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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-640**

Miller Architects & Builders, Inc.,
Respondent,

vs.

Mighty Fortress International Ministries, Inc.,
Appellant,

Brenny Custom Cabinets, Inc., et al.,
Defendants.

**Filed October 26, 2010
Affirmed
Klaphake, Judge**

Hennepin County District Court
File No. 27-CV-09-2091

Ryan D. Stai, Stephen H. Barrows, Leonard, Street and Deinard, P.A., Minneapolis,
Minnesota (for respondent)

Damon L. Ward, Ward Law Group, Minneapolis, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Klaphake, Judge; and
Shumaker, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

In this mechanic's lien and breach-of-contract action, appellant Mighty Fortress
International Ministries, Inc., challenges the district court's grant of summary judgment

to respondent Miller Architects & Builders, Inc. Appellant asserts that respondent failed to satisfy a condition precedent under the contract and to prove damages. Further, appellant argues that genuine issues of material fact preclude summary judgment.

Because the contract here did not contain a condition precedent and was for a fixed price upon performance of specified services, which were performed, the district court did not err by granting summary judgment. We therefore affirm.

D E C I S I O N

Standard of Review

The district court must grant summary judgment if, based on the entire record before the court, there are no genuine issues of material fact and either party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. On appeal, we determine whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). No genuine issue for trial exists when a rational trier of fact, considering the record as a whole, could not find for the nonmoving party. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997).

If a contract is unambiguous, interpretation of the contract is a question of law. *City of Va. v. Northland Office Props. Ltd. P'ship*, 465 N.W.2d 424, 427 (Minn. App. 1991), *review denied* (Minn. Apr. 18, 1991). “Whether a contract is ambiguous is a question of law that we review de novo.” *Carlson v. Allstate Ins. Co.*, 749 N.W.2d 41, 45 (Minn. 2008). Contract language is given its plain and ordinary meaning. *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998).

Contractual Condition Precedent

Appellant argues that its construction contract with respondent unambiguously requires as a condition precedent that respondent pay its subcontractors before appellant is obligated to pay the cost of work under the contract. Appellant cites Article 5 of the agreement, which states that appellant agrees to pay respondent for the cost of the work and which defines “Cost of the Work” to include “Payments made by [respondent] to Subcontractors for work performed under this Agreement.” Appellant argues that because respondent did not pay all of its subcontractors before filing this lawsuit, respondent did not satisfy the condition precedent, and appellant was therefore not bound by the contract.

Appellant overlooks the effect of a valid addendum to the contract that converted the cost of the work to a fixed price option. Under this addendum, the parties agreed that the construction would be accomplished for a fixed price, subject to certain modifications through change orders. The fixed price option included respondent’s fee and an estimate of the cost of the work as defined in Article 5 of the contract. More specifically, the agreement states that appellant “proposes to furnish all labor, materials, construction equipment and supervision necessary to construct a 29,956 square foot church per the current plan set” for a total price of \$5,206,499. This option was signed by appellant on July 27, 2007, and became a valid part of the contract on that date. *See Simplex Supplies, Inc. v. Abhe & Svoboda, Inc.*, 586 N.W.2d 797, 802 (Minn. App. 1998) (construing for purposes of statute of frauds four separate writings as one contract), *review denied* (Minn. Feb. 24, 1999).

Contract language is given its plain and ordinary meaning. *Brookfield Trade*, 584 N.W.2d at 394. Under the fixed price option, respondent was required to furnish all labor and materials for a set price; appellant's corresponding obligation was to pay the agreed-upon fixed price. The district court's conclusion that appellant had breached the contract by failing to pay the balance of the agreed-upon contract price is supported by the evidence and is a correct application of the law.

Further, "[a] condition precedent is an event that must occur before a party is required to perform a certain contractual duty." *Minnwest Bank Cent. v. Flagship Props. LLC*, 689 N.W.2d 295, 299 (Minn. App. 2004). Appellant raises an argument based on the language of the article defining "cost of work" as "[p]ayments made" to subcontractors, rather than the cost of subcontractors. But as respondent points out, the "cost of work" also includes "[a]ll costs directly incurred in the performance of the Work or in connection with the Project . . . which are reasonably inferable from the Contract Documents as necessary to produce the intended results." This clause is broad enough to include subcontractor costs that have not yet been paid.

Based on the plain meaning of the contract language, appellant was obligated to pay a fixed sum under the contract and failed to do so. The district court did not err by granting summary judgment on this basis.

Evidence of Damages

Appellant further argues that the district court erred in awarding damages under the contract because the evidence was speculative or insufficient to support the damages claim. Appellant asserts that respondent claimed damages based on performance by

subcontractors and that these are not truly damages to respondent; further, appellant argues that respondent has not identified all of the unpaid subcontractors and that some of them have not participated in the mechanic's lien process.

The contract here is for a fixed sum based on the provision of certain services. Respondent agreed to supply all materials, labor, and supervision for a fixed price of \$5,206,499.¹ Appellant has not claimed that respondent did not fulfill its obligations under the contract. Had respondent agreed to provide labor, materials, and supervision for a per unit cost, with the total calculated after completion of the project, the evidence offered would not be sufficient. But the parties here agreed on a fixed total price.

We interpret a contract according to its plain meaning in order to effectuate the intention of the parties. *Carlson*, 749 N.W.2d at 45. Here, the plain language of the contract is that the parties intended to fix their obligations to one another; just as appellant agreed to pay a fixed price to respondent for certain services, respondent agreed to provide certain services for that price and could not have increased the price of what it had agreed to provide. Because of this, the amounts that respondent paid to various subcontractors was not relevant to any breach of contract claim brought against respondent by appellant on the fixed price contract.

Appellant also argues that money owed to subcontractors who did not participate in the mechanic's lien process could not provide a basis for damages. Although the mechanic's lien statute provides a method for assuring payment for services rendered in

¹ The full amount due including change orders was in excess of \$5.65 million, but the claim here does not include amounts arising under the change orders.

connection with improvements to real estate, Minn. Stat. § 514.01 (2008), a person who has rendered such service retains the right to recover “in an ordinary civil action, from the party with whom a contract was made.” Minn. Stat. § 514.13 (2008). Thus, respondent could legitimately owe money to subcontractors who did not appear in the mechanic’s lien action. But because the contract is one for a fixed price, respondent would not need to prove the amount owed to subcontractors in order to collect under the contract.

Genuine Issues of Material Fact

Appellant argues that genuine issues of material fact exist regarding the amount of damages, precluding summary judgment. Appellant asserts that respondent failed to prove the outstanding amounts it owed to various subcontractors who were not involved in litigation and thus its request for damages was speculative.

“An award of damages may not be based on speculation or conjecture.” *Snyder v. City of Minneapolis*, 441 N.W.2d 781, 789 (Minn. 1989). Determination of the amount of damages is generally a question of fact. *Id.* But no question of fact exists when a rational trier of fact, considering the record as a whole, could not find for the nonmoving party. *DLH*, 566 N.W.2d at 69. Damages for breach of contract generally represent the amount that will place the non-breaching party “in the same position he would be in had the contract been performed.” *Kellogg v. Woods*, 720 N.W.2d 845, 853 (Minn. App. 2006).

Determination of damages can undoubtedly involve fact-finding and the weighing of competing considerations. But here the contract is based on a fixed price of \$5,206,499 and the parties do not disagree that the amount still unpaid under the contract,

after deductions for appellant's direct payments to subcontractors, is \$55,891.14. An award of the agreed-upon contract price will put respondent in the same position it would have been in had appellant performed its obligation to pay, and it is not speculative. Under these facts, the amount of the award of damages is not therefore a genuine issue of material fact.

Affirmed.