Plaintiffs Prevail In Appeal Of Illinois Prevailing Wage Act Case

April 27, 2020 | Construction Law,Contracts,Labor And Employment

On March 26, 2020, the Appellate Court of Illinois issued a decision holding that a municipality's failure to stipulate in its contract that the Illinois Prevailing Wage Act applied had no effect on the plaintiffs' right to bring a cause of action under the act.

In *Valerio v. Moore Landscapes*, 12 landscaper laborers alleged that Moore Landscapes, LLC hired them as tree planters to complete a project for the Chicago Park District, a public body. The laborers alleged that Moore Landscapes paid them $18 per hour instead of the prevailing wage rate of $41.20 per hour. Moore Landscapes had three contracts with the Chicago Park District that all contained the same prevailing wage rates provision:

"Contractor shall pay all persons employed by Contractor, or its subcontractors, prevailing wages where applicable. As a condition of making payment to the Contractor, the Park District may request the Contractor to submit an affidavit to the effect that not less than the prevailing hourly wage rate is being paid to laborers employed on contracts in accordance with Illinois law."

The policy of the Prevailing Wage Act (Wage Act) is that "laborers, workers and mechanics employed by or on behalf of any and all public bodies engaged in public works" shall be paid "a wage of no less than the general prevailing hourly rate as paid for work of a similar character in the locality in which the work is performed." The Wage Act creates a right of action for "[a]ny laborer, worker or mechanic employed by the contractor … who is paid for his services in a sum less than the *stipulated rates* for work done under such contract" (emphasis added).

The trial court dismissed the laborers' complaint, holding that they could not pursue a claim under section 11 of the Wage Act because the contract

language at issue did not constitute a *stipulated rate* of payment. The laborers appealed, arguing that the trial court "misconstrued section 11 of the Wage Act to require a contractor and a public body to stipulate in their contract that their project was subject to the provisions of the Wage Act as a prerequisite for laborers to have a right of action for prevailing wages and related damages under section 11."

The laborers further argued that the trial court "ignores the public policy in favor of laborers engaged in the construction of public works receiving the prevailing wage" and that the trial court's interpretation "rewards violations of the Wage Act's requirements that the contracts between public bodies and contractors must stipulate whether a project is subject to the provisions of the Wage Act by essentially giving contractors the discretion to pay laborers the prevailing wage." Moore Landscapes argued that the contract between it and the Chicago Park District only indicated that the prevailing wage would be paid "if applicable" and therefore it did not constitute a contract stipulation to pay prevailing wages.

In its review, the appellate court stated it could not uphold the trial court's decision due to the unambiguous language of section 11 of the Wage Act. The appellate court explained that any failure by the Chicago Park District and Moore Landscapes to include the stipulation required by the Wage Act regarding whether the project was or was not subject to the provisions of the Wage Act had no effect on the laborers' right to pursue a cause of action under the Wage Act. The appellate court reversed the trial court's decision, and remanded for further proceedings.

In summary, the appellate court clarified that, pursuant to the plain language of the Wage Act and the clear legislative intent, section 11 of the Wage Act did not place a limitation on the right of a worker to bring a cause of action if they had been denied the prevailing wage on a public works project.