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8-9-2012

Summary of Certified Fire Protection, Inc. v. Precision Construction, Inc., et. al., 128 Nev. Adv. Op. No. 35

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Recommended Citation

Akin, Travis, "Summary of Certified Fire Protection, Inc. v. Precision Construction, Inc., et. al., 128 Nev. Adv. Op. No. 35" (2012). *Nevada Supreme Court Summaries*. 156.
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CONTRACT – QUANTUM MERUIT

Summary

Consolidated appeal from a district court judgment on partial findings and an appeal and cross-appeal from a post-judgment order awarding costs and denying a motion for attorney fees.

Disposition/Outcome

To recover in quantum meruit, a party must establish liability on either an implied-in-fact contract or unjust enrichment basis.

Factual and Procedural History

Precision Construction, Inc. (hereinafter “Precision”), as general contractor on a warehouse construction project, solicited subcontractor bids for the design and installation of a sprinkler system. After Certified Fire Protection, Inc. (hereinafter “Certified”) submitted the winning bid in November 2005, Precision notified Certified and entered into a contract with the owner of Certified.

After obtaining a copy of the subcontract on December 5, Certified objected on the grounds that it imposed terms different from the bid specification, complaining that the unanticipated terms changed in the scope of the work and that it would have to amend its bid accordingly. Certified also took exception to additional-insured requirement. Precision asked Certified several times over the following weeks to sign the subcontract and to provide the additional-insured certificate.

On January 19, Certified submitted a \$33,575 progress bill to Precision. On January 25, Precision wrote Certified’s owner requesting the plans and notifying Precision that the progress payment would not be processed until the subcontract was signed. The next day, Precision contacted Certified inquiring if Certified planned to continue and notifying it that the delay was holding back the entire project.

After reiterating its objections to the subcontract on January 27, Certified submitted the drawings on February 1. After the parties communicated several times about the subcontract, Precision identified errors in the drawings on February 8 and again asked Certified about the still unsigned subcontract.

¹ By Travis Akin

On February 16, Precision terminated its relationship with Certified for failure to sign the subcontract, for not providing the additional-insured endorsement, and for errors in designs. Certified submitted a bill for design work and permit fees for \$25,185.04. After Precision refused to pay, Certified placed a mechanic's lien on the property and filed a lawsuit seeking to foreclose the lien and damages for unjust enrichment, quantum meruit, and breach of contract.

The case went to a bench trial. At the close of the case-in-chief, Precision moved for judgment on partial findings pursuant to NRCP 52(c). The district court granted the motion and expunged the lien. The district court found that no contract existed, and, because the design materials could not be used by Precision, the quantum meruit and unjust enrichment claims failed. After the judgment, Precision moved for and was denied attorney fees and costs pursuant to NRS 17.115 and NRS 108.237.

On appeal, Certified argued that the district court failed to determine if a contract for design-only work existed. Certified also asserted error on the unjust enrichment and quantum meruit claims because Precision did not benefit. On cross-appeal, Precision argued abuse of discretion by the district court in denying its motion for attorney fees.

Discussion

Justice Pickering wrote the opinion for a unanimous three justice panel. In granting the NRCP 52(c) motion on partial findings, the district court found an absence of the meeting of the minds required to form a contract, and that Certified's work "conveyed no value" to Precision. Certified argued that the district court erred by focusing on a contract that Certified was not seeking to enforce. Certified argued that it had, at minimum, an implied contract for design work only, and was entitled to damages in quantum meruit for only design work.

A. Certified's express contract claim

Basic contract principles require, for an enforceable contract, an offer and acceptance, meeting of the minds, and consideration. In attempting to establish a meeting of the minds on price and scope, Certified argued that the bill it sent Precision established price and that Precision's urging it to begin work supported its claim. But the record did not establish that Precision agreed to pay a certain sum for the design-only work. Certified's bill went unpaid and Precision made payment contingent upon the signing of the subcontract. Testimony established that the designs were not useful to a different installer. Thus, Certified's argument that it was contracted for designs only was illogical.

Additionally, the parties never agreed to a time to perform. Precision's repeated urging to complete the designs showed that time-for-performance was essential. Although the district court did not examine a design-only contract, the

Court found that such a contract could not be formed absent an agreement on these three terms.

B. Certified's implied contract claim

Certified's next argument was that it should recover under an implied contract, either through quantum meruit or unjust enrichment. The Court explained that Certified's argument was correctly expressed as for recovery under quantum meruit, either through an implied contract-in-fact or unjust enrichment.

Quantum meruit's first application is in based upon contracts implied-in-fact. To find an implied-in-fact contract, the fact-finder must conclude that promises were exchanged, and that the general obligations of each party are sufficiently clear. At this point, a party may use quantum meruit as a gap-filler for the absent term. Quantum meruit ensures that the laborer receives reasonable value for his services.

The Court repeated that there was no express or implied contract for design-only work. Because price, scope, and time were never agreed upon, there were too many absent terms for quantum meruit to apply. Precision selected Certified for design and install, and the record established the design was useless to others. Therefore, the Court found that the district court properly denied Certified's claim for recovery in quantum meruit for an implied contract-in fact.

Quantum meruit's other application is to provide restitution for unjust enrichment. In this context, quantum meruit serves as a remedy of the market value of services when nonreturnable benefits have been provided at the defendant's request, but the parties have no enforceable agreement as to price. A pleading of quantum meruit requires the plaintiff to demonstrate that the defendant received any advantage from the services provided.

The district court found that Precision had not unjustly retained money or property from the designs because the designs were useless to others. All of Certified's witnesses admitted this fact on cross-examination, and Certified never submitted evidence of any ascertainable advantage to Precision from Certified's work. Because the work was incomplete, incorrect, late, and useless to others, the Court affirmed the district court's denial of recovery in quantum meruit for unjust enrichment.

C. Precision's claim for attorney fees

Next, Precision argued that the district court abused its discretion when it failed to award attorney fees based on the offer of judgment it made shortly after filing its answer. Precision specifically argued that the factors established in *Beattie*

v. Thomas were not addressed,² and that it should be granted fees pursuant to NRS 108.237, the mechanic's lien statute.³

The district court found that the offer of judgment was “unreasonable in amount” and made so early that Certified did not have an opportunity to assess the claim through discovery. The district court has discretion to consider the offer and propriety of granting fees, and explicit findings on every *Beattie* factor are not required. Therefore, the Court found that the district court did not abuse its discretion and affirmed its denial of attorneys fees based upon the offer of judgment.

Although the district court did not make an express finding on the mechanic's lien, the Court found that Certified had a reasonable basis to pursue the lien, despite losing on the claim. Therefore, the Court found that the district court did not abuse its discretion and affirmed its denial of attorneys fees based upon the mechanic's lien statute.

Conclusion

The Court affirmed the denial of recovery in quantum meruit because Certified did not provide sufficient evidence to establish either an implied-in-fact contract or unjust enrichment. The Court also affirmed the cross-appeal of the district court's order denying attorney fees to Precision.

² 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983).

³ See NEV. REV. STAT. 108.237 (2007).