

JOHNY MONGAMI, Plaintiff
v.
MELEKEOK MUNICIPALITY, Represented by
Its Councilmen and Magistrate, Defendant

Civil Action No. 344

Trial Division of the High Court

Palau District

January 17, 1969

Action to recover on contract. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that the court would not enforce a contract which was contrary to public policy and also that where the contract payment provisions had been satisfied and discharged, the party seeking further payment would not be entitled to it.

1. Contracts-Enforcement

The courts will not enforce contracts which contravene public policy.

2. Contracts-Public Policy

A contract is said to be against public policy **if** it is injurious to the interests of the public, contravenes some established interest of society, violates some public statute, is against good morals, tends to interfere **with** some public welfare or safety, or, **if** it is at war with the interests of society and is in conflict with the morals of the time.

3. Contracts-Public Policy

Contract in question **was** a contract contravening public policy and would not be enforced by the court.

4. Contracts-Performance--Payment

Where all the claims person performing the contract had arising from performance of the contract had been satisfied, he was not entitled to further payment.

5. Contracts-Construction

Even though contract payment prOVISIONs were poorly drafted, the court cannot rewrite the contract for the parties.

6. Contracts-Construction

If the language of a contract is uncertain or unclear then the court must decide on the meaning and intent of the parties.

7. Contracts-Construction

If the language of a contract is plain and the meaning clear, the language alone governs the intent and some other meaning or intent may **not** be construed out of the plain and ordinary meaning of the words used.

<i>Assessor:</i>	JUDGE FRITZ RUBASCH
<i>Interpreter:</i>	SINGICHI IKESAKES
<i>Reporter:</i>	NANCY K. HATTORI
<i>Counsel for Plaintiff:</i>	FRANCISCO ARMALUUK
<i>Counsel for Defendant:</i>	JOHN I. STOLE

TURNER, *Associate Justice*

This was a suit on a written contract between the plaintiff and the defendant municipality for construction of a bridge to the Melekeok dock.

The plaintiff received from a grant-in-aid appropriation by the District Legislature for the cost of construction, the sum of eight hundred fifty-two dollars and forty cents (\$852.40) for "materials to be used". The contract provided a maximum "draw" one week after start of construction for the sum of eight hundred ninety-nine dollars (\$899.00) for cost of "materials to be used".

The plaintiff sought judgment against the municipality in this suit for the sum of one thousand ninety-seven dollars and sixty cents (\$1,097.60) alleged by him to be "the due payment of said bridge". The plaintiff arrived at this figure by adding the \$46.60 difference between \$852.40 received for "materials" and the \$899.00 contract allowance for materials to the contract amount of \$1,051.00 "for labor and transportation".

The plaintiff previously attempted to collect from the legislative appropriation the \$1,097.60 which he claimed to be due for labor. He was charged, convicted and sentenced to jail for the crime of Attempted Cheating, Sections 392 and 431, Trust Territory Code. The court takes judicial notice of the record and the High Court opinion affirming the conviction on appeal, *Elechuus v. Trust Territory*, 3 T.T.R. 297.

The attempt to recover the same amount in this civil action was based upon the same evidence as was developed in the criminal prosecution. Plaintiff testified in the civil

case that his labor costs were \$351.00, his cost of materials used in performance of the contract approximately \$350.00, and transportation expenses (including a \$20.00 charge for use of a carabao) not in excess of \$75.00. In other words, when plaintiff received \$852.40 from the legislative appropriation, it was more than enough to pay for materials, labor and transportation. It obviously did not occur to plaintiff that the attempt to collect \$1,097.60 for labor costs which was held to be a criminal offense when the claim was against the legislative appropriation also was a fraud upon the people of Melekeok Municipality when collection was attempted in accordance with the contract with the municipality.

At the close of plaintiff's case, counsel for the municipality moved for dismissal or judgment in behalf of the defendant. The motion was made upon the theory plaintiff had not performed in accordance with the terms of the contract. In fact, a great deal of the testimony was directed toward the question of performance.

The court finds it unnecessary to consider the question of plaintiff's performance because the defendant municipality is entitled to judgment on two different theories of law applicable to plaintiff's evidence.

[1] The first of these propositions of law is that the courts will not enforce contracts which contravene public policy. In other words, the court will not enforce a fraudulent claim against the people of Melekeok.

The other reason plaintiff is not entitled to recover is that his evidence showed, as a matter of law, that under the contract he had no claim remaining unsatisfied against the municipality.

[2] As to the first proposition, a contract is said to be against public policy if it is injurious to the interests of the public, contravenes some established interest of society, violates some public statute, is against good morals,

tends to interfere with the public welfare or safety, or, as it is sometimes put, if it is at war with the interests of society and is in conflict with the morals of the time. 17 Am. Jur. 2d, Contracts, § 179. 38 A.L.R.2d 1337. 140 A.L.R. 550. 86 A.L.R. 190.

[3] Nearly every aspect of this bridge contract—the manner of negotiation with the municipal council whose chairman was the plaintiff's older brother; the complete absence of any terms, restraints or conditions of construction of the bridge except its size and even that was changed after the contract was entered into; the fact that the labor was performed by the council members who also signed the contract; the use of contract funds for a party or celebration upon completion of the job; the admitted inexperience of both the municipal representatives and the plaintiff in construction matters; the obvious influence of plaintiff's brother in changing the terms of the contract as to the size of the bridge—all of these lead to the inevitable conclusion that the contract was a fraud upon the people of Melekeok, was injurious to their interests, was "at war" with the welfare of society, and was, therefore, a contract contravening public policy. This court, nor any court, will not enforce a contract against public policy.

[4] There is another reason why, as a matter of law, the plaintiff may not recover. All of the claims he had against the municipality arising from performance of the contract have been satisfied. Plaintiff is not entitled to further payment.

The contract provided for two different payments at different times. The first of these was \$899.00 for materials to be used and the other was for \$1,051.00 "for labor and transportation".

[5] Admittedly, the contract payment provisions were poorly drafted, but the court cannot rewrite the contract for the parties. 17 Am. Jur. 2d, Contracts, § 242.

[6,7] If the language of a contract is uncertain or unclear, called "ambiguous" by the courts, then the court must decide on the meaning and intent of the parties. If, however, the language is plain and the meaning clear, the language alone governs the intent and some other meaning or intent may not be construed out of the plain and ordinary meaning of the words used. 17 Am. Jur. 2d, Contracts, § 245 et seq. *Zellen v. Cole*, 183 F.2d 139. *Homelite v. Trywilk Realty*, 272 F.2d 688.

In this contract, amounts were to be paid for labor, materials, and transportation. Plaintiff admittedly was paid \$852.40. He testified his labor cost was \$351.00, his cost of "materials used" not in excess of \$350.00, and transportation approximately \$75.00. This is less than \$800.00 and plaintiff received \$852.40. He has been paid more than the costs allowed him by the contract. He cannot claim additional costs, which he did not incur, for labor, materials and transportation.

The claim of \$1,097.60 as the balance due on the contract is as much a fraud against the defendant municipality as the prior claim against the legislative appropriation was a criminal offense.

The contract, construed in accordance with plain meaning of the words used, has been satisfied and discharged. Plaintiff is not entitled to further payment.

It is ordered, adjudged, and decreed:-

The plaintiff be and hereby is denied any recovery and judgment for the defendant be and hereby is granted.