

1978

Jensen Brothers Construction Company, Inc., A Corporation v. Walter Schofield, Dba Wally Shofield Masonry : Respondent's Brief

Utah Supreme Court

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IN THE
SUPREME COURT
OF THE
STATE OF UTAH

JENSEN BROTHERS CONSTRUCTION
COMPANY, INC., a corporation,

Plaintiff-Respondent,

vs.

Case No. 15558

WALTER SCHOFIELD, dba WALLY
SHOFIELD MASONRY,

Defendant-Appellant

RESPONDENT'S BRIEF

Appeal from Judgment of the Sixth Judicial
District Court, Sevier County, State of Utah
The Honorable Don V. Tibbs, Judge

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RESPONDENT'S BRIEF

STATEMENT OF THE NATURE OF THE CASE

This action was initiated in the Sixth Judicial District Court of Sevier County, Utah by plaintiff-respondent seeking damages from defendant-appellant for breach of contract. Defendant-appellant counterclaimed for breach of contract.

DISPOSITION IN LOWER COURT

On the basis of the facts presented, the Honorable Don V. Tibbs, District Judge, awarded judgment to the plaintiff-respondent on its breach of contract claim and against the defendant-appellant on his counterclaim.

RELIEF SOUGHT

Plaintiff-respondent seeks affirmance of the District Court Judgment.

STATEMENT OF FACTS

The parties in this case entered into a Subcontract Agreement dated August 8, 1975. [P. Exhibit 1; Findings of Fact, paragraph 2; Conclusions of Law, paragraph 1 and Transcript at pp. 5, 111]. Pursuant to the terms of the Agreement, appellant agreed to perform the masonry work on the Ivie Creek Rest Area project near Salina, Utah, including furnishing "at his [appellant's] sole cost and expense, ... all materials, supplies and equipment" necessary to complete the work. [P. Exhibit 1].

After beginning the masonry work appellant began to perform in an unworkmanlike manner and later abandoned the project entirely, [Transcript, pp. 19, 35, 40, 42, 43 and 56; Findings of Fact, paragraph 4] whereupon respondent, appellant, pursuant to the terms of the Agreement, completed the project at a cost which exceeded by \$7,326.78, the original amount agreed upon in the Agreement. [P. Exhibit 7; Transcript, p. 54; Findings of Fact, paragraph 10].

A trial of the case was held on October 27, 1977 in the Sevier County Courthouse, the Honorable Don V. Tibbs, District Judge, presiding. The Court held that the defendant had breached the contract between the parties in (1)

failing to complete the masonry work as contemplated by the contract, (2) failing to perform the masonry work in a competent and qualified manner, (3) failing to proceed with the masonry work in an efficient and expeditious manner as contemplated by the contract, and (4) abandoning the project prior to completion. [Findings of Fact, paragraph 4, Conclusions of Law, paragraph 1 and Transcript at page 111]. Appellant does not dispute these findings.

The Court below awarded respondent the amount of \$7,326.78 as damages for breach of contract together with \$1,000 in attorneys fees.

ARGUMENT

POINT I

APPELLANT WAS PROPERLY HELD LIABLE FOR BREACH OF CONTRACT

The parties in this case entered into a valid and enforceable contract, the terms of which governed their relationship. Wingets, Inc. v. Bitters, 28 Utah 2d 231, 500 P.2d 1007 (1972) ["If the language is such that the intention of the parties is clearly and unequivocally expressed, it must be enforced according to its terms"]. See also Holley v. Federal-American Partners, 29 Utah 2d 212, 507 P.2d 381, 383 (1973).

In this case there was no claim that the contract was unclear or ambiguous. The parties in fact performed according to the contract terms until appellant breached his obligations.

Appellant argues in his brief that his relationship to respondent was one of employer-employee and for that reason appellant "is not liable for plaintiff's damages." [Appellant's Brief, page 2]. Appellant's argument is totally irrelevant to any issue presented in this case. Even if an employer-employee relationship existed, such would in no respect absolve appellant from liability. Employers and employees are bound by the terms of a contract between them just as are other parties.

The arguments presented by appellant are unclear to respondent. The cases cited and referred to in appellant's Brief are completely irrelevant to this case. Each of those cases concerns the issue of whether an injured worker is covered by the Workmen's Compensation statute. Rustler Lodge v. Industrial Commission, 562 P.2d 227 (1977) [injuries to a drywall worker]; Smith v. Alfred Brown Company, 493 P.2d 994 (1972) [injuries to a brick mason]; Sulton v. Industrial Commission, 344 P.2d 538 (1959) [injuries to a roofer]; Parkinson v. Industrial Commission, 172 P.2d 136 (1946) [injuries to a Coke worker]; Buhler v. Maddison, 176 P.2d 118 (1947) [injuries to a miner]. This case does not involve Workmen's Compensation. Rather, it is simply a case of breach of contract.

Appellant has cited no relevant case law and has failed to show any facts presented at trial or otherwise

which would indicate that the lower Court's holding was not correct. Therefore, this Court should affirm the District Court's application of the contract.

POINT II

THE DISTRICT COURT CORRECTLY ASSESSED DAMAGES AGAINST APPELLANT

There is no merit whatever in appellant's contention that damages were improperly assessed against him. [Appellant's Brief, pp. 5 and 6]. Just as in its determination whether a breach had occurred, the lower Court correctly turned to the language of the contract between the parties to determine the proper method of assessing damages. On the issue of damages, the contract was abundantly clear that if the Contractor (Respondent) were forced to complete the masonry work itself, and if the cost of completing the work exceeded the amount originally agreed upon in the contract, "then the Subcontractor (Appellant) and his sureties, if any, shall be bound and liable unto the Contractor for the difference." [Plaintiff's Exhibit Number 1, Section 2].

Evidence was presented and the Court found that completion of the masonry work cost the plaintiff \$7,326.78 more than the original contract price. [P. Exhibit 7; Findings of Fact, paragraph 10; Conclusions of Law, paragraph 6; Transcript, page 111]. Thus, damages of \$7,326.78 along with an award of \$1,000 for respondent's attorney's fees

were assessed against appellant.

Appellant states in his brief that it is unfair to charge him with overhead expenses. However, the lower Court directly addressed and considered the issue of whether overhead expenses should be included in the damages assessed against appellant and determined that inclusion of overhead expenses was fair and proper. The simple facts presented to the lower Court show that the overhead expenses were necessary expenses for the completion of the project which were paid by respondent and which should have been paid by appellant. [Transcript, p. 29]. Appellant's statements of unfairness, unsupported by facts, case law or other authority, are certainly not sufficient to require this Court to alter the findings of the lower Court.

CONCLUSION

The parties in this case were governed by a valid and enforceable contract. The District Court, after considering the evidence and arguments of counsel, found that appellant had breached the contract and that respondent was damaged by the breach. On appeal, appellant has not provided this court with a single ground for reversal of any part of the District Court's holding. The Judgment of the District Court should be affirmed.

DATED this 7th day of April, 1978.

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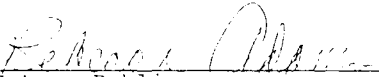
CERTIFICATE OF SERVICE

I hereby certify that I served two copies of the foregoing Respondent's Brief, by placing them in an envelope addressed to Mr. Carl T. Smith, Attorney at Law, 2910 Washington Boulevard, Suite 305, Ogden, Utah, Case No. 15558, and mailing the same, postage pre-paid, on the 12th day of April, 1978.



Noell J. Parker

Subscribed and sworn to before me this 12th day of April, 1978.



Notary Public
Residing in Salt Lake City,
Utah

My Commission Expires:

7-10-80