STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0269

Bowman Construction Co., Inc.,
Respondent,

vs.

LaValla Sand & Gravel, Inc., et al.,
Appellants.

Filed November 25, 2013
Affirmed; motion denied
Connolly, Judge

Lake of the Woods County District Court
File No. 39-CV-12-34

Steven A. Nelson, International Falls, Minnesota (for respondent)

Alan B. Fish, Dennis H. Ingold, Alan B. Fish, P.A., Roseau, Minnesota (for appellants)

Considered and decided by Kalitowski, Presiding Judge; Worke, Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Appellants challenge the denial of their motion for amended findings of fact and conclusions of law or for a new trial on the ground that the district court erred in

concluding that, because an oral contract between the parties was breached when appellants declined to purchase rock respondent had blasted, appellants owed respondent a sum of money for the rock. Because reasonable evidence in the record supports the finding that an oral contract for purchase of the rock existed between the parties, we affirm.

FACTS

In 2008, respondent Bowman Construction Co. entered into an oral contract with appellants LaValla Sand & Gravel Inc., and Mark LaValla (collectively, appellant). The contract provided that respondent would arrange for blasting bedrock from a quarry leased by appellant and would purchase the rock it had blasted. Respondent hired Viking Explosives to blast the bedrock. A disagreement between the parties resulted in respondent refusing to pay appellant $5,221.59.

In 2009, the parties entered into another oral contract. This contract also provided that respondent would arrange for blasting the bedrock; it further provided that respondent would pay $1.35 per cubic yard for any blasted rock respondent removed from the quarry and that appellant would pay respondent $4.50 per cubic yard for any remaining blasted rock that appellant wanted to remove. The $4.50 charge was a markup on the price respondent paid Viking Explosives to do the blasting. After respondent removed the blasted rock it wanted, about 9,000 cubic yards remained at the quarry. Appellant did not take this rock and did not pay respondent for it.

In 2011, appellant wanted more rock blasted from the quarry and hired another company, which, like respondent, hired Viking Explosives to do the blasting. This

company imposed a smaller markup on Viking Explosives' charge than respondent had imposed, so appellant was able to buy the blasted rock more cheaply than it could be bought from respondent.

Respondent brought this action, alleging it was owed $4.50 per cubic yard for 9,527 cubic yards of blasted rock left in the quarry after the 2009 blast. Appellant counterclaimed for the $5,221.59 respondent had not paid after the 2008 blast.

During the trial, appellant answered "Yes" when asked if one advantage of the transaction with respondent was that it would provide rock that appellant could market. Appellant also indicated its intent to pay respondent for the blasted rock by answering "Yes" when asked if "the agreed upon price that [it] would pay [respondent] for a cubic yard was [$]4.50 per yard . . . ."

Appellant was questioned about the rock he had blasted by another company.

> Q. Now, if you have this product available from [respondent], why did you blast your own?
> A. Because [respondent is] charging me too much.
> Q. Okay. You can do it cheaper yourself?
> A. Sure.
> Q. All right.
> A. The product I had blasted [by another company] is way less than what [respondent] says I . . . owe . . . .
> Q. All right. So you can just get a lot better deal elsewhere?
> A. Yes.

When asked, "[Y]ou didn't want to pay [respondent's] markup. Would that be a fair statement?" appellant again agreed.

The district court found that:

> 6. . . . [I]n 2009, [appellant] discussed the possibility of buying back some of the [blasted] rock from [respondent]. The parties reached an agreement that [appellant] could buy that rock aggregate at $4.50 per [cubic] yard. It is the construction of this later agreement which is central to the claim by [respondent] against [appellant].
>
> 7. . . . $4.50 per cubic yard is the charge [respondent] levied for the service of separating the aggregate from the solid bedrock outcropping. This incorporate[d] [respondent's] cost for labor, machinery, contractors, blasting consultants, blasting companies, materials, supplies, profit, etc.
>
> . . . .
>
> 12. . . . It makes much more sense that [respondent] would . . . charge [appellant] for all material . . . broke[n] from the bedrock outcropping that [respondent] did not want. Indeed, [appellant] got the broken-up rock, but clearly, [respondent] incurred expense to make it readily available to [appellant]. It is implausible that [respondent] would give this effort away at no charge.
>
> 13. [Appellant] has or had 9,000 yards of broken rock aggregate in various shapes and sizes available now for sale separated from the bedrock at a cost to [respondent]. That aggregate was agreed to be paid for at $4.50 per yard by [appellant]; but it has yet to be paid.

The district court entered judgment for respondent against appellant for $35,278.41.[1] Appellant moved for amended findings of fact and conclusions of law or, in the alternative, for a new trial. In denying the motion, the district court found:

> The parties engaged in a contract whereby [respondent] was to extricate rock from a solid rock outcropping at a quarry under the control of [appellant]. . . . The service provided by [respondent] rendered several thousand yards of loose rock which did not exist in that form

[1] The district court subtracted the $5,221.59 respondent owed appellant after their 2008 transaction from the $40,500 ($4.50 per cubic yard for 9,000 cubic yards) appellant owed respondent. Respondent's debt to appellant is not challenged on appeal.

> for [appellant] prior to [respondent's] performance under the contract.
>
> . . . [F]rom the labor and services provided by [respondent, appellant] had (and perhaps still has) access to a rock product that [respondent] created.
>
> [Respondent's] . . . claim is . . . based upon compensation for [its] blasting cost . . . .

Appellant challenges the denial of its motion, arguing that the district court's finding that the parties' oral contract was breached by appellant's refusal to pay respondent for the 9,000 cubic yards of blasted rock is clearly erroneous.[2]

D E C I S I O N

"Both the existence and terms of an oral contract are issues of fact, generally to be decided by the fact-finder." *Rios v. Jennie-O Turkey Store, Inc*., 793 N.W.2d 309, 315 (Minn. App. 2011), *review denied* (Minn. Mar. 29, 2011).

> [W]e review the district court's factual findings for clear error. That is, we examine the record to see if there is reasonable evidence in the record to support the court's findings. And when determining whether a finding of fact is clearly erroneous, we view the evidence in the light most favorable to the verdict. To conclude that findings of fact are clearly erroneous we must be left with the definite and firm conviction that a mistake has been made.

Rasmussen v. Two Harbors Fish Co., 832 N.W.2d 790, 797 (Minn. 2013) (quotations and citations omitted).

Reasonable evidence supports the district court's findings. Appellant testified that: (1) an advantage of the parties' transaction for appellant was that appellant would

[2] Appellant also moved to strike five sentences and one paragraph from respondent's brief, arguing that they mischaracterized the record and did not cite to the record. Because the defects appellant cites are not pertinent to this opinion, the motion is moot and is denied.

acquire blasted, marketable rock; (2) appellant intended to pay respondent $4.50 per cubic yard for the blasted rock; and (3) appellant later learned it could purchase blasted rock at a lower price and did so. Particularly when viewed in the light most favorable to the district court's verdict, this evidence supports the district court's finding that there was an oral contract between the parties for appellant to purchase the rock. *Id.*

Appellant argues that "the parties entered into an express contract that did not provide compensation to [respondent] for blasting services." But both appellant and respondent testified that they had agreed that appellant would pay respondent $4.50 per cubic yard for blasted rock left in the quarry and removed by appellant. The only reason for appellant to pay respondent, which did not own or lease the rock in the quarry, was to compensate respondent for arranging the blasting; therefore, the parties' contract did provide compensation for blasting services.

Appellant also objects to the district court's observation that "[Respondent] has not been fully paid for the service performed and [appellant] has benefitted from that service", arguing that any "allu[sion] to a theory of recovery that is based on quantum meruit or unjust enrichment" is precluded by the oral contract between the parties. For this argument, appellant relies on *Sharp v. Laubersheimer*, 347 N.W.2d 268 (Minn. 1984). *Sharp* concerned a partnership agreement that "did not provide for compensation to the partners for services rendered [by a partner to the partnership]." *Id.* at 269. "*Because there was an express contract* . . . , the trial court's award of compensation under a quasi-contract or an unjust enrichment theory . . . was contrary to well-established Minnesota case law" and was reversed. *Id.* at 271 (emphasis added). But

Sharp is distinguishable. Here, the parties' oral agreement did provide that appellant would pay respondent $4.50 per cubic yard for blasted rock, and that payment was compensation for respondent's service in arranging to have the rock blasted.

Moreover, "the primary goal of contract interpretation is to determine and enforce the intent of the parties." *Motorsports Racing Plus, Inc. v. Arctic Cat Sales, Inc*., 666 N.W.2d 320, 323 (Minn. 2003). A party is presumed not to intend to contract against its own interest. *See, e.g., Gransbury v. Saterbak*, 116 Minn. 339, 341, 133 N.W. 851, 852 (1911). *Gransbury* concerned a landowner's written agreement to pay an agent a $1-per-acre commission on all land sold to customers brought or sent by the agent. *Id.* at 340, 133 N.W. at 852. The written agreement was modified by an oral agreement that the agent's commission would be taken from the purchaser's second payment for the land. *Id*., 133 N.W. at 852. When the purchaser defaulted after the first payment, the landowner refused to pay the agent's commission on the ground that the agent was not entitled to it because he had agreed that his commission would be taken from the second payment. *Id.*, 133 N.W. at 852. But the agent's agreement to delay receipt of his commission until the buyer made the second payment did not show the agent's intent to forego the commission if the buyer defaulted: "[The agent] had earned his commission when he produced a purchaser . . . and *there seems no great probability that he would agree to make his commission contingent upon the purchaser's carrying out the contract*, while he might well consent . . . to postpone the payment of the commission." *Id.* at 341, 133 N.W. at 852 (emphasis added). Analogously, there is no great probability that appellant would have agreed to pay respondent $4.50 per cubic yard for rock that

respondent did not own and had not made available; nor is there any great probability that respondent paid to have 9,000 cubic yards of rock blasted loose so respondent could give it to appellant. The district court did not set aside the parties' oral contract; it rather determined and enforced the parties' intent, i.e. that respondent would pay to have the rock blasted and appellant would pay respondent for the blasted rock. *See Motorsports*, 666 N.W.2d at 323.

There is no clear error in the district court's finding that appellant breached its oral contract with respondent when it refused to pay for the rock respondent had blasted and instead hired another company to blast rock at a lower price.

Affirmed; motion denied.