

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000726-MR

BORNSTEIN BUILDING CO., INC.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE AUDRA J. ECKERLE, JUDGE
ACTION NO. 09-CI-000052

ATLAS METAL PRODUCTS CO.

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: TAYLOR, CHIEF JUDGE; STUMBO, JUDGE; LAMBERT,¹ CHIEF SENIOR JUDGE.

STUMBO, JUDGE: Bornstein Building Co., Inc. is appealing from a summary

judgment granted in favor of Atlas Metal Products Co. The Jefferson Circuit Court

¹ Chief Senior Judge Joseph E. Lambert, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

found that there was no enforceable contract formed between these two companies.

We agree and affirm.

Bornstein is a general contractor which was bidding on a construction project at the University of Louisville Cardiovascular Innovation Institute. Atlas is a distributor of materials for sale to general construction contractors for installation in construction projects. On or about September 23, 2008, Atlas tendered a bid package to Bornstein to supply certain items and materials for the project.

Bornstein incorporated some of the items from Atlas' bid into its proposal for the project. Bornstein was awarded the contract for the project.

On or about October 29, 2008, Bornstein sent a purchase order to Atlas for the materials. One item on the purchase order was a pass-through window.² Atlas claims that it did not offer this item and in fact specifically excluded it from its bid package. Bornstein argues that Atlas did include it in the bid. The confusion came from Atlas' inclusion of a different item, a specimen pass thru,³ in its bid. Bornstein claims there was no confusion and that the quoted specimen pass thru is the same as the pass-through window.

Eventually, Bornstein purchased the required pass-through windows from another supplier and brought suit against Atlas to recover the monetary difference between the specimen pass-thru quoted by Atlas and the pass-through

² A pass-through window is a stainless steel box or window that is hermetically sealed. It is used to allow patients to pass medical specimens to laboratory technicians in medical clean rooms.

³ A specimen pass thru is not the same as a pass-through window. A specimen pass thru is not hermetically sealed and is considerably less expensive. The specimen pass thru was priced at \$966 while pass-through windows cost over \$9,000 each.

windows actually purchased from another supplier. After discovery was conducted, both parties filed motions for summary judgment. Summary judgment was granted in favor of Atlas. The trial court found that Atlas had specifically excluded the pass-through windows in its bid and that no valid contract was formed between the parties with regard to the pass-through windows. This appeal followed.

The standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure (CR) 56.03 “The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor.” *Steelvest, Inc. v. Scansteel Service Center, Inc.*, Ky., 807 S.W.2d 476, 480 (1991). Summary “judgment is only proper where the movant shows that the adverse party could not prevail under any circumstances.” *Steelvest*, 807 S.W.2d at 480, citing *Paintsville Hospital Co. v. Rose*, Ky., 683 S.W.2d 255 (1985). Consequently, summary judgment must be granted “[o]nly when it appears impossible for the nonmoving party to produce evidence at trial warranting a judgment in his favor” *Huddleston v. Hughes*, Ky. App., 843 S.W.2d 901, 903 (1992).

Scifres v. Kraft, 916 S.W.2d 779, 781 (Ky. App. 1996).

The interpretation of a contract is a question of law for the Court.

Abney v. Nationwide Mut. Ins. Co., 215 S.W.3d 699, 703 (Ky. 2006).

When no ambiguity exists in the contract, we look only as far as the four corners of the document to determine [the] intent. See *3D Enterprises Contracting Corp. v. Louisville and Jefferson County Metro. Sewer Dist.*, 174 S.W.3d 440, 448 (Ky. 2005). “The fact that one party may have intended different results, however, is

insufficient to construe a contract at variance with its plain and unambiguous terms.” *Cantrell Supply, Inc. v. Liberty Mut. Ins. Co.*, 94 S.W.3d 381, 385 (Ky. App. 2002).

Id.

In the case at hand, we agree with the trial court that there was no contract as it pertains to the pass-through windows. In the bid package submitted by Atlas to Bornstein, there is a section called “Exclusions.” That section includes “clean room items” and “pass through windows.” That is a clear and unambiguous statement.

Further, as stated above, a specimen pass thru and a pass-through window are two different items.

When words are used in a context of ordinary usage then their commonly understood meanings are the meanings to be ascribed to those words. When other words, even in the same writing, are used as technical terms in a transaction entered into by parties knowledgeable in a technical field then the technical meanings of such words are the meanings to be ascribed to those words.
Bradford v. Billington, 299 S.W.2d 601 (Ky. 1957).

Cook United, Inc. v. Waits, 512 S.W.2d 493, 495 (Ky. 1974).

It is clear that pass-through windows were specifically excluded from Atlas’ bid. We find that the trial court did not err when it granted summary judgment in favor of Atlas. We therefore affirm the judgment.

ALL CONCUR.

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