

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Butt Construction Co., Inc.) ASBCA No. 52081
)
Under Contract No. F33601-97-C-W028)

APPEARANCE FOR THE APPELLANT: William T. Butt, Jr.
President

APPEARANCES FOR THE GOVERNMENT: COL John M. Abbott, USAF
Chief Trial Attorney
Jean R. Love, Esq.
CAPT Gregory A. Baxley, USAF
Trial Attorneys

OPINION BY ADMINISTRATIVE JUDGE ELMORE
ON THE GOVERNMENT'S MOTION FOR RECONSIDERATION

The Board on 19 January 2000 issued its decision denying the parties' cross motions for summary judgment. On 27 January 2000 the Government filed a Motion for Reconsideration of the Board's decision on the Government's Summary Judgment motion. In response, appellant filed a series of affidavits. Familiarity with the Board's original decision is presumed.

In its reconsideration motion the Government argues that appellant has failed to put forth any evidence, in the form of affidavits or other sworn statements, supporting its contention that the existence of the asbestos-wrapped pipe in the living room wall to be demolished was not reasonably foreseeable and, accordingly, that appellant cannot make out a *prima facie* case.

Appellant responded to the Government's motion for reconsideration and has proffered six affidavits* which we determine, upon review, offer sufficient evidence to support appellant's arguments that it relied on the contract documents which did not detail the asbestos-wrapped pipes in the living room walls. Further, appellant's evidence

* Appellant has provided affidavits from the following: director of construction, Mr. Timothy J. George; project manager and estimator, Mr. Daniel Mott; vice president, Mr. Garth Williams; superintendent, Mr. Raymond E. Seibel; project manager, Mr. P. Charles Cheadle; executive vice president, Mr. David S. Butt; and president, Mr. William T. Butt.

indicates that the existence of the asbestos-wrapped pipes in the living room walls was not reasonably foreseeable.

We have reviewed the Government's reconsideration motion and cannot find any compelling reason to disturb the original decision. Accordingly, the Board's original decision is affirmed.

The Government's motion for reconsideration is denied.

Dated: 18 February 2000

ALLAN F. ELMORE
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

I concur

MARK N. STEMLER
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

MICHAEL T. PAUL
Administrative Judge
Acting Vice Chairman
Armed Services Board
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 52081, Appeal of Butt Construction Company, Inc., rendered in conformance with the Board's Charter.

Dated:

EDWARD S. ADAMKEWICZ
Recorder, Armed Services
Board of Contract Appeals