



DALLAS COUNTY

NEGLIGENT MISREPRESENTATION

Construction

Construction co. said it bid on project based on faulty info

VERDICT \$5,000,000
ACTUAL \$2,250,000

CASE Martin K. Eby Construction Co. Inc. v. LAN/STV, a Joint Venture of Lockwood, Andrews & Newnam Inc. and STV Inc., No. 03-78355-K
COURT Dallas County District Court, 192nd, TX
JUDGE Craig Smith
DATE 5/20/2009

PLAINTIFF
ATTORNEY(S) Daniel J. Davis, Davis Law Firm, Dallas, TX
 Jeffrey A. Ford, Ford Nassen & Baldwin, Dallas, TX

DEFENSE
ATTORNEY(S) James W. Grau, Grau Koen P.C., Dallas, TX
 Scott Whisler, Grau Koen P.C., Dallas, TX

FACTS & ALLEGATIONS In 2002, plaintiff Martin K. Eby Construction Co. bid on and was awarded a contract by Dallas Area Rapid Transit to construct 1.5 miles of light railway between Dallas' West End and American Airlines Arena. Prior to the bidding, DART had plans for the line drawn up by LAN/STV, a joint venture between engineering firms Lockwood, Andrews & Newnam and STV Inc. DART distributed the plans to the bidders on the contract. Construction on the line began in 2002 and was completed in 2004, after a number of delays.

Eby Construction sued LAN/STV, alleging negligent misrepresentation. It claimed the plans as drawn up by LAN/STV contained inaccurate information. Eby Construction contended it based its bid on this inaccurate information, and during the work was forced to make changes that prevented it from completing the work on time for the amount bid.

LAN/STV denied the plans contained errors, and argued any errors they did contain were within acceptable margins of error in the industry. The defense argued contributory negligence on the part of Eby Construction, DART and other parties.

Eby Construction also filed a separate suit against DART for breach of contract. DART settled before trial for \$4.7 million.

INJURIES/DAMAGES Eby Construction claimed the delays in the project cost it \$13 million and sought that amount in its lawsuit.

The defense disputed the damages, claiming the actual losses were much smaller.

RESULT The jury found LAN/STV had engaged in negligent misrepresentation. It found LAN/STV 45 percent, DART 40 percent and Eby Construction 15 percent liable. The jury found that Eby Construction's damages were \$5 million. Based on the liability apportionment, Eby Construction recovered \$2.25 million from LAN/STV.

DEMAND \$4,750,000
OFFER \$1,000,000

INSURER(S) Lexington Insurance Co.

TRIAL DETAILS Trial Length: 6 days
 Trial Deliberations: 1.5 days
 Jury Vote: 10-2
 Jury Composition: 7 female, 5 male

PLAINTIFF
EXPERT(S) William Smith, architecture, Dallas, TX

DEFENSE
EXPERT(S) Brad Bright, damage models, Dallas, TX
 Donald Phillips, civil, Houston, TX

POST-TRIAL The defendant has filed a motion for a new trial. The plaintiff has filed a notice of appeal.

EDITOR'S NOTE This report is based on information provided by plaintiff's counsel and defense counsel.

—Rick Archer