

Williston on contracts

Law



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FACTS: The plaintiff entered into an asphalt contract with the defendant to produce approximately 50, 000 tons of asphalt for paving within the time specified in the contract. To comply with the requirement the plaintiff was required to rent and ship an asphalt plant capable of producing 50, 000 tons of asphalt a day. Upon the plaintiff, executing the contract the defendant reduced the asphalt tonnage to 20, 000 tons without consent and or notice to the plaintiff on grounds that the defendant could not economically use the large equipment and installation, which the original work required.

Within a few days after the completion of the agreement, the plaintiff learned that the Government had lessened the amount of asphalt that was predetermined under the contract by around the number of tons of lessening supposed in the complaint. The defendant was directed by the plaintiff advised of its receipt and on the contention that the lessening of asphalt considered under the contract would augment the unit cost in the act of the contract. The defendant replied to the plaintiff confirming the plaintiff's information concerning reduction of asphalt required under the contract and promising to submit to the proper Government officials' requests for increased unit prices. The defendant's letter was acknowledged and the plaintiff signed its intention of proceeding with performance of the contracts as changed, and express confidence that defendant would adequately present to the Government the plaintiff's request for an increase in unit prices for work under the contract. The defendant later wrote to the plaintiff saying that it had received from the Government a change order providing for the changes in the original contract that resulted in the reduction of the asphalt required

The plaintiff sought to recover the expenses incurred in shipping the large asphalt plant to the place of performance of the work and in installing and equipping the plant for the production of 50, 000 tons of asphalt. Further, there was a demand for dismantling and returning the asphalt plant to the point from which it was shipped as damages for breach of the contract.

ISSUE: Whether the plaintiff is liable to damages for the breach of contract by the defendant.

HOLDING: The majority of the court was of the opinion that the defendant was not liable and as such, the plaintiff is permitted recovery by the relator of nominal damages and interest of \$1.

RATIONALE: The fundamental basis for an award of damages for contravening a contract is just compensation for losses necessarily flowing from the breach (Lord, 1338). In addition, while the breach of contract gives rise to a right of action, it is nevertheless possible for a breach to occur without causing damage. A party whose contract has been breached is not entitled to be placed in a better position because of the breach than he would have been in had the contract been performed. The plaintiff in this case did not seek recovery of profits which it may have made had the contract been performed as originally written. It seeks only the recovery of out-of-pockets expense claimed to have caused by the breach. The evidence fails completely to establish the loss which plaintiff has asserted.

Works Cited

Richard, Lord. Williston on Contracts. USA: West Group Country, 1989. 1338.