IN THE COURT OF APPEALS OF IOWA

No. 2-246 / 91-1641

FILED
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CLERK SUPREME COURT

D & M ROAD MAINTENANCE SERVICES, INC.,

Appellant,

vs.

IOWA DEPARTMENT OF TRANSPORTATION,

Appellee.

Appeal from the Iowa District Court for O'Brien County, James L. McDonald, Judge.

D & M Road Maintenance appeals from the district court's ruling which granted summary judgment to the Iowa Department of Transportation. **AFFIRMED.**

Robert W. Goodwin of Goodwin Law Office, P.C., Ames, for appellant.

Bonnie J. Campbell, Attorney General, David A. Ferree, Special Assistant Attorney General, and John W. Baty and Kerry Anderson, Assistant Attorneys General, for appellee.

Considered by Oxberger, C.J., and Schlegel and Hayden, JJ.

OXBERGER, C.J.

The plaintiff, D & M Road Maintenance Services, Inc., "D & M," entered into two road repair contracts with the Iowa Department of Transportation, "IDOT." The contracts provided D & M repair portions of highways 10 and 59 in O'Brien County, Iowa. Both contracts adopted by reference IDOT's Standard Specifications of 1984, Supplemental Specifications and Special Provision. The contracts included express specifications requiring prior approval before D & M could incur additional cost. The contracts required completion of the repair work by August 25, 1989. The repairs on Highway 10 were completed on September 8, 1989. Work ceased on Highway 59 on October 18, 1989, but was not completed. IDOT retained another contractor to complete the work.

At no time during D & M's work did the contractor request additional compensation. No extra work orders were issued by the State's engineer authorizing D & M to provide additional labor or material.

On February 5, 1990, D & M requested additional compensation. The IDOT denied the request. D & M instituted suit alleging IDOT breached its contracts by changing work conditions and requiring work contrary to the custom, practice, and usage in the industry.

The district court granted IDOT's motion for summary judgment. D & M appeals.

Scope Of Review

Our scope of review is for correction of errors at law. Iowa R. App. P. 4.

I. Summary Judgment

Summary judgment is appropriate if there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Downs v. A & H Constr., 481 N.W.2d 520, 522 (Iowa 1992). The moving party has the burden to show the nonexistence of a material fact. Farm Bureau Mutual Ins. Co. v. Milne, 424 N.W.2d 422, 423 (Iowa 1988). Material facts are those which "might affect the outcome of the suit under the governing law . . . ." Behr v. Meredith Corp., 414 N.W.2d 339, 341 (Iowa 1987). The evidence must be viewed in the light most favorable to the resisting party. Thorp Credit, Inc., v. Gott, 387 N.W.2d 342, 343 (Iowa 1986). A fact issue is generated if reasonable minds can differ on how the issue should be resolved, but if the conflict in the record consists only of the legal consequences flowing from undisputed facts, entry of summary judgment is proper. Id. at 343. If the motion is properly supported, however, the resisting party "must set forth specific facts showing that there is a genuine issue for trial." Iowa R. Civ. P. 237(e).

II. Breach of Contract

D & M claims the district court erred in sustaining IDOT's motion for summary judgment and alleges factual disputes. D & M contends the IDOT changed the character of the work by requiring it to perform in a manner in excess of the IDOT's Special Provisions, custom and practice and previous dealings. D & M claims this resulted in a significant cost increase.

Based on the briefs submitted by the parties, we assume, without deciding, IDOT required D & M to perform additional work. We have previously adopted the general rule entitling contractors to compensation for additional work caused by inaccurate specifications. Ida Grove Roofing v. City of Storm Lake, 378 N.W.2d 313, 315 (Iowa App. 1985). Equally as important, the general rule also provides, if so required by contract, prior written notice and approval before commencing work. Id., citing 13 Am. Jur. 2d Building and Construction Contracts § 22 (1964).

The record indicates the contract is replete with language requiring prior written notice and approval before commencing any additional work. D & M failed to notify the IDOT of additional work, failed to request approval and failed to obtain an extra work order as required by the terms of the contract.

We find D & M failed to generate a genuine issue of material fact to support its claim. We affirm the trial

court's ruling granting the IDOT's motion for summary judgment.

AFFIRMED.