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Illinois Supreme Court Affirms School District Must Pay For Emergency Construction

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Public construction projects in Illinois can be fraught with legal loopholes and “gotchas” that can take hard earned money out of the pockets of construction workers. Back in December, we wrote about the [cautionary tale of Proviso East High School](#). In that case, the school district attempted to avoid making any payments over and above insurance proceeds for \$7.3 million of emergency construction work that was performed to repair a high school following a fire loss.

The construction contracts at issue were signed by the school superintendent and the board received regular updates on the work. There were no objections to the price or the quality of the work when it was performed. But the school district then refused to pay on the ground that the contracts were void from the beginning because the school board did not follow the bidding-and-approval process required by the Illinois School Code. In the school district’s view, this was the construction company’s problem because the contractor had the responsibility in the first instance to make sure that the people it was dealing with had proper authorization before proceeding.

The trial court agreed with the school district and dismissed the case on the ground that the construction contract was void. The trial court also held that the contractor could not recover based on a contract implied by law (quantum meruit). [The appellate court reversed](#), finding that the affected contractors could sue based on a contract implied by law for the value of the work.

[The Illinois Supreme Court's decision](#) affirms the appellate court's decision. The Supreme Court first held that the school board did not act beyond its statutory authority when it entered into the contracts. The decision observed that a Financial Oversight Panel (FOP) was managing the school district's finances at the time the construction contracts were entered into, and the FOP had the authority to regulate the procedure for entering into contracts – not the school board. In addition, the school code provides that its “enumeration of powers is not exclusive,” and also specifically exempts the expenditure of funds for emergencies from the normal bidding process where the expenditure is approved by three-quarters of the board.

The Supreme Court then concluded:

“While the actions taken by the Board in handling the emergency repair and restoration work at Proviso East may not have comported with the procedures set forth in the School Code, hiring a contractor to do such work, as the Board did here, is unquestionably among the types of action Illinois school boards are authorized to undertake. The contractor, Restore, performed its obligations in good faith, and the Board willingly accepted the benefits of Restore's efforts without question or complaint.”

The decision also holds that the contractor was entitled under the circumstances to recover the value of its work based on a contract implied by law. According to the Court:

“Illinois courts have similarly recognized that the failure of a governmental unit to comply with the required methods for awarding contracts is not fatal to a plaintiff's right to recover based on principles of quasi-contract or contract implied in law. The essence of a cause of action based upon a contract implied in law is the defendant's failure to make equitable payment for a benefit that it voluntarily accepted from the plaintiff. Even where a governmental unit has not complied with its policies and procedures for awarding contracts, recovery may be had against it if the plaintiff can show that it furnished valuable goods or services, which the defendant received under circumstances that would make it unjust to retain without paying a reasonable sum in compensation.”

Finally, the Supreme Court concluded that any problem with the formation of the contracts was caused by the school board's own “misconduct,” and that fundamental principles of Illinois law will not permit a party to seek to take advantage of its own wrongdoing:

“A fundamental precept of Illinois law is that no one shall be permitted to take advantage of his own wrong. Allowing the Board to escape responsibility for paying what it owes based on its own misconduct would directly contravene this core principle and reward school districts for failing to adhere to the law. That is not a precedent we should set, particularly where, as here, the school board has had such difficulty managing its own financial affairs that it has been forced to operate with State oversight for more than a decade.”

Although the Illinois Supreme Court has made it clear it will not allow a public entity to hide behind contracting technicalities to escape payment for work performed under an improperly formed agreement, contractors should still act with caution. Contractors that are contemplating contracting with a public entity should consult an attorney to navigate the complex bidding requirements for such work.