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United States District Court, S.D. Iowa, Central Division.

PERFECTION PROPERTY RESTORATION, INC., Plaintiff,

v.

MARSHALL COUNTY, IOWA, Defendant.

4:24-cv-00310-SHL-SBJ

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Signed October 21, 2025

Attorneys and Law Firms

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ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

[Stephen H. Locher](#), UNITED STATES DISTRICT JUDGE

I. INTRODUCTION.

*1 In the immediate aftermath of a tornado in July 2018, the Marshall County Auditor signed an “Insurance Work Authorization” so that Plaintiff Perfection Property Restoration, Inc. (“Perfection”), would begin work to remediate water damage in the Marshall County Courthouse. Perfection argues that this document is a binding contract that governs the tens of millions of dollars of work that Perfection ended up performing in Marshall County between 2018 and 2021. The problem, however, is that the Insurance Work Authorization was never formally approved by the Marshall County Board of Supervisors despite Iowa Supreme Court precedent requiring formal approval before a contract will be enforceable against a local governmental entity. Accordingly, the Court GRANTS Marshall County's Motion for Summary Judgment (ECF 60) and holds that Perfection may not recover damages or collection costs (including attorney's fees) under a breach of contract theory.

II. STATEMENT OF FACTS.

The following facts are undisputed or, where genuinely disputed, resolved in the light most favorable to Perfection as the non-moving party. In many instances, one party or the other objected to asserted facts on the basis that they are “immaterial,” “irrelevant,” or “misleading,” among other grounds. For the most part, these are not proper objections under [Fed. R. Civ. P. 56\(c\)](#), and thus all such facts are deemed admitted unless the responding party also cited parts of the record to “dispute” the fact (rather than merely “objecting” to it) as required under [Rule 56\(c\)\(1\)](#).

A. Marshall County, Iowa.

Marshall County is a county in central Iowa whose authority and structure are governed by Iowa Code Chapter 331. (ECF 68-2, ¶ 4.) The Marshall County Board of Supervisors (the “Board”) is responsible for the County's budget and supervises some non-elected County employees. (Id., ¶ 5.) Nan Benson is the Marshall County Auditor and Recorder. (Id., ¶ 6.) This is an elected position. (Id.) The parties dispute the scope of Benson's authority to bind the County to contracts, although both sides agree that she has *some* level of authority over funds within her department. (Id., ¶ 7.)

Lucas Baedke is the Marshall County Director of Building and Grounds and reports directly to the Board. (Id., ¶ 8.) His department shares responsibility for the Marshall County Courthouse and other County-owned buildings. (Id., ¶ 9.) The Marshall County Courthouse is an historical building in Marshalltown, Iowa, that houses not just the local court, but also the offices of the County Auditor, Board of Supervisors, and other county officials. (Id., ¶¶ 1, 3, 57.)

B. July 2018: Perfection Property Responds to Tornado in Marshalltown, Iowa.

In the late afternoon on July 19, 2018, a tornado struck Marshalltown, causing significant damage to the Courthouse and other county-owned properties. (ECF 66, ¶¶ 6, 7.) The Courthouse sustained damage to the clocktower, dome, spire, roof, chimneys, and general exterior and interior. (Id., ¶ 7.) The storm tore off the spire to the clocktower and dome, with the spire smashing against the roof, puncturing holes and shearing off large areas of shingles. (Id., ¶ 8.) The storm also broke sprinkler lines in the attic, causing water to run through the building. (Id., ¶¶ 8–9.) The damage to the Courthouse resulted in the displacement of county officials from their offices, including the Board and County Auditor. (Id., ¶ 11; ECF 68-2, ¶ 3.) Numerous County employees responded to the emergency situation, including Benson, Baedke, and Board members. (ECF 68-2, ¶ 12.) The following morning, Benson contacted the County's insurance broker for assistance. (Id., ¶ 13.)

*2 Perfection is a full-service disaster remediation contractor. (ECF 66, ¶ 5.) Within twenty-four hours of the tornado on July 19, representatives from Perfection arrived in Marshalltown. (Id., ¶ 12.) This included David Heitman (the company's owner) and Rick Hoffmeyer (a project estimator). (Id., ¶¶ 12–13.) Marshall County's insurer contacted Heitman and provided contact information for Benson. (Id., ¶¶ 2, 14; ECF 68-2, ¶ 21.) Heitman provided this information to Hoffmeyer, who then contacted Benson. (ECF 66, ¶ 15; ECF 68-2, ¶ 22.)

Hoffmeyer met Benson at the Courthouse shortly after 10:00 a.m. on July 20, 2018, for an initial assessment of the damage. (ECF 66, ¶ 16; ECF 68-2, ¶ 23.) Hoffmeyer also met Baedke that day. (ECF 66, ¶ 18.) Hoffmeyer spent three to four hours inspecting the damage, following which Perfection said it could assist the County in cleaning up and drying out the Courthouse. (Id., ¶ 17; ECF 68-2, ¶ 26.) Heitman arrived on site later that afternoon and accompanied Hoffmeyer for portions of the inspection. (ECF 68-2, ¶ 27.) In emails from the morning of July 20, 2018, Hoffmeyer told Heitman: “5 floors on the east end All wet Lots of damage.” (ECF 66, ¶ 19.) Heitman replied: “Did you sign it?” (Id., ¶ 20.)

C. Insurance Work Authorization Form.

Perfection told Benson that she needed to sign a document entitled “Insurance Work Authorization” before the company would begin work on the Courthouse. (Id., ¶ 21; ECF 68-2, ¶ 34.) Someone from Perfection presented Benson with the Insurance Work Authorization in the afternoon on July 20, 2018. (ECF 66, ¶ 22.) The Insurance Work Authorization has two pages (front and back), but Benson asserts that no one from Perfection referred to or discussed the second (back) page when the document was presented to her. (ECF 60-2, pp. 8–9.) At most, she says she merely reviewed the handwritten information on the first page before signing. (ECF 68-2, ¶ 35.) The parties dispute whether Benson or anyone else at Marshall County received a full copy of the Insurance Work Authorization that day. (ECF 66, ¶ 33.) Benson denies having received a copy, but Perfection asserts that Heitman gave a copy of the Insurance Work Authorization to Baedke. (Id., ¶¶ 23, 33; ECF 68-2, ¶ 29.) Heitman also testified that his typical practice is to make two copies of the Insurance Work Authorization for signature. (ECF 66, ¶ 33.) In any event, it is undisputed that Benson ended up executing the Insurance Work Authorization that day. (Id., ¶ 23; ECF 68-2, ¶ 30.)

The Insurance Work Authorization is a form document with blank lines that were filled in by Heitman by hand with information specific to Marshall County. (ECF 60-2, pp. 193.) The document is dated July 20, 2018, and contains, among other things, a provision authorizing the County's insurer, EMC Insurance, to make payments directly to Perfection. (Id.) The Insurance Work Authorization states that progressive draws would be paid “as needed.” (Id.) The bottom of the first page contains signature lines for “Owner” and “Contractor.” (Id.) The “Contractor” line was signed by Heitman on behalf of Perfection. (Id.) The “Owner” line was signed by Benson, with the handwritten words “Marshall County Auditor/Recorder” below her signature. (Id.) The first

page of the Insurance Work Authorization includes language stating: “This agreement is subject to the Notice of Lien Rights and Terms & Conditions set forth above and on the reverse side hereof.” (Id.)

The Terms and Conditions page—which, again, Marshall County disputes was ever reviewed by Benson on July 20, 2018—contains a provision stating: “Claims by Owner against Contractor must be made in writing to Contractor within thirty (30) days of knowledge of the alleged claim and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Owner.” (Id., p. 194.) The Terms and Conditions page further states: “**OWNER AGREES TO PAY ALL COSTS OF COLLECTION, INCLUDING REASONABLE ATTORNEY FEES.**” (Id.) It also includes a venue provision requiring disputes to be litigated in Stephenson or Cook County, Illinois. (Id.)

*3 Benson did not receive formal approval from the Board to sign the Insurance Work Authorization, although Perfection argues: (a) such approval was not required because the document “related to an insurance claim and was believed to be capable of performance within one year without use of public funds,” and (b) the Board ratified the Insurance Work Authorization over the ensuing three years anyway. (ECF 66, ¶ 31.) Perfection further asserts that the Board received a copy of the document on or before October 10, 2019, and “was aware of Perfection performing work throughout the project as its offices were at the Courthouse and it participated in the construction update meetings the County held on a daily and then weekly basis in 2018.” (Id., ¶ 32.) To that end, the Board approved thirty-four payment applications for Perfection during the project. (Id.; ECF 68-2, ¶ 61.) At least some members of the Board also received status updates regarding the project. (ECF 68-2, ¶ 58.) In addition, the Board had a role in developing scope of work and architectural plans. (Id., ¶ 59.)

The first Board meeting after the tornado occurred on July 24, 2018. (ECF 66, ¶ 42.) Neither Perfection nor Marshall County obtained a certificate from a licensed professional architect or engineer certifying that emergency repairs were necessary, although Perfection asserts that the County's architect, OPN, developed a scope of work identifying necessary repairs “at various stages of the project.” (Id., ¶ 43.) Marshall County did not make official findings as to the necessity of emergency repairs at the Courthouse or any other County-owned building, although Perfection argues that this is legally irrelevant because Marshall County “has repeatedly admitted that it did not believe public bidding was necessary because it was an emergency.” (Id., ¶ 44.)

Perfection alleges that Baedke received a complete copy of the Insurance Work Authorization by email on April 16, 2019. (Id., ¶ 35.) Marshall County says, however, that this occurred only in the sense that Baedke was carbon copied on an email from Perfection to a potential subcontractor that included the Insurance Work Authorization as an attachment. (ECF 68-2, ¶ 62.) Later, on October 10, 2019, Baedke received a copy of the first page of the Insurance Work Authorization. (ECF 66, ¶ 35; ECF 68-2, ¶ 64.) Baedke forwarded this page to the Board. (ECF 68-2, ¶ 65.) In May 2021, a full copy of the Insurance Work Authorization was sent to Benson in connection with work performed by Perfection for Marshall County following a second major storm, a derecho, in 2020. (ECF 66, ¶ 36.) Benson did not, however, review the full document. (Id.) Benson and Baedke testified that they did not provide the Board with a full copy of the Insurance Work Authorization in April 2019 or May 2021. (Id., ¶ 37.)

D. Perfection's Performance of Work on the Courthouse.

Perfection commenced work at the Courthouse on July 20, 2018. (Id., ¶ 39.) Perfection's work included, among other things, determining where water breached the building, assessing corresponding damage, and stabilizing and securing the building. (Id., ¶ 40.) Marshall County characterizes this as the “emergency mitigation stage of the project,” but Perfection disputes this characterization and says the “remediation and rebuilding portions of the project were intermingled throughout as new damages were constantly being revealed as the project continued.” (Id.) Regardless of terminology, the initial drying work was completed within a few weeks of when the tornado hit in July 2018. (Id., ¶ 41.) Thereafter, Perfection continued to perform other work that the County characterizes as involving Perfection in “a general-contractor type role.” (Id., ¶ 51.) Perfection sought bids for various types of repair work and submitted work estimates to the County and/or insurer for approval. (Id., ¶ 52.)

Perfection's work fell into three categories: (i) storm-related repairs, reimbursable through Marshall County's insurance policies; (ii) code-related upgrades to bring the facilities into compliance with building codes, paid for either through Marshall County's insurance policy rider or by the County itself; and (iii) owner-directed improvements, including discretionary changes and other

improvements requested by the County, paid for by Marshall County. (Id., ¶ 45.) For work in the first and second categories, EMC Insurance made payments to Marshall County, which then paid the contractor or vendor. (Id., ¶ 46.) Marshall County paid for work in the third category through its existing budget, funds from FEMA, and/or tax levies and loan proceeds. (Id., ¶ 47.) There was no public bidding for any of these categories of work, although Perfection argues that Marshall County “did not care or believe that public bidding was required in 2018 and therefore did not undertake the formalities of public bidding despite having knowledge of previous county projects that were publicly bid.” (Id., ¶ 49.) Perfection further asserts that “each aspect of the project was bid in a manner as required by [the County’s] insurer and architect.” (Id.) Marshall County asserts that it received advice after the tornado that public bidding was not required, although Baedke “now understands this [advice] to be incorrect.” (Id., ¶ 50.)

*4 The Board approved each payment to Perfection. (ECF 68-2, ¶ 82.) The parties dispute, however, whether these approvals meant that the parties were operating under the Insurance Work Authorization. (Id., ¶¶ 81–82.) Perfection focuses on the Board’s approval of architectural plans and other aspects of the project, as well as the use of insurance proceeds to pay most of Perfection’s invoices. (E.g., id., ¶¶ 83–85.) Marshall County, by contrast, asserts that “the Board approved payments, but did not believe they were operating under the [Insurance Work Authorization] as a contract between Perfection and the County.” (Id., ¶ 82.)

In January 2021, the Courthouse repair project transitioned to primarily interior work on the building’s five floors. (ECF 66, ¶ 53.) At least some portion of this work consisted of owner-directed improvements. (Id., ¶ 54.) Marshall County asked Perfection to enter into an “industry standard AIA contract” for this work. (Id., ¶ 55.) Perfection insists, however, that the parties “already had a contract covering the same project.” (Id.) Perfection refused to accept the requests in the proposed AIA for contract provisions relating to scheduling and liquidated damages. (Id., ¶ 56.) In July 2021, Perfection stopped performing work on the Courthouse project. (Id., ¶ 57.) Perfection asserts that it was willing to continue performing work pursuant to the Insurance Work Authorization, but Marshall County refused to allow the work to continue. (Id.) In total, Marshall County paid Perfection almost \$31.4 million in connection with work on County properties. (Id., ¶ 58.) Marshall County later hired a local construction firm to finish the project without public bidding. (ECF 68-2, ¶ 71.)

III. SUMMARY JUDGMENT STANDARD.

Summary judgment is appropriate where, viewing the evidence in the light most favorable to the nonmoving party, “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” [Fed. R. Civ. P. 56\(a\)](#); see [Smith v. Ashland, Inc.](#), 250 F.3d 1167, 1171 (8th Cir. 2001). “A fact is material if it ‘might affect the outcome of the suit.’” [Dick v. Dickinson State Univ.](#), 826 F.3d 1054, 1061 (8th Cir. 2016) (quoting [Anderson v. Liberty Lobby, Inc.](#), 477 U.S. 242, 248 (1986)). “An issue of fact is genuine when ‘a reasonable jury could return a verdict for the nonmoving party’ on the question.” [Woods v. DaimlerChrysler Corp.](#), 409 F.3d 984, 990 (8th Cir. 2005) (quoting [Anderson](#), 477 U.S. at 248).

IV. LEGAL ANALYSIS.

The core of the dispute is whether the Insurance Work Authorization is a binding and enforceable contract. The parties make many arguments in both directions, but only two matter: (i) whether the Board of Supervisors formally approved or ratified the contract; and (ii) whether Benson had authority to bind Marshall County in the absence of formal Board approval. The Court concludes as a matter of law that the answer to both questions is “no,” and thus that Insurance Work Authorization is unenforceable. Because of this ruling, the Court need not address Marshall County’s remaining arguments regarding mutual assent, duress, and related matters.

A. The Board of Supervisors Did Not Formally Approve the Insurance Work Authorization in the Manner Required by Iowa Law.

The Iowa Supreme Court has repeatedly held that a party wishing to enter into a contract with a local governmental entity must adhere to all relevant Iowa Code requirements. See [Serv. Emps. Int’l Union, Loc. 199 v. Iowa Bd. of Regents](#), 928 N.W.2d 69, 77 (Iowa 2019); [City of Akron v. Akron Westfield Cmty. Sch. Dist.](#), 659 N.W.2d 223, 225–26 (Iowa 2003); [Miller v. Marshall](#)

County, 641 N.W.2d 742, 750–51 (Iowa 2002). To that end, “[i]t is clear that any contract with a city entered without a formal motion, resolution, amendment or ordinance is void.” *City of Akron*, 659 N.W.2d at 225; accord *Miller*, 641 N.W.2d at 750 (“A fundamental requirement for the enforcement of a municipal contract is that the municipality must have exercised its authority to enter into the contract within the scope of the powers conferred by statute.”). “A contract, unlawful for lack of authority, is not rescued by good faith.” *City of Akron*, 659 N.W.2d at 225. “It is also irrelevant that the other party has detrimentally relied upon the municipal contract, by fully or partially performing the contract or making expenditures, even if the municipality benefited from the other party’s reliance.” *Miller*, 641 N.W.2d at 751. “Those who negotiate or enter contracts with a municipality are charged with notice of the limits on the municipality’s authority.” *City of Akron*, 659 N.W.2d at 225.

*5 Although Perfection argues otherwise, these principles apply with equal force to putative contracts with counties. See *Reliance Tel. of Grand Forks, Inc. v. O’Brien Cnty.*, No. 22-CV-04055, 2024 WL 400821, at *5 n.2 (N.D. Iowa Jan. 5, 2024) (“[C]ounties and municipalities are interchangeable in the sense that the ... rules applicable to contracts with such entities are, absent apparent disparity, equally relevant and applicable without distinction.”). Indeed, in a relatively recent case, the Iowa Supreme Court broadly stated that “[c]ontracts with public entities are unenforceable” in the absence of “proper approval or compliance with statutory requirements.” *Serv. Emps. Int’l Union, Loc. 199*, 928 N.W.2d at 77. Accordingly, the principle applies to cities, counties, and other public bodies alike. See *id.* at 77–79 (holding that collective bargaining agreement was unenforceable in the absence of formal approval by the Public Employment Relations Board); *Angstrom v. Calhoun Cnty.*, 965 N.W.2d 498 (Table), 2021 WL 2709137, at *2 (Iowa Ct. App. 2021) (holding that putative contract with county was unenforceable based on non-compliance with statutory requirements).

Here, the undisputed facts show that the Marshall County Board never approved the Insurance Work Authorization through passage of a formal motion, resolution, amendment, or ordinance. Accordingly, the Board did not bind Marshall County to the terms of that document in accordance with Iowa Code § 331.302(1), which states that county boards “shall exercise a power or perform a duty only by the passage of a motion, a resolution, an amendment, or an ordinance.” It follows that the Insurance Work Authorization is not binding on Marshall County unless Benson had independent authority to enter into it. See *City of Akron*, 659 N.W.2d at 225–26 (holding that putative contract was unenforceable against municipality due to absence of motion, resolution, amendment, or ordinance); *Riley v. City of Hartley*, 565 N.W.2d 344, 346–47 (Iowa 1997) (same).

In asking the Court to hold otherwise, Perfection argues that the Board approved or ratified the Insurance Work Authorization by approving payments, architectural plans, and other aspects of the project for three years starting in 2018. Perfection notes that Board members had access to the Insurance Work Authorization at most or all relevant times and were well aware of the work being performed given that the Board’s own offices were located within the Courthouse.

The Iowa Supreme Court rejected similar arguments in *City of Akron v. Akron Westfield Community School District* and *Riley v. City of Hartley*. In *City of Akron*, the superintendent of the local school district and city administrator negotiated and signed a written contract requiring the city to buy electricity generated by a wind turbine constructed and owned by the school district. 659 N.W.2d at 225. “Having participated in its negotiation, the city was certainly aware of the contract,” and the parties operated in accordance with it for approximately eighteen months. *Id.* Nonetheless, the Iowa Supreme Court held that the contract was unenforceable due to non-compliance with Iowa Code § 364.3(1), which requires city council action through motion, resolution, amendment, or ordinance. See *id.* at 225–26. *City of Akron* recognized that some might “view the holding as unfair,” *id.* at 225, but concluded it was “nevertheless demanded. The legislature considered it of first importance for city officials to observe formal requirements before obligating taxpayers to finance the affairs of city government. Any party, including even another public entity like a school district, must yield to those set formal requirements.” *Id.* at 226.

Riley is similar. There, a landlord entered a written lease with the City of Hartley, signed by the mayor and city clerk, that included a right of first refusal for the landlord to buy the property at issue. 565 N.W.2d at 345–46. After the landlord leased the property for seven years, the city notified him that it intended to terminate the lease. *Id.* at 345. He responded by trying to exercise his right of first refusal. *Id.* The Iowa Supreme Court held that the right of first refusal was unenforceable because the lease had never been approved by the city council through formal motion, resolution, or ordinance. *Id.* at 347. It did not

matter that the city council was aware of the lease—including the landlord's right of first refusal—and even passed a resolution referencing it. *Id.* Like *City of Akron*, *Riley* recognized that it “might appear to be unfair to allow the city to escape its liability under the lease on the basis of its own failure to follow the statutes.” *Id.* at 348. “However, the public has an interest in the disposition of the city's property, and the public's rights cannot be waived by the council's improper exercise of city powers.” *Id.*

*6 The Iowa Supreme Court has repeatedly and consistently reiterated the core holding of *City of Akron* and *Riley* that formal approval is mandatory before a contract will be binding on a local governmental entity or other public body. See *Sand v. An Unnamed Loc. Gov't Risk Pool*, 988 N.W.2d 705, 711 (Iowa 2023) (“A fundamental requirement for the enforcement of a municipal contract is that the municipality must have exercised its authority to enter into the contract within the scope of the powers conferred by statute. If a municipality fails to appropriately exercise its authority or comply with statutory procedures, the contract is void.” (quoting *Landowners v. S. Cent. Reg'l Airport Agency*, 977 N.W.2d 486, 500 (Iowa 2022))); *Miller*, 641 N.W.2d at 750–51 (same); *Serv. Emps. Int'l Union, Loc. 199*, 928 N.W.2d at 77–78 (refusing to enforce collective bargaining agreement in light of absence of formal approval). The Iowa Court of Appeals has followed suit. See *Angstrom*, 965 N.W.2d 498 (Table), 2021 WL 2709137, at *2. So, too, have federal courts applying Iowa law. See *Reliance Tel. of Grand Forks, Inc.*, 2024 WL 400821, at *12; *Fibred Props. Ltd. P'ship v. City of Iowa Falls*, No. C99-38, 2001 WL 34152088, at *15–16 (N.D. Iowa Sept. 20, 2001), *aff'd sub nom., In re Fibred Props. Ltd. P'ship*, 36 F. App'x 574 (8th Cir. 2002) (“As illustrated by *Riley*, even extensive participation and performance by a city will not justify reliance if statutory requirements are overlooked.”).

City of Akron and *Riley* squarely apply here. Like the Iowa Code provisions at issue there, which govern municipal action, Iowa Code § 331.301(2) states that the authority of a county to take action “is vested in the board, and a duty of a county shall be performed by or under the direction of the board except as otherwise provided by law.” In turn, Iowa Code § 331.302(1) states that the board “shall exercise a power or perform a duty only by the passage of a motion, a resolution, an amendment, or an ordinance.” In other words, like the city councils at issue in *City of Akron* and *Riley*, a county board of supervisors must follow formal statutory requirements before the county is bound by a putative contract. As no such formal action occurred here, “the contract is void,” *Miller*, 641 N.W.2d at 751, unless Benson independently had authority to enter it. It does not matter that the Marshall County Board had access to the contract, knew work was being performed, and even approved payment for that work. See *City of Akron*, 659 N.W.2d at 225–26 (holding that contract was void even though the city council was aware of it and the parties operated under it for eighteen months); *Riley*, 565 N.W.2d at 347 (similar); see also *Fibred Props. Ltd. P'ship*, 2001 WL 34152088, at *15 (“As illustrated by *Riley*, even extensive participation and performance by a city will not justify reliance if statutory requirements are overlooked.”).

B. Benson Did Not Have Authority as County Auditor to Bind Marshall County to the Insurance Work Authorization.

In the absence of formal Board approval, Perfection turns to arguing that Benson had the authority to bind Marshall County to the Insurance Work Authorization in her status as elected County Auditor. Perfection's argument emanates from the provisions of Iowa Constitution and Iowa Code Chapter 331 granting “home rule” authority to counties to “determine their local affairs and government” so long as the counties do not act in a manner “inconsistent with the laws of the general assembly.” Iowa Const. art. III, § 39A. Perfection argues, in essence, that counties like Marshall County may exercise home rule authority by granting elected officials like Benson the authority to enter binding contracts in some circumstances.

The problem with Perfection's argument is that there is no provision of Iowa law giving a county auditor the unilateral authority to enter construction or remediation contracts like the Insurance Work Authorization. Iowa Code § 331.502 lists thirty-eight enumerated duties of a county auditor, none of which are broad enough to capture what Perfection is trying to argue here. Perfection cites Iowa Code § 331.502(1), which gives the county auditor “general custody and control of the courthouse, subject to the direction of the board.” There is no plausible reading of this provision that would authorize a county auditor like Benson to enter a binding agreement without Board approval for an outside contractor to perform millions of dollars in remediation and repair work on county buildings. Nor is there any room in cases like *Miller*, *City of Akron*, or *Riley* to allow the conclusion that city councils and/or county boards of supervisors may informally delegate to the county auditor the authority to enter contracts on the city's or county's behalf.

*7 Perfection also argues that (i) the county auditor has authority over his or her own budget pursuant to [Iowa Code § 331.403](#), and (ii) it reasonably would have appeared on July 20, 2018, that Benson was not exceeding her budget by entering the Insurance Work Authorization given the expectation that insurance proceeds would cover repair and remediation work. This argument fails for several reasons.

First, Perfection cites no persuasive authority—much less on-point authority—for the proposition that county auditors or other elected officials can bind a county to contractual obligations in construction projects simply by virtue of having control over their budgets. See [Reliance Tel. of Grand Forks, Inc., 2024 WL 400821](#), at *9 (rejecting argument that the appropriation of money by the county board of supervisors to the county sheriff meant the sheriff could enter any contract he wanted). The absence of precedent is not surprising, as granting such unfettered authority to local elected officials like the auditor or treasurer is inconsistent with *Miller, City of Akron*, and *Riley*, all of which hold without exception that formal action is required before a local governmental entity will be bound to a contract. See also [Iowa Code §§ 331.301\(2\), 331.302\(1\)](#).

Second, Perfection's argument, if accepted, also would conflict with competitive bidding requirements in [Iowa Code §§ 331.341 et seq.](#), which require competitive bidding for any “public improvements” that exceed certain cost thresholds. [Section 331.341](#) clearly requires board action in connection with any such projects, as it uses the words “the board shall” repeatedly to describe how the competitive bidding requirements will be given effect. Yet Perfection's argument would allow a county auditor like Benson to bypass competitive bidding requirements even in large construction or renovation projects so long as insurance proceeds are being used. In addition to being inconsistent with *Miller, City of Akron*, and *Riley*, this would undermine one of the purposes of competitive bidding requirements: “to forestall fraud, favoritism and corruption in the making of contracts.” [Istari Constr., Inc. v. City of Muscatine, 330 N.W.2d 798, 800 \(Iowa 1983\)](#) (quoting C. Rhyne, *The Law of Local Government Operations* § 27.6, at 942 (1980)).

Granted, the phrase “public improvements” is defined in [Iowa Code § 26.2\(3\)](#) to include only construction or building projects for which “funds of the governmental entity” are used. Perfection argues that this definition is not satisfied when insurance proceeds are used (or expected to be used) to pay for the work. See [Istari, 330 N.W.2d at 800](#) (recognizing that competitive bidding requirements are also designed to protect taxpayers from wasteful spending). Moreover, [Iowa Code § 26.2\(3\)\(b\)\(3\)](#) excludes “[e]mergency work” from the definition of “public improvement.” See [Iowa Code § 26.2\(3\)\(b\)\(3\)](#). Perfection argues that its work would have qualified as “emergency work” at the time Benson signed the Insurance Work Authorization in July 2018.

Neither part of Perfection's argument is persuasive. As to the use of “funds of the governmental entity,” the premise of Perfection's position is that insurance proceeds are not public or governmental funds. This is inconsistent with Iowa Supreme Court precedent recognizing that an insured “immediately acquires a property interest in the insurance proceeds” upon the occurrence of the event that triggers insurance coverage (here, the tornado). See [Iowa Fair Plan v. U.S. Internal Revenue Dep't, 257 N.W.2d 626, 629 \(Iowa 1977\)](#). In other words, insurance proceeds are “funds of the governmental entity” under any fair reading of [Iowa Code § 26.2\(3\)](#). Indeed, the undisputed facts show that Marshall County's insurer paid the funds to Marshall County in the first instance, with Marshall County then paying them to Perfection. Meaning: the funds literally were possessed by Marshall County before being passed along to Perfection. Moreover, it is undisputed that insurance proceeds did not end up covering all of Perfection's work. Rather, Marshall County decided to use Perfection for code-related upgrades and other owner-directed improvements that were not funded through insurance. Thus, for several reasons, it is clear as a matter of law that “funds of the governmental entity” were used for Perfection's work for purposes of [Iowa Code § 26.2\(3\)](#).

*8 As to the exception for “emergency work,” Perfection plausibly argues that the exception would have applied to the work it performed in the immediate aftermath of the tornado in Summer 2018. By the time this dispute arose, however, Perfection had performed approximately three years' worth of work in Marshall County on projects that went well beyond emergency remediation and included voluntary upgrades and improvements on the Courthouse and other County-owned buildings, with a total price tag of more than \$30 million. This is not “emergency work” under any reasonable interpretation of that phrase, and thus the “emergency” exception does not save Perfection from competitive bidding requirements. Instead, Perfection's work

clearly required formal Board approval under the competitive bidding provisions set forth in [Iowa Code §§ 331.341 et seq.](#) It follows that Benson did not have unilateral authority to bind Marshall County to the terms of the Insurance Work Authorization. *See Reliance Tel. of Grand Forks, Inc.*, 2024 WL 400821, at *10 (holding that even if county sheriff had authority in some circumstances to enter binding contracts without violating [Iowa Code § 331.301](#), the authority did not extend to contracts that require Board approval under other provisions of Iowa Code Chapter 331). Holding otherwise would allow a small contract approved by a local elected official to mushroom into a multimillion-dollar project for which the county or city is bound to unfavorable terms and conditions despite the absence of formal approval.

This leads to the third problem with Perfection's position. By focusing on whether the initial work it performed was “emergency work” and whether the parties expected it to be covered by insurance proceeds, Perfection is essentially arguing that the enforceability of a contract with a county revolves around whether the relevant county official had authority—or, at least, *appeared* to have authority—to bind the county at the moment the contract was executed. There is nothing in cases like *Miller*, *City of Akron*, or *Riley* to suggest this is the appropriate lens through which enforceability should be determined. Instead, the lesson from those cases is that *any* contract with a local governmental entity must go through the formal approval process.

Even assuming, for sake of argument, that there are certain narrow contracts that might avoid formal approval requirements because they fall within the exclusive jurisdiction and budget of a particular elected official (like a county auditor or county attorney), *see Reliance Tel. of Grand Forks, Inc.*, 2024 WL 400821, at *10 (recognizing this possibility), the principles reflected in cases like *Miller*, *City of Akron*, and *Riley* require those contracts to receive formal approval as soon as the work expands beyond the scope of the local official's authority.

This case illustrates the point. Perfection is not merely trying to get paid for its “emergency” work, but also roughly \$2.7 million in non-emergency work performed long after the tornado. Moreover, Perfection wants to bind Marshall County to contract provisions in which the County (a) waives any claims for which notice was not provided within thirty days, (b) is required to pay all collection costs, including attorney's fees, and (c) must litigate in a different state before a judge who presumably is not familiar with Iowa law. If these claims and arguments are successful, the cost to Marshall County taxpayers will be several million dollars based on a contract that was never approved by the Marshall County Board. Perfection's position finds no support in Iowa law.

Nothing about this is unfair. It has been clearly established in Iowa for more than twenty years that “[t]hose who negotiate or enter contracts with a municipality are charged with notice of the limits on the municipality's authority.” *City of Akron*, 659 N.W.2d at 225. Perfection had the opportunity every month to place the Insurance Work Authorization in front of the Marshall County Board and receive formal approval. Having failed to do so, the company cannot now bind the County to the terms of that agreement anyway. Instead, the Court concludes as a matter of law that the Insurance Work Authorization is unenforceable.

C. The Court DENIES Perfection's Request for Leave to Amend to Bring a Fraud Claim Against Benson.

In the alternative, Perfection asks in a footnote for leave to amend to add a fraud count against Benson based on her testimony that she “did not care” about the extent of her authority when she signed the Insurance Work Authorization in the immediate aftermath of the storm because she simply wanted Perfection to begin performing remediation work. (ECF 65-1, p. 19 n.5.) The Court denies this request. It is far too late to amend the scheduling order to add new claims or parties. *See Sherman v. Winco Fireworks, Inc.*, 532 F.3d 709, 716–17 (8th Cir. 2008) (holding that party must show good cause to amend scheduling order to add claims or parties after deadline, with the moving party's diligence being the primary factor). In any event, Perfection does not have a viable fraud claim. “Those who negotiate or enter contracts with a municipality are charged with notice of the limits on the municipality's authority.” *City of Akron*, 659 N.W.2d at 225. Nothing Benson said or did prevented Perfection from understanding that it needed Board approval for the Insurance Work Authorization or trying to obtain that approval through formal Board action.

D. The Court GRANTS Marshall County's Motion for Summary Judgment on Counts I and II and Holds as a Matter of Law that Perfection Is Not Entitled to Attorney's Fees or Other Collection Costs.

*9 The only remaining question is what this ruling means for Perfection's claims. On Counts I and II, which allege Breach of Contract (Payment) and Breach of Contract (Collection Costs), respectively, the answer is simple: both Counts are dismissed. Perfection is not entitled to payment of outstanding invoices on a breach of contract theory, nor is it entitled to recover collection costs. Marshall County has not moved for summary judgment on Perfection's remaining claims (Counts III through X), nor is there anything on the docket to suggest those claims have been withdrawn or otherwise resolved. Accordingly, Counts III through X will proceed to trial on a date to be determined in accordance with the recent Text Order from United States Magistrate Judge William P. Kelly. (ECF 76.)

V. CONCLUSION.

Because the Insurance Work Authorization is not enforceable against Marshall County, Perfection cannot recover damages, attorney's fees, or other collection costs under breach of contract theories. The Court therefore GRANTS Marshall County's Motion for (Partial) Summary Judgment. (ECF 60.) Counts I and II are dismissed.

IT IS SO ORDERED.

All Citations

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