

Bond Case Briefs

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CONTRACTS - LOUISIANA

Akers v. Bernhard Mechanical Contractors, Inc.

Court of Appeal of Louisiana, Second Circuit - April 16, 2014 - So.3d - 48, 871 (La.App. 2 Cir. 4/16/14)

This breach of contract claim arose from a public works project to renovate the Shreveport Fire Maintenance Facility. The dispute stemmed from a subcontract to provide the vehicle exhaust system for removing CO gas from the building while fire trucks are being serviced.

The City of Shreveport awarded the general contract to A & R General Contractors. Bernhard Mechanical Contractors won the mechanical subcontract on the job. Bernhard awarded the exhaust system subcontract to David Akers.

The city rejected Akers's submittal for "no prior approval." Ultimately, the city installed a different exhaust system. It used a small portion of Akers' equipment, authorizing Bernhard to pay Akers \$3,861 for it.

Akers filed this suit against Bernhard, A & R and the City of Shreveport. He demanded the full bid amount, 18% interest, and attorney fees under the Public Works Act, [La. R.S. 38:2246](#).

In response, Bernhard filed a third party demand against the city, citing a Department of Revenue certificate issued by the city to Bernhard, granting sales tax exemption for the project. The third party demand asserted, "To the extent that Bernhard is found to be the agent for the City of Shreveport with regard to the materials and/or equipment furnished by [Akers] then the City of Shreveport would be obligated to pay any and all amounts awarded to [Akers]."

The court ruled in favor of Akers against Bernhard, awarding him \$40,773.00, subject to a credit of \$3,861.00, with 18% contractual APR.

The court also granted judgment on the third party demand in favor of Bernhard and against the City of Shreveport, for \$40,773.00, subject to a credit of \$3,861.00, with 18% contractual APR. This award was based upon the court's finding that the city had in fact approved Akers' submittal, followed by an abortive attempt to retract that approval.

The court rejected the argument that the tax exemption certificate made the city and Bernhard equally or jointly responsible for a breach of contract. The exemption applies to sales and use taxes for the purchase of component construction materials, taxable services and leases and rentals of tangible personal property for the project. It does not make Bernhard the city's agent for all purposes.