

STATE OF NORTH CAROLINA  
COUNTY OF DAVIDSON

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
NORTH CAROLINA BUSINESS COURT  
02 CVS 739

CORR SERVICES, INC. d/b/a )  
CORRVANTIS, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
DAVIDSON COUNTY, )  
 )  
Defendant. )

ORDER AND OPINION

{1} This case arises out of the claim by Plaintiff Corr Services, Inc. d/b/a Corrvantis (“Corr Services”) that Defendant Davidson County failed to adhere to the terms of the parties’ Contract for Child Support Enforcement Services (the “Contract”), in which Davidson hired Corr Services to administer Davidson County’s child support enforcement program. Corr Services asserts claims for breach of contract. Davidson County asserts counterclaims for breach of contract. This matter is before the Court on cross motions by plaintiff and defendant for summary judgment.

{2} Here, an event which occurred subsequent to execution of the contract requires judicial interpretation of its language under circumstances not contemplated by the parties at the time the Contract was executed. As will become clear below, the Court believes that Corr Services offered in good faith to resolve the problem and the County failed to respond in kind. The Court is thus left with the task of interpreting the Contract. There are no disputed facts. The parties having failed to reach an agreement, there is no middle ground. One party to the Contract will suffer a financial impact from the outcome. In this instance, it is Davidson County.

{3} After considering the briefs and oral arguments of both parties and for the reasons discussed below, the Court GRANTS plaintiff’s motion for summary judgment. The Court DENIES defendant’s motion for summary judgment.

*Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P. by Jeffrey E. Oleynik and Charles E. Coble for Plaintiff Corr Services, Inc. d/b/a Corrvantis.*

*Biesecker, Tripp, Sink & Fritts, L.L.P. by Joe E. Biesecker for Defendant Davidson County.*

I.

FACTUAL BACKGROUND

{4} Corr Services is a North Carolina corporation with its principal place of business in Raleigh, North Carolina. Corr Services provides privatized administration of government-administered child support enforcement programs.

{5} Specifically, Corr Services administers a federal welfare program known as the “Temporary Assistance for Needy Families” or “TANF” program, in which states must certify that they provide and administer programs consistent with the requirements of Title IV-D of the Social Security Act in order to receive federal grants to help fund the program. These programs are commonly referred to as “child support enforcement programs.” Child support enforcement programs offer a means of establishing and collecting amounts due under child support orders.

{6} In North Carolina, child support enforcement programs are administered at the county level. Applicable federal and state regulations allow a county to contract with a private entity to administer the county’s child support enforcement program.

{7} In 1997, Corr Services made proposals to several North Carolina counties, seeking to administer the county’s child support enforcement program.<sup>[1]</sup> On May 27, 1997, the Davidson County Board of Commissioners voted (4-3) to allow Corr Services to administer Davidson County’s child support enforcement program. On June 16, 1997, Davidson County entered the Contract, which obligated Corr Services to administer Davidson County’s child support enforcement program beginning July 1, 1997 and ending June 30, 1999.

{8} The Contract specified the procedure by which Corr Services would be paid. The payment procedure was designed to operate in accordance with the Title IV-D regulations, which create three distinct sources of revenue for a child support enforcement program operated in compliance with Title IV-D regulations.

{9} The primary source of revenue is known as “Federal Financial Participation” or “FFP.” FFP is the federal government’s reimbursement of 66% of the actual costs of operation for a child support enforcement program. The actual costs are submitted by the reporting entity—here, Davidson County. FFP is disbursed by the state to the county on a monthly basis.

{10} The second source of revenue is known as “TANF Returns,” “Public Assistance Recoveries,” “IV-D money” or “Commissions.” The amount of Commissions paid relates to the dollar recoveries made by the program for clients who are TANF recipients. Commissions are disbursed by the federal government to the county on a monthly basis.

{11} The third source of revenue is known as “Incentives.” The amount of Incentives paid during the life of the Contract was a percentage of the recoveries obtained for TANF recipients. Incentives are disbursed by the federal government to the county on a quarterly basis.

{12} At the outset of the Contract, the parties established an Annual Guarantee, which was defined as Davidson County’s net revenue from the sources described above for the fiscal year 1996-97, plus \$50,000. The Quarterly

Guarantee was calculated to be \$38,347.94, one-fourth of the Annual Guarantee.

{13} The Contract provided that Corr Services was to submit an invoice to Davidson County by the fifth of each month for Corr Services' actual costs incurred in the previous month.

{14} Within ten days of receiving the FFP for the prior month, Davidson County was to pay Corr Services 66% of Corr Services' invoice corresponding to the actual costs incurred in the previous month. The Contract defined monthly FFP as the amount of FFP paid or payable to the county as reimbursement for the expenditures it had incurred in a month.

{15} The Contract provided further that within ten days of receiving Commissions for the prior month, Davidson County was to pay the remaining 34% of Corr Services' invoice corresponding to the actual costs incurred in the previous month. If the Commissions received by Davidson County were insufficient to pay the remaining 34% of Corr Services' invoice, Davidson County was to pay the remainder of this 34% within ten days of receiving Incentives for the quarter.

{16} According to the Contract, after all monthly FFP, Commissions, and Incentives were received for a quarter, a calculation comparing the Quarterly Guarantee to the difference between program revenues and Corr Services invoices paid by Davidson County was to be performed. The sum of monthly FFP, Commissions and Incentives less Davidson County's costs incurred was defined as the Quarterly Net Revenue Balance. Davidson County's costs were defined as the sum of the amount of Corr Services' invoices paid by Davidson County and any separate direct or indirect costs incurred by Davidson. If the ending Quarterly Net Revenue Balance was greater than the Quarterly Guarantee, Davidson County was to pay the difference to Corr Services. However, if the ending Quarterly Net Revenue Balance was less than the Quarterly Guarantee, Corr Services was to pay the difference to Davidson County. This payment was to be made within ten days of the latter of either Davidson County receiving the Quarterly Incentive payment or the Commissions for the last month of the quarter.

{17} Within five days of the payment of the difference between the ending Quarterly Net Revenue Balance and the Quarterly Guarantee for the last quarter of the fiscal year, the Yearly Net Profit was to be calculated. The Contract defined Yearly Net Profit as the Annual Net Revenue minus the Annual Guarantee. If the Yearly Net Profit was greater than zero, Corr Services would pay Davidson County 25% of the Yearly Net Profit.

{18} It is undisputed that Corr Services properly administered and operated the child support enforcement program during the period to the specifications set forth in the Contract.

{19} It is undisputed that Corr Services submitted a monthly invoice for costs incurred in each of the 24 months covered in the Contract. It is undisputed, save one exception, that Corr Services' monthly invoices reflected actual costs as defined in the Contract.<sup>[2]</sup> In addition, it is undisputed that a separate invoice submitted in May 1999 that included additional amounts owed due to an adjustment in Corr Services' billing rates met the contractual definition of actual

costs.

{20} It is undisputed that the total actual costs submitted by Corr Services were \$1,883,118.37. Further, it is undisputed that Davidson County submitted approximately the invoiced amount, \$1,878,801.09, to the State for FFP reimbursement. It is undisputed that Davidson County received monthly FFP on all of the invoices submitted for FFP reimbursement.

{21} It is undisputed that FFP reimbursement was deposited directly. The amount deposited, \$1,241,930.47, directly corresponded to Corr Services' actual costs and the amounts owed due to the adjustment in Corr Services' billing rates.

{22} It is undisputed that over the 24 month term of the Contract, Davidson County received \$395,581.86 in Commissions and Incentive payments.

{23} Davidson County was consistently late in the payment of Corr Services' invoices. Rather than adhering to the payment terms set forth in the Contract, Davidson County believed that it must pay only if it received sufficient revenues to cover the invoice. Thus, Davidson County interpreted the Contract such that if Davidson County never received sufficient revenue to cover Corr Services' invoice, then Davidson County was not obligated to pay the invoice in full. Davidson County's interpretation is not supported by the language of the Contract. Corr Services continued to perform its contractual obligations despite Davidson County's lack of timely payment.

{24} Davidson County paid all of Corr Services' July 1997 through September 1998 invoices, but paid only \$337.36 towards Corr Services' October 1998 invoice and paid nothing towards Corr Services' November 1998 through June 1999 invoices. During its period of non-payment to Corr Services, Davidson County continued to receive monthly FFP on Corr Services' actual costs and continued to receive Commissions and Incentives.

{25} On June 10, 1998, Corr Services paid to Davidson County the agreed amount of guarantee payment due to Davidson County for the first two quarters of fiscal year 1998, which was \$121,930.21.

{26} Davidson County was unsure of how it should report the guarantee payment. On July 2, 1998, the Davidson County accountant wrote the North Carolina Local Government Commission seeking guidance on the guarantee issue. Ultimately, state and federal officials expressed the view that the guarantee payments must be treated and reported as credits that would offset allowable costs, thereby reducing the State's claim for federal funding proportionately.<sup>[3]</sup>

{27} At the heart of this contract dispute is the difference in interpretation of Davidson County's obligations to Corr Services in light of the proposed treatment of the guarantee payments. Davidson County took the position that this reporting requirement should reduce the amount of compensation owed to Corr Services, despite the provisions in the Contract. Corr Services' position was that the reporting requirement did not affect the compensation provisions specified in the Contract. It is clear neither party contemplated the problem which arose subsequent to the execution of the Contract.

{28} In order to resolve their discordant interpretations, Corr Services proposed a contract amendment, which would have replaced the Contract with a fixed-price contract with no guarantees. Such a fixed-price contract would have mooted the issue of reporting the guarantees. Corr Services successfully amended contracts with nearly all of the other North Carolina counties with which it had contracted to administer child support enforcement programs.<sup>[4]</sup> The Davidson Board of Commissioners conditionally approved a negotiated contract amendment on April 27, 1999. The amendment would have solved the contract interpretation problem as similar amendments had done in other counties. The amendment failed, however, because the Davidson County attorney refused, without explanation, to approve the contract amendment. The Court has yet to hear a satisfactory explanation of why the contract amendment was not approved, nor does it understand why the Commissioners abdicated responsibility to solve the problem they knew existed.

{29} Rather than amending the Contract, Davidson County proceeded to pass on the financial impact to Corr Services. Specifically, Davidson County submitted reductions to the actual costs of operation for Davidson County's child support enforcement program.<sup>[5]</sup> These reductions reduced the amount of FFP reimbursement received by Davidson County. Davidson County claims that Corr Services is financially responsible for these reductions and therefore Davidson County should deduct these amounts from the amounts due according to Corr Services' invoices. Remarkably, Davidson County returned to the State the FFP reimbursement that was to be paid to Corr Services for the administration of Davidson County's child support enforcement program. Rather than take advantage of federal money available to it to cover the cost of administration and solve the problem, Davidson County decided to risk litigation the benefit of which is unclear to the Court.

{30} It was clear at the time the County elected not to resolve the problem with available federal money that the County's interpretation of the Contract would basically require Corr Services to work for free for about one-half of the contract period. That result was clearly not contemplated by the parties when the Contract was executed.

## II.

### SUMMARY JUDGMENT STANDARD

{31} Pursuant to Rule 56(c) of the North Carolina Rules of Civil Procedure, summary judgment shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law. N.C. R. Civ. P. 56(c). A genuine issue is one which can be maintained by substantial evidence; a material fact is that which would constitute a legal defense preventing the non-moving party from prevailing. *Bd. of Ed. of Hickory Admin. School Unit v. Seagle*, 120 N.C. App. 566, 463 S.E.2d 277 (1995).

{32} The North Carolina Court of Appeals has explained that a summary judgment movant may meet its burden of

showing that it is entitled to judgment as a matter of law by showing either (1) an essential element of the non-movant's claim is nonexistent, (2) the non-movant cannot produce evidence to support an essential element of his claim, or (3) the non-movant cannot surmount an affirmative defense which would bar his claim. *Taylor v. Ashburn*, 112 N.C. App. 604, 606-607, 436 S.E.2d 276, 278 (1993), *cert. denied*, 336 N.C. 77, 445 S.E.2d 46 (1994). Once defendants have met their burden by proving that an essential element of the opposing party's claim is nonexistent or by showing through discovery that the opposing party cannot produce evidence to support an essential element of its claim, the burden shifts to the non-moving party to show that a genuine issue exists by forecasting sufficient evidence of all essential elements of the claim. *Farrelly v. Hamilton Square*, 119 N.C. App. 541, 459 S.E.2d 23 (1995). The non-moving party may not rest upon mere allegations or denials in its pleadings but instead is required to offer evidence tending to establish, beyond mere speculation or conjecture, the essential elements of its claims. N.C. R. Civ. P. 56(e).

### III.

#### CORR SERVICES' BREACH OF CONTRACT CLAIM AND DAVIDSON COUNTY'S COUNTERCLAIM

{33} Corr Services claims that Davidson County breached the Contract when Davidson failed to fully compensate Corr Services in accordance with the provisions of the Contract. Davidson counterclaims that Corr Services was overcompensated according to the terms of the Contract. The elements of breach of contract are the existence of a valid contract and breach of the terms of the contract. *Poor v. Hill*, 138 N.C. App. 19, 26, 530 S.E.2d 838, 843 (2000). A breach of contract is only actionable if a material breach occurs—one that substantially defeats the purpose of the agreement or goes to the very heart of the agreement, or can be characterized as a substantial failure to perform. *Fletcher v. Fletcher*, 123 N.C. App. 744, 752, 474 S.E.2d 802, 807-08 (1996), *disc. rev. denied*, 345 N.C. 640, 483 S.E.2d 706 (1997).

{34} In this matter, summary judgment is appropriate because there are no genuine issues of material fact which are disputed, and Corr Services is entitled to judgment as a matter of law. There is no genuine issue of material fact that Corr Services performed its obligations under the Contract. Further, there is no genuine issue of material fact that Corr Services submitted its invoices pursuant to the Contract. There is no genuine issue of material fact that Davidson County received the invoices and submitted Corr Services' actual costs to the State for FFP reimbursement. There is no genuine issue of material fact that Davidson County received FFP reimbursement, Commissions, and Incentives throughout the 24-month period of the Contract. There is no genuine issue of material fact that Davidson County paid only a portion of the compensation due Corr Services.

{35} The Contract stated that Davidson County was required to pay 66% of Corr Services' invoice for the prior month within ten days of receiving monthly FFP. Further, the Contract stated that Davidson County pays the remaining 34% of

Corr Services' invoice for the prior month within ten days of receiving Commissions, provided that Commissions are sufficient to cover 34% of the invoice. The Contract stated that Davidson County pays any remaining portion of the 34% of Corr Services' invoice within ten days of receiving the quarterly Incentives payment, regardless of whether the Incentives payment was sufficient to cover that amount.

{36} Contrary to Davidson County's interpretation of the Contract, nothing in the language of the Contract allows Davidson County to withhold payment if revenues received are insufficient to cover Corr Services' invoices in full.

{37} Davidson County failed to adhere to the payment provisions of the Contract. Davidson County did not pay 66% of Corr Services' invoices for the prior month within ten days of receiving FFP reimbursement for the prior month. Davidson County did not pay the remaining 34% of Corr Services' invoices for the prior month within ten days of receiving the Incentives payment for the prior quarter. Davidson County essentially disregarded the final nine invoices submitted by Corr Services. Under the plain reading of the Contract, there is no genuine issue of material fact as to Davidson County's breach. Davidson County's breach can be characterized as a substantial failure to perform.

{38} There is no genuine issue of material fact as to the amount that Davidson County owes to Corr Services. Davidson County should have paid Corr Services the full amount of Corr Services' invoices. Davidson County paid only \$1,072,700.65 of the \$1,883,118.37 total invoice amount, leaving an unpaid balance of \$810,417.72. Corr Services made only one guarantee payment of \$121,930.21, which covered the first two quarters of fiscal year 1998. The total guarantee amount owed by Corr Services for the two-year period of the Contract was \$551,461.91. Therefore, the total amount owed to Corr Services is \$810,417.72 minus \$551,461.92, plus the guarantee payment made by Corr Services of \$121,930.21, for a total amount owed to Corr Services of \$380,886.02. This application of the Contract language gives the County the benefit of the guarantee and Corr Services the benefit of the provisions requiring payment of its services. That is what the Contract contemplated.

{39} There is no genuine issue of material fact as to Corr Services' lack of responsibility for the financial impact derived from Davidson County's reporting requirements as applied to the guarantee payments. No contractual basis exists that would have allowed Davidson County to pursue this course of behavior. The plain language of the Contract does not allow the figures used for Corr Services' actual costs or Davidson's monthly FFP received to be net of any credits or debits imposed by Davidson County's own reporting requirements to the State. These reporting requirements were Davidson County's obligation. Davidson County had it within its powers to solve its reporting problem; Corr Services had agreed to work with it. Davidson County elected not to avail itself of a remedy.

{40} Davidson County's counterclaim is based upon its incorrect shift of responsibility to Corr Services regarding the financial impact of the reporting requirements. Davidson County claims that the amount of FFP reimbursement should be reduced by the guarantee payments. This interpretation would in turn reduce the amount owed to Corr Services.

Davidson County improperly contends that Corr Services must reimburse Davidson County for the FFP reimbursement, which Davidson County withheld from paying Corr Services and eventually returned to the State. Davidson County's interpretation is not supported by the Contract, and is rejected as a matter of law as there is no general issue as to the amount owed by Davidson County to Corr Services.

{41} Davidson County did not involve Corr Services in the problem solving process after notification of the reporting requirement as it was required to do under the express Contract provisions.<sup>[6]</sup> Davidson County had the opportunity to moot the issue of the financial impact of the reporting requirement by amending the Contract. Nearly all the other North Carolina counties which had contracts with Corr Services for the administration of child support enforcement programs resolved the reporting requirement by amending their contracts. Davidson County initially approved an amended contract, yet ultimately rejected the amendment without explanation. Davidson County now contends that its interpretation of the Contract as to the payment procedures in light of the reporting requirements for guarantees is proven by the fact that Corr Services amended its contracts with other North Carolina counties. To the contrary, by amending their existing contracts, Corr Services and the other North Carolina counties sought a solution in congruence with the original meeting of the minds from which the original contracts arose. If the County's interpretation is correct, it reaps a windfall, Corr Services is harshly penalized for fully performing its contractual obligations, and the federal government escaped paying over a half million dollars it was obligated and prepared to pay. That result could have been avoided. At the least the County was obligated to involve Corr Services in resolution of the problem, and it failed to do so.

{42} The Court has decided this matter based upon a legal analysis of the contract language in light of an occurrence which the parties did not foresee. It was apparent at the time of Mr. Smith's letter<sup>[7]</sup> that absent some adjustment to the Contract, one party would suffer an adverse consequence, depending on judicial interpretation of the Contract. Davidson County was required by contract to involve Corr Services in the resolution of its position with the state and federal authorities. It failed to do so without reason or explanation. The Commissioners had tentatively approved a contract amendment which would have solved the problem. Again, the County failed to act to finalize the amendment—without reason or explanation. Other North Carolina counties solved the problem with contract amendment. Davidson County's interpretation of the Contract would have imposed a grave injustice on Corr Services under circumstances in which that injustice could have been avoided at virtually no cost to the County. The Court heard no justifiable reason or explanation for the Commissioners' failure to act. Throughout the Contract period Corr Services unflinchingly performed its obligations despite the fact that it was not being paid. Corr Services could have terminated the Contract when it was not paid and cut its losses. Instead, Corr Services performed its contractual obligations fully, competently and professionally. Were equity to be a consideration here, Corr Services has performed in a manner warranting equitable relief. Davidson County has not acted in any way which would earn it equitable consideration.

## CONCLUSION

Based upon the foregoing, it is hereby ORDERED, ADJUDGED and DECREED:

1. Summary judgment in favor of Corr Services is GRANTED on Corr Services' claim against Davidson County for breach of contract;
2. Summary judgment in favor of Davidson County is DENIED on Corr Services' breach of contract claim.
3. Summary judgment in favor of Corr Services is GRANTED on Davidson County's breach of contract counterclaim.
4. Summary judgment in favor of Davidson County is DENIED on Davidson County's breach of contract counterclaim.
5. Corr Services is entitled to recover from Davidson County the principal amount of \$380,886.02, plus pre-judgment interest of \$159,972.13 as of September 30, 2004, with post-judgment interest as provided by law.
6. The costs of this action will be taxed against Davidson County.

This the 30th day of September 2004.

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[1] Corr Services entered into contracts to administer child support enforcement programs with Anson, Beaufort, Buncombe, Davidson, Madison, McDowell, New Hanover, Onslow, Polk, and Yancey counties.

[2] Davidson County disputed one expense during the Contract period. Corr Services has submitted it will forego the contested \$8,812.40 charge for "programmatically legal advice" for the purposes of its Motion for Summary Judgment.

[3] In an October 28, 1998 letter from Stephen R. Smith, Director, Office of Financial Services, Department of Health and Human Services, to Michele R. Tart, Assistant Chief, Child Support Enforcement, North Carolina Department of Health and Human Services, Mr. Smith stated that the guarantee payments should be treated as "applicable credits." Mr. Smith continued, stating that in "accordance with Office of Management and Budget (OMB) Circular A-87, Attachment A, Section C(1)(i), '[t]o be allowable ... costs must ... [b]e the net of all applicable credits.'" Mr. Smith concluded, "[t]herefore, the State is required to report only the net amount of program expenditures—reducing the amount of its title IV-D costs by the full amount of any payments received from contractors."

[4] Those programs had contracts similar to the Davidson County Contract and were affected in the same way by Mr. Smith's letter with respect to the guarantee payments.

[5] On January 15, 1999, Davidson County submitted a "reverse" 1571 form, which contained a reverse entry of \$231,032.19. This figure corresponds to the total amount of guarantee payments owed to Davidson County for fiscal year 1998. The result of the submission was that Davidson County received a reverse FFP reimbursement in the amount of \$152,481.25, or 66% of \$231,032.19. Thus, Davidson County owed \$152,481.25 to the State due to the reverse entry. On June 17, 1999, Davidson County submitted a 1571 form for reimbursement of actual costs included in Corr Services' May 1999 and labor adjustment invoices. Davidson County offset the actual costs by Davidson County's estimate of a guarantee payment, in the amount of \$149,967.43. Finally, on November 18, 1999, Davidson County submitted a "reverse" 1571 form in the amount of \$551,022.70. This figure represents a estimated guarantee payment of \$41,863.99 for the fourth quarter of fiscal year 1999, and \$509,158.71 in Corr Services' actual costs that were previously included on 1571 submissions for FFP reimbursement. This \$509,158.71 amount was received by Davidson County to pay Corr Services' invoices representing the actual costs of the administration of the child support enforcement program. However, this \$509,158.71 amount was never paid to Corr Services but, rather, was eventually returned to the State. The Court finds no rational purpose behind this decision. The Court does note that by this time there had been a change in the composition of the Board of Commissioners which involved the loss of members who had supported the Contract in the narrow 4-3 vote previously identified.

[6] See § 1.1.4 of the Contract (“To consult with the Contractor concerning potential settlements affecting the rights of the County and act as liaison with the State concerning any potential settlements that may affect the rights of the State and consult with the Contractor concerning any adverse administrative or judicial rulings in order to determine appropriate remedies to be sought by the Contractor.”).

[7] See *supra* note 3.