

In the Matter of Municipal Consultants & Publishers, Inc.,  
Respondent, v. Town of Ramapo et al., Appellants

[NO NUMBER IN ORIGINAL]

Court of Appeals of New York

47 N.Y.2d 144; 390 N.E.2d 1143; 1979 N.Y. LEXIS 1997; 417  
N.Y.S.2d 218

May 1, 1979, Decided

PRIOR HISTORY: [\*\*\*1]

Appeal from an order of the Appellate Division of the Supreme Court in the Second Judicial Department, entered March 27, 1978, which (1) reversed, on the law, a judgment of the Supreme Court (Theodore A. Kelly, J.), entered in Rockland County in a proceeding pursuant to *CPLR article 78*, granting a motion to dismiss the petition, and (2) granted the petition.

In June, 1976, petitioner Municipal Consultants & Publishers, Inc., at the request of respondent Town of Ramapo, submitted a written proposal to the town in the form of a contract offering to codify its ordinances and local laws for a sum specified in the proposal. Municipal later agreed to certain changes suggested by the town attorney, but no formal action was taken at that time on behalf of the town on the proposal. In February, 1977, the town board formally acted on it and by resolution authorized the town attorney to accept the proposal, authorized the supervisor to sign the agreement, and provided payment for the work. The supervisor, however, never signed the contract, since one of Municipal's competitors, long after the passage of the resolution authorizing the agreement, offered to do the work for a lesser sum. [\*\*\*2] Although the parties met in an attempt to work out their differences, a *CPLR article 78* proceeding ensued requesting that the court declare the contract valid and enforceable and also to direct the supervisor and town attorney to deliver an executed copy of the agreement.

The Court of Appeals affirmed the order of the Appellate Division, holding, in an opinion by Judge Gabrielli, (1) that since all of the terms of the agreement had been negotiated and agreed upon, and there was no understanding or agreement that the contract would not be binding until both parties had signed it, it was enforceable although never memorialized with a mutually signed writing, and (2) that since subdivision 6 of *section 64* of the Town Law reposes exclusive authority in the town board to award contracts and provides that such contracts shall be executed by the supervisor in the name of the town after approval by the board, the town board's resolution was an acceptance of petitioner's offer, and the supervisor's refusal to perform

the ministerial act of signing the contract was therefore unlawful.

*Matter of Municipal Consultants & Publishers v Town of Ramapo*, 61 AD2d 1049. Matter of Municipal [\*\*\*3] Consultants & Publishers v Town of Ramapo, 47 NY2d .

DISPOSITION: Order affirmed.

HEADNOTES: Municipal Corporations -- Contracts -- Failure to Memorialize Terms of Contract

1. A town is contractually obligated to receive and pay for services offered by petitioner, a consulting and publishing firm which submitted a written proposal at the town's request in the form of a contract offering to codify its ordinances and local laws for a sum specified in the proposal, inasmuch as petitioner later agreed to certain changes suggested by the town attorney and the town board, by resolution, authorized the town attorney to accept the proposal, authorized the supervisor to sign the agreement, and provided payment for the work, following which the supervisor failed to sign the contract, since although generally, where the parties contemplate that a signed writing is required there is no contract until one is delivered, the rule yields when the parties have agreed on all contractual terms and have only to commit them to writing; because all the terms of the contract had been negotiated and agreed upon, and there was no understanding or agreement that the contract would not be binding until both parties [\*\*\*4] had signed it, it is enforceable although it was never memorialized with a mutually signed writing. Moreover, the town board's resolution authorizing the supervisor to sign the agreement on its behalf was an acceptance of petitioner's offer, since subdivision 6 of *section 64* of the Town Law reposes exclusive authority in the town board to award contracts and provides that such contracts shall be executed by the supervisor in the name of the town after approval by the board; nothing further was necessary to create an enforceable contract, and the supervisor's refusal to perform the ministerial act of signing the contract was, therefore, unlawful.

Contracts -- Failure to Memorialize Terms

2. Although, generally, where the parties contemplate that a signed writing is required there is no contract until one is delivered, this rule yields where the parties have agreed on all contractual terms and have only to commit them to writing; when this occurs, the contract is effective at the time the oral agreement is made, although the contract is never reduced to writing and signed.

COUNSEL: Kenneth H. Resnik and Mitchell P. Schecter for appellants. I. No valid and binding contract [\*\*\*5] arose between Municipal Consultants & Publishers, Inc., and the Town of Ramapo, absent the execution of a written agreement by the Supervisor of the Town of Ramapo. (*Town of Hempstead v United States Trucking Corp.*, 31 Misc 2d 419; *Pratt v Hudson Riv. R. R. Co.*, 21 NY 305; *Berkeley Unified School Dist. of Alameda County v Barnes Constr. Co.*, 112 F Supp 396.) II. The lack of execution and delivery of the alleged contract bars recovery by petitioner-respondent. (*Matter of Hendrickson Bros. v County of Suffolk*, 58 AD2d 602.) III. An article 78 proceeding is improper and does not lie to enforce obligations of a public contract as there is an adequate remedy at law. (*Matter of Corbeau Constr. Corp. v Board of Educ.*, 32 AD2d 958; *Matter of Koegan v Yunich*, 51 AD2d 744; *People ex rel. Richards v Hylan*, 200 App Div 871.) IV. The Court of Appeals is bound by the findings of fact determined in the Supreme Court.

Harold J. Van Opdorp for respondent. I. A contract with a municipal corporation may arise from the submission of a proposal and its acceptance by a resolution. (*Village of Lake George v Town of Caldwell*, 3 AD2d 550, 5 NY2d 727; *Belmar Contr. [\*\*\*6] Co. v State of New York*, 233 NY 189; *Matter of Town of Hempstead v United States Trucking Corp.*, 31 Misc 2d 419; *Sanders v Pottlitzer Bros. Fruit Co.*, 144 NY 209; *Pratt v Hudson Riv. R. R. Co.*, 21 NY 305; *Rouse Constr. Corp. v Albany Acoustical Corp.*, 9 AD2d 38; *Matter of Hendrickson Bros. v County of Suffolk*, 58 AD2d 602.) II. Subdivision 6 of section 64 of the Town Law does not require execution by the supervisor before the contract becomes obligatory. (*New York Tel. Co. v Town of North Hempstead*, 41 NY2d 691; *Soundview Woods v Town of Mamaroneck*, 14 Misc 2d 866, 9 AD2d 789; *McDonald v Mayor of N. Y.*, 68 NY 23; *Matter of Town of Clay v Helsby*, 45 AD2d 292; *Knapp v Fasbender*, 1 NY2d 212; *Village of Lake George v Town of Caldwell*, 3 AD2d 550, 5 NY2d 727; *Orelli v Ambro*, 51 AD2d 85, 41 NY2d 952.) III. Even if it could be interpreted that the provisions of subdivision 6 of section 64 of the Town Law is a legislative fiat that a contract with a town cannot be enforceable until the supervisor executes the contract, the remedy sought is still appropriate. (*Belmar Contr. Co. v State of New York*, 233 NY 189; *People ex*

*rel. Lunney v [\*\*\*7] Campbell*, 72 NY 496; *People ex rel. Vickerman v Contracting Bd.*, 46 Barb 254; *People ex rel. Belden v Contracting Bd.*, 27 NY 378; *Matter of Semper v Duffey*, 227 NY 151; *Matter of Arcangel v Holling*, 258 App Div 180, 1031, 282 NY 808; *Bailey v Colonna*, 73 Misc 2d 299; *Matter of Town of Hempstead v United States Trucking Corp.*, 31 Misc 2d 419; *Moore v Mayor of N. Y.*, 73 NY 238; *Fleishman v Furgueson*, 223 NY 235.) IV. Even assuming that mandamus is not the appropriate remedy, the relief to which petitioner-respondent is or may be entitled should be considered by the court. (*Matter of Lakeland Water Dist. v Onondaga County Water Auth.*, 24 NY2d 400; *Dun & Bradstreet, Inc. v City of New York*, 276 NY 198; *Matter of Niagara Falls Urban Renewal Agency v O'Hara*, 57 AD2d 471; *Matter of Corbeau Constr. Corp. v Board of Educ.*, 32 AD2d 958; *Matter of Rockland Bus Lines v Board of Educ.*, 43 Misc 2d 1060.) V. The agreement is clearly enforceable within the Statute of Frauds. (*Cohon & Co. v Russell*, 23 NY2d 569; *Argus Co. v Mayor of Albany*, 55 NY 495; *Village of Lake George v Town of Caldwell*, 3 AD2d 550, 5 NY2d 727; *Crabtree v Elizabeth [\*\*\*8] Arden Sales Corp.*, 305 NY 48; *Lalonde v Modern Album & Finishing Co.*, 38 AD2d 960; *Tymon v Linoki*, 16 NY2d 293; *Flax v B. M. Dev. Corp.*, 35 AD2d 565; *Marshall v Ferris*, 65 Misc 2d 405; *Clifford v Carrols N. Y. Dev. Corp.*, 50 Misc 2d 741; *Sokol v Terry*, 43 Misc 2d 168.) VI. The Court of Appeals is not bound by the conclusions of the Supreme Court. (*Williams Press v State of New York*, 37 NY2d 434.)

JUDGES: Chief Judge Cooke and Judges Jasen, Jones, Wachtler and Fuchsberg concur with Judge Gabrielli.

OPINIONBY: GABRIELLI

OPINION: [\*147] [\*\*1144] OPINION OF THE COURT

The issue in this case is whether the Town of Ramapo is contractually obligated to receive and pay for the services offered by the petitioner Municipal Consultants & Publishers, Inc. (Municipal). For the reasons which follow we conclude that there existed an enforceable contract between the parties, and we therefore affirm the order of the Appellate Division.

On June 10, 1976 Municipal, at the request of the town, submitted a written proposal in the form of a contract to the Town of Ramapo offering to codify its ordinances and local laws for a sum specified in the proposal. [\*\*\*9] On July 21 Municipal agreed to certain changes suggested by the town attorney, but no formal action was taken at that time on behalf of the town on the proposal. Finally, on February 9, 1977 the

town board formally acted on it, and agreed to engage petitioner's services.

[\*148] By resolution No. 77-54 the town (1) authorized the town attorney to accept the proposal; (2) authorized the supervisor to sign the agreement, and (3) provided payment for the work. The resolution adopted by the town board on February 9, 1977, in pertinent part, provided that:

"RESOLVED by the Town Board of the Town of Ramapo that authorization be hereby granted for the Town Attorney to accept the proposal submitted by Municipal Consultants & Publishers, Inc., of 64 Seneca Street, Geneva, New York, to codify Ordinances and Local Laws of the Town of Ramapo, and

"BE IT FURTHER RESOLVED that the Supervisor be hereby authorized to execute the Agreement between the Town of Ramapo and Municipal Consultants & Publishers, Inc., and

"BE IT FURTHER RESOLVED that the sum of \$10,000.00 for the first 450 pages or less and \$20.00 per page for each additional page in excess of 450 pages, be hereby paid to Municipal [\*\*\*10] Consultants & Publishers, Inc. for services rendered."

On February 15, 1977, the town attorney notified Municipal that the agreement had been approved, forwarded copies of the agreement for Municipal to execute, and stated he looked forward to a long and pleasant relationship.

Ramapo's supervisor, however, never signed the contract. It appears that one of Municipal's competitors, long after the passage of the resolution authorizing the agreement, offered to do the work for a lesser sum. The parties met in an attempt to work out their differences but to no avail. This article 78 proceeding ensued requesting that the court declare the contract valid and enforceable and also to direct the supervisor and town attorney to deliver an executed copy of the agreement.

The primary issue presented is whether the contract is enforceable against the town without the signature of the supervisor.

Generally, where the parties contemplate that a signed writing is required there is no contract until one is delivered (*Scheck v Francis*, 26 NY2d 466; *Schwartz v Greenberg*, 304 NY 250). This rule yields, however, when the parties have agreed on all contractual terms and have [\*\*\*11] only to commit them to writing. When this occurs, the contract is effective at [\*149] the time the oral agreement is made, although the contract is

never reduced to writing and signed. Where all the substantial terms of a contract have been agreed on, and there is nothing left for future settlement, the fact, alone, that it was the understanding that the contract should be [\*\*\*1145] formally drawn up and put in writing, did not leave the transaction incomplete and without binding force, in the absence of a positive agreement that it should not be binding until so reduced to writing and formally executed (*Disken v Herter*, 73 App Div 453, affd 175 NY 480; 1 Williston, Contracts, § 28; see, also, *Matter of Meister*, 39 AD2d 857, affd 32 NY2d 626; *Belmar Contr. Co. v State of New York*, 233 NY 189, 194). Here, of course, there was no understanding that the agreement would not be binding, short of formal execution by the supervisor; and the facts of the case before us fall within the legal framework of the last above-cited cases. All the terms of the contract had been negotiated and agreed upon. They were, in fact, expressed in Municipal's written standard contract [\*\*\*12] which had been modified in several slight respects through negotiations. There was no understanding or agreement that the contract would not be binding until both parties had signed it, and therefore it is enforceable although it was never memorialized with a mutually signed writing.

We now further address the question of whether the authorizing resolution No. 77-54 constituted an acceptance of the proposal. The resolution of the town board authorized the town attorney to accept the contract on behalf of the board and authorized, but did not specifically direct, in so many words, the supervisor to sign the agreement on behalf of the town (cf. *Village of Lake George v Town of Caldwell*, 3 AD2d 550, 552, affd 5 NY2d 727). Because the supervisor never signed the agreement the town maintains that it never fully assented to it. This concept we reject.

Subdivision 6 of *section 64* of the Town Law reposes exclusive authority in the town board to award contracts; and it further provides that "the same shall be executed by the supervisor in the name of the town after approval by the town board" (emphasis added). The section does not recognize any discretion on the part of the supervisor [\*\*\*13] to pass on the award of contracts; in fact it is quite the opposite, in effect, by instructing him or directing that he act. The ministerial nature of the supervisor's function is further emphasized by *section 29* of the Town Law which delineates the powers and [\*150] duties of the supervisor. Despite the breadth of the responsibilities outlined therein, nowhere does there appear any authority or responsibility to agree to or to have any discretionary authority in anywise relating to the execution of contracts authorized or adopted by the board.

Hence, the town board's resolution which authorized the supervisor to sign the agreement on its behalf was an acceptance of the offer made by Municipal (*Orelli v Ambro*, 51 AD2d 85, revd on other grounds 41 NY2d 952; *Village of Lake George v Town of Caldwell*, 3 AD2d 550, affd 5 NY2d 727, supra; *Town of Hempstead v United States Trucking Corp.*, 31 Misc 2d 419). Nothing further was necessary to create an enforceable contract. The supervisor's refusal to perform the

ministerial act of signing the contract was therefore unlawful, and an article 78 proceeding in the nature of mandamus lay to compel his action (see *Belmar [\*\*\*14] Contr. Co. v State of New York*, 233 NY 189, supra).

Accordingly, the order of the Appellate Division should be affirmed, with costs.