Elsinore Union Elem. Sch. Dist. v. Kastorff

353 P.2d 713 (Cal. 1960)

Defendants, who are a building contractor and his surety, appeal from an adverse judgment in this action by plaintiff school district to recover damages allegedly resulting when defendant Kastorff, the contractor, refused to execute a building contract pursuant to his previously submitted bid to make certain additions to plaintiff's school buildings. We have concluded that because of an honest clerical error in the bid and defendant's subsequent prompt rescission he was not obliged to execute the contract, and that the judgment should therefore be reversed. Pursuant to plaintiff's call for bids, defendant Kastorff secured a copy of the plans and specifications of the proposed additions to plaintiff's school buildings and proceeded to prepare a bid to be submitted by the deadline hour of 8 p. m., August 12, 1952, at Elsinore, California. Kastorff testified that in preparing his bid he employed work sheets upon which he entered bids of various subcontractors for such portions of the work as they were to do, and that to reach the final total of his own bid for the work he carried into the right hand column of the work sheets the amounts of the respective sub bids which he intended to accept and then added those amounts to the cost of the work which he would do himself rather than through a subcontractor; that there is "a custom among subcontractors, in bidding on jobs such as this, to delay giving . . . their bids until the very last moment"; that the first sub bid for plumbing was in the amount of $9,285 and he had received it "the afternoon of the bid-opening," but later that afternoon when "the time was drawing close for me to get my bids together and get over to Elsinore (from his home in San Juan Capistrano) he received a $6,500 bid for the plumbing.

Erroneously thinking he had entered the $9,285 plumbing bid in his total column and had included that sum in his total bid and realizing that the second plumbing bid was nearly $3,000 less than the first, Kastorff then deducted $3,000 from the total amount of his bid and entered the resulting total of $89,994 on the bid form as his bid for the school construction. Thus the total included no allowance whatsoever for the plumbing work.

Kastorff then proceeded to Elsinore and deposited his bid with plaintiff. When the bids were opened shortly after 8 p. m. that evening, it was discovered that of the five bids submitted that of Kastorff was some $11,306 less than the next lowest bid. The school superintendent and the four school board members present thereupon asked Kastorff whether he was sure his figures were correct, Kastorff stepped out into the hall to check with the person who had assisted in doing the clerical work on the bid, and a few minutes later returned and stated that the figures were correct.

He testified that he did not have his work sheets or other papers with him to check against at the time. The board thereupon, on August 12, 1952, voted to award Kastorff the contract. The next morning Kastorff checked his work sheets and promptly discovered his error. He immediately drove to the Los Angeles office of the firm of architects which had prepared the plans and specifications for plaintiff, and there saw Mr. Rendon. Mr. Rendon testified that Kastorff "had his maps and estimate work-sheets of the project, and indicated to me that he had failed to carry across the amount of dollars for the plumbing work. It was on the sheet, but not in the total sheet. We examined that evidence, and in our opinion we felt that he had made a clerical error in compiling his bill. . . . In other words, he had put down a figure, but didn't carry it out to the 'total' column when he totaled his column to make up his bid. . . . He exhibited . . . at that time . . . his work-sheets from which he had made up his bid." That same morning (August 13) Rendon telephoned the school superintendent and informed him of the error and of its nature and that Kastorff asked to be released from his bid. On August 14 Kastorff wrote a letter to the school board explaining his error and again requesting that he be permitted to withdraw his bid. On August 15, after receiving Kastorff's letter, the board held a special meeting and voted not to grant his request. Thereafter, on August 28, written notification was given to Kastorff of award of the contract to him. Subsequently plaintiff submitted to Kastorff a contract to be signed in accordance with his bid, and on September 8, 1952, Kastorff returned the contract to plaintiff with a letter again explaining his error and asked the board to reconsider his request for withdrawal of his bid.

Plaintiff thereafter received additional bids to do the subject construction; let the contract to the lowest bidder, in the amount of $102,900; and brought this action seeking to recover from Kastorff the $12,906 difference between that amount and the amount Kastorff had bid. Recovery of $4,499.60 is also sought against Kastorff's surety under the terms of the bond posted with his bid.

Defendants in their answer to the complaint pleaded, among other things, that Kastorff had made an honest error in compiling his bid; that "he thought he was bidding, and intended to bid, $9500.00 more, making a total of $99,494.00 as his bid"; that upon discovering his error he had promptly notified plaintiff and rescinded the $89,994 bid. The trial court found that it was true that Kastorff made up a bid sheet, which was introduced in evidence; that the subcontractor's bids thereupon indicated were those received by Kastorff; that he "had 16 subcontracting bids to ascertain from 31 which were submitted"; and that Kastorff had neglected to carry over from the left hand column on the bid sheet to the right hand column on the sheet a portion of the plumbing (and heating) subcontractor's bid. Despite the uncontradicted evidence related hereinabove, including that of plaintiff's architect and of its school superintendent, both of whom testified as plaintiff's witnesses, the court further found, however, that "it is not true that the right hand column of figures was totaled for the purpose of arriving at the total bid to be submitted by E. J. Kastorff . . . It cannot be ascertained from the evidence for what purpose the total of the right hand column of figures on the bid sheet was used nor can it be ascertained from the evidence for what purpose the three bid sheets were used in arriving at the total bid." And although finding that "on or about August 15, 1952," plaintiff received Kastorff's letter of August 14 explaining that he "made an error of omitting from my bid the item of Plumbing," the court also found that "It is not true that plaintiff knew at any time that defendant Kastorff's bid was intended to be other than $89,994.00 . . . It is not true that the plaintiff knew at the time it requested the execution of the contract by defendant Kastorff that he had withdrawn his bid because of an honest error in the compilation thereof. It is not true that plaintiff had notice of an error in the compilation of the bid by defendant Kastorff and tried nevertheless to take advantage of defendant Kastorff by forcing him to enter a contract on the basis of a bid he had withdrawn. . . . It is not true that it would be either inequitable or unjust to require defendant Kastorff to perform the contract awarded to him for the sum of $89,994.00, and it is not true that he actually intended to bid for said work the sum of $99,494.00." Judgment was given for plaintiff in the amounts sought, and this appeal by defendants followed.

"Rescission may be had for mistake of fact if the mistake is material to the contract and was not the result of neglect of a legal duty, if enforcement of the contract as made would be unconscionable, and if the other party can be placed in statu quo. [Citations.] In addition, the party seeking relief must give prompt notice of his election to rescind and must restore or offer to restore to the other party everything of value which he has received under the contract. [Citations.]”

. . . [T]he trial court's view . . . that "Kastorff had ample time and opportunity after receiving his last subcontractor's bid" to complete and check his final bid, does not convict Kastorff of that "neglect of legal duty" which would preclude his being relieved from the inadvertent clerical error of omitting from his bid the cost of the plumbing. . . .

Neither should he be denied relief from an unfair, inequitable, and unintended bargain simply because, in response to inquiry from the board when his bid was discovered to be much the lowest submitted, he informed the board, after checking with his clerical assistant, that the bid was correct. He did not have his work sheets present to inspect at that time, he did thereafter inspect them at what would appear to have been the earliest practicable moment, and thereupon promptly notified plaintiff and rescinded his bid.

Further, . . . Kastorff's bid agreement, as provided by plaintiff's own bid form, was to execute a formal written contract only after receiving written notification of acceptance of his bid, and such notice was not given to him until some two weeks following his rescission.

If the situations of the parties were reversed and plaintiff and Kastorff had even executed a formal written contract (by contrast with the preliminary bid offer and acceptance) calling for a fixed sum payment to Kastorff large enough to include a reasonable charge for plumbing but inadvertently through the district's clerical error omitting a mutually intended provision requiring Kastorff to furnish and install plumbing, we have no doubt but that the district would demand and expect reformation or rescission. In the case before us the district expected Kastorff to furnish and install plumbing; surely it must also have understood that he intended to, and that his bid did, include a charge for such plumbing. The omission of any such charge was as unexpected by the board as it was unintended by Kastorff. Under the circumstances the "bargain" for which the board presses (which action we, of course, assume to be impelled by advice of counsel and a strict concept of official duty) appears too sharp for law and equity to sustain.

Plaintiff suggests that in any event the amount of the plumbing bid omitted from the total was immaterial. The bid as submitted was in the sum of $89,994, and whether the sum for the omitted plumbing was $6,500 or $9,285 (the two sub bids), the omission of such a sum is plainly material to the total. . . .

The judgment is reversed.