1947

Contracts--The Liability of a Building Contractor for Defects in Plans and Specifications Furnished by the Owner

James C. Brock

University of Kentucky

Follow this and additional works at: https://uknowledge.uky.edu/klj

Part of the Construction Law Commons, and the Contracts Commons

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation

Available at: https://uknowledge.uky.edu/klj/vol35/iss3/7

This Note is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledges@lsv.uky.edu.
CONTRACTS—THE LIABILITY OF A BUILDING CONTRACTOR FOR DEFECTS IN PLANS AND SPECIFICATIONS FURNISHED BY THE OWNER

The question of the liability of a contractor for structural failures or for failure to complete work as a result of defective plans and specifications furnished by the owner is one that has received quite varied treatment by the courts.

The early decisions followed the view that when a contractor agreed to build or accomplish a given thing, he was liable if he failed to build properly or to complete the work, regardless of any subsequent impossibility. The case which appears first to have adopted this theory of strict liability was that of Paradine v. Jane.1

Somewhat later decisions reached the same result by holding that when the contractor agreed to build according to plans and specifications furnished by the owner he impliedly warranted the sufficiency of those plans and specifications and assumed any risk of impossibility to comply therewith. He was held to the duty of inspecting the plans and examining them as to their sufficiency before he obligated himself to perform and if he failed to do this he could not offer ignorance of their insufficiency as a defense.2 In Lonergan v. San Antonio L. & T. Co.,3 the court held the contractor liable in damages where a building fell due to defects resulting from following the plans furnished by the owner, saying, that if the contractors were called upon to use their judgment and, "... if they were not competent to judge for themselves, it became their duty to protect their interests by procuring such aid as was necessary to put them in possession of the facts." The courts have justified this doctrine

1 62 Eng. R. 897 (1647), where the court said: "... but when the party by his own contract creates a duty or charge upon himself he is bound to make it good, if he may, notwithstanding any accident by inevitable necessity, because he might have provided against it by his contract. And therefore if the lessee covenant to repair a house, though it be burnt by lightning or thrown down by enemies, yet he ought to repair it."

2 Superintendent & Trustees v. Bennett, 27 N. J. 513, 72 Am. Dec. 373 (1859); see Beebe v. Johnson, 19 Wend. 500 (N. Y.), 32 Am. Dec. 518 at 519 (1838), which said: "... but if the covenant be within the range of possibility, however absurd or improbable the idea of the execution of it may be, it will be upheld: As where one covenants it shall rain tomorrow, or that the Pope shall be at Westminster on a certain day."


by reasoning that the contractor, who has experts in his employ, whose duty it is to approve or disapprove plans and to determine their sufficiency, should be in a better position than the owner to determine whether or not the plans will obtain the result called for.\(^5\)

Also, if the contractor holds himself out as having had a great deal of experience, when in fact he has not, he is held liable.\(^6\) In Clark \textit{v.} Pope,\(^7\) the act of entering into the agreement was thought by the court to be an implication by the contractor that he then understood the plans and specifications and his defense that he did not understand them when sued by the owner for breach of contract was held untenable. When the impossibility was foreseeable at the time the contract was made such impossibility could not be pleaded as a defense or an excuse for non-performance.\(^8\)

Within recent years the majority of the courts have held that it is the owner who impliedly warrants the sufficiency of the plans and specifications and not the contractor.\(^9\) In practically every American jurisdiction where the question has come up for adjudication it has been held that the contractor is not liable for defects in the plans furnished by the owner.\(^10\) As to producing a desired result by following the plans and specifications where the contract is only to comply with such plans and specifications the contractor is not liable if he fails to produce the desired result.\(^11\) However, where the contractor has bound himself not only to follow the plans and specifications but also to produce a specific result there is a difference of opinion as to his liability for failing to produce the result by following the plans and specifications.\(^12\) With regard to the adaptation of the plans to the site the recent cases hold that the owner, and not the contractor, is assumed to have superior knowledge of the plans if the conditions or defects are not apparent on the face of the contract.\(^13\)

\(^6\) Id.
\(^7\) 70 Ill. 128 (1873).
\(^8\) Lloyd \textit{v.} Murphy, 66 Cal. App. 2d 1020, 153 P. 2d 47 (1944).
\(^9\) Culbertson \textit{v.} Ashland Cement & Const. Co., 144 Ky. 614, 139 S.W 792 (1911); Larson \textit{v.} Tacoma School Dist., 143 Wash. 414, 255 Pac. 113 (1927); Bentley \textit{v.} State, 73 Wis. 416, 41 N.W. 338 (1889), 88 A. L. R. 798 (1934).
\(^10\) Note, 88 A. L. R. 798, 799 (1934).
In those instances where the contractor, after beginning the work or after partial completion has found that the plans and/or specifications were insufficient the courts have allowed him to receive compensation in quantum meruit for any additional expense if he has gone ahead with the owner's consent and done the work. Where the contract provides, as some do, that necessary extra work shall be done at the contractor's expense, this provision includes only extra work that may be said to have been within the reasonable contemplation of the parties at the time the contract was executed. The contractor may recover reasonable compensation for other necessary extra labor or materials.

Thus we have seen the evolution from the doctrine of absolute liability in the early law to the more liberal interpretation adopted by practically every jurisdiction at the present time. It is the belief of the writer that such evolution is in harmony with the spirit of our modern law, and is justified by the present day practice of employing architects and other experts to prepare the plans and specifications.

JAMES C. BROCK

---
