

SUPREME COURT OF NORTH DAKOTA

B. J. Kadrmas, Inc. v. Oxbow Energy, LLC

2007 ND 12 · No. 20060137 · Decided February 1, 2007

SUMMARY

The North Dakota Supreme Court affirmed a judgment requiring Oxbow Energy, LLC to pay B. J. Kadrmas, Inc. for title-search services performed under an implied-in-fact contract. The court held that the district court did not clearly err in crediting Kadrmas's testimony and finding mutual assent based on the parties' communications, conduct, and surrounding circumstances. The court also upheld the amount awarded for work performed before and after Oxbow communicated about stopping the work.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Dale V. Sandstrom, Justice; Dale V. Sandstrom; Daniel J. Crothers; Mary Muehlen Maring; Carol Ronning Kapsner; Gerald W. VandeWalle, C.J.
JURISDICTION	North Dakota
DECIDED	February 1, 2007
DOCKET	20060137
DISPOSITION	affirmed
PROCEDURAL POSTURE	Oxbow Energy appealed from a district court judgment ordering it to pay B. J. Kadrmas, Inc. for services performed under an implied-in-fact contract.
STANDARD OF REVIEW	The existence of a contract is a question of fact reviewed under the clearly erroneous standard of N.D.R.Civ.P. 52(a). The appellate court does not reweigh evidence, reassess credibility, or reexamine findings based on conflicting testimony, and gives due regard to the trial court's opportunity to assess witness credibility.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	Oxbow Energy, LLC v. B. J. Kadrmas, Inc.

TOPICS

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mutual assent

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the evidence supported the district court's finding that the parties mutually intended to form an enforceable implied-in-fact contract.
2. Whether the district court's findings concerning the scope and timing of the work for which Oxbow was liable were clearly erroneous.

HOLDINGS

1. The district court did not clearly err in finding that the parties' objective manifestations, surrounding circumstances, communications, conduct, and conflicting testimony established mutual assent to an implied-in-fact contract.
2. Although silence and inaction ordinarily do not constitute acceptance, they may constitute assent when the circumstances warrant or require an inference of assent, including when the offeree accepts the benefits of the transaction and fails to communicate rejection.
3. The district court did not clearly err in finding that Oxbow was liable for work performed through February 16 and 27, 2004, because it credited testimony that Oxbow instructed Kadrmas to complete work on tracts already in progress.

KEY QUOTATIONS

"To create an enforceable contract, there must be a mutual intent to create a legal obligation." (¶ 11)

"The parties' mutual assent is determined by their objective manifestations, not their secret intentions." (¶ 11)

"Where the parties have agreed on the essential terms of a contract, the fact they contemplated a further writing memorializing the agreement does not prevent enforcement of the contract." (¶ 12)

"It is a general rule of law that silence and inaction, or mere silence or failure to reject an offer when it is made, do not constitute an acceptance of the offer." (¶ 13)

"A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it so far as the facts are known or ought to be known to the person accepting." (¶ 13)

FACTUAL BACKGROUND

B. J. Kadrmas, Inc. performed title-search and mineral-ownership work for an oil exploration project involving tracts with fractionalized mineral rights. Kadrmas testified that Oxbow's representative authorized the work during a January 10, 2004 telephone conversation, while the representative testified that he requested only a cost estimate and never accepted Kadrmas's proposed contract. Kadrmas sent Oxbow invoices and other communications while performing the work, and Oxbow did not dispute the terms or invoices until after substantial work had been completed. The district court credited Kadrmas's testimony and found that Oxbow owed \$17,613.38 plus interest for the work.

PROCEDURAL HISTORY

The District Court of Stark County found Kadrmas's account of the parties' dealings more credible than Oxbow's and concluded that the circumstances supported an implied contract, ordering Oxbow to pay \$17,613.38 plus interest. Oxbow appealed, arguing that no contract existed and that the award improperly included work performed before and after certain communications concerning the project. The North Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Lonesome Dove Petroleum, Inc. v. Nelson, 2000 ND 104, ¶¶ 15, 18-19, 611 N.W.2d 154
- Stout v. Fisher Industries, Inc., 1999 ND 218, ¶ 11, 603 N.W.2d 52
- Jones v. Pringle & Herigstad, P.C., 546 N.W.2d 837, 842 (N.D. 1996)
- Bleth v. Bleth, 2000 ND 52, ¶ 8, 607 N.W.2d 577
- Buri v. Ramsey, 2005 ND 65, ¶ 10, 693 N.W.2d 619
- Akerlind v. Buck, 2003 ND 169, ¶ 7, 671 N.W.2d 256
- Lire, Inc. v. Bob's Pizza Inn Restaurants, Inc., 541 N.W.2d 432, 434-35 (N.D. 1995)
- National Bank of Harvey v. International Harvester Co., 421 N.W.2d 799, 804 (N.D. 1988)
- Amann v. Frederick, 257 N.W.2d 436, 439 (N.D. 1977)
- Estate of Zent, 459 N.W.2d 795, 798 (N.D. 1990)
- Bismarck Hospital Ass'n v. Burleigh County, 146 N.W.2d 887, 893 (N.D. 1966)
- Union State Bank v. Woell, 434 N.W.2d 712, 717 (N.D. 1989)
- Lechler v. Montana Life Ins. Co., 48 N.D. 644, 653, 186 N.W. 271, 274 (1921)