

NORTH STAR CONSTRUCTION, INC.

v.

TOWN OF MILBRIDGE

Submitted on Briefs November 16, 2006

Decided December 7, 2006

Panel: SAUFLEY, C.J., and CLIFFORD, DANA, ALEXANDER, CALKINS,  
LEVY, and SILVER, JJ.

MEMORANDUM OF DECISION

The Town of Milbridge appeals from a judgment entered in the Superior Court (Washington County, *Hunter, J.*) ordering it to pay \$17,500 plus penalties, costs, expenses, attorney fees, and interest to North Star Construction, Inc., under a theory of quantum meruit.<sup>1</sup>

The court did not err in granting North Star recovery under a theory of quantum meruit because competent evidence in the record supported the court's finding that the ravine work was additional work not contemplated within the original contract. *See Runnells v. Quinn*, 2006 ME 7, ¶¶ 10-11, 890 A.2d 713, 716-17. Furthermore, the court was entitled to credit North Star's evidence as to the value of the work performed and was not compelled to accept as fact the

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<sup>1</sup> Contrary to North Star's contention, the appeal is not moot by reason of the Town's partial payment of the judgment. *See* 5 AM. JUR. 2D *Appellate Review* § 618 at 307 (1995) (stating that the loss of an appeal right through acquiescence "should be decreed only when the party's intention to abandon the right of appeal is clearly demonstrated").

Town's evidence that it made payment against its obligation for the ravine work. *See State v. Black*, 2000 ME 211, ¶ 17, 763 A.2d 109, 113-14.

Finally, the court did not err in assessing penalties against the Town pursuant to 10 M.R.S. § 1118(2) (2005), *see Jenkins, Inc. v. Walsh Brothers, Inc.*, 2002 ME 168, ¶ 11, 810 A.2d 929, 934; in determining that North Star was the substantially prevailing party within the meaning of 10 M.R.S. § 1118(4) (2005), entitling it to attorney fees, *see Jenkins*, 2002 ME 168, ¶ 11, 810 A.2d at 934; or in determining that North Star was the prevailing party within the meaning of 14 M.R.S. § 1501 (2005), entitling it to costs, *see Runnells*, 2006 ME 7, ¶¶ 15-16, 890 A.2d at 717. The amount of attorney fees awarded was also within the court's discretion. *See VanVoorhees v. Dodge*, 679 A.2d 1077, 1082 (Me. 1996).

The entry is:

Judgment affirmed.

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