

CANADA / JUDGMENT

Cana Construction Co. v. R.

[1974] SCR 1159

COURT

Supreme Court of Canada

DECIDED

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Cana Construction Co. v. R.

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Date

1973-08-27

Report

[1974] SCR 1159

Judges

Martland, Ronald; Judson, Wilfred; Ritchie, Roland Almon; Spence, Wishart Flett; Laskin, Bora

On appeal from

Canada

Subjects

Contract

Decision Content

Supreme Court of Canada

Cana Construction Co. v. R., [1974] S.C.R. 1159

Date: 1973-08-27

Cana Construction Co. Ltd. formerly Burns and Dutton Construction (1962) Ltd. Appellant;
and

Her Majesty The Queen Respondent.

1973: May 31, June 1; 1973: August 27.

Present: Martland, Judson, Ritchie, Spence and Laskin JJ.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Contract—Building contracts—Crown contract—Estimate of cost—Bid based on estimate—
Liability of owner for extras.

The appellant entered an agreement with the Crown in 1964 for the construction of a new postal terminal at Edmonton. Tenders had been invited in May of that year for the construction of the building forthwith on the understanding that separate tenders would be invited for the supply and installation of the mail handling equipment once plans and specifications were complete and the electrical and control system decided upon. The supply and installation of this equipment was however to be the responsibility of the general contractor who would enter a subcontract with the successful bidder as notified to them by the Department of Public Works. An estimate of the cost of the supply and installation of the mail handling equipment in the amount of \$1,150,000 was embodied in material made available to prospective bidders by the Department of Public Works. In addition these bidders were supplied with a complete set of drawings for the building but no mail handling equipment drawings or specifications except three drawings described as floor layout plans and marked “For information only”. The actual figure included in the subcontract for the supply and installation of the mail handling equipment proved to be \$2,078,543.66. The appellant’s claim for an extra for overhead supervision and profit as general contractor arose because of the striking difference between the estimate and the amount of the subcontract. The trial judge allowed the appellant’s petition for only \$19,654.79 of its claim of \$92,854.37 amended to \$102,812.46.

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Held: The appeal should be allowed.

Due to the unusual circumstances under which the contract was made the head contractor had no chance to take the subcontract into account when drawing his tender other than the floor plans marked “for information only”. The estimate of \$1,150,000 was expected to be accurate and given to the bidders as a basis on which to submit their bids and these bidders were entitled to rely on the figures being accurate within certain normal limits (generally accepted as some 10 per cent above or below the estimate). The Crown directed the appellant to treat the subcontract as if it were an extra: when the parties entered the original contract the larger amount was not within the contemplation of the parties. The subcontract should have been handled as an extra and 10 per cent of the amount by which the subcontract was over \$1,150,000 allowed for overhead, supervision and profit. *Parkinson & Co. Ltd. v. Commissioners of Works and Public Buildings* [1950] 1 All E.R. 208 applied.

APPEAL from a judgment of the Exchequer Court of Canada. Appeal allowed.

H. Irving, Q.C., and K.F. Bailey, for the appellant.

A. Pennington and P.T. McInenly, for the respondent.

The judgment of the Court was delivered by

SPENCE J.—This is an appeal from the judgment of the Exchequer Court of Canada pronounced on July 23, 1970. By that judgment, the said Exchequer Court of Canada awarded to the appellant the sum of \$19,654.79 without interest. The appellant, as Suppliant in the Exchequer Court of Canada, had claimed \$92,854.37 subsequently amended to the sum of \$102,812.46.

The Suppliant had entered into an agreement with the Crown under date July 15, 1964 for the construction of the new postal terminal at

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Edmonton, in the Province of Alberta. The Suppliant was then known as Burns & Dutton Construction (1962) Ltd., but it is the same company as the present appellant.

As a preliminary statement of facts, I take the following account from the reasons for judgment of the learned trial judge:

The suppliant, a joint stock company engaged in the construction business, was the successful tenderer for the construction of an addition and alterations to Postal Terminal “A” in the City of Edmonton, Alberta for the price of \$4,424,626. It was agreed that the suppliant should not supply and install mail handling equipment but that the respondent should call for and accept tenders for the supply and installation of the mail handling equipment and that when the successful bidder was selected by the respondent, such supply and installation should become part of this contract and the suppliant would enter into a sub-contract with the tenderer selected by the respondent.

In the late 1950’s it became evident to the Post Office Department that the facilities for handling mail in Edmonton would require expansion. The engineering staff of the Post Office began preliminary studies for a project to fulfill those needs and to formulate an estimate of the cost of the project in order that the necessary funds might be voted by Parliament, which was done.

Two firms of architects, K.C. Stanley and associates and Aberdeen and Groves, both of Edmonton, were engaged as co-designers and supervising architects of the proposed Post Office. While the building itself was to be merely the “umbrella” for the mail handling equipment it was to house, nevertheless, the whole project was experimental in nature being predicated upon the function of a system to handle the flow of mail. The Architects worked on the design of the building, with the view of housing the mail handling equipment to be installed, from 1953 until 1963 before the Post Office Department was satisfied. Naturally throughout that period there were many consultations and meetings with the consequent exchange of ideas.

The architects employed a firm of consulting engineers, Racey, MacCallum and Bluteau to advise upon the mail handling system. The responsibility for so advising devolved upon Mr. Bluteau a member of that firm.

As I conceive the function of Mr. Bluteau from the evidence adduced, it was that he would act in a co-ordinating capacity. The basic major components

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of the mail handling system and the manufacturers and suppliers thereof had already been selected by the Post Office, the preliminary studies and ideas and conclusions as to feasibility had been done by that Department as well as preliminary drawings.

Mr. Bluteau was to prepare detailed drawings and specifications. On receiving the preliminary drawings from the Post Office he made and discussed with the Post Office many modifications, some minor and some major ones.

As I understood the evidence, Mr. Bluteau's task in the design of the equipment would be to ensure that the major components of the system, which were designed by the manufacturers, were incorporated in an overall system, with chutes, conveyors and like connections and devices to fulfill the flow of mail requirements. His responsibility also included the design of an electrical and control system for the overall system but not for individual component units.

Mr. Bluteau testified that he considered his work to have been finished in June 1964 when he had sent all corrected drawings and specifications drafted by him to the Post Office Department, excepting additional work that might be required of him and the design of an electrical and control system.

...

The Post Office Department was anxious to get the project under way and the Department of Public Works, in turn, was anxious to invite tenders. It was apparent to them that due to the considerable delay which was being experienced on the completion of the mail handling equipment drawings and specifications and the design of electrical and control systems for the mail handling system, that a corresponding delay would follow on the completion of the overall project. Accordingly it was resolved that tenders should be invited for the construction of the building forthwith and that subsequently separate tenders would be invited for the supply and installation of the mail handling equipment when plans and specifications had been completed and the electrical and control system decided upon. Therefore it was considered that it would be more expeditious to incorporate the supply and installation of the mail handling equipment as part of the general contract so that this would become the responsibility of the general contractor but that the Department of Public Works would call for tenders for the mail handling installation and that it would be agreed that the successful general contractor would be obliged to

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enter into a subcontract with the bidder selected by the Department for that sub-trade. This was the course adopted in the spring of 1964 and was prompted by the inability of the consultant on the mail handling equipment to meet the design requirements thereof to the satisfaction of the government departments involved.

In May 1964 tenders were invited on that basis. In order to complete the material to be made available to bidders upon which to formulate their bids, the architect wired Mr. Bluteau on February 12, 1964 requesting that he supply an estimate of the cost of the supply and installation of the mail handling equipment. Mr. Bluteau replied by wire, subsequently confirmed by letter, giving his estimate of that cost as \$1,150,000. This estimate was embodied in material made available to general contractors who were prospective bidders by the Department of Public Works. In addition the bidders were supplied with a complete set of drawings showing all facets of the building but with no mail handling equipment drawings or specifications other than three drawings which were described as floor layout plans and marked "For information only".

As the lowest tenderer for the construction of the building proper the predecessor of the appellant was awarded the contract by the document to which I have referred and then the specifications for the installation of the mechanical and electrical equipment were completed and tenders were called for the supply of such items. The successful tenderer was the Canadian Mail Handling Systems Limited of Windsor, Ontario, and the tender was in the amount of \$2,078,543.66. By its letter of February 17, 1965, the Department of Public Works directed the predecessor of the appellant to enter into a contract with the said Canadian Mail Handling Systems Limited in that amount in accordance with the provisions of clause A1—4(d) of the general requirements of the contract. Reference will be made hereafter in detail to the said clause. A subcontract between the appellant's predecessor and the said Canadian Mail Handling Systems Limited of Windsor, Ontario, was entered into on February 23, 1965.

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As well as the letter of February 17, 1965, to which I have referred, there were a series of interesting documents in connection with the transaction. Under date February 17, 1965, a document headed "Department of Public Works of Canada, Construction Branch" with the stamped words "Change Order" was forwarded to the architect in charge, Mr. Hodgson. This document showed an increase in the amount of \$2,078,543.66 for the supply and installation of mechanical handling equipment, referred to Treasury Board Minutes and had at the foot of it a report addressed to the Chief Treasury Officer by one Wallace for the Chief Architect recommending "this amount to be encumbered as an extra to the contract". Then another document, entitled also "Change Order" and executed by K.C. Stanley and Company Aberdeen & Groves, the architects, was addressed to and delivered to the predecessor of the appellant dated February 25, 1965. That document which, as I have said, went from the resident Chief Architect to the predecessor of the appellant also authorized the change in the amount of \$2,078,543.66. The importance of these two documents will be dealt with hereafter.

On February 23, 1965, the predecessors of the appellant addressed a letter to the Department of Public Works in Ottawa referring to their instructions as to making a subcontract with the Canadian Mechanical Handling Systems Limited and then setting out the difference between the original estimate for such equipment as set out in the said clause A 1-4 of the contract and the actual completed contract, the difference being \$928,543, claiming an additional sum of \$92,854.37, being 10 per cent for general contractor's overhaul and profit. The said letter ended

with:

We therefore request that the change order for the mail handling equipment be issued for the amount of \$2,078,543.66 plus \$92,854.37 or a total amount of \$2,171,398.03.

The additional amount is the subject matter of this litigation.

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On April 5, 1965, the predecessor of the appellant submitted a like request for alteration in the change order to the resident architect and on April 7th, the architect reported to the Department of Public Works as to the request concluding with this paragraph:

As your consultants on the referred work, we would recommend the acceptance by the Department of the amount requested, this action being in common with the intent of the contract documents.

Finally, on May 31, 1965, the Chief Architect of the Department of Public Works in Ottawa notified the predecessor of the appellant that they could not effectively support a recommendation for payment.

Set out in the General Requirements is clause A 1-4 MAIL HANDLING EQUIPMENT which reads as follows:

A1-4 MAIL HANDLING EQUIPMENT

- (a) Tenders shall not include the supply and installation of the Mail Handling Equipment. The Mail Handling Equipment shown on drawings MG 695, 696, and 697 is for information only.
- (b) This tender shall include all costs for required overhead, supervision and profit on the supply and installation of Mail Handling Equipment.

The estimate for the supply and installation of Mail Handling Equipment is approximately \$1,150,000.00.

As will be perceived, this litigation arises because of the startling difference between the “estimate” of \$1,150,000 in the General Requirements and \$2,078,543.66 the actual amount of the subcontract with the mail handling contractor. Due to the unusual circumstances under which this contract was entered into, the head contractor had no opportunity to take into account this subcontract when drawing his tender. All the head contractor had available to him was the three plans entitled Floor Plans for Information only to which I have referred above.

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It is significant that Mr. Hodgson testified:

A. I believe that it would be—this is my own personal opinion, professional opinion—impossible for a contractor to be able to arrive at a competent estimate from anything contained in those general contract drawings.

I would say this because, although there may be within his organization people competent in materials handling, we had in effect some very sophisticated first time equipment in very large parcel sorters, an Aero Jet general bag sorter, a number of vertical rising conveyors that had not come into use in this country before, with the exception, I think, of two smaller ones in the vertical rise conveying field in Eastern Canada. The total amount of these fixed items would be sufficient to throw any—anybody's estimate out because these were specified—which is a departure of course in Department of Public Works' specifications also—as described unites and specified as manufacturers and therefore unless that contractor contacted these manufacturers, he would have no way of knowing that the bulk of the price, a good portion of this particular cost of mail handling, was included in these fixed items in the first place.

Q. And were the names and the identity of these manufactured components given in the material that went out to the general contractors in May or June of '64?

A. No.

Q. That wouldn't be available then?

A. Neither on drawings nor specifications.

Q. I see. Thus the purpose then in putting the figure \$1,150,000 into section A-1-4 of mail handling equipment, Exhibit 1, was what, again?

A. So the contractor may assess his costs for the overhead, supervision of that particular branch of the work that was to be inserted in his general contract.

A. Alright, for which he received—

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THE COURT:

Q. But you are saying, Mr. Hodgson, that he could not assess, because he does not know about these components. How is he going to assess?

A. Well, by this particular figure, we have inserted in the specifications of \$1,150,000.

Q. Yes.

A. Yes, he assesses his overhead, his cost, his profit on the basis of that figure.

Q. On that amount?

A. Yes, sir.

It was therefore of the utmost importance to the bidder, knowing that he would have to, in his bid, include an amount for overhead, supervision and profit applicable to the contract for mail handling equipment in his bid, to know the proper amount at which the subcontract for such mail handling equipment would be issued. It was for that reason that the Department of Public Works included in its general requirements the statement "The estimate for the supply and

installation of mail handling equipment is approximately \$1,150,000.” Mr. Hodgson, the architect, telegraphed to Racey, McCallum & Bluteau, Limited, on February 12, 1964 as follows:

Wire Estimate of cost for complete mail handling installation Edmonton Postal Terminal by
Friday February Fourteenth

Mr. Bluteau testified that to the best of his memory he had replied to that telegram on the same afternoon and that he had made a very quick check before doing so. I quote from his examination by counsel for the suppliant:

Q. Well, perhaps I could ask you this, sir: If you had known in February 12th of 1964 that the purpose of asking for the calculation of cost, of the estimate of cost for mail handling equipment was to go into the contract documents for tender purposes, as you now know it was, would you have intended to achieve some degree of accuracy in the figure you furnished?

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A. Yes, if I—I would have felt quite competent to maintain an accuracy of 10 to 15 percent on the cost of conveyors, skip hoist, miscellaneous equipment, glacis, chutes, and all auxiliary equipment, but I don't think that at any time I would have—could have done better than assumed that the figures I had received on the major components was accurate. What I might have done, of course, obviously, would have been to check with the department and this I failed to do. I think, as you asked me the question, if I had recognized this was an engineering estimate, I certainly could have checked with the department and obtained a yes or no answer as to the accuracy of these figures.

Mr. Hodgson's view of the reply which he received from Mr. Bluteau differed markedly. He was asked:

Well, did you intend it to have some degree of accuracy?

A. I expected that the estimate would be accurate.

Of course, in view of the purpose for which the estimate was obtained, one which was over \$900,000 less than the actual amount of the subcontract, it was worse than useless. It is, in my view, significant, that this estimate was not obtained by the tenderer, the present appellant, from the engineers but was obtained from the Chief Architect in the region to whom the tenders were to be submitted and was a representation therefore, in my view, by the Crown that the proper estimate of the cost of the installation of such equipment in the subcontract was \$1,150,000. As I have said, this so-called estimate was the only basis upon which a tenderer could place his bid which must include his overhead, supervision and profit on the whole of the contract including the mail handling equipment subcontract. The learned trial judge characterized this amount in these words:

The estimate of the cost set out in section A1-4 was merely a representation, a suggestion or a guess and cannot be construed as a warranty that the estimate of the cost was correct.

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With respect, I must differ. The view taken by Mr. Hodgson, who supplied the figure to bidders, was very far from being that it was a mere estimate or guess. On the other hand, he expected it to be accurate and he realized that when the Crown put that estimate into the general requirements it was giving to bidders the basis upon which they could submit their bids. Bidders were entitled to rely on that so-called estimate as being accurate within the limits to which I shall hereafter refer, and Mr. Bluteau, in the testimony which I have quoted above, admitted that the estimate could have been made accurately. There was general agreement amongst the witnesses that such engineering cost estimates do have an element of variation in them but that element of variation is limited to ten per cent above or below the amount of the estimate. In this case, the estimate, so-called, was only about 55 per cent of the actual subcontract. Moreover, as I have said, Mr. Hodgson was not even ready to allow the usual ten per cent variation in this case. On the other hand, he thought it was and certainly should have been accurate.

Under these circumstances, it is difficult to understand how the Crown can in justice resist the claim of the appellant for the ten per cent of the amount of the subcontract greater than the amount set out in such estimate. The Crown has done so by relying on the formal terms of the contract and that reliance has been accepted by the learned Exchequer Court Judge who said:

It was specifically stated in section A1-4 that the estimate for the supply and installation of the mail handling equipment was only an estimate. As it turned out that estimate was grossly inaccurate. I have searched through the contract and could find no provision to the effect that the respondent would be liable if the estimate proved to be inaccurate, nor was any such provision pointed out to me.

As I have already said, the statement, in my opinion, was more than the mere usual estimate

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and was intended to be by the person who made it on behalf of the Crown, Mr. Hodgson, a representation and was accepted as such by a person who had to rely on it and on it alone in making his calculations.

I am of the opinion that the manner in which the appellant was directed to enter into a contract with the mail handling equipment company and to add that amount to his contract is of considerable significance. As I have pointed out, it was first a change order issued by the department to the Chief Architect for the region and then by a change order issued by that Chief Architect to the appellant. The contract between the Crown and the appellant makes provision for extras and the important provision found in clause 38 which reads:

38. (1) The Engineer may at any time before he issues his Final Certificate of Completion, in writing,
 - (a) order work or material in addition to that provided for in the Plans and Specifications; and

- (b) dispense with or change the dimensions, character, quantity, quality, description, location or position of the whole or any part of the work or material provided for in Plans and Specifications or as ordered pursuant to paragraph (a),

and the Contractor will execute the work in accordance with such orders, dispensations and changes as if the same had appeared in and been part of the Plans and Specifications.

- (2) The Engineer shall determine whether anything done or not done by the Contractor pursuant to an order, dispensation or change made by the engineer pursuant to subsection (1) increased or decreased the cost of the work to the Contractor.
- (3) If the Engineer determines under subsection (2), that the cost has been increased, Her Majesty will pay to the Contractor the cost, calculated in accordance with sections 44 to 47 of the General Conditions, of the additional labour, materials and plant necessarily involved.

Counsel for the respondent contended that the change order raised by the Department of Public Works was merely a mechanical device to secure authorization for dispersal of the moneys from the Treasury Board and that the

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“change order issued by the superintending architect to the suppliant did not bring the matter within section 38 in that it was not an order of the engineer. There was no additional cost to the suppliant and the order did not contemplate any changes but merely the cost of completion items which were necessarily obvious from the floor layout plans”.

I am of the opinion that if the Crown chose to direct the contractor to add the subcontract as an extra then the Crown was using the provisions of clause 38 and its rights are governed by that clause. “Engineer” is defined in s. 1(1) (a) of the General Conditions as follows:

- (a) “engineer” means the chief architect, Department of Public Works of the Government of Canada, and includes a person specifically authorized by him to perform on his behalf any function under the contract.

The consulting and superintending architect, i.e., the companies represented by Mr. Hodgson, were a person specifically authorized by the Chief Architect within the terms of that definition. There was an additional cost to the appellant. The appellant entered into a contract with the mechanical handling equipment company and was under a liability to pay that company despite the fact that it could claim against the Department for such amounts disbursed. In the letter from the Department of Public Works to the predecessor of the appellant, it is stated:

In so far as the Crown is concerned, your firm will be responsible for the performance of the work within the scope of that subcontract and all matters pertaining to it. Progress payments in respect of work executed by that subcontractor will be made to your firm in the normal manner.

I am therefore of the opinion that the subcontract is properly to be handled as an extra under the provisions of clause 38 of the contract and in accordance with the direction in that clause

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payment therefor is to be regulated by clauses 44 to 47 inclusive.

Clause 45 provided that if the matter was not one within the unit price table the cost of the labour, plant and material for the purposes of certain sections of the General Building Conditions including clause 38 shall be the amount agreed upon from time to time by the contractor and the engineer and the appellant submitted that the engineer had agreed to the payment of this \$92,000 amount. I am of the opinion, however, that the respondent's answer to this contention is completely convincing. The letter from Mr. Hodgson to the Department of Public Works dated April 7, 1965 from which I have quoted above was not an agreement for payment but was a mere recommendation to the Department of Public Works that the amount should be paid and the Chief Architect of the Department of Public Works, in his letter of May 31st to the predecessor of the appellant, definitely refused to accept that recommendation. Therefore, one must turn to clause 46 of the General Conditions. That clause provides that if the method of determination in sections 44 and 45 cannot solve the matter then the allowance shall be equal to the aggregate of (a) all reasonable and proper amounts actually expended and (b) 10 per cent of the total of the expenditures of the contractor that meet the test in paragraph (a). Applying clause 46(b), one sees that on this argument, which I accept, the appellant is entitled to 10 per cent of the costs of the \$2,078,543.66. It has already been allowed 10 per cent of \$1,150,000 of that sum in its successful bid and it will be entitled to 10 per cent of the balance, that is, the \$92,000 odd which he claims in this petition.

A decision of the Court of Appeal on a subject matter very similar to the present one is of considerable interest. In *Parkinson & Co. Ltd. v. Commissioners of Works and Public Buildings*[1], the Court considered again a con-

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tract between the public works authorities and a builder for the building of a plant which made provision for the possible large increase in the services to be performed during the course of the contract. The contract was on a cost plus basis and it provided that the amount to be paid to the contractor should be calculated in accordance with its terms but should not be less than the cost of the works plus a net profit or remuneration of £150,000 and not more than such cost of works plus £300,000. Those amounts were calculated as being a percentage on the works as they were originally contracted for or as they might be extended to but the extensions in fact ran to a total cost of not merely £5,000,000 but £6,683,000. It was held that on the true construction of the deed of variation it was not within the contemplation of the parties at the execution of the deed that there would be such large increases in the amount of work to be executed; and at that time both parties contemplated work which, with the introduction of exceptional methods, would cost approximately £5,000,000 and it was on that basis that the maximum profit agreed to was £300,000. The additional work having been performed by the contractor at the request of the commissioners, he was entitled to be paid a reasonable profit or remuneration in respect of it. At p. 226, Asquith L.J. said:

To deal with these in turn, first, if the original contract plus the deed are read without any implied limitation on their literal meaning, the result, as indicated above, is that after £300,000 profit has been earned by the contractor, he can be compelled to labour like the Danaids without reward or limit, on any further “extras” which the commissioners may elect to exact from him “till the last syllable of recorded time.” The restraining practical factor that such “extras” will have to be paid for, and paid for out of the taxpayers’ funds, no longer operates, because of the proviso to cl. 4 of the deed imposing a maximum profit. Only the most compelling language would induce a court to construe the combined

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instruments as placing one party so completely at the mercy of the other. Where the language of the contract is capable of a literal and wide, but also of a less literal and a more restricted, meaning, all relevant surrounding circumstances can be taken into account in deciding whether the literal or a more limited meaning should be ascribed to it.

And at p. 227, Asquith L.J. said:

If so, the conclusion seems justified that the parties to the varying deed contracted on the basis of a maximum and minimum profit directly related and limited to a total quantum of work measured approximately by £5,000,000 and on the basis that the commissioners should not be entitled under the contract to require work materially in excess of this quantum. Hence no claim to exact an extra quantum of work measured by about £2,000,000 can be sustained under the contract and, such extra work having been in fact requested and performed, the contractor is entitled to claim in respect of it, not under the contract, but *dehors* the contract, for a reasonable remuneration.

Applying this same method of interpretation to the present case, I have come to the conclusion that when the parties entered into the original contract then it was on the basis that the appellants would be required to enter into a subcontract for the installation of the mechanical handling equipment at a cost of about \$1,150,000 and that therefore their bid should include overhead, supervision and profit for that amount. As it turned out, the appellant was required to enter into a subcontract for an amount of over \$2,000,000 and therefore, the overhead, supervision and profit on that larger amount was not within the contemplation of either party. None of the authorities cited by the respondent during the argument have convinced me that I should not approach the interpretation of this business contract in a fashion which I regard as business-like reaching the result which I have reached.

The learned Exchequer Court judge allowed the petition for only \$19,654.79. Of that sum, \$9,958.09 had been the subject of the amend-

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ment to the petition to which I referred earlier in these reasons and liability for it was admitted by the respondent. I would therefore vary the judgment upon the petition to include that sum of \$9,958.09 and also the original claim for \$92,854.37 making a total of \$102,812.46. The appellant is entitled to its costs throughout.

Appeal allowed with costs.

Solicitors for the appellant: Parlee, Cavanagh, Irving, Henning, Mustard & Rodney, Edmonton.

Solicitor for the respondent: André M. Garneau, Ottawa.

[1] [1950] 1 All E.R.208.

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