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CONTRACTS - SOUTH CAROLINA

Stevens & Wilkinson of South Carolina, Inc. v. City of Columbia

Supreme Court of South Carolina - August 20, 2014 - S.E.2d - 2014 WL 4087917

In April 2003, the City entered into an MOU with Stevens & Wilkinson of South Carolina, Inc. (S&W) to develop a publicly-funded hotel. As architect, S&W was to complete sufficient preliminary design work to determine a guaranteed maximum price for the project, which would be used by the City to obtain municipal bond funding to cover the cost of the hotel. Pursuant to the MOU, the construction company was to pay S&W directly. On June 26, 2003, the City received a letter stating that S&W would complete its preliminary design on July 10, 2003, and would thereupon cease further work until the bond financing for the hotel was finalized. Realizing this could delay the start of construction, S&W offered to continue working the remaining ninety days until the anticipated bond closing date of October 13, 2003, but required assurance it would be compensated for the work it performed during this time frame. It provided an estimate requiring \$650,000 through October 13 and \$75,000 per week after that. On July 30, the City approved "\$650,000 for interim architectural design services for a period of 90 days prior to bond closing."

The bond closing did not occur as scheduled, but S&W nevertheless continued to work. On December 16, 2003, S&W submitted an invoice to the City for \$697,084.79 for work that took place from July 10 to December 15, 2003. By letter dated December 17, 2003, S&W informed the construction company that the City had voted that day "to advance [\$705,000.000] to the design team for design services and expenses at cost covering the time period between July 10, 2003 to December 15, 2003." Because under the MOU the construction company was to pay S&W, not the City, the construction company agreed to reimburse the City for the funds paid to S&W after the bond closing. The City remitted \$697,084.79 directly to S&W later that month. S&W continued to work on the project, but in March 2004, the City abandoned its plans under the MOU and ended its relationship with S&W. S&W received no further compensation and sued the City for breach of contract under the MOU and the July 2003 agreement. S&W then moved for partial summary judgment arguing it had a contract with the City as a matter of law based on the performance of and payment for architectural design services agreed to in July 2003. S&W's motion clarified that it only sought resolution of whether there was a contract, and did not seek summary judgment on the issue of breach or damages.

The City argued there was no separate agreement and the payment of interim fees was merely an advance on fees under the MOU and furthermore, the MOU provided that S&W was to be paid by the construction company, not the City. The circuit court agreed with S&W and granted partial summary judgment on the sole issue of the existence of a contract under the July 2003 agreement. Specifically, the court found S&W made an offer by delivering its estimate to the City, and the City accepted the offer, "albeit on seemingly modified terms," by voting to authorize the \$650,000.

The City filed a Rule 59(e) motion, abandoning the argument that there was no contract. For the first time, the City argued the authorization of the \$650,000 could not constitute an acceptance on "seemingly modified terms" because any modification of the terms resulted in a counteroffer, which

S&W accepted by performance. It further argued that because S&W accepted by performance, the terms were limited to the counteroffer of \$650,000. Because S&W had already been paid that sum, the City argued the court should find the City had fully performed and the contract was satisfied.

The Supreme Court of South Carolina held that city failed to preserve for appellate review assertion that contract was satisfied.