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Municipal Corporations--Effect of Failure to Award Paving Contract by Competitive Bidding on Municipal Liability

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MUNICIPAL CORPORATIONS — EFFECT OF FAILURE TO AWARD PAVING CONTRACT BY COMPETITIVE BIDDING ON MUNICIPAL LIABILITY. — Plaintiff sought to recover the balance due on a paving contract. Defendant city claimed that the contract was invalid because there was no compliance with the charter which required such contracts to be let "after advertisement for four weeks in one or more newspapers in the city, for bids and proposals for the work". *Held*: No recovery on the contract or on quantum meruit. *Burgess v. City of Cameron.*[1]

The ruling seems to be in accord with the weight of authority both as to recovery on the contract[2] and in quasi-contract for benefits received.[3] It may be noted that the rule differs as to private corporations. They are generally liable, where the contract is made without compliance with legal formalities, either on the contract[4] or on quantum meruit.[5]

To deny a recovery against the municipal corporation in quasi-contract seems to be a harsh result since the contractor has no recourse against the municipal officers personally[6] and is thus left without remedy. The rule also seems to be inconsistent with that applied relative to irregularly executed municipal bonds, under which the city is held liable in quasi-contract for the amount received if it has been used for a public purpose.[7] The reason given for the more stringent enforcement of the requirement of bids is protection of the public in getting work done at the best rates and the avoidance of corruption in awarding contracts for public improvements. Courts have rigidly enforced requirements as to advertising for bids[8] and letting to the lowest bidder.[9] Either

[1] 166 S. E. 113 (W. Va. 1932), rehearing denied, 166 S. E. 703.

[2] Fox v. New Orleans, 12 La. Ann. 154, 68 Am. Dec. 766 and note (1857); Zottman v. San Francisco, 20 Cal. 96, 81 Am. Dec. 96 and note (1862); Wait v. Southern Oil and Trust Co., 209 Ky. 682, 273 S. W. 473 (1925).

[3] Anderson v. Fuller, 51 Fla. 380, 41 So. 684, 6 L. R. A. (n. s.) 1026 (1906); note (1910) 27 L. R. A. (n. s.) 1120.

[4] COOK ON CORPORATIONS (8th ed. 1923) § 725.

[5] Note, L. R. A. 1917A, 1036.

[6] Lawrence v. Toothaker, 75 N. H. 148, 71 Atl. 534, 23 L. R. A. (n. s.) 428 and note (1908); Klauder v. Cox, 295 Pa. St. 323, 145 Atl. 290 (1929).

[7] Bolton v. Wharton, 161 S. E. 454 (S. C. 1931); note (1920) 7 A. L. R. 353.

[8] Duffy v. Saginaw, 106 Mich. 335, 64 N. W. 581 (1875); Flinn v. Philadelphia, 258 Pa. 355, 102 Atl. 24 (1907); Webster Groves v. Reber, 212 S. W. 38 (Mo. App., 1917).

[9] Chippewa Bridge Co. v. City of Durand, 122 Wis. 85, 99 N. W. 603, 106 Am. St. Rep. 931 and note (1904). But where only one bid is received the requirement is held to be complied with. Hager v. Melton, 66 W. Va. 62, 66 S. E. 13 (1909).

a taxpayer or a competitive bidder may interfere in these cases; the taxpayer by enjoining the letting of the contract[10] or by refusal to pay taxes assessed for payment of such work,[11] the bidder by mandamus to compel the contract to be let to him or by injunction to restrain the letting to a higher bidder.[12]

This strict rule of enforcement seems to be the better view. If the contractor is allowed to recover on quantum meruit the purpose of the requirement is defeated. The measure of recovery where defendant repudiates and the plaintiff has performed is the value of the work done, of which the contract may be evidence.[13] If the contractor can recover possibly as much as the contract price in quasi-contract in case the contract is held void, why should he worry about the city's compliance with statutory requirements in letting the contract? The answer is obvious. The penalty for failure to comply is removed and the door is opened to indifference and fraud in the letting of public contracts.

—PAUL S. HUDGINS.

TORTS—RECOVERY WHERE MENTAL DISTRESS IS SOLE INJURY—EFFECT OF WILLFULNESS.—The plaintiff, a widow, owed a small claim on which her wages were exempt. Defendant, collecting agency, wrote her several letters, threatened to sue her on the claim, to appeal to her employer, and intimated that her action was as bad as a criminal's. No threat had reference to physical violence. The letters caused her much worry and mental anguish. In a suit for damages, she neither alleged nor proved any resultant physical injury. From verdict and judgment for the plaintiff the defendant appealed. The decision of the lower court was upheld on the grounds that the defendant had willfully and intentionally caused the plaintiff anguish and suffering. *Barnett v. Collection Service Co.*.[1]

[10] Murphy v. City of Greensboro, 190 N. C. 268, 129 S. E. 614 (1925); Kratz v. City of Allentown, 304 Pa. 51, 155 Atl. 116 (1931).

[11] Twiss v. City of Huron, 63 Mich. 528, 30 N. W. 177 (1886). See also Moundsville v. Yost, 75 W. Va. 224, 83 S. E. 910 (1914).

[12] Federal Construction Co. v. Ryan, 47 Cal. App. 637, 191 Pac. 69 (1920). And see note (1895) 50 Am. St. Rep. 489. But the lowest bidder cannot maintain an action at law for failure to award the contract to him. People ex rel. Haecker Sterling Co. v. City of Buffalo, 176 N. Y. Supp. 642 (1919).

[13] WOODWARD ON QUASI-CONTRACTS (1913) § 268.

[1] 242 N. W. 26 (Iowa 1932).