

2000

Mountain States Steel, INC. v. Voest-Alpine Services and Technologies Corporation : Reply Brief

Utah Supreme Court

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ORIGINAL

IN THE UTAH SUPREME COURT

MOUNTAIN STATES STEEL, INC., :
Case No. 20000608-SC
:
Appellant/Third-Party Plaintiff, :
Priority No. 15
:
vs. :
:
VOEST-ALPINE SERVICES & :
TECHNOLOGIES CORPORATION, :
:
Appellee/Third-Party Defendant. :

APPELLANT'S REPLY BRIEF

On Appeal from Judgment
of the Fourth Judicial District Court,
Utah County, State of Utah
Honorable James Taylor, Presiding

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FILE

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CLERK SUPREME COURT

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ARGUMENT

I. WHERE VOEST-ALPINE'S PRIMARY OBLIGATION UNDER THE LEASE WAS EXPRESSLY DELAYED BY MOUNTAIN STATES' FAILURE TO DELIVER TIMELY POSSESSION OF THE BUILDING TO VOEST-ALPINE, VOEST-ALPINE'S OBLIGATION TO SECURE INSURANCE COVERING MOUNTAIN STATES WAS LIKEWISE DELAYED.

Because Mountain States failed to deliver possession of the building to Voest-Alpine on March 1, 1994, the lease term did not commence and Voest-Alpine's primary obligation under the lease – the payment of rent – was not triggered. Furthermore, given the circumstances, nature, and purpose of the lease agreement, Voest-Alpine's obligation to secure insurance covering Mountain States was likewise delayed until Mountain States delivered possession of the building. The written terms of the lease are clear and unambiguous, with paragraph 2 providing:

2.1 Term.

The term of this lease shall be for a period commencing on the 1st day of March, 1994, and terminating twelve (12) months thereafter, unless sooner terminated or extended pursuant to any provision hereof.

. . . .

2.3 Delay in Commencement.

The parties acknowledge time is of the essence of this lease, particularly with respect to completion of improvements and commencement of occupancy. Lessor agrees to make improvements ("Lessor Improvements") set forth in Exhibit "C" and its attachments pursuant to the schedule for completion set forth therein ("Completion Schedule"). . . . If for any reason Lessor cannot deliver possession of the premises to Lessee on March 1, 1994, Lessee shall not be obliged to pay

rent . . . until possession is delivered. Possession cannot be delivered until the completion of item numbers 2, 3, 6, 8, 9, 10, 11, and 15 of Attachment 1 to Exhibit “C”.

(R. 98) While it is clear from the terms of the lease that the lease was to commence on March 1, 1994 and that Mountain States’ failure to deliver possession of the building to Voest-Alpine on that date delayed commencement of the lease and Voest-Alpine’s obligation to pay rent, it is not clear what effect Mountain States’ failure had on Voest-Alpine’s secondary obligations under the lease. Specifically, the lease is silent as to the effect of Mountain States’ failure on Voest-Alpine’s obligation to secure an insurance policy “insuring [Mountain States] and [Voest-Alpine] against any liability arising out of the ownership, use, occupancy or maintenance of the premises and all areas appurtenant thereto.” (R. 94) Ordinarily, a contract’s silence regarding an important term gives rise to an ambiguity requiring resort to extrinsic evidence in order to determine the intent of the parties. See Bailey-Allen Co. v. Kurzet, 876 P.2d 421, 424 (Ut. Ct. App. 1994) (fully integrated construction contract found to be ambiguous because contract was silent as to proper remedy for breach of the contract). In this case, however, the trial court found that the lease was clear and unambiguous and held that only Voest-Alpine’s obligation to pay rent was delayed as a result of Mountain States’ failure to deliver possession of the building on March 1, 1994.

Voest-Alpine agrees that the written terms of the lease are clear and unambiguous,

however Voest-Alpine submits that the trial court's interpretation of the terms of the contract is erroneous.¹ Specifically, Voest-Alpine challenges the trial court's finding that only Voest-Alpine's obligation to pay rent was delayed by virtue of Mountain States' failure to complete the required improvements to the building by March 1, 1994. Because Mountain States retained possession of the building and all rights of control over the building well beyond March 1, 1994, there is no justifiable basis for finding that Voest-Alpine was obligated to secure a bodily injury and property damage insurance policy insuring Mountain States "against any liability arising out of the ownership, use, occupancy or maintenance of [Mountain States' building] and all areas appurtenant thereto[]" effective March 1, 1994. For all intents and purposes, Voest-Alpine's possession of Mountain States' building was the essence of the lease agreement. Accordingly, under the circumstances, Voest-Alpine's obligations under the lease, especially the insurance obligation, were triggered when Voest-Alpine took possession of the building and commenced paying rent to Mountain States.

When asked to interpret the terms of a contract, this Court has stated that:

¹This Court reviews a trial court's interpretation of an agreement for correctness, according no deference to the trial court's conclusions of law. See Zions First Nat'l Bank v. National Am. Title Ins. Co., 749 P.2d 651, 653 (Utah 1988) ("Questions of contract interpretation not requiring resort to extrinsic evidence are matters of law, and on such questions we accord the trial court's interpretation no presumption of correctness.")

we interpret the terms of a contract in light of the reasonable expectations of the parties, looking to the agreement as a whole and to the circumstances, nature, and purpose of the contract.

Peirce v. Peirce, 2000 UT 7, ¶19, 994 P.2d 193.² See also, Utah State Med. Ass’n v. Utah State Employees Credit Union, 655 P.2d 643, 646 (Utah 1982); Nixon & Nixon, Inc. v. John New & Assocs., Inc., 641 P.2d 144, 146 (Utah 1982). Here, looking to Mountain States’ and Voest-Alpine’s lease agreement as whole, and to the circumstances, nature, and purpose of the lease, the parties reasonably expected that Voest-Alpine’s lease obligations would be triggered when Mountain States delivered possession of the building to Voest-Alpine.

Because the contract between Voest-Alpine and Mountain States was a lease agreement, Voest-Alpine’s obligations were contingent upon Voest-Alpine’s taking possession of the building. Voest-Alpine contracted with Mountain States for the exclusive use, possession, and enjoyment of Mountain States building. In return, Voest-

²In their reply brief, Mountain States challenges Voest-Alpine’s citation to Peirce for basic principles of contract law on the basis that a postnuptial agreement was at issue in Peirce and not a commercial contract. See Mountain States’ Reply Brief at p. 4. Mountain States’ challenge is not well-taken. Voest-Alpine does not rely on the Court’s application of contract law to the particular facts of Peirce, but merely relies on the Court’s statements as to basic contract principles and general rules of contract interpretation. These rules are equally applicable to post-nuptial agreements and commercial contracts. Peirce, 2000 UT 7, ¶ 20, 994 P.2d 193 (“Postnuptial agreements are a type of contract and are generally subject to basic contract principles.”).

Alpine was obligated to pay rent to Mountain States and insure Mountain States against liability and damages that might arise as a result of Voest-Alpine's use and possession of the building. Mountain States' and Voest-Alpine's obligations therefore turn on possession of the building. So long as Voest-Alpine was in possession of the building and enjoying the use and benefits associated with possession, Voest-Alpine was obligated to pay rent to Mountain States and insure Mountain States against any damage that might result from Voest-Alpine's use and enjoyment of the building. The lease expressly provided that Voest-Alpine would not be obligated to pay rent until Mountain States delivered possession of the building.

Further, given the circumstances, nature, and purpose of the lease, it follows that Voest-Alpine's additional obligations under the lease, i.e. the insurance obligation, were likewise contingent upon Voest-Alpine taking possession of the building. So long as Mountain States retained possession and control of its building, Mountain States quite rightly bore responsibility for insuring itself and its building. There was no reason for Voest-Alpine to insure a building it did not possess, did not control, and had no rights over. Furthermore, there was no reason for Voest-Alpine to insure Mountain States against damage that might arise out of Mountain States' use and possession of its own building. The purpose of Voest-Alpine's insurance obligation was to protect Mountain States from damages that might arise out of Voest-Alpine's use and possession of the

building. There is no justifiable basis for the contention that Voest-Alpine was obligated to procure a bodily injury and property damage public liability insurance policy covering Mountain States and Mountain States' building where Mountain States failed to deliver possession of the building to Voest-Alpine. Voest-Alpine would have been conferring a benefit upon Mountain States while receiving nothing in return.

Mountain States does not dispute that it failed to deliver possession of the building to Voest-Alpine on March 1, 1994. In fact, as of March 1, 1994, Mountain States had failed to complete 8 of the 15 requisite improvements to the building. As a result of Mountain States' failure to satisfy the preconditions to Voest-Alpine's occupancy, Voest-Alpine could not use, occupy or otherwise enjoy possession of the building. The fact that Voest-Alpine's employees were present in the building and assisting Mountain States with its improvements after March 1, 1994 is irrelevant to Voest-Alpine's insurance obligations under the lease. After March 1, 1994, the commencement of the lease was delayed and Mountain States retained exclusive possession and rights of control over its building. Voest-Alpine had no control over the building. Voest-Alpine's employees were on the premises with the permission of Mountain States. By permitting Voest-Alpine's employees to enter the premises while Mountain States possessed and controlled the building, Mountain States assumed responsibility for the employees' presence. Accordingly, Mountain States had the obligation of insuring itself and its building

because it had exclusive control over the building. Voest-Alpine had no such obligation until Mountain States delivered possession of the building.

Additionally, there is no basis for Mountain States' insinuation that Voest-Alpine began work on its commitments to Geneva Steel prior to taking possession of the building. See Mountain States' Reply Brief at p. 2. Voest-Alpine was actually unable to begin its work for Geneva Steel until Mountain States had made the requisite improvements to the building and delivered possession of the building to Voest-Alpine. To be sure, this is why the lease expressly provided that: "The parties acknowledge that time is of the essence of this lease, particularly with respect to completion of improvements and commencement of occupancy." (R. 98) There is no evidence whatsoever that Voest-Alpine was working for Geneva Steel prior to Mountain States' delivering possession of the building to Voest-Alpine. Mountain States' insinuation is wholly inappropriate and not supported any evidence in the record.

Mountain States has failed to offer any legitimate basis to support the trial court's finding that although Mountain States failed to meet its obligations under the contract and deliver possession of the building to Voest-Alpine, Voest-Alpine was nevertheless obligated to secure a bodily injury and property damage public liability insurance policy insuring Mountain States against any liability arising out of Voest-Alpine's use, occupancy, and possession of the building. Indeed, the trial court's interpretation of the

lease runs counter to the reasonable expectations of the parties, looking to the agreement as a whole and to the circumstances, nature and purpose of the contract. Under the circumstances, Voest-Alpine's obligations under the lease – including the payment of rent and securing an insurance policy insuring Mountain States – were triggered when Voest-Alpine took possession of the building and received the benefits of occupancy. Until that point, Mountain States was responsible for insuring the building because it had complete control over and responsibility for the building.

Because the trial court's interpretation of the lease is incorrect, this Court should reverse the trial court and enter summary judgment in favor of Voest-Alpine on the basis that the lease had not commenced at the time of the Bakowski/Ramirez accident. Further, because the lease had not commenced at the time of the accident, Mountain States' insurers properly covered the Bakowski/Ramirez accident.

II. THE TRIAL COURT'S FAILURE TO SET FORTH ITS REASONS FOR NOT AWARDING THE FULL AMOUNT OF ATTORNEY FEES SUBMITTED BY VOEST-ALPINE WARRANTS A REMAND.

Because Voest-Alpine prevailed in the trial court, Mountain States was and is obligated to pay Voest-Alpine's reasonable attorney fees pursuant to paragraph 15.13 of the lease.³ Voest-Alpine submitted evidence to the trial court establishing that it incurred

³Paragraph 15.13 of the lease provides: "Attorney fees. If either party brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party shall

attorney fees totaling \$38,380.00 in defending against Mountain States' action. The trial court, however, only awarded Voest-Alpine \$30,206.45 in attorney fees.⁴ The trial court did not explain its basis for awarding a lesser amount than that sought by Voest-Alpine. Because the trial court is required to state its reasons for awarding the lesser amount, the issue should be remanded to the trial court with instructions to set forth the basis of the amount of attorney fees awarded to Voest-Alpine.⁵

This Court is unable to determine whether the trial court's reduction of the fees sought by Voest-Alpine is reasonable because the trial court offered no basis for the reduction. The trial court simply crossed out the amount listed in the pleadings drafted by Voest-Alpine's counsel and wrote in the lesser amount by hand without explanation. (R. 1141; 1138) In Hoth v. White, 799 P.2d 213, 220 (Ut. Ct. App. 1990), the court stated:

Trial courts should make findings which explain the factors which they consider relevant in making an attorney fee award, especially when they reduce the amount from that requested.

be entitled to its reasonable attorney fees.” (R. 86)

⁴Admittedly, due to counsel's clerical error, Voest-Alpine initially submitted evidence that its attorney fees totaled only \$30,206.45. However, Voest-Alpine informed the court of the error and submitted evidence indicating that it actually incurred \$38,380.00 in attorney fees. (R. 1074; 1063)

⁵Additionally, the issue of attorney fees will have to be remanded to the trial court so that the it may determine the amount of fees to be awarded to the prevailing party in this appeal.

Here, the trial court made no such findings. As it stands, there is nothing in the record to indicate that the trial court considered the evidence submitted by Voest-Alpine supporting its request for \$38,380.00. Furthermore, there is nothing to support the trial court's reduction of the amount Voest-Alpine requested.

Voest-Alpine submits that the trial court abused its discretion in reducing the amount of attorney fees requested by Voest-Alpine. "Where the evidence supporting the reasonableness of the attorney fees is both adequate and entirely undisputed, the court abuses its discretion in awarding less than the amount requested unless reduction is warranted by one or more of the factors described in Dixie State Bank v. Bracken, 764 P.2d 985, 987-91." Hoth v. White, 799 P.2d 213, 220 (Ut. Ct. App. 1990).⁶ Here, the evidence submitted to the trial court supports an award of \$38,380.00. Mountain States does not contend that this amount is unreasonable. Accordingly, unless the trial court reduced the award pursuant to the one or more of Dixie factors, the trial court abused its discretion in awarding less than the amount requested by Voest-Alpine.

This Court should remand the issue to the trial court with instructions to review the

⁶The Dixie factors include: the legal work actually performed; the reasonable necessity of the legal work to adequately prosecute the matter; the consistency of the attorney's billing with the rates customarily charged in the locality for similar services; and any circumstances requiring the consideration of other factors, such as those listed in the Code of Professional Responsibility. Dixie State Bank v. Bracken, 764 P.2d 985, 990 (Utah 1988). Notably, clerical error is not a basis for reducing an attorney fee award.


amount requested by Voest-Alpine, to review the evidence in support of the award, and make findings which explain the factors which the trial court considers relevant in making the award.

CONCLUSION

This Court should reverse the trial court's holding that the lease commenced on March 1, 1994, and find that because Mountain States failed to deliver possession of the building to Voest-Alpine, Voest-Alpine was not obligated to secure the insurance required under the lease until such time as Mountain States delivered possession of the building to Voest-Alpine. Additionally, this Court should remand the issue of attorney fees to the trial court with instructions to review the amount requested by Voest-Alpine; to review the evidence submitted by Voest-Alpine; and to make findings explaining the basis for the trial court's award.

DATED this 27th day of September, 2001.

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CERTIFICATE OF SERVICE

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