

LOUISIANA COURT OF APPEAL

Louisiana Industries, Inc. v. Gibbens Bros. Construction Co.

144 So. 2d 630 (La. Ct. App. 1962) · Decided September 4, 1962

SUMMARY

The Louisiana appellate court affirmed a judgment against a contractor and its surety for unpaid construction materials. It held that the surety’s letter and the supplier’s executed release formed a binding agreement to pay the amount claimed, rather than an inadmissible compromise discussion. The agreement novated the prior obligation and was subject to a ten-year prescription period, making the one-year prescription applicable to materialmen’s privileges inapplicable.

CASE DETAILS

COURT	Louisiana Court of Appeal
WRITING FOR THE COURT	M. D. Miller, Jr., Judge pro tem
JURISDICTION	Louisiana
DECIDED	September 4, 1962
DISPOSITION	affirmed
PROCEDURAL POSTURE	Phoenix Insurance Company appealed a judgment holding it and Gibbens Brothers Construction Company jointly and in solido liable to Louisiana Industries for \$733.75 in unpaid construction materials.
STANDARD OF REVIEW	The appellate court reviewed the legal effect and admissibility of the written letter and release and the applicability of prescription to the claim.
PRECEDENTIAL VALUE	Published Louisiana Court of Appeal opinion
PARTIES	Phoenix Insurance Company of Hartford, Connecticut v. Louisiana Industries, Inc.

TOPICS

- construction law
- insurance
- contracts
- contract formation
- evidence

PRACTICE AREAS

- construction law
- contracts
- insurance
- evidence
- commercial litigation

QUESTIONS PRESENTED

1. Whether the June 30, 1960 letter and release constituted inadmissible compromise discussions or an enforceable agreement.
2. Whether the agreement between Louisiana Industries and Phoenix was conditional and, if so, whether the condition was satisfied by the contractor's admission at trial.
3. Whether the agreement novated the prior obligation and was governed by the ten-year prescription period under LSA-Civil Code article 3544 rather than the one-year period under LSA-R.S. 9:4814.

HOLDINGS

1. The letter and release were admissible because they did not evidence a compromise of a disputed amount; they constituted an unconditional offer by Phoenix to pay \$733.75 in exchange for a complete release.
2. Even assuming Phoenix's obligation to pay was suspended until Gibbens approved the correctness of the account, the agreement was a valid contract whose condition was satisfied when Gibbens' counsel admitted that the materials had been received and unpaid.
3. The June 30 agreement novated the prior obligation owed by Phoenix under the bond and was subject to the ten-year prescription period under LSA-Civil Code article 3544; the one-year prescription period under LSA-R.S. 9:4814 did not apply.

KEY QUOTATIONS

"It is simply an unconditional offer by defendant-appellant to pay plaintiff-appellee \$733.75 for a complete release from plaintiff-appellee." (633)

"The offer and acceptance of June 30, 1960 is consequently valid and binding between the parties and is sufficient to novate the prior obligation owed to plaintiff-appellee by defendant-appellant for the satisfaction of the materialmen's privilege under the bond issued to Gibbens Brothers Construction Company." (634)

FACTUAL BACKGROUND

Louisiana Industries sold and delivered 4,000 bricks, worth \$733.75, to Gibbens Brothers Construction Company for use on the Pittman construction job. The contractor did not pay for the materials, and Phoenix, the surety, sent Louisiana Industries a letter and release on June 30, 1960, offering payment of \$733.75 in exchange for a complete release. Louisiana Industries executed and returned the release, but Phoenix never issued payment. The contractor's counsel later admitted at trial that the materials had been received and remained unpaid.

PROCEDURAL HISTORY

Louisiana Industries sued the contractor and Phoenix Insurance Company, the surety on the contractor's bond, for the price of bricks supplied for a construction project. Phoenix pleaded one-year prescription under LSA-R.S. 9:4814 and also objected to the admission of the parties' June 30, 1960 letter and release. The trial court entered judgment for Louisiana Industries; Phoenix appealed. The appellate court affirmed.

DISPOSITION

affirmed

CASES CITED

- Reid v. J. P. Florio and Co., Inc., 172 So. 572 (La. App.)
- Aronson v. Paillet, 173 So. 545 (La. App.)
- Breeland v. Kenner, 174 So. 678 (La. App.)
- Green v. National Life and Accident Co., Inc., 183 So. 604 (La. App.)

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