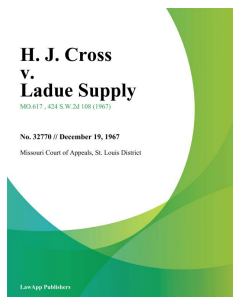


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H J CROSS V LADUE SUPPLY EBOOKS 2019



Author: St. Louis District Missouri Court of Appeals

Realese Date: Expected @@expectedReleaseDate@@

This action began in the magistrate court upon plaintiff's petition alleging defendant's breach of contract and seeking judgment as damages therefor in the sum of \$1,296.00. The answer was a general denial. The magistrate court entered judgment in favor of defendant and plaintiff appealed to the circuit court. After jury-waived trial the circuit court entered judgment in favor of defendant on June 1, 1966. On June 10th plaintiff filed his motion to amend the judgment with an alternative motion for new trial. On October 14, 1966 the circuit court rendered its findings of fact and Conclusions of law as a result of which it ""reversed"" the earlier judgment of June 1st in favor of defendant and entered judgment in favor of plaintiff in the sum of \$1,296.00. On October 20, 1966 defendant filed a motion to vacate the trial court's order of October 14th based on the ground that court was without jurisdiction to enter the order of October 14th by reason of the expiration of more than ninety days from the date of filing plaintiff's after-trial motion. (See Civil Rule 78.04, V.A.M.R.) That motion was never ruled upon but in order to preserve his contentions for review plaintiff filed a motion with this court praying that he be granted permission to file notice of appeal by special order pursuant to Civil Rule 82.07, V.A.M.R. We granted plaintiff such permission provided he do so within ten days from the receipt of notice of our order. Plaintiff complied with this provision and as therein provided filed his notice and appeal from the judgment of the circuit court entered June 1, 1966 in favor of defendant and against plaintiff. Accordingly, plaintiff filed the first brief and has otherwise proceeded as appellant in this court. He seeks reversal of the judgment of June 1, 1966 and entry of judgment in his favor. There is no serious dispute as to the facts. In order to prepare a bid as general contractor for a high school addition to be built by the Bayless School District plaintiff sent postcard notices to prospective suppliers and subcontractors. The postcard received by defendant invited it to submit a proposal for furnishing materials and labor involved in the installation of a protective roof decking known in the trade as ""Tectum roof decking or Tectum decking"" on the addition. At the time (1960) the witness Green was a sales engineer employed by defendant and acted as an estimator for it. He examined the plans and specifications and on June 15, 1960, the day the bids were due, telephoned a bid to plaintiff in the amount of \$627.00. In this telephoned bid the amount stated was for 775 square feet which Green testified he assumed to be the entire roof of the high school addition. In submitting his bid to the school district plaintiff used the sum submitted by defendant and on the evening of June 15th was advised that his bid as general contractor had been accepted. He commenced work shortly thereafter. By letter of July 21st defendant, acting through Green, confirmed its oral proposal and bid. The letter then sent to plaintiff read as follows: ""Proposition 1 : High school addition and alterations. To furnish the labor and material, 2 1/2"" Tectum plank for approximately 775 square feet for the sum of - Six Hundred and Twenty-Seven Dollars, (\$627.00). * * * Complete drawings will be submitted for your approval before work begins. Thank you for the privilege to work with you. We appreciate your business very much. Sincerely yours, LADUE SUPPLY, Inc. /s/ Marion A. Green, Marion A. Green, Sales Engineer ACCEPTED /s/ H. J. Cross Prop. 1 yes * * * DATE: July 23/60 TERMS: Net 30 days.""

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