Contracts II (May 27, 1970)

William & Mary Law School

Repository Citation
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Contracts II

May 27, 1970

1. (15 points)

Sam Seller owns a brick factory which is operating at half-capacity. Sam contracts to sell Bill Buyer 500,000 bricks at $82.00 per thousand. Fulfillment of this contract will take 5 percent of Sam's plant capacity for eight weeks. Sam will make a profit of $5 per thousand bricks under the contract with Bill. Prior to the time for performance, Bill repudiates the contract. At the time for performance, the market price of brick of the type under the contract is $90 per thousand. Has Sam a cause of action for damages? If so, what is the proper measure of damages?

II. (30 points)

On September 1, 1968, Owner entered into a contract with Contractor whereby Contractor undertook to build an apartment building on Owner's lot in downtown Williamsburg. The contract called for the apartment building to be completed by June 1, 1969 for a total price of $500,000. Owner agreed to make periodic monthly payments equal to 80% of the value of the work completed. The last payment was to be made 30 days after the completion of the work which was to be performed to the satisfaction of and under the direction of Architect to be attested by his certificate before any final payment became due. The contract also contained the following provision:

"If Owner desires any extra work to be done, Contractor agrees to do same for a reasonable sum, and in the event that the parties to this contract cannot agree upon such reasonable sum the matter shall be referred to a board of arbitration to consist of one person selected by the Owner and one person selected by the Contractor, these two to select a third. The decision of any two of this board shall be final and binding on both parties hereto."

On November 15, 1969 Owner visited the site and saw that there would not be adequate parking space for his prospective tenants. He, therefore, requested Contractor to build a parking lot adjacent to the building. Contractor agreed and the lot was completed on February 15th at a cost to Contractor of $30,000.

By June 1, 1969 the building had been only 50% completed and Contractor had received $200,000 in payments under the contract. Contractor continued to perform work on the building, and Owner continued to make periodic payments as scheduled. The building was completed on September 1, 1969 at which time Contractor had received $400,000 pursuant to the contract terms.

On September 1st Owner and Architect visited the site. They found that Contractor had used Westinghouse appliances in the apartments instead of General Electric as required by the contract. Westinghouse appliances are considered in the trade to be equivalent to General Electric, but, of course, individual preferences vary. Because of this failure to conform to the contract terms the architect refused to issue his certificate. This action induced Contractor to refuse to submit the question of reasonable payment for the extra work to arbitration, at which point Owner refused to make any further payments to Contractor whatever.
Contractor brings an action in the Circuit Court of the City of Williamsburg to recover $100,000 final payment under the contract and $50,000 for the construction of the parking lot. Owner answered by denying any liability and counterclaimed for $6,000 damages for delay in construction based on the established rental value of 20 units at $100 per month for three months.

a) What defense or defenses might you raise as attorney for Owner as to Contractor's claims?

b) What defense or defenses might you raise as attorney for Contractor as to Owner's counterclaim?

c) How should the court rule on the claims and counterclaim?

III. (20 points)

In September 1969 O sold B a parcel of land which was to be developed by B as a shopping center. The contract provided that, as part of the consideration for the sale, B would construct a filling station by June 1, 1970, as per agreed plans, on the land sold, and would then lease the filling station to D for twenty years. (D was O's younger brother who had just been released from the penitentiary and was determined to make a new start in life.) In January, 1970, the local zoning ordinance was changed so that the filling station could not be constructed unless B secured a variance. B, however, wishing to operate filling station of his own made no effort to secure a variance although there was a reasonable possibility that such a variance could have been obtained.

On June 2, 1970, after B had failed to construct the station as per the contract, D instituted an action for breach of contract against B alleging as his basis for damage, loss of anticipated profits on the operation of the filling station.

What defense or defenses can be raised by B and how should the court rule on each?

IV. (15 points)

D owned a building in Norfolk, Virginia. P contracted to install a heating and air conditioning system in the building according to certain plans and specifications for $250,000. D's architect and engineer were to have general supervision of the work. P departed from the plans with the consent of D's architect and used some inferior materials. When the job was done the system, while amply sufficient to heat and cool the building, was not up to contract capacity. While the departures from the contract were deliberately made there was no evidence that they were fraudulent. The architect gave P a certificate of completion which expressly provided that it did not bar any rights that D might have for any breach of contract on P's part. It would now cost $75,000 to do the work as per the original plans. The difference in the value of the work as done and as it should have been done is $24,000. D owed P a $14,000 final payment which D has refused to pay because of P's deliberate departure from the plans. P sues D for the final payment. D denies any liability and counterclaims for $75,000. What result?
V. (20 points)

In April 1969 S contracted with B to supply coal from its mine to B for two years. The price was fixed at $10.00 per ton and the amount was to be 500 tons per month or as much more as B required for the operation of his business. In September 1969, B being pursued by creditors found himself in need of liquid assets. At that time the prevailing market price of coal was $15 per ton. Consequently, on October 1, 1969 B assigned the contract with S to X for $10,000. Two weeks later, B, being in difficulty again, assigned the contract with S to Y for $9,500. On October 15, 1969, Y notified S of the assignment and demanded performance as of November 1. Meanwhile X became aware of the assignment and demanded performance pursuant to the contract terms. S, being fearful of multiple liability consults you and wants to know to whom he should supply coal in order to discharge his contractual liability. What do you advise? Discuss all issues fairly presented whether or not dispositive of the case.