OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

PENZEL CONSTRUCTION COMPANY, INC.,	)	No. ED108821
Respondent,	)	Appeal from the Circuit Court
	)	of Cape Girardeau County
vs.	)	
	)	Honorable Benjamin F. Lewis
JACKSON R-2 SCHOOL DISTRICT,	)	
	)	
Appellant.	)	FILED: July 20, 2021

The Jackson R-2 School District (the "District") appeals from the judgment of the trial court following a jury trial finding for Penzel Construction Company, Inc. ("Penzel") on its claim for breach of contract as well as prompt-payment prejudgment interest ("PPP interest") under Section 34.057. The District raises nine points on appeal.

Points One and Two challenge the award of prejudgment interest and PPP interest. Point One alleges Penzel did not satisfy the contract requirements allowing the award of prejudgment interest while Point Two disputes the award of general prejudgment interest in the amount specified by Section 408.020 because the trial court could not as a matter of law award both general prejudgment interest under Section 408.020 and PPP interest under Section 34.057.

In Point Three, the District contends the trial court abused its discretion in excluding the proffered testimony of an expert witness concerning an unreasonably low subcontractor bid because the testimony was directly probative on Penzel's damages and excluding the evidence prejudiced the District.

Point Four alleges trial court error in denying its motion for judgment notwithstanding the verdict because Penzel failed to make a submissible case under Section 34.057 for PPP interest. In Point Six, the District argues the trial court erred in denying its motion for a directed verdict because Penzel did not make a submissible case for damages under the modified total cost method (the "MTCM").

Points Five, Seven, Eight, and Nine concern jury instructions. Point Five challenges the PPP interest verdict-directing Instruction No. 16, claiming the submitted instruction was not supported by the evidence and misstated the law by allowing Penzel to prove it had submitted a "demand" for payment rather than an "invoice." Point Seven argues that Instruction No. 14 did not accurately instruct the jury on the law regarding the MTCM of calculating damages. In Point Eight, the District asserts the breach-of-contract verdict-directing Instruction No. 8 erroneously allowed the jury to find for Penzel on bases other than those set forth by this Court in prior proceedings in this case. In Point Nine, the District posits the pleadings and evidence did not support giving Instruction No. 12 regarding Penzel's avoidance to the District's affirmative defense of failure to give timely notice and in correspondingly modifying Instruction No. 11.

AFFIRMED.

DIVISION THREE HOLDS: We affirm the judgment of the trial court on all points. Specifically, because the contract expressly provided for prejudgment interest and Penzel satisfied its conditions, the trial court did not err in awarding prejudgment interest under the contract, and we deny Point One. Because the District does not challenge whether prejudgment interest can be concurrently imposed under a contract and under Section 34.057, we deny Point Two. Because the exclusion of the proffered expert witness testimony as to the reasonableness of the subcontractor's bid did not prejudice the District, we deny Point Three. Penzel made a submissible case for PPP interest under Section 34.057 and also made a submissible case for damages under the MTCM, therefore we deny Points Four and Six. Instruction No. 16 governing Penzel's claimed PPP interest was supported by the evidence. In addition, the contested portions of Instruction No. 16 either did not misstate the law or did not materially prejudice the District. Therefore, we deny Point Five. Because Instruction No.14 did not incorrectly instruct the jury in any of the ways alleged, we deny Point Seven. Because the grounds for recovery in Instruction No. 8 were supported by Penzel's pleadings and evidence on its theories of recovery for breach of contract, the District's limited challenge to only one of Penzel's two theories of recovery fails to support a claim of reversible error, and we deny Point Eight. Because Instructions No. 11 and 12 concerning the District's affirmative defense and Penzel's avoidance did not prejudice the District in light of its own insufficient pleadings, we deny Point Nine.

Accordingly, we affirm the judgment of the trial court on all points. Additionally, we grant Penzel's motion for appellate attorneys' fees and remand to the trial court for a determination of reasonable attorneys' fees.

Opinion by: Kurt S. Odenwald, Judge
Angela T. Quigless, P.J., and James M. Dowd, J., concur.

Attorneys for Appellant: Jay S. Dobbs, Nicholas P. Meriage, Robyn G. Fox, Boris A. Kaupp, and Gary E. Snodgrass

Attorney for Respondent: Michael E. Wilson

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.