



11/15/94 NORTHERN MINNESOTA PAVING v. ASPHALT

1994 | Cited 0 times | Court of Appeals of Minnesota | November 15, 1994

KALITOWSKI, Judge

This matter involves a dispute over a written agreement concerning payment for materials and work provided by appellant subcontractor Northern Minnesota Paving (Northern) for respondent general contractor Asphalt Surface Technologies (ASTECH). On appeal, Northern argues the trial court erred by: (1) failing to enforce the written agreement; and (2) dismissing ASTECH's bond surety, Employer's Mutual Casualty Corporation (Employers) and thereby denying Northern attorney fees under the bond statute. We agree and reverse.

DECISION

I.

Before the last night's work on a runway repair project at International Falls Airport, Northern requested that ASTECH provide Northern a written purchase order for Bid Item 87-2 at a price of \$175 per ton. ASTECH drafted and signed the requested purchase order without objection. The trial court refused to enforce this written contract because it found: (1) no subjective agreement between the parties on the meaning of the contract; and (2) economic duress.

Minnesota follows the objective theory of contract formation. The objective manifestation of intent rather than the parties' subjective intent determines whether a contract was formed. *Speckel v. Perkins*, 364 N.W.2d 890, 893 (Minn. App. 1985). There was nothing in the record to indicate that ASTECH disagreed with or protested Northern's request for the purchase order. Neither Northern nor ASTECH changed its course of conduct as a result of the purchase order.

The purchase order indicates that ASTECH agreed to pay Northern \$175 per ton for Bid Item 87-2. The trial court found that there was no meeting of the minds because "ASTECH reasonably intended and believed that the contract drawn constituted an assumption of the entire job on 87-2, not just the work done by Northern." This finding is clearly erroneous because it is without support in the record. The record indicates that ASTECH directly paid the other subcontractors on 87-2 and did not look to Northern to perform additional duties or pay the other subcontractors.

The trial court also found that the written contract was unenforceable because it was formed under economic duress. Minnesota law, however does not recognize the defense of economic duress. See *Bond v. Charlson*, 374 N.W.2d 423, 428 (Minn. 1985) (duress is a defense to a contract only when



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agreement is coerced by physical force or unlawful threats); see also *St. Louis Park Inv. v. R.L. Johnson Inv.*, 411 N.W.2d 288, 291 (Minn. App. 1987), pet. for rev. denied (Minn. Oct. 30, 1987) (declining to apply defense of economic duress).

The documentary evidence indicates the parties objectively manifested an intent to form a contract. Because the trial court's conclusion that the written contract failed is clearly erroneous and unsupported by law, Northern is entitled to the full contract price of \$175 per ton.

II.

Northern also argues the trial court erred by dismissing ASTECH's surety, Employers, and denying Northern's claim for attorney fees under Minn. Stat. § 574.26 (1992). We agree.

A surety is directly and equally liable to a creditor, on the same terms as the principal. 74 Am. Jur. 2d Suretyship § 1. Northern was entitled to have judgment entered against Employers and ASTECH equally. The statute requiring performance bonds also provides for reasonable attorney fees when an action on the bond is successful. *American Druggists Ins. v. Thompson Lumber*, 349 N.W.2d 569, 574 (Minn. App. 1984). Because Northern was forced to resort to an action on the bond in order to be paid, and because they were successful in that action, they are entitled to reasonable attorney fees.

Finally, we note that ASTECH's argument that Northern's appeal is moot and should be dismissed is without merit.

We reverse and remand to the trial court for determination of reasonable attorney fees and to enter a judgment in favor of Northern against ASTECH and Employers in the amount of \$97,791.50, plus reasonable attorney fees.

Reversed and remanded.

Thomas Kalitowski

11-8-94

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

