

SUPREME COURT OF NORTH DAKOTA

Schipper Construction, Inc. v. American Crystal Sugar Company

758 N.W.2d 744 (N.D. 2008) · No. 20080123 · Decided December 16, 2008

SUMMARY

The Supreme Court of North Dakota affirmed summary judgment dismissing Schipper Construction's quantum meruit claim based on rescission at law of its contracts with American Crystal Sugar Company. The court held that Schipper failed to present evidence that it gave American clear, unambiguous, and unequivocal notice of rescission as required by N.D.C.C. § 9-09-04. The court affirmed an award of \$45,601.63, plus prejudgment interest and costs, on Schipper's contract-related claim.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Gerald W. Crothers; Gerald W. VandeWalle; Mary Muehlen Maring; Carol Ronning Kapsner; Dale V. Sandstrom
JURISDICTION	North Dakota
DECIDED	December 16, 2008
DOCKET	20080123
DISPOSITION	affirmed
PROCEDURAL POSTURE	Schipper appealed from a judgment awarding it \$45,601.63 plus prejudgment interest and costs on its contract claim and dismissing its alternative quantum meruit claim on summary judgment.
STANDARD OF REVIEW	Summary judgment is reviewed de novo on the record. The evidence is viewed in the light most favorable to the nonmoving party, with all favorable reasonable inferences, and summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	Schipper Construction, Inc. v. American Crystal Sugar Company

TOPICS

- construction law
- rescission
- quantum meruit
- summary judgment
- contracts

PRACTICE AREAS

Construction law

Contracts

Civil procedure

Remedies

Commercial litigation

QUESTIONS PRESENTED

1. Whether the district court properly granted summary judgment dismissing Schipper's quantum meruit claim based on legal rescission of the contracts.
2. Whether Schipper's two letters constituted clear, unambiguous, and unequivocal notice of rescission sufficient to satisfy N.D.C.C. § 9-09-04.

HOLDINGS

1. Summary judgment dismissal was proper because Schipper failed to present evidence raising a genuine issue of material fact that it had given American notice of rescission, a prerequisite to maintaining an action at law based on rescission.
2. Neither Schipper's January 11, 2000 letter nor its February 20, 2001 letter conveyed a clear, unambiguous, and unequivocal intention to rescind the contracts.

KEY QUOTATIONS

"A notice of rescission must be clear, unambiguous and unequivocal." (758 N.W.2d at 747)

"A fair reading of these letters reveals neither can be possibly construed as a rescission." (758 N.W.2d at 748)

FACTUAL BACKGROUND

American hired Schipper through a bidding process to perform maintenance and dirt-moving work for dikes at two ponds at its Drayton plant. The contracts priced the work by cubic yard, but American later determined Schipper had moved substantially less dirt than the quantities reflected in Schipper's invoices and concluded that only \$45,601.63 remained owing. Schipper later submitted a final billing based on time and materials and sought additional compensation, ultimately asserting breach-of-contract and alternative quantum meruit theories. Schipper relied on two letters as notices of rescission, but the letters discussed project status, quantities, equipment, hours, and compensation rather than clearly rescinding the contracts.

PROCEDURAL HISTORY

Schipper sued American for additional compensation for earthmoving and dike-building work. The district court rejected Schipper's contract construction, awarded compensation on a cost-per-unit basis after trial, and granted partial summary judgment dismissing the quantum meruit claim because Schipper had not shown rescission of the contracts or prompt action to rescind. Schipper appealed.

DISPOSITION

affirmed

CASES CITED

- Alerus Financial, N.A. v. Western State Bank, 2008 ND 104, ¶¶ 16-17, 750 N.W.2d 412
- Duemeland v. Norback, 2003 ND 1, ¶ 8, 655 N.W.2d 76
- Wahl v. Country Mutual Insurance Co., 2002 ND 42, ¶ 6, 640 N.W.2d 689
- Trinity Hospitals v. Mattson, 2006 ND 231, ¶ 10, 723 N.W.2d 684
- Hasper v. Center Mutual Insurance Co., 2006 ND 220, ¶ 5, 723 N.W.2d 409
- Riemers v. Grand Forks Herald, 2004 ND 192, ¶ 4, 688 N.W.2d 167
- Murphy v. Murphy, 1999 ND 118, ¶ 13, 595 N.W.2d 571
- Industrial Commission v. Noack, 2006 ND 195, ¶ 16, 721 N.W.2d 698
- Swenson v. Raumin, 1998 ND 150, ¶ 21, 583 N.W.2d 102
- Purnell v. Atkinson, 248 Ark. 401, 451 S.W.2d 734, 736 (1970)
- Patterson v. Amundson, 201 Or. App. 486, 119 P.3d 264, 271 (2005)
- Stovall v. Publishers Paper Co., 284 Or. 53, 584 P.2d 1375, 1377, 1379 (1978)
- Heng v. Rotech Medical Corp., 2004 ND 204, ¶ 10, 688 N.W.2d 389