

ASSOCIATED BUILDERS, INC. V. WILLIAM M. COGGINS ET AL.

SUPREME JUDICIAL COURT OF MAINE, 1999

1999 ME 12, 722 A.2D 1278

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FACTS Associated Builders, Inc. provided labor and materials to the defendants William M. Coggins and Benjamin W. Coggins, d/b/a Ben & Bill's Chocolate Emporium, to complete a structure on Main Street in Bar Harbor, Maine. After a dispute arose regarding compensation, Associated and the Cogginses executed an agreement stating that there existed an outstanding balance of \$70,005.54 and setting forth the following terms of repayment:

It is agreed that, two payments will be made by [the Cogginses] to [Associated] as follows: Twenty Five Thousand Dollars (\$25,000.00) on or before June 1, 1996 and Twenty Five Thousand Dollars (\$25,000.00) on or before June 1, 1997. No interest will be charged or paid providing payments are made as agreed. If the payments are not made as agreed then interest shall accrue at 10% per annum figured from the date of default. . . . It is further agreed that Associated Builders will forfeit the balance of Twenty Thousand and Five Dollars and Fifty Four Cents (\$20,005.54) providing the above payments are made as agreed.

The Cogginses made their first payment in accordance with the agreement. The second payment, however, was delivered three days late on June 4, 1997. Claiming a breach of the contract, Associated filed a complaint demanding the balance on the original contract of \$20,005.54, plus interest and cost. The Cogginses answered the complaint raising the affirmative defense of an accord and satisfaction and waiver. Both parties moved for a summary judgment. The court granted the Cogginses' motion and Associated appealed.

DECISION Judgment for the Cogginses affirmed.

OPINION Dana, J. "An accord 'is a contract under which an obligee promises to accept a substituted performance in future satisfaction of the obligor's duty.'" [Citation.] Settlement of a disputed claim is sufficient consideration for an accord and satisfaction. [Citation.] Here, the court correctly found the June 15, 1995 agreement to be an accord.

Satisfaction is the execution or performance of the accord. [Citation.] If the obligor breaches the accord, the obligee may enforce either the original duty or any duty pursuant to the accord. [Citations.] The obligor's breach of the accord, however, must be material. [Citations.] The question before the court, therefore, was whether the Cogginses' late payment constituted a material breach of the accord. The court found that it was not.

We apply traditional contract principles to determine if a party has committed a material breach. [Citation.] A material breach "is a nonperformance of a duty that is so material and important as to justify the injured party in regarding the whole transaction as at an end." [Citation]; see RESTATEMENT (SECOND) OF CONTRACTS § 241 (1981). [Court's footnote: The Restatement lists five factors as significant in determining if a failure to render performance is material: (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected; (b) the extent to which the injured party can be adequately compensated for the part of the benefit of which he will be deprived; (c) the extent to which the party failing to perform . . . will suffer forfeiture; (d) the likelihood that the party failing to perform . . . will cure his failure . . .; (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.]

"Time of performance" is merely one element in determining whether a defective or incomplete or belated performance is "substantial [performance]." [Citation.] Applying these principles, courts have found that a slight delay of payment that causes no detriment or prejudice to the obligee is not a material breach. [Citations.]

We discern no error in the Superior Court's finding that the Cogginses' payment to Associated after a three-day delay was not a material breach and, therefore, satisfied the June 15, 1995 accord. [Citation.] By receiving the second and final payment of \$25,000, Associated was not deprived of the benefit that it reasonably expected. [Citation.]. Moreover, Associated has not alleged any prejudice from this three-day delay. [Citations.] Further, the

Cogginses' late payment was not made in bad faith. [Citations.] Finally, neither the purpose of the June 15, 1995 accord nor the language of the accord suggests that time was of the essence. [Citation.] Because the late payment was not a material breach of the June 15, 1995 accord, the Cogginses have complied with the June 15, 1995 agreement relieving them of further liability to Associated.

INTERPRETATION Satisfaction is the performance of an accord; but if the obligor materially breaches the accord, the obligee may enforce either the original duty or any duty under the accord.

CRITICAL THINKING QUESTION Should courts hold contracting parties strictly to the letter of a contract? Why or why not?