

NORFOLK COUNTY CIRCUIT COURT

Hanson Pipe & Products, Inc. v. Falcon Construction Corp.

55 Va. Cir. 347 (2001) · Decided June 27, 2001

SUMMARY

The court addressed claims for unpaid concrete materials supplied on two municipal construction projects, each covered by a separate payment bond. It held that the defendant surety for the Glenrock Project was protected by the statute of limitations and that the surety for the Little Creek Project was not liable for Glenrock materials because the bonds clearly covered distinct projects. The court also rejected equitable-estoppel arguments and ruled in favor of both defendant sureties.

CASE DETAILS

COURT	Norfolk County Circuit Court
WRITING FOR THE COURT	Marc Jacobson
JURISDICTION	Virginia
DECIDED	June 27, 2001
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff sued the general contractor and sureties to recover unpaid amounts allegedly owed under two public-construction-project payment bonds. Defendant Fidelity and Deposit Company of Maryland specially pleaded the statute of limitations, and defendant United States Fidelity and Guaranty Company disputed liability for materials supplied to the project covered by the other surety's bond.
STANDARD OF REVIEW	The court interpreted the payment bonds according to their plain language and evaluated equitable-estoppel and statute-of-limitations issues on the stipulated facts.
PRECEDENTIAL VALUE	Published Virginia Circuit Court opinion

TOPICS

construction law contracts statute of limitations commercial litigation insurance

PRACTICE AREAS

construction law commercial litigation contracts insurance

QUESTIONS PRESENTED

1. Whether F&D was equitably estopped from asserting Virginia's one-year statute of limitations for an action on the Glenrock payment bond.
2. Whether the plain language of USF&G's Little Creek payment bond made USF&G liable for materials supplied to the separately bonded Glenrock Project.
3. Whether USF&G was equitably estopped from denying liability for the Glenrock materials because it did not disclose the existence of F&D's separate bond.

HOLDINGS

1. F&D was not equitably estopped from asserting the statute of limitations because F&D had no knowledge of the lawsuit or of any misinformation given to Hanson and owed no duty to disclose the existence of its bond before being served.
2. USF&G was not contractually liable for the Glenrock materials because its bond plainly covered the non-Part-B Little Creek project, while F&D's separate bond expressly covered the Glenrock Project, designated as Part B.
3. USF&G was not equitably estopped from denying liability for the Glenrock materials because its conduct did not cause the limitations delay in a manner that benefited USF&G; any resulting inability to sue benefited F&D, the separate surety.

KEY QUOTATIONS

“The plain language of each bond shows that the two bonds covered two projects, a “Part B” and a non-Part-B project.” (350)

“Here, USF&G is not attempting to assert the statute of limitations defense, which is the basis of the alleged misrepresentation.” (352)

FACTUAL BACKGROUND

Falcon performed two separate City of Norfolk construction projects: the Little Creek Project and the Glenrock Project. Hanson supplied reinforced concrete materials under an open-account arrangement, and Falcon failed to pay \$4,105.05 for Little Creek materials and \$9,722.77 for Glenrock materials. USF&G issued the Little Creek payment bond, while F&D issued a separate bond for the Glenrock Project, designated as Part B. Hanson received the USF&G bond but did not learn of the F&D bond until after the one-year limitations period had expired.

PROCEDURAL HISTORY

Falcon entered into two separate contracts with the City of Norfolk and obtained separate payment bonds from USF&G and F&D. After initially suing USF&G, Hanson learned of the F&D bond and obtained leave to add F&D after the statutory period had expired. The parties stipulated that Falcon owed the amounts claimed and that USF&G was liable for the Little Creek amount; the remaining disputes concerned F&D's limitations defense and USF&G's liability for the Glenrock project. The court ruled in favor of USF&G and F&D and directed entry of judgment for those defendants.

DISPOSITION

other

CASES CITED

- Federal Ins. Co. v. Starr Elec. Co., 242 Va. 459, 465 (1991)
- Reliance Ins. Co. v. Trane Co., 212 Va. 394, 184 S.E.2d 817 (1971)
- Thomas Somerville Co. v. Broyhill, 200 Va. 358 (1958)
- Contee Sand v. Reliance Ins. Co., 209 Va. 672, 676-77 (1969)

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