs regardless of whether the actual work was delayed by weather conditions. We believe provision 6 modifies the rate sheet to the extent that, for the emergency

repairs, an eight hour minimum charge per man per day applies rather than the minimum charges listed on the rate sheet for those work days consisting of less than an eight hour duration. However, when the job is delayed by weather, requiring men to be held over for job completion, the two hour minimum applies. We must "strive to give effect to all the language of [the] contract." Fashion Fabrics, 266 N.W.2d at 26 (emphasis added). We believe the provisions of this contract must be read in much the same manner as an insurance policy where an exclusion provision often limits the applicability of those provisions providing broad coverage. Here the eight hour minimum charge applies to emergency repairs performed any day except those days where no work is performed due to bad weather conditions and where workmen must be held over to complete the job. Any other construction would require that we disregard the provision relating to bad weather and thus, frustrate the clear expression of the parties' intent. We refuse to do so.

We are plagued with one additional problem. The record does not disclose the exact number of days during which the work was delayed due to bad weather. It is apparent that defendants unilaterally determined which days work was not performed because of weather. Specifically, Richard Douglas, Director of Business Services at the University of Northern Iowa, testified that, in making reductions in the amounts he felt were due and owing to plaintiff:

> we identified certain days which from the description and from the knowledge that other people had of the conditions at the time, we supposed work was actually not done on the tower, and for each of those days we reduced the eight hour charge to two hours and changed the calculations.

Because the trial court misconstrued the contract, no finding was made as to how many days plaintiff's workmen were actually delayed and held over due to bad weather conditions. We thus find it necessary to remand this case for a

determination of the exact number of days plaintiff's workmen were delayed by weather conditions. For these days defendants may only be charged a two hour minimum per day per man held over for job completion. On remand the court must determine, under this construction, the amount defendants were overcharged. The amount of the overcharge must then be subtracted from the total bill to determine the balance due and owing plaintiff. Plaintiff shall recover the balance of this sum, plus interest at ten percent per annum from June 8, 1979.

REVERSED AND REMANDED.

All judges concur except Snell and Schlegel, JJ., who dissent.

SNELL, J., (dissenting)

I respectfully dissent.

While I agree with the majority's determination that the contract for emergency repairs was not ambiguous, I cannot accept its ultimate conclusion that the two-hour minimum charge provision governing jobs delayed by weather applies even in the case of emergency repairs. The majority opines that provision 6 of the agreement, which states "[a]n eight hour minimum charge per man per day will apply to these emergency repairs," controls in lieu of the rate sheet with regard to those work days consisting of less than eight hours' duration. I do not understand how the majority can reach this conclusion without taking the next logical step, that provision 6 also supplants the rate sheet provision dealing with jobs delayed by weather. In my opinion, the most specific and consequently controlling provisions of the parties' agreement are set forth on page one of the agreement; the standard rate sheet was attached solely to provide a guide for "[p]ayment. . . at the completion of the above work," as stated in provision 5.

In its conclusions of law, the trial court stated:

> The record is overwhelming with evidence to prove that this job was undertaken by the Plaintiff and requested by the defendants on an emergency basis. It is, therefore, the conclusion of this Court based on the applicable law and the evidence that the contract when read as a whole provided that the Plaintiff was to be paid a minimum of eight hours per man per day until the repairs were completed, despite the weather conditions; that Plaintiff performed these services at the request of the Defendants.

I agree and therefore would affirm the trial court.

Schlegel, J., joins in this dissent.