

SUPREME COURT OF SOUTH DAKOTA

Gettysburg School District 53-1 v. Helms and Associates

2008 SD 35 (S.D. 2008) · No. No. 24543 · Decided April 30, 2008

SUMMARY

The Supreme Court of South Dakota affirmed a jury verdict for Gettysburg School District arising from defective construction of an outdoor track. The court rejected Bituminous Paving's arguments concerning contractual conditions precedent, notice, comparative fault, the verdict form, prejudgment interest, attorneys' fees, and expert witness costs. The court held that the District followed the contract's repair and dispute procedures and that the contract authorized recovery of fees and costs.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Meierhenry, Justice; Gilbertson, Chief Justice; Konenkamp, Justice; Sabers, Justice; Zinter, Justice
JURISDICTION	South Dakota
DECIDED	April 30, 2008
DOCKET	No. 24543
DISPOSITION	affirmed
PROCEDURAL POSTURE	Bituminous appealed a jury verdict and posttrial judgment awarding the Gettysburg School District damages, prejudgment interest, attorneys' fees, expert witness fees, and other costs arising from defective construction of an outdoor track.
STANDARD OF REVIEW	The court reviewed the use of the special verdict form for abuse of discretion. It reviewed the legal issues concerning conditions precedent, prejudgment interest, and contractual fee and cost awards as questions of law, and presumed that the jury understood and followed properly given instructions.
PRECEDENTIAL VALUE	Published South Dakota Supreme Court opinion; precedential.
PARTIES	Bituminous Paving, Inc. v. Gettysburg School District 53-1

TOPICS

- construction defects
- construction law
- breach of contract
- damages
- appellate procedure

PRACTICE AREAS

construction law

contracts

torts

remedies

appellate procedure

QUESTIONS PRESENTED

1. Whether the District's breach-of-contract claim was barred, waived, or estopped because the District allegedly failed to satisfy contractual conditions precedent, including pleading satisfaction of conditions, providing notice of defects, obtaining an engineer's decision, or obtaining a certificate of substantial completion.
2. Whether the negligence claim was barred because the jury allocated 70% responsibility to Bituminous, allegedly implying that the District was more than slightly contributorily negligent.
3. Whether the special verdict form and related jury instructions were confusing or prejudicial.
4. Whether the award of prejudgment interest was erroneous because the damages were uncertain or constituted future damages.
5. Whether the trial court properly awarded attorneys' fees, expert witness fees, and other costs under the parties' contract.

HOLDINGS

1. The District's breach-of-contract claim was not barred, waived, or estopped by the asserted failures to satisfy contractual conditions precedent. The District provided sufficient notice of the known defects, followed the contract's repair and dispute procedures, and was entitled to sue after the repair efforts failed.
2. The jury's finding that Bituminous was 70% responsible did not establish as a matter of law that the District was 30% contributorily negligent or bar the District's negligence claim.
3. The special verdict form was neither confusing nor prejudicial, and Bituminous failed to establish that the trial court abused its discretion by using it.
4. The prejudgment-interest award was proper. Under SDCL 21-1-13.1, prejudgment interest is allowed from the date the loss or damage occurred regardless of whether the damages were certain at that time, and the District's loss occurred when it received the faulty track rather than when it later paid for replacement.
5. The trial court properly awarded attorneys' fees, expert witness fees, and other costs because the contract expressly authorized recovery of those amounts when Bituminous's work was defective.

KEY QUOTATIONS

“The contract did not contemplate infinite opportunities to repair a structurally defective project that was scheduled for completion almost two years earlier.” (§13)

“Under the present rule in SDCL 21-1-13.1, prejudgment interest is allowed from the day the loss or damage occurred regardless of whether the damages are certain.” (§23)

FACTUAL BACKGROUND

The District contracted with Bituminous to construct an outdoor track and with Helms and Associates to provide engineering and inspection services. Defects appeared shortly after completion, including uneven lanes, depressions, cracking, improper slopes, pooling water, inadequate compaction, and asphalt containing unsuitable shale-like material. Bituminous attempted repairs, but the problems remained or worsened; after an outside expert concluded that the defects were structural and could not be adequately corrected by patching, the District stopped the proposed re-repair work and sued.

PROCEDURAL HISTORY

The District sued Bituminous and Helms and Associates for defective construction and related claims. The District settled its claims against Helms before trial. A jury found Bituminous liable for breach of contract, negligence, breach of express or implied warranties, and breach of the duty of good faith, awarded total damages of \$215,500, and allocated 70% responsibility to Bituminous. The trial court awarded prejudgment interest, statutory costs, disbursements, attorneys' fees, and expert witness costs, resulting in a \$278,450 judgment. The Supreme Court of South Dakota affirmed.

DISPOSITION

affirmed

CASES CITED

- Hall v. State ex rel. South Dakota Department of Transportation, 2006 SD 24, ¶12, 712 N.W.2d 22, 26
- First National Bank of Minneapolis v. Kehn Ranch, Inc., 394 N.W.2d 709, 720 (S.D. 1986)
- Allen v. McLain, 75 S.D. 520, 529, 69 N.W.2d 390, 395 (1955)
- Thomas v. Sully County, 2001 SD 73, ¶¶8-9, 629 N.W.2d 590, 592-93
- Martinmaas v. Engelmann, 2000 SD 85, ¶72, 612 N.W.2d 600, 615
- Woods v. City of Crooks, 1997 SD 20, 559 N.W.2d 558
- Miller v. Hernandez, 520 N.W.2d 266, 270 (S.D. 1994)
- Kanta v. Kanta, 479 N.W.2d 505, 507 (S.D. 1991)
- Fjerstad v. Sioux Valley Hospital, 291 N.W.2d 786, 788 (S.D. 1980)
- Setliff v. Stewart, 2005 SD 40, ¶46, 694 N.W.2d 859, 871
- City of Aberdeen v. Rich, 2003 SD 27, ¶19, 658 N.W.2d 775, 781
- All Star Construction Co., Inc. v. Koehn, 2007 SD 111, ¶24, 741 N.W.2d 736, 742
- Honomichl v. Modlin, 477 N.W.2d 599, 601 (S.D. 1991)
- Fuller v. Croston, 2006 SD 110, ¶41, 725 N.W.2d 600, 612
- Credit Collection Service, Inc. v. Pesicka, 2006 SD 81, ¶6, 721 N.W.2d 474, 476
- Matter of Estate of O'Keefe, 1998 SD 92, ¶17, 583 N.W.2d 138, 142
- Jacobson v. Gulbranson, 2001 SD 33, ¶31, 623 N.W.2d 84, 91
- Berry v. Risdall, 1998 SD 18, ¶12, 576 N.W.2d 1, 5
- Baker v. Jewell, 77 S.D. 573, 580, 96 N.W.2d 299, 304 (1959)

