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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 fail-
ures 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 subse-
quent 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 specifica-
tions furnished by the owner he impliedly warranted the sufficiency
of those plans and specifications and assumed any risk of impossi-
bility to comply therewith. He was held to the duty of inspecting
the plans and examining them as to their sufficiency before he ob-
ligated 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 dam-
ages 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."

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."

³ 101 Tex. 63, 104 S.W. 1061, 22 L.R.A. (N.S.) 364, 130 Am. St.
Rep. 803 (1907) Contra: Murphy v. Liberty Nat'l. Bank, 184 Pa. 208,
39 Atl. 143 (1898).

813 (1907).
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 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.\(^13\)

\(^{\text{5}}\) See Northern Pac. R. Co. v. Goss, 203 Fed. 904 at 911 (C.C.A. 8, 1913).
\(^{\text{6}}\) Id.
\(^{\text{7}}\) 70 Ill. 128 (1873).
\(^{\text{8}}\) Lloyd v. Murphy, 66 Cal. App. 2d 1020, 153 P. 2d 47 (1944).
\(^{\text{10}}\) 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.\footnote{Montrose Contracting Co. v. Westchester, 80 F. 2d 841 (C. C. A. 2, 1936); Penn Bridge Co. v. New Orleans, 222 Fed. 737, 138 C. C. A. 191 (1915).}

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.\footnote{Salt Lake City v. Smith, 104 Fed. 457, 462 et seq (C. C. A. 2, 1900).}

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.

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