

ASSIGNED FOR PRETRIAL CONFERENCE AT PIKEVILLE, KENTUCKY
ON MARCH 22, 1982 AT 3:00 P.M.

PIKEVILLE CIVIL ACTION NO. 79-205

JOE SIMPSON d/b/a
JOE SIMPSON PLASTERING COMPANY

JAMES E. COOPER

VS:

APPALACHIAN REGIONAL HOSPITALS, INC.
Deft & Third Party Plaintiff

DAVID T. ENLOW

VS:

ARMSTRONG CONSTRUCTORS, INC. and
HARTFORD ACCIDENT & INDEMNITY
COMPANY

Third Party Defendant

RICHARD W. MARTIN

PRETRIAL CONFERENCE

12/10/79 #1 COMPLAINT, fil

1/31/80 #7 ANSWER, of deft & THIRD PARTY COMPLAINT

3/17/80 #14 ANSWER, of Third party Defts. Armstrong Const. Co. & Hartford
Accident & Indemnity Co.

TRIAL DATE SET FOR APRIL 6, 1982

DEMAND FOR JURY

PLAINTIFF

TO: Judge
FROM: Maggie
DATE: 22 March 1982
RE: Civil Action # 79-205

JOE SIMPSON v. APPALACHIAN REGIONAL HOSPITALS v. ARMSTRONG
CONSTRUCTORS & THE HARTFORD COMPANY

Pre-trial Conference today, 3:00

Nobody in this case has filed a memorandum for this conference.

Nothing new has happened since the preliminary conference,
except that the parties ~~filed~~^{tendered} (two weeks late) their agreed
statement of disputed facts and agreed facts.

Trial is scheduled for April 6.

* However, the statement of agreed and disputed facts, signed by
all 4 parties, says:

"There are no disputed facts and all
remaining issues in this proceeding
are substantive issues of law."

AT THE PRE-TRIAL:

1. I'd suggest ordering the statement of agreed and disputed facts FILED, although they tendered it so late.
2. I'd suggest that you dispose of this thing on cross-motions for summary judgment, since everyone involved believes there are no disputed facts.
You could order them to each file a summary judgment motion by a certain date, allowing them each to respond to the other motions within a certain number of days thereafter. If it develops that there are some factual issues to be resolved, then you could schedule a trial; but for now, there's not much point in keeping a trial date scheduled for a case in which there are no factual issues to be resolved.

SUMMARY JUDGMENT MOTIONS:

1. If you order them to move for summary judgments, the issues on which each party would argue they deserve judgment as a matter of law would appear to be:
 - a. Whether plaintiff has an equitable remedy in quasi-contract for his expenditures on the hospital project,
 - b. Whether, if plaintiff is entitled to his remedy, the hospital is entitled to indemnification from the general contractor (or the contractor's surety) (Based on the preliminary conference memos, there are probably sub-issues here, such as whether any claim against the performance bond is now untimely under its terms, how the bond provisions are to be interpreted . . . , however, these aren't clear from the pleadings and there are no pre-trial memos to spell it out)

Civil 79-205 - Joe Simpson vs (Somebody)

Mary,

While in the Clarks' office just now,
counsel for TT in 79-205 called
& alluded to Judge's having relieved
TT, Mr. Simpson, from mandatory
attendance at the PTC. Supposedly
Judge did this at the PC; but
after Brenda hung up the phone, after
rightly advising him that she couldn't
make any such confirmation over the
phone, she checked the PC minutes
& found no reference to whether or
not TT has to show for the PTC.
She said she'd check her own notes
& I said we'd check anything that
we can check. OK?

Thanks,

MSF 3/18, 3:45 p.m.

TO: Judge
FROM: Maggie
DATE: 5 February
RE:

STATUS CONFERENCE

JOE SIMPSON V. APPALACHIAN REGIONAL HOSPITALS

FACTS:

1. Defendant hospital contracted with 3rd party defendant contractor to build addition to the hospital.
2. 3rd party defendant contractor contracted with plaintiff subcontractor for labor and materials.
3. Hospital addition was never built.
4. 3rd party defendant contractor is now insolvent.
5. Plaintiff subcontractor sues the defendant hospital.

THE ACTION:

1. Plaintiff seeks to recover of the defendant hospital in equity. He wants a quantum meruit recovery, for the value of the labor and materials he furnished to the hospital and which he claims have enriched the hospital.
2. Defendant hospital sues the contractor, with whom it had the original contract, and the insurance company which acted as surety on the contractor's bond against claimants.

THE ISSUES:

1. Whether the hospital is liable in quasi-contract to the subcontractor.
2. Whether the contractor is liable to the hospital on the basis of their construction contract.
3. Whether the surety is liable, should the contractor be found liable, to the plaintiff subcontractor.

PRESENT STATUS:

1. We'll find out at the conference, I suppose.
2. Nothing has happened in over a year. At that time, the parties were conducting discovery.
3. Discovery was to be concluded over a year ago, but no further conferences were set until you set this status conference by order of this past December 4.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

CIVIL ACTION NO. 79-205

JOE SIMPSON d/b/a JOE SIMPSON
PLASTERING COMPANY

PLAINTIFF

V.

APPALACHIAN REGIONAL HOSPITALS, INC.

DEFENDANT AND
THIRD PARTY
PLAINTIFF

V.

ARMSTRONG CONSTRUCTORS, INC., AND
HARTFORD ACCIDENT AND INDEMNITY COMPANY

THIRD PARTY
DEFENDANTS

* * * * *

-PRELIMINARY CONFERENCE NOTES-

1. This is an action on a construction contract arising out of a contract to construct an addition to the defendant hospital. Jurisdiction is not seriously contested.
2. Plaintiff was a subcontractor who performed work on the building, but was never paid.
3. The hospital has sued the third party defendant for indemnification. There were the usual construction bonds executed. Hartford is the surety of those bonds.
4. The facts indicate that the construction was never completed. The plaintiff alleges that the hospital gained some benefit from the work that was done, and that the hospital should therefore pay for the work. I.E. quantum meruit.
5. The parties all agree that there is no privity of contract between the plaintiff and the hospital. The action is therefore based upon implied contract.

ISSUES:

- what is the Kentucky law on implied contracts
- do these facts invoke an obligation on the hospital to pay under implied contract
- what are the time limits the parties have set by contract within which demand for payment must be made (as they relate to the sureties)
- proper interpretation of the bond obligations
- whether the indemnification of the hospital is proper given all the facts.