SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0408-22

JO-MED CONTRACTING CORP.,

Plaintiff-Respondent,

v.

CITY OF LINDEN,

Defendant-Appellant.

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Argued September 27, 2023 – Decided October 16, 2023

Before Judges Smith and Perez Friscia.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Docket No. L-3288-20.

Daniel Antonelli argued the cause for appellant (Antonelli Kantor Rivera, attorneys; Daniel Antonelli, of counsel and on the briefs; Michael A. Sabony, on the briefs).

Mitchell W. Taraschi argued the cause for respondent (Connell Foley LLP, attorneys; Mitchell W. Taraschi and William T. McGloin, of counsel and on the brief; Nicholas J. Guarino, on the brief).

PER CURIAM

Defendant City of Linden appeals from the Law Division's August 22, 2022 final judgment awarding plaintiff Jo-Med Contracting Corp. damages, interest, fees, and costs in the amount of $194,794.43 under the New Jersey Prompt Payment Act (PPA), N.J.S.A. 2A:30A-1 to -2. After reviewing the parties' arguments, the record, and applicable law, we affirm.

We derive the pertinent facts from the summary judgment record. In December 2019, Linden became aware of the need for an emergency sewer repair on Linden property. On December 16, 2019, Joseph C. Chrobak, Linden's supervising engineer, emailed Jo-Med requesting a quote for the necessary emergency sewer work including: the repair of "approximately 20 feet of 12[-] inch terra-cotta pipe with pvc and ferncos"; "30 feet of curb" replacement; "[t]rench and road restoration"; and asphalt replacement "to grade." The request also required removal of excavation materials, by-pass pumping by Linden, and off-duty police monitoring. Chrobak had expected the job to take "eight hours" to complete "under normal circumstances." Jo-Med submitted a bid proposal to Linden the same day in the amount of $25,000 and provided that Jo-Med "would only be able to perform work on Tuesday, 12/17 after 3:00 p.m." Additionally, the bottom of the proposal provided "[t]his ESTIMATE is for completing the job as described above. It is based on our evaluation and does not include

material price increases or additional labor and materials which may be required should unforeseen problems or adverse weather conditions arise after the work has started."

After Chrobak reviewed the emergency repair proposal with Nicholas J. Pantina, Linden's engineer, it was approved and Jo-Med was awarded the bid. Pantina acknowledged after the approval he told Jo-Med's owner "I was going to work with him for additional charges to finish the work." Pantina did not recall whether he had read the proposal's language requiring payment for "additional labor or materials," but recalled that he "told Jo-Med we would be willing to work with him for additional fees." It is undisputed that before Jo-Med began the work, Linden was performing bypass pumping to "relieve some of the build up [sic] of sewerage above the blockage or the collapse."

On December 17, 2019, Jo-Med commenced work at the site by removing asphalt. Jo-Med discovered that the excavation hole was filled with water and that "three feet of water" covered the sewer main. Chrobak acknowledged he learned of "an issue with excessive groundwater coming into the excavated area" and that there was "an issue with trying to get that groundwater removed." Linden's Public Works Department was on site during Jo-Med's work. Pantina acknowledged that the excessive groundwater problem was "[p]ossibly"

unforeseen. It is undisputed Jo-Med was required to remove the water to replace the pipe, use three pumps for water removal, and wait for the water level to drop.

Within a day of beginning the repair, Jo-Med notified Chrobak that the work would "cost more than [the price in] the original proposal" because extracting the excess water at the site was an additional expense. Chrobak testified the parties understood Jo-Med would be compensated a "reasonable amount" for additional work done. Pantina told Jo-Med's owner that Linden would allow a "change order" for the contract. Linden did not set a monetary reimbursement limit, request a "time and material schedule," or request Jo-Med to stop working.

On December 20, 2019, the water sufficiently receded for Jo-Med to complete the repair. Chrobak and Pantina agreed that Jo-Med completed the contracted work and that additional work was required.

After the work was completed, Linden discovered it still had a sewer "blockage or collapse." Chrobak learned of a "secondary blockage" or "collapse" which was "just upstream of Jo-Med's work" and unrelated to "the section of the pipe that Jo-Med was contracted to replace." Pantina acknowledged Jo-Med performed the required work but believed "even though we said approximately 20 feet and there is the approximate area of where it is,

the approximate area could have been a couple feet past that . . . . Could have been 20 feet past." Pantina further acknowledged possibly knowing of "two collapses," he "[was] not quite sure"; but he thought there may have been only "one collapse the entire time." Pantina's position was, "in essence[,] . . . even though [Jo-Med] did the work that they were asked to . . . it didn't solve the problem." Linden hired another contractor, Montana Construction, Inc., to complete the sewer repair unrelated to Jo-Med's work. During Montana's work, Linden learned that Jo-Med "allegedly failed to properly secure a pipe [f]ernco," but never notified Jo-Med of the deficiency.

On January 3, 2020, Chrobak asked Jo-Med to submit a final invoice for the work performed and to explain "[a]ny additional items." On January 14, 2020, Jo-Med submitted an itemized invoice for $119,970.95. Upon receipt, Linden believed the labor charge was "excessive and unreasonable," but did not notify Jo-Med of any dispute.

On February 3, 2020, Chrobak emailed Jo-Med requesting an invoice and billing statement to explain "what was actually included in the original $25,000 and then what the additional costs include[d]." On March 2, 2020, Jo-Med sent a revised invoice for $106,708.20. Relevantly, over one month later, on April 7, 2020, Linden offered Jo-Med "a reduced sum of $75,000" for the work.

Pantina believed the amount offered was fair because another contractor was necessary to "resolve the existing emergency repairs." Linden never remitted money to Jo-Med or provided written notice disputing the work.

Jo-Med filed a complaint alleging: (1) breach of contract; (2) breach of the covenant of good faith and fair dealing; (3) delinquency in payment of a book account; (4) quantum meruit; (5) unjust enrichment; and (6) violation of the PPA. Linden filed an answer and counterclaim for: (1) breach of contract; (2) breach of covenant of good faith and fair dealing; and (3) "[s]et-off" for the "reasonable and necessary cost of . . . corrective work."

Jo-Med moved for summary judgment, arguing: (1) it was owed payment for the contracted and additional work performed because Linden failed to timely object as required by the PPA; and (2) absent an objection the PPA mandated prompt payment within thirty days of the billing date. Linden countered: (1) the additional amount charged was unreasonable and (2) the PPA did not apply because Jo-Med's repair work involved "no improvement to real property" or "structure."

On June 28, 2022, the motion judge entered an order granting summary judgment in favor of Jo-Med in the amount of $119,970.95, "as well as [one percent] interest, attorney's fees and costs" and dismissed Linden's

counterclaims with prejudice. The judge found the PPA applied to Linden's work as the sewer system repairs "constitute[d] real property that was improved upon" under the plain language of N.J.S.A. 2A:30A-1. The judge also found that "the dispositive issue . . . [was] whether the sewer constitute[d] real property, or alternatively, if it connected with, on or beneath the surface of real property." Finding that the PPA defines "real property" as "real estate that is improved upon or to be improved upon," the judge reasoned that "[a] sewage system constitute[d] real property" because it was "an integral part of [Linden's] wastewater disposal system, pumping stations, and appurtenances that convey[ed] sewage from its points of origin to a point of treatment or disposal." The judge further reasoned a sewage system by its nature would have "multiple connections to real property" because without any connection to real property, a sewage system would be superfluous as "there would be no waste to dispose of." The judge also determined Linden's failure to timely object to Jo-Med's invoice and to dispute the work performed rendered Linden's arguments meritless as to any dissatisfaction. The judge found, under the PPA, Linden was required to object to Jo-Med's invoice within twenty days after receipt, which it failed to do.

On July 13, 2022, Jo-Med filed a certification in support of an award of attorney's fees and costs. On August 22, 2022, the judge entered final judgment for a total of $194,794.43, including $133,355.93 for work performed according to the "January 13, 2020 invoice, plus statutorily required interest at the prime rate plus [one percent] since February 14, 2020"; $58,522 in attorney's fees; and $2,916.50 in costs.

We review "the grant of a motion for summary judgment de novo, applying the same standard used by the trial court." Samolyk v. Berthe, 251 N.J. 73, 78 (2022). Pursuant to Rule 4:46-2, in reviewing a motion for summary judgment, the court is to "determine whether 'the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.'" Castano v. Augustine, 475 N.J. Super. 71, 76-77 (App. Div. 2023) (quoting Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021)). To determine "whether a genuine issue of material fact exists," we must derive "all legitimate inferences from the facts in favor of the non-moving party." Id. at 77 (quoting Friedman v. Martinez, 242 N.J. 449, 472 (2020)).

When interpreting a statute, we first review the actual language of the statute. Goldhagen v. Pasmowitz, 247 N.J. 580, 599 (2021). "Where statutory language is clear, courts should give it effect unless it is evident that the Legislature did not intend such meaning." Bubis v. Kassin, 184 N.J. 612, 626 (2005) (quoting Rumson Estates, Inc. v. Mayor of Fair Haven, 177 N.J. 338, 354 (2003)). We "ascribe[] to the statutory words their ordinary meaning and significance and read[] them in context with related provisions so as to give sense to the legislation as a whole." W.S. v. Hildreth, 252 N.J. 506, 518 (2023) (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005)). "If the language of a statute is clear, a court's task is complete." In re Plan for Abolition of the Council on Affordable Hous., 214 N.J. 444, 468 (2013). We review statutory interpretation de novo. In re H.D., 241 N.J. 412, 418 (2020).

We conclude the judge correctly entered final judgment in favor of Jo-Med pursuant to the PPA as the statutory plain language is clear. The PPA requires timely payment, "[i]f a prime contractor has performed in accordance with the provisions of a contract with the owner." N.J.S.A. 2A:30A-2(a). The PPA provides, "the owner shall pay the amount due to the prime contractor . . . not more than [thirty] calendar days after the billing date." Ibid. The PPA defines a "[p]rime contractor" as "a person who contracts with an owner to

improve real property." N.J.S.A. 2A:30A-1. "Improve" is defined as "to build, alter, repair or demolish any structure upon, connected with, on or beneath the surface of any real property; to excavate, clear, grade, fill or landscape any real property; . . . to furnish construction related materials," among other things. Ibid. "Real property" is defined as "the real estate that is improved upon or to be improved upon." Ibid. Additionally, "[s]tructure" is defined as "all or any part of a building and other improvements to real property." Ibid. (emphasis added). Notably, the definition of "structure" contains an "and" between "building" and "other improvements to real property." Ibid. We observe the "clear purpose" of the PPA is to ensure that contractors and subcontractors "are fully and promptly paid for their work." JHC Indus. Servs., LLC v. Centurion Cos., 469 N.J. Super. 306, 309, 315 (App. Div. 2021).

The PPA provides for contracted work to be paid as follows: "[t]he billing shall be deemed approved and certified [twenty] days after the owner receives it unless the owner provides, before the end of the [twenty]-day period, a written statement of the amount withheld and the reason for withholding payment." N.J.S.A. 2A:30A-2(a). The PPA further provides a public entity payment provision for a: "governing body to vote on authorizations for each periodic payment, final payment or retainage monies, the amount due may be approved

and certified at the next scheduled public meeting of the entity's governing body, and paid during the entity's subsequent payment cycle." Ibid.

We reject Linden's arguments that the PPA's statutory language "requires improvements be made to a structure" and that the judge erred in finding the PPA applied to the contract. Further, Linden's arguments that the judge incorrectly relied only on partial definitions for "structure" and "improvement" are unavailing. The judge correctly applied the definition of "structure," which provides "all or any part of a building and other improvements to real property," to determine the sewerage work constituted an improvement to real property under the PPA. N.J.S.A. 2A:30A-1 (emphasis added).

We agree with the judge's finding that the "sewer system . . . constitute[d] real property that was improved upon" under the PPA. Linden's proposed statutory interpretation that the PPA requires an improvement to be made to a physical building structure, is misplaced as it ignores the statute's clear language. The plain language of "structure" clearly includes "and other improvements to real property," which provides for improvement to more than simply "a building." We conclude the PPA applies to contracted work for "improvements to real property," including work "upon, connected with, on or

beneath the surface . . . to excavate, clear, grade, fill or landscape." N.J.S.A. 2A:30A-1.

It is undisputed Jo-Med provided emergency repair services to: remove unexpected ground water at the site; repair twenty feet of sewer pipe; provide curb replacement, trench and road restoration; and replace asphalt. Jo-Med's underground sewer repair work and above ground curb and asphalt replacement constituted improvements to real property owned by Linden under the PPA. Although we conclude the PPA applies to the contract for Jo-Med's real property improvements, it cannot be ignored that the work performed "beneath the surface" was to "repair" a collapsed sewer pipe that caused damage to Linden residents' homes, which are structures. As Chrobak conceded, the emergency work precipitated from "[r]esidents upstream [who] were having backups into their homes." The judge correctly looked at the applicable PPA definitions for improvement, real property, and structure to find the PPA applied to the parties' contract. Substantial credible evidence in the record supports the judge's judgment in favor of Jo-Med. Indeed, the application of the PPA was consistent with the Legislature's purpose to ensure prompt payment to contractors.

Linden's argument that the PPA did not apply because Jo-Med failed to perform "in accordance with" the contract is also unsupported. The record

demonstrates no genuine issue of material fact exists to refute Jo-Med completed the contracted work. Although Linden requested an itemized invoice for the work performed, it neither timely objected nor provided a written reason for withholding payment within twenty days of receiving the bill. See N.J.S.A. 2A:30A-2(a).

Lastly, Linden's argument that the PPA does not contemplate the "unique" situation of "a public entity[] solicit[ing] proposals for emergency work" is misplaced. The PPA specifically provides for contracts entered by public entities. Linden's failure to timely object to the work performed under the contract foreclosed its dispute of the amount billed pursuant to the PPA.

To the extent that we have not addressed Linden's remaining arguments, it is because they lack sufficient merit to be discussed in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.