

# *In Brief*

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April 21, 2020

## **ILLINOIS SUPREME COURT RULES CONTRACTOR CAN RECOVER FOR SERVICES EVEN WITHOUT A BOARD-APPROVED CONTRACT AND A FAILURE TO GO TO BID**

On April 16, 2020, the Illinois Supreme Court ruled that a contractor could recover outstanding sums for emergency repair and reconstruction work performed on behalf of a school district despite the district's failure to follow the bidding requirements for contracts under the School Code and the district's failure to have the contract approved by a formal board vote. The school district argued that because the contract was not properly bid and approved by a formal vote, the contractor could not recover for work that had not been paid.

The supreme court's decision in *Restore Construction Co., Inc. v. Bd. of Educ. of Proviso Township High School District 209* relates to Restore Construction's emergency work on one of the District's schools following a fire. Shortly after the fire, the District's representatives requested Restore's services and advised that the District would approve the contracts for those services. The District's superintendent represented that she was acting on behalf of the District and executed one contract with Restore to mitigate and remediate the fire damage and another to repair the fire-damaged school. The Board's president subsequently signed an amended agreement with Restore for the repair of the school.

Restore alleged that the District took other actions affirming the contract and it was undisputed that the Board knew that Restore was hired to repair the school. For example, the District hired an architect to prepare a project manual and specifications for the projects, and to act as a contract administrator. Throughout the projects, the superintendent, and the Financial Oversight Panel's ("FOP") chief fiscal officer participated in construction meetings and approved additional agreements including subcontracts, bids, change orders, and invoices for the projects. The FOP's chief fiscal officer also provided regular updates to the Board and the FOP related to the project, and the Board often had District employees, the architect, and other representatives report to the Board on the project.

According to Restore's complaint, there was never a dispute as to the validity of the contracts or Restore's work, and the District's insurer paid Restore directly. At the conclusion of the project, the District's insurer had paid Restore \$7,271,000 for its mitigation, remediation, and repair work, and \$1,428,000 remained unpaid which consisted of amounts that the District's insurer refused to pay, including wages that Restore paid its workers as required by the Prevailing Wage Act. As a result, Restore filed its lawsuit against the District and its insurer seeking payment of the outstanding amount up to the District's insurance coverage limits.

The District moved to dismiss Restore's complaint arguing that Restore's contracts were void because they were not competitively bid and approved by a formal Board vote. The circuit court granted the District's motion to dismiss but the appellate court reversed, finding that although the contracts were void because they were not formally bid, this did not bar Restore from asserting a claim based on a contract implied in law for the value of the work performed in reliance on the presumed agreements.

The supreme court affirmed the appellate court's decision for two reasons. First, the court noted that pursuant to the Financial Oversight Panel Law, the FOP had the authority to exercise financial control over the District and the FOP approved Restore's work.

Second, even if the District were not subject to the FOP, the court held that the District would still be liable to Restore. The court acknowledged that Restore's work may have fit within a bidding exception because Restore was initially retained to provide emergency mitigation services and the Board approved that work, albeit informally. Nonetheless, the court held that even if the contracts should have been bid and approved by a formal Board vote, the District accepted Restore's work and thus Restore could support a claim under *quantum meruit*, or an implied contract theory. In supporting its ruling, the court found that under Illinois law, a governmental unit's failure to comply with required methods for awarding contracts does not preempt a plaintiff's ability to recover where the plaintiff is seeking recovery based on an implied or quasi- contract.

Finally, the court noted that the only misconduct involved in this matter was that of the Board itself, not Restore whose actions and their associated costs were thoroughly scrutinized by the Board, the District, and the FOP. The court held that the Board did not have standing to invoke the bidding requirements as grounds for evading its obligations to pay for work performed, and that it is "a fundamental precept of Illinois law that no one shall be permitted to take advantage of his own wrong."

The decision is important for public bodies to consider when determining whether payment is required to contractors who performed work even if the contract was not bid or otherwise approved as required by the public bodies' governing statute. Contact your Robbins Schwartz attorneys if you have any further questions about bidding or payment obligations.