MISSOURI COURT OF APPEALS
WESTERN DISTRICT

ADB COMPANIES, INC.,
RESPONDENT

vs.

SOCKET TELECOM, LLC.,
APPELLANT

DOCKET NUMBER WD83575

DATE: FEBRUARY 9, 2021

Appeal from:

The Circuit Court of Boone County, Missouri
The Honorable Kevin Crane, Judge

Appellate Judges:

Division Two: W. Douglas Thomson, Presiding Judge, Lisa White Hardwick, Judge and Edward R. Ardini, Jr., Judge

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Attorneys:

Brian E. McGovern, for Respondent

David G. Brown, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

ADB COMPANIES, INC., RESPONDENT
v.
SOCKET TELECOM, LLC, APPELLANT

WD83575 Boone County, Missouri

Division Two: W. Douglas Thomson, Presiding Judge, Lisa White Hardwick, Judge and Edward R. Ardini, Jr., Judge

Socket Telecom, LLC, an internet service provider, entered into a contract with ADB Companies, Inc., wherein ADB was to lay approximately 101 miles of fiber that would enable Socket to provide broadband internet service to homes and businesses in Callaway County. The contract required that ADB complete its work within 150 days, however ADB could obtain an extension of this deadline for delays caused by Socket's failure to provide necessary materials, easements, or rights-of-way. To obtain a deadline extension, ADB was required to request an extension, in writing, "within ten (10) days after the happening of any event relied upon by [ADB] for such an extension of time[.]" The contract also included a liquidated damages provision, which provided that: "Should [ADB] neglect, refuse or fail to complete the construction within the time herein agreed upon . . . [Socket] shall have the right to deduct from and retain out of such moneys . . . payable to [ADB] the sum of [$2,500.00] per day for each and every day that such construction is delayed in its completion[.]"

On July 24, 2013, ADB was advised that the deadline for completion of construction had passed and because ADB had not completed its work, Socket was withholding liquidated damages in the amount of $2,500 per day. ADB completed its work on August 23, 2013. Socket assessed thirty days' worth of liquidated damages—$75,000—and withheld this money from the "retainage" funds it owed to ADB.

ADB initiated this action, alleging that Socket breached the contract by failing to pay the money it owed to ADB. After a bench trial, the trial court entered judgment in favor of ADB. Specifically, the trial court found that Socket failed to timely obtain certain materials and easements causing delays in ADB's work, ADB provided notice to Socket of the delays, ADB was entitled to extensions of time to complete its work, ADB completed its work within the contract deadline when such extensions of time were applied, and, as a result, Socket improperly withheld liquidated damages. The trial court also awarded ADB attorney's fees and prejudgment interest pursuant to section 431.180, RSMo, Missouri's Private Prompt Pay Act. Socket appealed.

REVERSED AND REMANDED.

Division Two holds:

(1) The trial court's finding that ADB was entitled to extensions of time to complete its work was not supported by the evidence. There was no evidence that ADB requested a deadline extension, in writing, within ten days after the happening of any event relied upon by ADB for an extension of time, as required by the contract. Thus, there was no evidence to support the finding that ADB completed its work within the contract deadline. As a result, Socket was entitled to withhold liquidated damages under the terms of the contract.

(2) ADB was not entitled to attorney's fees and prejudgment interest pursuant to section

(3) 431.180, RSMo, because ADB was not a "prevailing party" under the statute.

Opinion by: Edward R. Ardini, Jr., Judge Date: February 9, 2021

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