MISSOURI COURT OF APPEALS
WESTERN DISTRICT

TWEHOUS EXCAVATING, INC.,

Respondent,

v.

JEFFERSON CITY RETIREMENT, LLC.,

Appellant.

DOCKET NUMBER WD83547

Date: November 24, 2020

Appeal from:

Cole County Circuit Court
The Honorable Daniel R. Green, Judge

Appellate Judges:

Division Two: Lisa White Hardwick, Presiding Judge, Thomas H. Newton and Karen King Mitchell, Judges

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Attorneys:
Jonathan C. Browning, Jefferson City for appellant.
Mark A. Ludwig, Jefferson City for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

TWEHOUS EXCAVATING, INC., Respondent,
v.
JEFFERSON CITY RETIREMENT, LLC., Appellant.

WD83547 Cole County

Before Division Two Judges: Lisa White Hardwick, Presiding Judge, Thomas H. Newton and Karen King Mitchell, Judges

Jefferson City Retirement, LLC, ("JCR") appeals from the circuit court's judgment in favor of Twehous Excavating, Inc., ("Twehous") on Twehous's claims for breach of contract and quantum meruit. JCR contends that the court erred in granting Twehous relief on both claims because the claims were mutually exclusive and inconsistent as a matter of law, and the court's judgment allowed Twehous a double recovery. JCR further asserts that the court's judgment misapplied the law and was against the weight of the evidence.

AFFIRMED.

Division Two holds:

(1) The circuit court did not err in finding in favor of Twehous on both its breach of contract and quantum meruit claims. Twehous was not required to elect its theory of recovery because the evidence supported both theories and the existence of a contract did not negate, repudiate, or disprove the elements of a quantum meruit claim. Because the damages for both claims were the same, the damages merged into one award, and Twehous was not allowed a double recovery.

(2) The circuit court's judgment finding in favor of Twehous on its breach of contract claim did not misapply the law and was not against the weight of the evidence. The evidence established that Twehous and JCR entered into an oral contract that JCR breached by failing to pay Twehous the full amount of the retainage it was owed upon Twehous's completion of the work.

(3) The circuit court did not misapply the law in awarding Twehous attorney fees and interest under Section 431.180, RSMo 2016. Because the evidence established that Twehous and JCR entered into an oral construction contract, Twehous completed its work pursuant to the contract, and JCR failed to pay Twehous the full amount it was owed upon completion, the court had discretion to award attorney fees and interest under the statute.

Opinion by: Lisa White Hardwick, Judge November 24, 2020

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