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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

EMMANUEL ROZAKIS,

Plaintiff and Appellant,

v.

CITY OF SACRAMENTO,

Defendant and Respondent.

C066389

(Super. Ct. No.
34200700880769CUBCGDS)

Plaintiff Emmanuel Rozakis entered into a contract with defendant City of Sacramento (the City) to paint the Old Sacramento parking garage. Rozakis performed extra work not covered by his bid and sought payment from the City. When the City refused to pay him, Rozakis brought suit for breach of contract. After a court trial, judgment was entered in favor of the City. The trial court found Rozakis had not obtained the necessary approval authorizing the extra work.

On appeal, Rozakis contends the trial court erred in interpreting various provisions of the City Code. He contends that both Lori Fox, the project manager for the City, and John

Crosswhite (Crosswhite), the consultant hired as construction manager, had authority to approve the extra work. Rozakis further contends the judgment must be reversed because the trial court did not rule on his objections to the statement of decision.

We find the trial court properly interpreted the relevant documents governing authority to approve extra work and its statement of decision was sufficient to resolve the outstanding issues. Accordingly, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I

The Contracts

In 2006, Rozakis and the City entered into a Maintenance Contract, under which Rozakis agreed to paint the Old Sacramento parking garage for \$168,000 (the project). The Maintenance Contract was executed by Rozakis and the Assistant City Manager for the City Manager. It was approved as to form by the City Attorney and attested to by the City Clerk. Lori Fox, an administrative analyst with the City, was named the project manager. Under paragraph 2.3 of the contract, the "Project Manager" was defined as "the designated representative of the City of Sacramento for this project."

Paragraph 12.1 of the Maintenance Contract was titled "Changes in Work" and provided: "The Contractor may be ordered in writing by the Project Manager without invalidating this contract, to make changes in the work within the general scope of this contract consisting of additions, deletions or other

revisions. The Contractor, prior to the commencement of such changed or revised work, shall submit to the City written copies of any claims or adjustment to the contract amount and time of completion for such revised work in accordance with the procedures set forth in the Contract Documents." The "Contract Documents" included various documents specific to this project, as well as the 1989 Standard Specifications and title 3 of the Sacramento City Code.¹

The City hired the Zahn Group as a consultant to coordinate and monitor the progress of the project. The contract for services was executed by the president of the Zahn Group and the interim Director of Transportation for the City Manager. The duties of the consultant included: "Monitor and process all requests for information, change orders, and submittal submitted by contractor." Crosswhite was the Zahn Group employee who was on-site monitoring the project. Paragraph 4 of Exhibit D (General Provisions) to the contract between the City and the Zahn Group provided: "**CONSULTANT Not Agent.** Except as CITY may specify in writing, CONSULTANT and CONSULTANT's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONSULTANT and CONSULTANT's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever."

¹ Pertinent provisions of the Standard Specifications and the City Code are set forth in the Discussion, *post*.

The City and the Zahn Group entered into a supplemental agreement for payment for an additional 50 hours for, among other things, "change order documentation." This agreement was executed by the Zahn Group and the Director of Transportation for the City Manager.

II

Rozakis's Claim

Rozakis claimed he performed 19 items of additional work on the project. Eighteen were valued at \$500 to \$3,600. For the remaining item, TSP (trisodium phosphate) cleaning, Rozakis sought \$72,429.32.

Rozakis sued the City for breach of contract. He contended he performed additional work on the project that was approved and agreed to by a representative of the City. The City failed to pay Rozakis the balance due for this additional work. He sought \$102,062.37 in damages.

The City moved for summary judgment, arguing Rozakis failed to obtain the requisite authorization from the City before commencing the extra work. The trial court denied the motion, finding the City had failed to meet its burden to show Crosswhite and Fox were not authorized agents of the City.

III

The Trial

A court trial was held on stipulated facts and extensive documentation. The parties stipulated to the authenticity, foundation, admissibility, and relevance of certain documents, including the contract documents and relevant provisions of the

City's Charter, Code, Standard Specifications, and Administrative Policy Instructions.

Three issues were submitted to the court for decision: (1) Whether the designation of Fox as project manager delegated to her the authority to approve change orders; (2) Whether the Zahn Group contract authorized the project manager for that group (Crosswhite) to approve change orders; and (3) Whether there was a limitation on the maximum amount of change orders that Fox or Crosswhite could approve, assuming either had properly delegated approval authority.

The court found Crosswhite had no authority to approve change orders. The court noted there were no change orders signed by Crosswhite, and the consultant contract expressly provided the consultant had no authority to bind the City. The court, however, declined to make a ruling as to the authority of Fox as project manager without extrinsic evidence. It found paragraph 2.3 of the Maintenance Contract, designating Fox as project manager, was ambiguous.

Five witnesses provided extrinsic evidence pertaining to Fox's authority. Rozakis testified he had completed numerous projects pursuant to contracts with the City. In the past, he had performed extra work pursuant to a field order and received payment.

William Connor, who had been a project manager for the City testified that in 2006 (when the contract at issue was performed) and before, the project manager had authority to direct extra work by a change order. He was not certain who

could authorize a change order. He would discuss the matter with his manager first. Now, a change order and approval by the City were necessary. Connor admitted that, prior to 2007, he was not familiar with City Codes on change orders.

Nicholas Theocharides, a manager with the Department of Transportation, was familiar with the role of a project manager in a City contract. He testified that a project manager did not have authority to authorize pay for extra work. Under certain emergency circumstances, a project manager had authority to direct that extra work be performed. Such work was compensable if a change order was properly executed. Theocharides explained a field order was a direction to the contractor and a change order was a change to the contract.

Fox, the project manager, testified she was not aware that a project manager ever had authority to authorize extra work without another City official involved.

Matthew Eierman, the operations general supervisor and Fox's boss, testified that Fox did not have authority to authorize any payment above the contract amount. Her role was to be facilitator between the contractor and the City. The City Manager could approve a change order under \$25,000; over that amount, the City Council would have to approve it.

The trial court found the extrinsic evidence did not support finding that Fox, as a project manager, had authority to approve change orders or authorize the expenditure of money.

DISCUSSION

I

Provisions Governing Public Projects by the City

The City of Sacramento is a charter city. (See *City of Sacramento v. Southgate Recreation and Park Dist.* (1964) 230 Cal.App.2d 916, 918.) The City's charter gives authority for contracting for the purchase of goods or services for public projects to "[t]he city manager, or his designated representatives." (Sac. City Charter, art. XIV, § 200.)

The City Code defines City Manager. "'City Manager' means the city manager of the city of Sacramento or an official specifically designated to act for the city manager. Authorization not specified in this chapter shall be made in writing by the city manager and filed with the city clerk." (Sac. City Code, § 3.60.010.) The Code gives the City Manager limited authority to approve change orders on his own. For a contract of less than \$250,000, the City Manager has authority to issue change orders of up to \$25,000, provided the total of all such change orders does not exceed \$25,000, without obtaining consent of the City Council. (Sac. City Code, § 3.60.210, ¶ A.) In certain emergencies, the City Manager has authority to issue change orders in such sums as necessary to prevent delay which would increase costs or to protect work, equipment or human safety. In such event, the City Manager

shall report to the City Council within 30 days. (Sac. City Code, § 3.60.210, ¶ F.)

Pursuant to Administrative Policy Instruction (API) No. 22, the City Manager has delegated authority for supplemental agreements for public contracts to the Director of Public Works or the Director of Public Utilities, subject to the dollar limitations of City Code section 3.60.210. In 2004, the City Council reorganized the Public Works Department into two departments, the Department of Transportation and the General Services Department.

The City Council is authorized to adopt standard specifications setting forth procedures and controls for public project contracts. (Sac. City Code, § 3.60.130.) The council adopted Standard Specifications in 1989. These Standard Specifications were part of the contract documents. The definition of the City Manager under the Standard Specifications is: "the City Manager of the City of Sacramento acting either directly or through properly authorized agents acting within the scope of the particular duties delegated to such agents." The "Engineer" is "the Director of Public Works of the City of Sacramento and such assistants who have been assigned to the work and exercising control and supervision of the work."

Paragraph 4-4 of the Standard Specifications gives the Engineer authority to make changes in the plans, character or quantity of work, provided such change does not change the total cost of a major item (an item the total cost of which is 10 percent or more of the contract price) by more than 20 percent.

Any changes above that amount must be covered by a change order. "The Contractor shall not start work on any alteration requiring a Contract Change Order until the Change Order setting forth the adjusted price shall be executed by the City and Contractor."

The Standard Specifications warn the contractor: "EXTRA WORK MUST BE AUTHORIZED IN WRITING BY THE ENGINEER BEFORE THE WORK IS STARTED. Payment for extra work will not be made unless such prior authorization is obtained."

For claims for payment for extra work that is not covered by paragraph 4-4, the Contractor must give the Engineer prior written notice of such claim. The notice must be given before the extra work is performed.

These provisions indicate the City has greatly restricted the authority to bind it to payments above the contract amount. That authority is given to the City Manager or his specific designee, and any such authority not set forth in the City Code must not only be in writing by the City Manager, but also filed with the city clerk. (Sac. City Code, § 3.60.101.) Even the City Manager's authority to approve change orders is limited. The City Manager may approve only a total of \$25,000 for contracts under \$250,000 or any amount in certain emergency situations, followed by a prompt report to the City Council. (Sac. City Code, § 3.60.210.)

The only express delegation of the City Manager's authority to bind the City to amounts above the contract amount appears in API No. 22 and the Standard Specifications. Pursuant to these documents, the Director of Public Works (now the Director of

Transportation) and such assistants exercising control and supervision of the work, have the ability to approve limited change orders.

II

Authority of Crosswhite

Crosswhite signed an approval for additional work relating to the TSP work. He signed approvals for other additional work on the plans for the project. Rozakis contends Crosswhite had authority to approve these changes, and payment for them, under the contract between the City and the Zahn Group.

Rozakis's contention is contrary to the express provision in the Zahn Group's contract that states the consultant is not an agent of the City and cannot bind the City to any obligation. Rozakis argues, however, that this express limitation is subject to an exception if the City so specifies in writing. Rozakis contends the City did so specify in writing in the agreement with the Zahn Group. He contends Crosswhite had authority to bind the City to payments for extra work under the provision in the consulting contract that required the consultant to "monitor and process all . . . change orders." He contends this authority is confirmed in the supplemental agreement between the City and the Zahn Group, which provided extra payment for change order documentation.

The trial court rejected this interpretation of the contract, finding that the authority to "process" change orders did not equate to the authority to "approve" change orders. We agree.

First, as the trial court noted, there were no signed, approved change orders. Second, the authority to "process" change orders does not include the authority to "approve" change orders in the context of this case.

The "words of a contract are to be understood in their ordinary and popular sense." (Civ. Code, § 1644; see also *Lloyd's Underwriters v. Craig & Rush, Inc.* (1994) 26 Cal.App.4th 1194, 1197-1198 ["We interpret the intent and scope of the agreement by focusing on the usual and ordinary meaning of the language used and the circumstances under which the agreement was made"].) In ordinary usage, the verb "process" does not mean the same thing as the verb "approve." "Approve" means "to accept as satisfactory" or "to give formal or official sanction to." (Merriam-Webster's Collegiate Dictionary (11th ed. 2006) p. 61, col. 2.) The dictionary definitions for the verb "process" include "to subject to or handle through an established usu. routine set of procedures." (*Id.* at p. 990, col. 1.) To "approve" something usually involves the exercise of discretion. Here, approval authority was limited and restricted. The City Charter and City Code reserved such authority to the City Manager or his specific designee and further limited it to certain dollar amounts or circumstances. In authorizing the Zahn Group to prepare the documentation to "process" change orders, the consulting contract did not specifically designate Crosswhite or any employee of the Zahn Group as having authority to "approve" payments above the contract amount.

III

Authority of Fox

Rozakis contends Fox had authority to bind the City as the City Manager's "designated representative," pursuant to section 200 of the City Charter. He contends Fox was the "official specifically designated to act for the city manager" (Sac. City Code, § 3.60.010) and the Engineer under the Standard Specifications as one of "such assistants who have been assigned to the work and exercising control and supervision of the work." Rozakis bases this contention on the designation of Fox as the project manager under paragraph 2.3 of the Maintenance Agreement. The project manager is defined as "the designated representative of the City of Sacramento for this project."

The trial court found paragraph 2.3 ambiguous, or at least susceptible to the interpretation urged by Rozakis, and admitted extrinsic evidence to clarify it. After considering the testimony of the five witnesses and documentary evidence, the court concluded Fox had no authority to bind the City. There was no evidence that the City Manager approved any change orders or filed a writing with the city clerk authorizing Fox to act on his behalf. There was no evidence the Engineer authorized extra work or authorized Fox to act on his behalf.

On appeal, Rozakis contends Fox's authority is established by the unambiguous terms of the Maintenance Agreement and the City Code. He argues: "What else could the phrase 'designated representative of the City' mean other than she stands in the shoes of the City Manager." He contends the trial court should

not have permitted clarifying testimony, as the terms of the contract were unambiguous.

Nothing in the Maintenance Agreement or the City Code established that Fox was the designated representative of the City Manager with authority to bind the City for amounts in excess of the contract price. Paragraph 2.3 of the agreement did not classify Fox as the "designated representative" of the City Manager, but instead as the designated representative of the City. The testimony at trial explained that her role was as a contact person--the facilitator or liaison between the City and the contractor. The contract provided that statements or invoices should be mailed to her.

Rozakis does not identify anywhere in the City Code or Standard Specifications that the position of project manager is mentioned or its authority delineated. Under section 3.60.010 of the City Code, any authorization to act for the City Manager that is not mentioned in the City Code must be made in writing by the City Manager and filed with the city clerk. There was no evidence that this was done with respect to Fox. Nor was there evidence that Fox exercised control and supervision of the work to make her an assistant who qualified as the Engineer under the Standard Specifications. In short, neither the stipulated documentary evidence nor the testimony provided any evidence that Fox had authority to bind the City.

Because neither Fox nor Crosswhite had authority to bind the City to payment for any work not included in the Maintenance

Agreement, it is unnecessary to consider whether the dollar limitations on such authority apply.

Rozakis cannot recover payment for work that was not part of the contract, even if such work were approved by Fox or Crosswhite, or both, because he failed to obtain proper authorization for such extra work. (*Katsura v. City Of San Buenaventura* (2007) 155 Cal.App.4th 104, 108-109.) “[I]t is well-settled that a charter city may not act in conflict with its charter. [Citations.] Any act that is violative of or not in compliance with the charter is void. [Citation.]” (*Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 171.) “In general, under long-standing California law, if a public contract is declared void, a contractor may not be paid for work performed under that contract. [Citations.]” (*Amelco Electric v. City of Thousand Oaks* (2002) 27 Cal.4th 228, 234.)

IV

Objections to Statement of Decision

Rozakis contends the judgment must be reversed for the independent reason that the trial court failed to rule on his objections to the statement of decision. (See Cal. Rules of Court, rule 3.1590(g) [objections to proposed statement of decision must be served and filed within 15 days].) The City did not respond to this contention.

Code of Civil Procedure section 632 requires the court to explain the factual and legal basis for its decision.² "The trial court is not required to respond point by point to the issues posed in a request for statement of decision. The court's statement of decision is sufficient if it fairly discloses the court's determination as to the ultimate facts and material issues in the case. [Citations.]" (*Golden Eagle Ins. Co. v. Foremost Ins. Co.* (1993) 20 Cal.App.4th 1372, 1379-1380.)

We find the trial court's statement of decision sufficient. It disclosed the trial court's determination as to the ultimate facts and material issues of the case, that neither Fox nor Crosswhite had authority to bind the City to payment for extra work. Although Rozakis complains the trial court did not include that paragraph 2.3 of the Maintenance Agreement named Fox as the designated representative of the City, the statement of decision includes that fact. In closing argument, Rozakis

² Code of Civil Procedure section 632 provides, in part: "In superior courts, upon the trial of a question of fact by the court, written findings of fact and conclusions of law shall not be required. The court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial. The request must be made within 10 days after the court announces a tentative decision unless the trial is concluded within one calendar day or in less than eight hours over more than one day in which event the request must be made prior to the submission of the matter for decision. The request for a statement of decision shall specify those controverted issues as to which the party is requesting a statement of decision. After a party has requested the statement, any party may make proposals as to the content of the statement of decision."

did concede he had not presented testimonial evidence to support his position on the authority of the project manager; he was relying on the documents. Finally, because the court found the Maintenance Agreement did not designate Fox as the City Manager's representative, the trial court was not required to consider the City Manager's authority in cases of emergency or to make findings concerning field orders.

DISPOSITION

The judgment is affirmed. The City shall recover costs on appeal. (Cal. Rules of Court, rule 8.278(a)(2).)

DUARTE, J.

We concur:

RAYE, P. J.

BUTZ, J.