

IN THE COURT OF CLAIMS OF OHIO

SYSTEM AUTOMATION CORPORATION :  
Plaintiff : CASE NO. 2001-11022  
v. : DECISION  
OHIO DEPARTMENT OF : Judge Fred J. Shoemaker  
ADMINISTRATIVE SERVICES,  
et al. :  
Defendants :  
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{¶1} Plaintiff, System Automation Corporation (SAC), brought this action against defendants, State of Ohio and Ohio Department of Administrative Services (DAS), alleging that DAS failed to pay for goods delivered pursuant to contract, that such conduct constituted a breach of the contract, and that DAS caused delays in the project which increased plaintiff's costs.<sup>1</sup> The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶2} In fiscal year 1996, DAS and the Ohio Professional Licensing Boards (Boards) began searching for a new computer-based licensing system that was Y2K compliant such that it could accept data for the year 2000 and beyond. After evaluating several systems in use nationwide, DAS entered into a contract with SAC in December 1998. SAC contracted to provide computer software identified as License 2000. The software consisted of a single

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For the purposes of this decision, DAS shall be referred to as the single defendant.

licensing system that was to be used by Ohio's 21 licensing boards (e.g., cosmetology, nursing, pharmacy) to administer professional licensure procedures. Once customized, the software was designed to facilitate processing of applications and renewals, as well as to track professional education compliance, disciplinary actions, and complaints. The project initially was expected to take a year to complete and the contract included a time-line which spanned calendar year 1999.

{¶3} According to the time-line, SAC was to first interview the users to ascertain their needs and then incorporate their comments into one final document entitled Functional Description (FD). Under the contract, DAS was allowed 30 days to review the delivered product and determine if it met acceptance criteria. Upon approval of the FD, SAC would develop a prototype and present this for review. The time-line allocated 30 days for acceptance of each "deliverable." The contract specified that SAC required FD approval before the prototype could be developed. SAC would then customize the software, offer training to the users and finally implement the system by incorporating the data that DAS retrieved from the old system.

{¶4} Soon after commencement of the project, plaintiff began experiencing delays because the various agencies could not agree on one design plan. Agencies expressed concerns with the use of Social Security numbers as identifiers and debated the privacy issues that arose when information concerning one individual with joint licensure (e.g., a professional who was both a pharmacist and a nurse, or an embalmer and a funeral director) could be accessed by personnel from more than one agency. Users also expressed reservations about displaying actual data during the testing phase, citing confidentiality concerns.

{¶5} Plaintiff was able to deliver the FD on time in June 1999; however, it was not formally accepted by DAS until December 1999. In March 2000, the parties' representatives met and agreed upon a revised time-line that estimated the data conversion would be accomplished by DAS before October 2000, with acceptance testing of License 2000 beginning in November, and project completion by January 2001. In July 2000, SAC notified DAS that it was on schedule and expected to deliver the customized software earlier than the date listed in the revised time-line. DAS declined to accept the deliverable earlier than the time-line specified. By the fall of 2000, SAC received notification from Gregory Jackson, the Chief Information Officer for DAS, that the project was designated "at risk" because it was so far behind schedule. (Plaintiff's Exhibit 47.) Defendant acknowledged its inability to timely convert the data from the old Legacy system to the new Oracle database.<sup>2</sup> (Plaintiff's Exhibits 41 and 57.) Although SAC employees traveled to Ohio to begin acceptance testing according to schedule, the computer work stations supplied by DAS malfunctioned and eventually DAS cancelled the testing. SAC also learned at that time that DAS had failed to convert any data for 18 of 21 agencies. (Plaintiff's Exhibit 57.) In January 2001, the time-line was again revised to effectuate project completion by the end of the fiscal year. SAC notified DAS that it had incurred increased costs as a result of the delays and the aborted testing phase.

{¶6} At some point in late 2000, DAS was informed that the funds appropriated for this project were marked for disbursement in fiscal year 2000. (Plaintiff's Exhibit 59.) To extend the appropriation capability throughout the prolonged project

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DAS had previously bargained with SAC for the right to perform the data conversion in exchange for an \$80,000 reduction in the overall contract price.

extensions, DAS was required to petition the Controlling Board for approval. At about the same time, the parties also became aware that the written document that they signed in December 1998 had expired and that a new contract was required before the Controlling Board would consider the request to release additional funds.

{¶7} At this point however, some of the licensing Boards expressed dissatisfaction with retaining SAC as the vendor on the project and threatened to voice their opposition to the Controlling Board members. The Boards were especially interested in obtaining internet access for license renewal, which was not contemplated in the original contract and would have required additional expense if SAC supplied this feature. (Plaintiff's Exhibit 89.) SAC was unwilling to sign a new contract under the same terms and conditions of the prior agreement. It is undisputed that the parties were unable to agree on the terms and conditions for a new contract. On June 19, 2001, DAS notified SAC that it was abandoning the License 2000 project.

{¶8} Plaintiff delivered and received payment for the following components of the licensing system: the Perpetual License, the FD, the prototype, and the Citrix Metaframe. Plaintiff maintains it delivered but did not receive payment for the software customization, documentation development, conversion utilities, and user training. Plaintiff also contends it is owed the retainage<sup>3</sup> on all deliverables as listed in the contract. Accordingly, a dispute exists related to invoices and payments for work performed pursuant to the contract as well as costs incurred due to delays.

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The contract allowed defendant to retain ten percent of the invoice amount owed plaintiff for each deliverable pending satisfactory completion of the project and final acceptance by DAS.

{¶9} "A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes a duty." *Ford v. Tandy Transp., Inc.* (1993), 86 Ohio App.3d 364, 380, citing Restatement of the Law 2d, Contracts (1981) 5, Section 1. In order for a party to be bound to a contract, the party must consent to its terms, the contract must be certain and definite, and there must be a meeting of the minds of both parties. *Episcopal Retirement Homes, Inc. v. Ohio Dept. of Indus. Relations* (1991), 61 Ohio St.3d 366, 369.

{¶10} While it is undisputed that an express contract initially existed between the parties, at issue is the following language found on page 1 of the contract:

{¶11} "Time of Performance. This Contract is effective upon the date of signature by the State, or upon the issuance of a valid purchase order, whichever is later in time. This contract remains in effect until the work described in Exhibit I is completed to the satisfaction of the State and the Contractor is paid in accordance with the Article entitled 'Payment Schedule' in this Agreement and the payment plan included in Exhibit I, or until terminated as provided in the Article entitled Cancellation and Termination in this Agreement.

{¶12} "The term of state of Ohio contracts may cross the state biennium. Therefore, this contract *must terminate June 30, 1999*. If the State or the Contractor have continuing obligations under this Contract, the State may renew this Contract on the same terms, conditions, and pricing in a new biennium by giving written notice to the Contractor prior to July 1, 1999. Renewal may not extend beyond the expiration of the next biennium." (Emphasis added.)

{¶13} Defendant argues that since the contract expired on June 30, 1999, and this action was not filed until November 14, 2001,

plaintiff's claims are barred by the two-year statute of limitations set forth in R.C. 2743.16. In the alternative, defendant argues that any renewal of the contract required written notice and that such notice was never given by DAS to SAC. Finally, DAS contends that even if plaintiff claims to have performed under the belief that the contract had been renewed, DAS was not authorized to negotiate a new contract without first obtaining Controlling Board authority. In response, plaintiff reasons that the contract was renewed by defendant via the various electronic communications and written correspondence authored by DAS and sent to SAC prior to July 1999, which approved the work schedule through December 1999. Plaintiff also asks that the court reject defendant's argument concerning a lack of authority to enter into another contract, asserting that since this affirmative defense was never raised in any pleading prior to trial, such must be waived. Plaintiff maintains that DAS breached the contract by failing to fully compensate it for work that was performed.

{¶14} Defendant asserts that the language in the agreement reprinted above is clear and unambiguous; specifically, that the contract expired June 30, 1999, unless defendant expressed its intent to renew in writing. Defendant was the only party that was granted authority to renew the contract. The term "written notice" was not defined in the contract. However, simple words in a written instrument are to be given their plain and ordinary meaning unless to do so would create an absurd result. *Alexander v. Buckeye Pipeline* (1978), 53 Ohio St.2d 241. After reviewing the numerous written and electronic communications exchanged by the parties and taking into consideration their ongoing collaborative relationship, the court is persuaded that defendant renewed the contract prior to its expiration. In March and May 1999, DAS advised SAC to proceed with the project and DAS requested that, due

to the holiday season, changes to the time-line be made which pushed completion into the first few months of 2000. (Plaintiff's Exhibit 14 and 17.) Thus, DAS not only approved a time-line that extended well beyond June 30, 1999, it also directed SAC to continue working on the project over the ensuing 18 months. DAS accepted components as they were delivered and actively participated in revising time-lines; revisions often necessitated by delays caused by the inability of DAS to coordinate the plan among the users or to convert the data into a usable format.

{¶15} In addition, the court notes that plaintiff presented ample proof that the parties created an implied-in-fact contract. In order to establish an implied-in-fact contract, the Supreme Court of Ohio has held that "there must be evidence that defendant requested plaintiff to render the service or assented to receiving their benefit under circumstances negating any presumption that they would be gratuitous. The evidence usually consists in, first, an express request pertaining to the services, or second, circumstances justifying the inference that plaintiff, in rendering the services expected to be paid, and defendants supposed or had reason to suppose and ought to have supposed that he was expecting pay, and still allowed him to go on in the service without doing anything to disabuse him of this expectation; or third, proof of benefit received, not on an agreement that it was gratuitous and followed by an express promise to pay." *Columbus, Hocking Valley & Toledo Ry. Co. v. Gaffney* (1901), 65 Ohio St. 104. In the instant case, the preponderance of the evidence and testimony presented at trial establishes that from July 1, 1999, through at least November 2000, both parties were operating under the belief that a contract existed. (Plaintiff's Exhibits 37, 60, and 79.) "A contract implied in fact may be proved by showing that the circumstances surrounding the parties' transactions make it reasonably certain

that an agreement was intended." *Lucas v. Costantini* (1983), 13 Ohio App.3d 367, citing *Gaffney*, supra. For the foregoing reasons, the court concludes that the contract was renewed by defendant for the July 1999-June 2001 biennium. Therefore, the complaint was timely filed and the statute of limitations is not a bar to plaintiff's claims.

{¶16} Defendant contends that it could not renew the contract because it lacked authority to do so without Controlling Board authority. Plaintiff insists that DAS waived that defense because it was not raised in the pleadings prior to trial. Upon review of the pleadings, the court finds that defendant provided sufficient notice in its answer, specifically under Section II, Additional Defenses, paragraph 2. Therefore, plaintiff's position is not well taken. Nevertheless, the court finds that the contract speaks for itself. It is undisputed that the Controlling Board approved the initial contract and that it authorized DAS to renew the contract under the same terms and conditions. (Plaintiff's Exhibits 12, 60, and 79.) While it is also undisputed that the parties never created a new contract with different terms, this court has already determined that the initial contract was renewed according to its terms and the court concludes that such renewal was within the authority of DAS.

{¶17} A breach of contract occurs when a party demonstrates the existence of a binding contract or agreement; the non-breaching party performs its obligations; the other party fails to fulfill its contractual obligations without legal excuse; and the non-breaching party suffers damages. *Garofalo v. Chicago Title Ins. Co.* (1995), 104 Ohio App.3d 95.

{¶18} Upon review of all the evidence submitted, the court is convinced that DAS made a grievous mistake when it chose to assume



responsibility for the data conversion as a means to lower the overall cost of the project. It is clear to the trier of fact that DAS and its employees were not qualified to perform the data conversion under the parameters set by the contract or the deadlines imposed by the time-line. The inability of DAS to convert the data along with the lack of integration among the various agencies created significant delays for plaintiff. The court further finds that the testimony of plaintiff's representatives was quite credible. Indeed, the court attributes the failure to complete the project to the inept leadership of the project management provided by DAS. Accordingly, for the reasons outlined above, the court finds defendant breached the contract and judgment shall be rendered in favor of plaintiff. A trial on the issue of damages shall be scheduled in the normal course.

{¶19} This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of plaintiff in an amount to be determined after the damages phase of the trial. The court shall issue an entry in the near future scheduling a date for the trial on the issue of damages.

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FRED J. SHOEMAKER  
Judge

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