

IN THE COURT OF APPEALS OF IOWA DEC 30 1981

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CLERK SUPREME COURT

R. H. GRABAU CONSTRUCTION, INC.,

Plaintiff-Appellee,

) Filed December 30, 1981

vs.

)

CENTRAL DALLAS COMMUNITY SCHOOL,

)

1-251
2-65698

Defendant-Appellant.

)

Appeal from Dallas District Court, Robert O. Frederick, Judge.

Defendant school appeals summary judgment granted in favor of plaintiff contractor. AFFIRMED.

Patrick J. Spellman of Spellman, Spellman, Spellman & Spellman, Perry, for defendant-appellant.

Kirke C. Quinn of Doran, Doran, Courter & Quinn, Boone, for plaintiff-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

Defendant school appeals summary judgment granted in favor of plaintiff contractor. We affirm.

Plaintiff, R. H. Grabau Construction, Inc., contracted with defendant, Central Dallas Community School, to build an addition onto the existing school in Minburn, Iowa. The contract contained specifications for workmanship and materials. The contract also provided (a) an architect will provide general administration of the construction contract; (b) the architect is the owner's representative and has authority to act on behalf of the owner-school board; (c) the architect is required to make periodic visits to the site to inspect the progress and quality of the work and to insure adherence to the contract specifications; (d) the architect is to determine the amounts owing to the contractor and when satisfied as to the progress, the architect is to issue periodic certificates for payment; (e) the architect will be the interpreter of the contract and the judge of the performance of the contractor; (f) the certificate of payment constitutes a representation by the architect to the owner-school board that the work has progressed to the point indicated and, to the best of the architect's knowledge, the work conforms to the contract; (g) the certificate of payment constitutes a representation the contractor has satisfied all conditions precedent to payment of the installment; (h) the owner is obligated to make payment once the architect issues the certificate of payment; and (i) upon receipt of written notice the work is ready for final inspection, the architect will make the inspection and if the work is found to be acceptable and the contract fully performed, he will issue a final certificate for payment stating the work has been completed satisfactorily, making the balance to the contractor due and payable.

The contractor asserts compliance with all of the requirements of the contract. The architect issued two certificates for payment, which were not paid. The school refused to make the payments claiming the contractor had not satisfactorily performed his duties. The school board maintains the contractor performed below contract specifications in several aspects of the cosmetic finish work. Plaintiff then sued for the \$33,400 installment, which the defendants refused to pay. Upon motion for summary judgment, the trial court, holding there were no genuine issues of material

facts and the plaintiff was entitled to judgment as a matter of law, granted the plaintiff's motion. The defendant appeals, claiming there were material issues of fact and plaintiff was not entitled to judgment as a matter of law. We affirm the grant of summary judgment.

Under Iowa R. Civ. P. 237, summary judgments are granted when there is no genuine issue as to any material fact. Tasco Incorporated v. Winkel, 281 N.W.2d 280, 282 (Iowa 1979). We give to the party opposing the motion the benefit of any doubt as to the propriety of granting summary judgment. Frohwein v. Haesmeyer, 264 N.W.2d 792, 795-96 (Iowa 1978). Our task on appeal is to determine only whether a genuine issue of material fact exists and whether the law was correctly applied. Id. If we find an unresolved issue concerning a material fact or an incorrect application of the law, we will reverse the grant of summary judgment.

Generally, the construction of a contract, and interpretation of a contract when it depends upon neither extrinsic facts nor choosing between reasonable inferences drawn from the contract, are matters of law for the court to decide. Farm Bureau Mutual Insurance Company v. Sandbulte, 302 N.W.2d 104, 107 (Iowa 1981). This case presents a question of contract construction. Essentially, the issue is whether the architect's issuance of a final certificate for payment to the contractor satisfies the condition precedent to the owner's immediate obligation to pay the outstanding balance due on the contract. We think the contract is clear on this point. The contract provides, in relevant part:

9.4.2 . . . In addition, the Architect's final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in subparagraph 9.7.2 have been fulfilled.

. . .
9.7.2 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when he finds the Work acceptable under the Contract Documents and the Contract fully performed, he will promptly issue a final Certificate for Payment stating that to the best of his knowledge, information and belief, and on the basis of his observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable.

The facts are not contested that the architect issued a final certificate for payment to the plaintiffs. We hold the architect's issuance of the certificate for final payment establishes the defendant's duty of immediate performance. See Marsh & Company v. Light & Power Company of St. Angsar, 196 Iowa 926, 933-34, 195 N.W. 754, 758 (Iowa 1923); 13 Am. Jur. 2d Building and Construction Contracts, § 32 at 34-35, § 34 at 36-38.

The problems and factual issues the defendant raises concerning the plaintiff's performance go to whether the architect performed satisfactorily in issuing the certificate. Since neither fraud, gross mistake, nor bad faith were alleged on the part of the architect in issuing the final certificate for payment, we are of the opinion there was no unresolved material issue as to whether plaintiff performed satisfactorily under the contract. A different result might obtain if the architect had issued the final certificate for payment without inspecting the work, or the architect perpetrated fraud upon the school board or acted collusively with the plaintiff. See Marsh & Company v. Light and Power Company of St. Angsar, 196 Iowa 926, 933-34, 195 N.W. 754, 758 (Iowa 1923); 13 Am. Jur. 2d Building and Construction Contracts, § 33 at 35-36, § 34 at 36-38. Once the certificate has issued, absent colorable assertions of fraud, bad faith or gross mistake, the contract makes it clear the school board becomes obligated to make final payment. We conclude the trial court was correct in granting the plaintiff's motion for summary judgment.

AFFIRMED.