

18. PERFORMANCE AND DISCHARGE

Presented by

Marisa Schatz,

Georgiana Battisonnicol

And Nancy Mora

STR Constructors and
Arch Insurance Company

v.

NEWMAN Tile



1. “Scintilla of Evidence”

- *According to TheLawDictionary.com, “Scintilla of evidence“ is a spark of evidence, usually used to infer that there is almost no evidence at all to support a proposition but it is still small enough to warrant a matter to be decided by a jury.*
- After reviewing the entire record, sufficient evidence such as the work done by NTI was considered and counted as factual evidence.

2. Breach of contract

- *A contract when he fails to perform an act that he has expressly or impliedly promised to perform. If the breach is material, the other party is discharged or excused from further performance.*
- STR materially breached the contract by terminating NTI without a cause.
- The project fell behind and kitchen tile was not prepared for the tile installation.
- Based upon the following facts, STR was found to materially breach the contract.

3. Failure to Perform

- *(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 that benefit of which he will be deprived.*
- *(c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture.*
- *(d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of the circumstances including any reasonable assurances.*
- *(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.*



Continued...

- Timely matter. STR failed to adhere to the schedule they had originally created, as a result NTI failed behind on the installation of the tile.
- Neglect. STR neglected to have a proper working environment for NTI team.
- Failure to Pay. As stated under the contract, STR was entitled to pay NTI approximately \$40,000.00. Although NTI submitted the 4 pay applications, STR only pay for 2.



4. You breached it first...



- *"NTI alone breached the contract and [NTI] breached first by performing" work so defective that it was rejected completely by the owner and architect following their inspection of the kitchen. Accordingly, STR maintains that terminating the contract was not wrongful, but in accord with the contract".*
- STR believed that they had the right to terminate the contract because it was first breached by NTI due to defective work done.
- STR further established that NTI tile work was rejected by the school district inspector and architect.

5. Testimonies

- *STR's behavior not only failed to comport with standards of good faith and fair dealing, but also played a significant role in creating the situation that STR now argues justified its termination of the contract .*
- The appeal court states that the testimony established that there was more than enough evidence to prove that STR failed to comport with standards of good faith and fair dealing.
- STR termination was not justifiable based on the evidences from the testimonies from both parties such as not adhering to schedule, not providing proper working conditions.

6. Contract materially breached

- *STR materially breached the contract and did so first by failing to pay what it owed NTI before terminating the contract.*
- Even though STR materially breached the contract by failing to pay NTI they -STR – still argued that they did not owe and they never received money for the work done by NTI.

Continued...

- The contract clearly stated that payment shall be made when work done is approved by the architect and owner. “ On the twenty fifth day of each month Subcontractor shall present to Contractor a statement of the work done during the preceding month, which statement, when checked and approved by contractor, will be paid within five (5) days after receipt of payment from Owner,

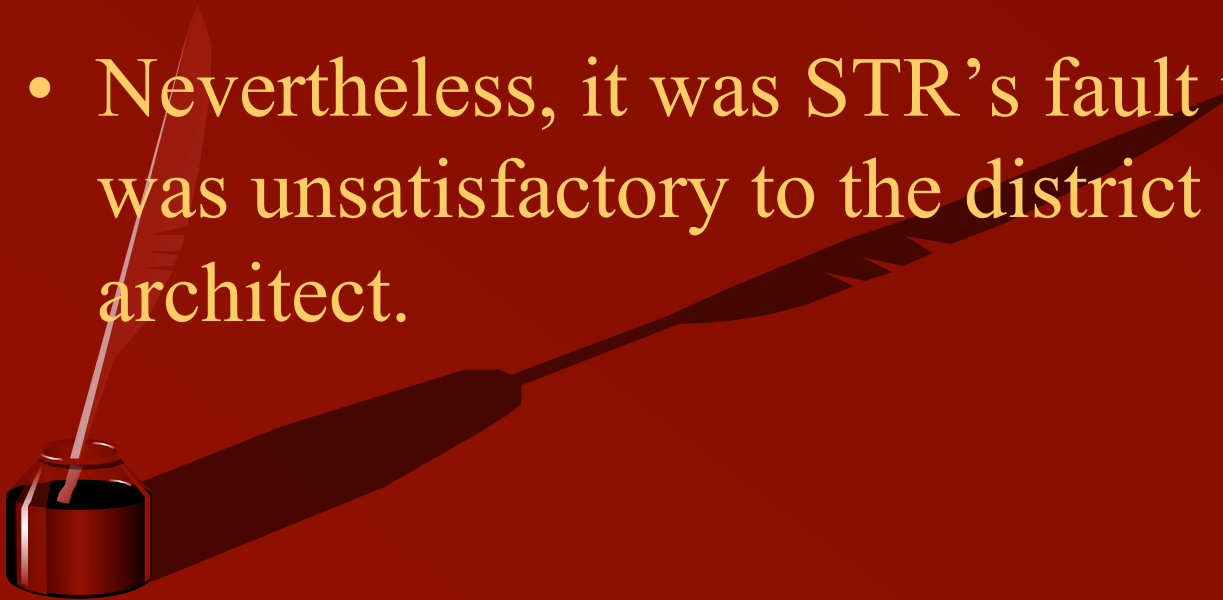
Continued...

- providing progress of the work and payments for labor used and material purchased by Subcontractor have been satisfactory”. Nevertheless, it was STR’s fault that NTI’s work was unsatisfactory to the district official and architect.



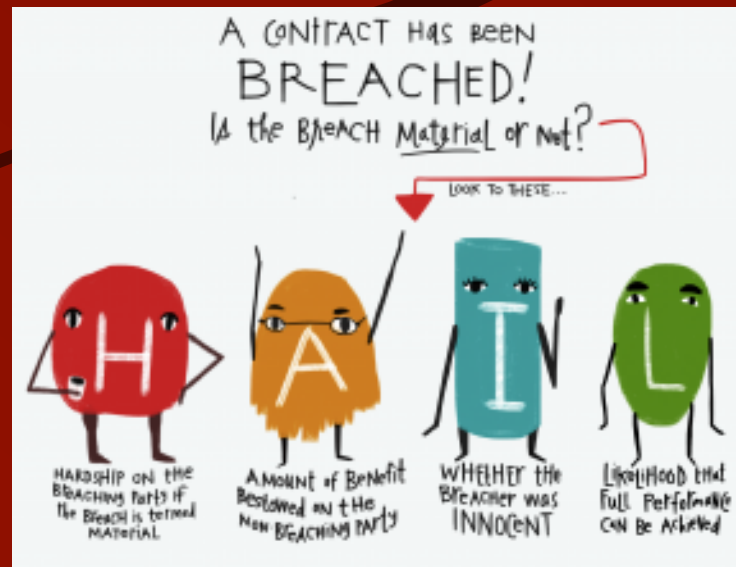
Continued...

- The contact clearly stated that payment shall be made when work done is approved by the architect and owner.
- Nevertheless, it was STR's fault that NTI's work was unsatisfactory to the district official and architect.



7. Substantial Performance Doctrine

- *Under the doctrine of substantial performance, a breaching party may recover damages if it has substantially complied with its contractual obligations. To recover damages under this doctrine, a breaching party must ordinarily obtain a finding that it substantially performed.*



Continued...

- Even though both parties materially breached the contract, it was STR who first terminated the contract.
- NTI substantial performance made it possible for them to recover damages because they substantially complied with their contractual obligations.
- Since it was STR that breached the contract they do not need to prove that they substantially performed because he had no right.

8. *Quantum Meruit*

- *The plaintiff was seeking "to recover the reasonable value of services rendered or materials supplied will be permitted to recover in quantum meruit only when there is no express contract covering those services or materials."*
- For a plaintiff to recover in *quantum meruit*, there must be no express contract but however the court make exceptions. It was permitted in this case because the evidence provided was legally sufficient for NTI to recover in *quantum meruit*. For example installation of the blue nose tile on the wall and an additional tile on the kitchen floor at STR's request.

9. Conclusion – who won?

- **NTI won the case. The appeals court found out that the evidence was legal to support the jury's findings that STR materially breached the contract by terminating it without a cause. STR failed to comport with standards of good faith and fair dealings. Also that all the other issues that they had with NTI they –STR- played a significant role in creating them.**