

SUPREME COURT OF WISCONSIN

Tri-Tech Corporation of America v. Americomp Services, Inc., 254 Wis. 2d 418

646 N.W.2d 822 (2002) · No. No. 00-3195 · Decided July 3, 2002

SUMMARY

The Wisconsin Supreme Court held that Wisconsin's treble-damages remedy for specified intentional property crimes is available for civil theft by contractor because the contractor-trust-fund statute incorporates the criminal theft statute. The court further held that a plaintiff must prove the criminal theft elements, including specific intent to convert the funds, by a preponderance of the evidence. It reversed summary judgment for the plaintiff because the record did not establish specific intent or provide sufficient evidence that the property work constituted an improvement.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Diane S. Sykes; Jon P. Wilcox
JURISDICTION	Wisconsin
DECIDED	July 3, 2002
DOCKET	No. 00-3195
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a court of appeals decision affirming summary judgment awarding treble damages to the plaintiff under Wisconsin Statutes section 895.80 for alleged theft by contractor.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo. Summary judgment is reviewed independently, while benefiting from the lower courts' analyses.
PRECEDENTIAL VALUE	published Wisconsin Supreme Court opinion; precedential
PARTIES	James Schmidt v. Tri-Tech Corporation of America

TOPICS

[construction law](#)[remedies](#)[statutory interpretation](#)[summary judgment](#)[civil procedure](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Wisconsin Statutes section 895.80 provides a treble-damages remedy for civil theft by contractor under section 779.02(5).
2. Whether a plaintiff seeking treble damages for theft by contractor must prove the criminal-theft elements under section 943.20(1)(b), including specific criminal intent.
3. Whether summary judgment was proper when the plaintiff failed to establish a prima facie case of specific criminal intent.
4. Whether the record established as a matter of law that The Frantz Group was an owner and that the computer-network cabling was an improvement under the construction-lien statutes.

HOLDINGS

1. Wisconsin Statutes section 895.80 provides a treble-damages remedy for theft by contractor under section 779.02(5) because section 779.02(5) makes misappropriation of contractor trust funds punishable under section 943.20, which is an enumerated predicate offense in section 895.80.
2. A plaintiff seeking treble damages for theft by contractor must prove the elements of both section 779.02(5) and the criminal-theft provision in section 943.20(1)(b), including specific criminal intent, by a preponderance of the credible evidence.
3. Summary judgment was improper because Tri-Tech did not present prima facie evidence establishing Schmidt's specific criminal intent to convert contractor trust funds.
4. The record did not establish as a matter of law that the computer-network cabling was an improvement providing a permanent benefit to the land; the issue ordinarily presents a question of fact.

KEY QUOTATIONS

“Because Wis. Stat. § 943.20 is one of the offenses that qualifies for the treble damages remedy of Wis. Stat. § 895.80, we agree with the court of appeals' conclusion that treble damages are available for theft by contractor under Wis. Stat. § 779.02(5), provided, however, that the elements of both the civil and the criminal statutes are proven, albeit to the civil preponderance burden of proof.” (at 430)

“Accordingly, to sustain a cause of action for treble damages under Wis. Stat. § 895.80 for theft by contractor under Wis. Stat. § 943.20, the plaintiff must prove, by a preponderance of the credible evidence, the elements of the criminal offense, including that the defendant knowingly retained, concealed, or used contractor trust funds without the owner's consent, contrary to his authority, and with intent to convert such funds to his own use or the use of another.” (at 433)

“Because Tri-Tech failed to establish a prima facie case on the element of specific criminal intent, and because there is a factual dispute about whether the computer network cabling is an “improvement” for purposes of Wis. Stat. § 779.02(5), summary judgment was improperly granted.” (at 439)

FACTUAL BACKGROUND

Americomp Services, Inc. was hired to install a computer network for The Frantz Group and subcontracted with Tri-Tech to provide materials, supplies, and services. The Frantz Group paid Americomp, but Americomp did not pay Tri-Tech's \$27,807.95 invoice. Tri-Tech sought treble damages from Americomp's president and sole shareholder, James Schmidt, alleging misuse of contractor trust funds. The summary-judgment record included Schmidt's statements that The Frantz Group did not own the property, that the work was not an improvement, and that the payment was deposited into a bank account encumbered by the bank's security interest.

PROCEDURAL HISTORY

Tri-Tech sued Americomp Services, Inc. and James Schmidt after Americomp failed to pay an invoice for materials and services provided for a computer-network installation. The circuit court entered summary judgment against Americomp on contract liability and later entered summary judgment against Schmidt for treble damages. The court of appeals affirmed, and the Wisconsin Supreme Court granted review, reversed, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the Waukesha County Circuit Court for further proceedings consistent with the opinion, including proceedings concerning the unresolved elements of the theft-by-contractor treble-damages claim.

CASES CITED

- Fuchsgruber v. Custom Accessories, Inc., 2001 WI 81, 244 Wis. 2d 758, 628 N.W.2d 833
- Yanke v. Carson, 2000 WI 74, 236 Wis. 2d 257, 613 N.W.2d 102
- Tri-Tech Corp. of America v. Americomp Services, Inc., 2001 WI App 191, 247 Wis. 2d 317, 633 N.W.2d 683
- John Mohr & Sons, Inc. v. Jahnke, 55 Wis. 2d 402, 411, 198 N.W.2d 363 (1972)
- Carlson & Erickson Builders, Inc. v. Lampert Yards, Inc., 190 Wis. 2d 650, 529 N.W.2d 905 (1995)
- Wangen v. Ford Motor Co., 97 Wis. 2d 260, 299, 294 N.W.2d 437 (1980)
- Kuehn v. Kuehn, 11 Wis. 2d 15, 30, 104 N.W.2d 138 (1960)
- State v. Wolter, 85 Wis. 2d 353, 362-63, 270 N.W.2d 230 (Ct. App. 1978)
- State v. Hess, 99 Wis. 2d 22, 28-29, 298 N.W.2d 11 (Ct. App. 1980)
- State v. Blaisdell, 85 Wis. 2d 172, 176, 179, 270 N.W.2d 69 (1978)
- Jones v. Sears Roebuck & Co., 80 Wis. 2d 321, 326-27, 259 N.W.2d 70 (1977)
- Walter Kassuba, Inc. v. Bauch, 38 Wis. 2d 648, 655-56, 158 N.W.2d 387 (1968)
- Lecus v. American Mutual Insurance Co. of Boston, 81 Wis. 2d 183, 190, 260 N.W.2d 241 (1977)
- Doern v. Crawford, 30 Wis. 2d 206, 214, 140 N.W.2d 193 (1966)

- *Green Spring Farms v. Spring Green Farms Associates, Ltd.*, 172 Wis. 2d 28, 41, 492 Wis. 2d 392 (Ct. App. 1992)
- *Wisconsin Department of Revenue v. A.O. Smith Harvestore Products, Inc.*, 72 Wis. 2d 60, 67-68, 73, 240 N.W.2d 357 (1976)
- *Premonstratensian Fathers v. Badger Mutual Insurance Co.*, 46 Wis. 2d 362, 367, 175 N.W.2d 237 (1970)
- *Wisconsin Dairies Cooperative v. Citizens Bank & Trust*, 160 Wis. 2d 758, 776, 467 N.W.2d 124 (1991)

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