

Standard Industries v. Matrix Industries, et al. (IC759707)

Result: Mar. 11, 03

San Diego Superior
HON Harry R. McCue

Topic: Contracts

Sub topic: Breach of Contract

Sub-sub topic: Construction

Binding arbitration: \$86,415

Attorneys:

Plaintiff - Christopher W. Olmsted, Barker Law Group, San Diego

Defendant - Thomas M. Finrow, La Mesa. Represents Clauss Construction Inc., Fidelity and Deposit Company of Maryland

Defendant - David Pines, Law Offices of David A. Pines, Woodland Hills. Represents Matrix Industries Inc. and Lumbermens Mutual Casualty Co.

Defendant - Sim Von Kalinowski, Office of the City Attorney, San Diego. Represents City of San Diego

Facts: The City of San Diego owned an old water tank located in East San Diego. The city wanted to demolish the tank, so it put out a notice for bids in early 1999. The city's environmental experts determined that the tank was covered in lead paint. Therefore, the city's project specifications required that the contractor adopt special procedures to prevent lead contamination of the area. The city awarded the contract to the defendant Clauss Construction for a price of \$214,185. Clauss subcontracted with the defendant Matrix Industries to perform the lead abatement and demolition for a price of \$79,000. Matrix, in turn, subcontracted with the plaintiff Standard Industries to cut down the tank and remove the scrap metal from the site for a price of \$20,000. The city contract contained a 180-day completion date with liquidated damages. Due to problems with environmental compliance paperwork, work started four months after the Aug. 30, 1999 notice to proceed. When work started in January 2000, Matrix encountered problems abating the lead paint, causing more delay. When the abatement was done, Matrix called Standard to the jobsite. However, environmental compliance issues delayed the start of work one day and so Matrix added \$1,650 to Standard's contract price. The next day, Standard began tearing down the tank and finished, on time, within ten days. Clauss' work went on through April 2000, when the project was finally completed. Because the project completion was delayed, the city penalized Clauss Construction for 31 days of liquidated damages, for a total of \$31,000. Clauss, in turn, deducted funds from Matrix's contract and paid them nothing. Matrix then refused to pay Standard.

Contentions: The plaintiff contended that it completed the demolition in accordance with the contract and was entitled to \$21,650, plus interest, costs and fees. The defendant Matrix contended that Standard was partly at fault for the four-month delay caused by unacceptable environmental compliance paperwork. Matrix also contended that Standard changed the cutting methodology from cutting to torching, which, in turn, widened the scope of Matrix's abatement work. It also contended that Standard mobilized late, causing more

delay. Clauss and Matrix contended that Standard caused property damage.

Damages: \$21,650 for breach of contract, plus interest, costs and attorney fees.

Settlement Discussions: Standard originally offered to settle for the contract price of \$21,650. As it had incurred attorney fees, costs and accrued interest, the demand increased to a high of \$51,400 sixty days before arbitration. At that point, Matrix offered to pay \$21,650, which was rejected.

Result: An award in favor of Standard as against Matrix, Clauss and their sureties: Principal, \$21,650; attorney fees in the amount of \$44,799; costs in the amount of \$2,983 and prejudgment interest in the amount of \$16,981, for a total amount of \$86,414.

Other Information: The parties stipulated to binding arbitration. Clauss' motion to set aside the award was denied. Judgment was entered on March 11, 2003.

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