

1988

Western Coating v. Gibbons & Reed : Unknown

Utah Supreme Court

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10/11

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UTAH SUPREME COURT

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FILED

NOV 17 1989

Clerk, Supreme Court, Utah

November 16, 1989

Geoffrey Butler
Clerk of the Supreme Court of Utah
332 State Capitol Building
Salt Lake City, Utah 84114

Re: Western Coating v. Gibbons and Reed, et.al.
No. 880289

Dear Mr. Butler:

I am enclosing ten copies of the Memorandum Decision of the trial court which relates to the captioned matter. The captioned matter was heard by the Supreme Court of Utah this week, and during Oral Argument, it was noted that said Memorandum Decision had not been attached as an Addendum to the Appellant's Brief. We apologize for this and hope that the enclosed copies will remedy the oversight.

Thank you for your attention to this matter.

Very truly yours,

WALSTAD & BABCOCK

Mary Louise LeCheminant
Mary Louise LeCheminant

Enc.

cc: Bryce Roe

FILED IN CLERK'S OFFICE
SALT LAKE COUNTY, UTAH

JUN 24 2 42 PM '88

H. JIM HINDLEY CLERK
4th DIST COURT

BY _____
DEPUTY CLERK

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

WESTERN COATING, INC., an	:	MEMORANDUM DECISION
Oregon corporation,	:	CIVIL NO. C-87-5562
Plaintiff,	:	
vs.	:	
GIBBONS & REED COMPANY, a	:	
Utah corporation, et al.,	:	
Defendants.	:	

Copy

The Motion of defendants Gibbons and Reed Company, and American Insurance Company for Summary Judgment dismissing the action was heard on the 6th day of June, 1988. Plaintiff was represented by Robert F. Babcock. Defendants were represented by Bryce E. Roe. The Court having read the Memorandums filed and heard oral argument, took the matter under advisement. The Court now renders its decision.

The issue presented to the Court was whether or not plaintiff, who furnished materials to Continental-Hagen, a supplier, who in turn furnished the materials to Pacheco and Martinez, a subcontractor of Gibbons and Reed Company, could recover for the materials.

The Court concludes that the plaintiff is too remote to recover. Section 63-56-38, Utah Code Ann., 1953 as amended, is

the statute that governs claims such as that of the plaintiff. The Utah statute has been referred to as the Little Miller Act because it appeared to be based upon the federal Miller Act. The United States Supreme Court in the case of Clifford F. MacEvoy Co. v. United States, 322 U.S. 102, 64 S.Ct. 890, 88 L.Ed. 1163 (1944) ruled that a claimant such as the plaintiff in this case could not recover from the government contractor. The court in that case said that to allow those in more remote relationships to recover on the bond would be contrary to the clear language of the proviso and to the express will of congress, and could lead to the absurd result of requiring notice from persons in direct contractual relationship with a subcontractor but not from remote claimants.

The matter of supplying materials to suppliers to subcontractors was again heard by the United States Supreme Court in J.W. Batisón v. Board of Trustees, 434 U.S. 586, 98 S.Ct. 873, 55 L.Ed.2d 50, 55 (1978). The court in the MacEvoy case defined who would be deemed to be a subcontractor and as a result limited claims to those who have furnished labor or material to the

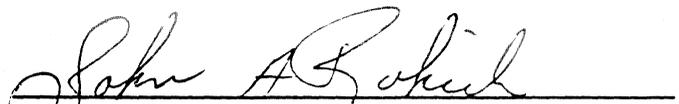
WESTERN COATING V.
GIBBONS AND REED

PAGE THREE

MEMORANDUM DECISION

contractor or subcontractor for the work provided for in the
contract.

Dated this 24 day of June, 1988.



JOHN A. ROKICH
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Memorandum Decision, postage prepaid, to the following, this _____ day of June, 1988:

Robert F. Babcock
Attorney for Plaintiff
254 West 400 South, Second Floor
Salt Lake City, Utah 84101

Bryce E. Roe
Attorney for Gibbons and Reed,
and American Insurance
215 S. State, 12th Floor
Salt Lake City, Utah 84111
