

CEMENT ASBESTOS PRODUCTS
COMPANY, a corp.

PLAINTIFF

VS.

BURBIC CONTRACTING CO., INC.,
a corp.; HARTFORD ACCIDENT AND
INDEMNITY COMPANY, a corp.

DEFENDANT

and
ROBINTech INCORPORATION, a corp.

THIRD PARTY DEFENDANT

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT
OF SHELBY COUNTY, ALABAMA

Certified a true and complete copy

Kyle Sanford
Clerk of Circuit Court

8/13/82

CASE NO. CV 79 227

J U D G M E N T

Plaintiff Cement Asbestos Products Company brought suit against defendant Burbic Contracting Co. for materials delivered under contract. Burbic answered that the pipe and/or gaskets were defective, and counterclaimed against plaintiff Cement Asbestos Products Company. Hartford Accident and Indemnity Company was also named as a defendant by plaintiff, Hartford Accident and Indemnity Company being Burbic Contracting Company's surety for the majority of plaintiff's claim against Burbic Contracting Co. Robintech was the pipe manufacturer who was brought into the case as a third party defendant.

The Court finds that the pipe leaks in question were caused by "pushed" or "fish-mouthed" gaskets, and that these gasket conditions were caused at the time of installation. At the very outset of this project the pipe-fitters encountered problems. It is the further finding of this Court that the problems with installation were known or should have been known at the time of fitting, had proper installation procedures been utilized by the Burbic crew. The job, for whatever reasons, nevertheless continued. The leaks, therefore, are found to be properly attributed to Burbic's employees. No expenses or damages incurred thereafter could justly be charged to either the supplier or manufacturer. Replacement would have been a reasonable remedy for Burbic Contracting Company, according to the facts of this case.

Moreover, the Court makes the following finding. The contractual limitation of remedies, which is also pressed by Plaintiff, was not a material addition to the contract. It was reasonable under the circumstances. Plaintiff submitted testimony that the "confirmation" which contained the written limitation was sent even prior to shipment of the first pipe and gasket. Anyway, the contract was not one entire contract encompassing all the pipe and gaskets used. The orders were separate and numerous. Certainly the Defendant could not say, as to the great bulk of shipments, that it did not know of the additional term after the first invoice it admittedly received. Written language sufficiently called attention to the limitation of remedies.

Judgment is hereby entered in favor of Cement Asbestos Products Company and against Burbic Contracting Company in the amount of \$75,858.25, including interest and attorney's fees. Judgment is entered in favor of Cement Asbestos Products Company and against Hartford Accident and Indemnity Company in the amount of \$65,702.18, including interest and attorney's fees. Judgment is hereby entered in favor of Hartford Accident and Indemnity Company against Burbic Contracting Company in the amount of \$73,164.61, which includes the amount stipulated in Court as being reasonable attorney's fees and expenses incurred by Hartford. Judgment is entered against any remaining claims.

Costs taxed to defendant Burbic Contracting Company.

FILED IN OFFICE THIS 18 DAY OF Nov, 1980.
DONE THIS 18 DAY OF Nov, 1980.

Circuit Court
Shelby County

Robert R. Armstrong, Jr.
ROBERT R. ARMSTRONG, JR.
CIRCUIT JUDGE

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