

SUMMARY OF ROWLEY ENGINEERING & ASSOCIATES V. CUOMO

Conn.Super. 1991

by

Knud E. Hermansen

Knud is a licensed professional land surveyor, professional engineer, and attorney at law. He teaches at the University of Maine in the surveying engineering technology program and has a consulting practice specializing in boundary disputes, title, land development, liability, and easements. <http://www.umaine.edu/set/svt/articles/>

Note: The principles discussed may not apply to all states. The reader is encouraged to research the law in their own state.

Most practitioners have faced the situation where the fees sought exceed the estimate. Subsequently, the client has balked or refused to pay any amount in excess of the estimate. A recent case indicates the practitioner should approach these situations with caution and forethought. In the case of *Rowley Engineering & Associates v. Cuomo*, a surveyor entered into a contract with a client to provide surveying services. Although no lump sum fee was fixed by the contract, the client had the impression the services would be rendered for a price not to exceed \$2,500. The contract provided for the surveyor's fee to be determined using an hourly rate. A \$1,500 retainer was given to the surveyor by the client.

At some point during the survey, the survey crew encountered problems establishing the boundary which required substantial time and effort. Subsequently, the client was billed \$3,913.00. The client disputed the amount and was advised in writing by the survey firm that no further work would be done unless payment was received. Despite the letter indicating work would stop, the practitioner continued to work on the project and sought additional compensation. The survey firm refused to deliver a plan at the completion of the survey until payment was received. The client refused to pay the previous amount and for the subsequent work. The surveyor sued for the amount owed. While the court eventually ruled in favor of the surveyor (in part), the Court was critical of the surveyor's communications and billing procedures. The Court noted that the client should have been informed of the unforeseen problems and given the opportunity to terminate or renegotiate the contract at that point. As a result, the amount sought by the surveyor was reduced. Furthermore, the practitioner was not allowed to recover for work performed after they had informed the client work would cease unless payment was received.

On a related matter in the litigation, the surveyor had a contract clause providing for attorney fees. The surveyor sought \$7,700 in attorney fees. The Court recognized that parties can bind themselves to pay for attorney's fees but the amount ultimately sought must be reasonable. The Court found that reasonable attorneys fees should not exceed \$1,750.

This is a good example of winning the battle and losing the war. The surveyor sought an amount in excess of \$5,000 for fees. In addition, the surveyor sought an amount in excess of \$7,000 for attorney fees and costs of litigation. Assuming these

amounts were actual amounts charged against the survey practitioner, the surveyor spent over \$12,000 to eventually recover less than \$4,000.

There are several lessons to be learned from this case:

1. The client should be informed of unexpected problems and given some idea of the costs associated with the problems.
2. In some cases, the client should be given the opportunity to withdraw or renegotiate the contract when unexpected problems are encountered.
3. The surveyor should keep clear and complete records to justify the fees charged.
4. Contract provisions providing for attorney fees and court costs to be paid to the winning side are enforceable. However, they are judged using a test of "reasonableness" and therefore may not always provide the relief expected.
5. If the client, as a result of a fee dispute with the surveyor, requests that work cease, the client may not be obligated to pay for subsequent work unless the dispute is settled and additional work authorized.
6. If the surveyor has informed the client that no further work will be done unless payment is received, the client may reasonably expect the surveyor to stop work.