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ABC Warehouse VI

The Pressure Regulator Ordered by the Building Inspector

Architect Ivor Judge, AIA, of Judge & King, was feeling pretty good. It was a beautiful invigorating spring morning in mid-May 1990. The ABC Warehouse construction was nearing completion. His incessant barely audible humming was an indication of optimism and peaceful contentment with his lot in life. He was just finishing off his second cup of coffee when his conscientious secretary placed the stack of morning mail on his desk. She'd already opened and emptied the envelopes, clipped the contents of each together with its envelope, and had branded everything with her trusty purple-inked adjustable date stamp. He'd warned her years ago to look before stamping when a client's original grant deed was inadvertently date stamped in.

He was well into the pile, when he suddenly stopped humming, held his breath, and took in a lung full of air. "What the hell is this?" he said, to no one in particular. "Damn!" He read incredulously from the change order request from Hyde Construction:

"Dear Mr Judge, The enclosed costs were incurred in connection with our furnishing and installing a pressure regulator and relief valve ordered by the building inspector as required by the plumbing code. Please issue a change order at your earliest convenience. Thank you. Sincerely, George Hyde, President."

Enclosed was an itemized bill from W.C. Plumbers for \$3523.30 and, after Hyde's customary add-ons and mark-ups for supervision, profit, overhead, and bond premium, the total was \$4703.00. Ivor's great day had just plummeted down the soil pipe.

Hyde Construction Company was building the warehouse and offices for ABC Warehouse Company. The job had been going along fairly smoothly, with only the occasional glitch, and was due for completion in about two weeks. Ivor knew that ABC's president, Allen Brady, would undoubtedly blow his stack when he became aware of this totally unanticipated extra. He was still smarting from the cracked floor incident.

Ivor's immediate knee jerk response to this change order request was to get George Hyde on the phone and kick some butt. "George, what the hell's this Mickey Mouse change order?" Hyde accurately sensed that the architect was up-tight and expected he'd be unreasonable. He'd have to employ some sweet talk.

George calmly elucidated, "The plumbing inspector insisted we had to install a pressure regulator and a relief valve because the water pressure is 135 pounds per square inch. The regulator's expensive because we have a two inch water service. The plumber had to revise the piping to get it and the relief valve installed. It was required by code. We had no choice."

"You mean the plumbing work is all done?" The architect couldn't believe that Hyde had gone ahead with such a costly change without prior approval.

"Yeah, the plumber was lucky to find a 2-inch pressure regulator so quickly, and his men have installed it. The plumbing inspector has already reinspected and approved it. We're in great shape for completion on time." George was upbeat, hoping to overcome Ivor's pique.

"Dammit, George, why didn't you get my or the owner's approval first?" Ivor was obviously not impressed.

George's patience was rapidly waning. He chose his words carefully. "Look, Ivor, the plumbing inspector had red tagged the job and we had to get right on it. We couldn't get our final inspections without doing it. If the building isn't completed in less than two weeks, we'll have hefty liquidated damages to pay. If we sat around waiting for paperwork and approvals we'd never get it done."

Ivor dug his heels in, "Well, I can't approve this change order." He was adamant. "The specifications require all work to be in accordance with the building code and if the code requires a pressure regulator and relief valve then the plumber should have included them in the bid. Tough luck, George!"

George was starting to lose his cool. "Look, Ivor, you know damn well that regulator wasn't specified and it's a proper extra. The owner hasn't paid for this work. It wasn't in the bid. We've kept the costs to an absolute minimum and we gotta be paid."

Ivor, intemperately, snapped back, "Well, dammit, George, I'm not going to approve it. That's all there is to it. You and the plumber can go hustle someone else!"

George angrily slammed down the phone, his blood pressure way over the top. He strode into his chief estimator's office looking for sympathy. He was livid. "Dammit all, we're caught in the middle again. We gotta pay the plumber and the damn architect won't approve our bill to the owner. Someday Ivor's gonna get his and he'll have earned it! He expects us to pay for his mistakes! Well, I'm not going to do it! I'll fight this one all the way!"

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Ivor picked up Hyde's change order request and walked into his partner Leo King's office. He threw himself angrily into a chair and said, "Leo, look at this crap. Hyde's going off the deep end again. He's conspiring with his plumbing sub to milk the job. I told him where to get off!"

Leo said, "Cool down, Ivor. Are you sure we're right? Maybe we should have specified the pressure regulator and relief valve. If we've made a mistake it isn't fair to stick the contractor with it."

Ivor rationalized his position. "The specs require the plumber to do all the work necessary for a complete job, all in compliance with the building code. He should have known what the code required."

Leo replied, "Have you called Ell about this?" Ell Street of Street & Rhodes, Mechanical Engineers, was their plumbing design consultant on the ABC job.

"No, I haven't talked to him yet. I plan to call him."

"Maybe he can explain why he didn't specify the pressure regulator and relief valve in the first place. Perhaps the plumbing inspector's wrong and the work's not even required."

That wouldn't be too helpful, thought Ivor, then Hyde would want to be paid again for removing it. Ivor returned to his office to phone Ell Street.

Getting the mechanical engineer on the line, he briefed him. "Ell, the plumbing inspector red tagged the ABC Warehouse job and required the plumber to install a pressure regulator and a relief valve. The general contractor wants an extra of almost five grand! How come it wasn't on the drawings or in the specs?"

Ell explained, "The inspector must think that the pressure is over 100 pounds per square inch. We were under the impression that the pressure was less than 100. Let me check our engineering notes." He left the phone for a minute to dig out his ABC Warehouse file. "I'm back. Here are my notes on water pressure. You instructed me in a letter I have here that the client had informed you that the pressure was 85 psi. We used that in our design. The plumbing code requires a pressure regulator whenever the pressure exceeds 100 psi. We'd also have to install a relief valve to protect the water heater."

"Well, Ell, shouldn't the plumber have included these items anyway if they're required by code? Shouldn't they have included all incidental parts to comprise a complete and integrated system in accordance with the Uniform Plumbing Code?"

"No, Ivor. The plumbing contractor wouldn't have any way of knowing the water pressure when they were bidding the job. They would normally assume that we would know whether or not a pressure regulator was needed. Besides, these are a lot more than mere incidental parts. You can tell by the size of the bill. If we knew that the pressure was over 100 psi we would have shown the regulator and relief valve on the drawings and specified them."

Ivor asked, "Then you think the contractor is justified in charging for this work?"

"Hell yes!"

"What do you think about the price? It seems pretty high to me!"

"It seems reasonable to me."

"Oh."

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Ivor then called ABC Warehouse and got Allen Brady on the line. "Allen, I've got to come over and talk to you about something. How about this afternoon around two o'clock?"

Allen said, "Okay, two o'clock it is. See you then." Allen was afraid to ask the topic of Ivor's concern. He was apprehensive. Ivor sounded worried. This is going to cost me money, thought Allen. I just know it. Damn!

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The ABC Warehouse Company was in a seedy part of Pacoima's unplanned industrial district. The office was in a front corner of the cramped corrugated iron building that served as ABC's warehouse. The small cluttered office was walled off from the warehouse storage area with some old garage doors. They had a suspended electric space heater but no air conditioning. A window provided light and ventilation. Four old desks were pushed together and Allen shared it with two of his clerical employees and his sales manager. Steel files and cardboard transfer cases filled the rest of the space. They had long since outgrown the building. In spite of their cramped conditions they were fairly efficient and their inter-office communication was immediate.

Carl Daly, Allen's loading dock manager, had a stand-up desk adjacent to the main loading doors. His telephone shared the wall space with several clipboards hung on brass hooks and approximately 7,000 scribbled notes impaled on nails.

Business was brisk and ABC Warehouse Company was more than ready for the new premises, properly designed for a modern warehouse business. They were all dreaming about the big move into the new building in less than two weeks.

Ivor arrived at ABC with time to spare but used it all up looking for a place to park. By the time he walked from his car to ABC's office, he was 10 minutes late. When he came into the office, Allen was consulting his watch for the seventeenth time. After the usual exchange of civilities, Allen asked, "Well, Ivor, what's up?"

Ivor, solemnly removing papers from his slim leather case, cleared his throat and said, "Allen, we have a slight problem on the job."

Allen, preparing for the worst, stiffened in his chair and held his breath. He exhaled slowly. His nearby employees, sensing their boss' apprehension, buried their noses deeper in their work. They clearly wanted to avoid any involvement. Nevertheless they had their ears cocked.

Ivor got it all out in a rush. "Hyde's plumber had to install a pressure regulator and relief valve. Requested by the plumbing inspector. Required by code. Plumbing work's all done and approved. It won't hold up completion."

Allen, obviously relieved, replied, "Well, that sounds great. I don't know what it is, but if we need it, it should be put in. What's the problem, Ivor?"

Ivor blurted out, "Hyde Construction has sent a change order request for \$4703.00."

Allen, shocked, repeated the amount slowly and deliberately, "F o u r T h o u s a n d S e v e n
H u n d r e d a n d T h r e e D o l l a r s ? That's ridiculous!" Then, recovering, "Why should we have to pay extra for something required by code? I thought the whole job had to be built according to code! What the hell's going on here? Can't you control Hyde?"

"I've talked to George and he feels pretty strongly that he has the money coming."

"I thought that extras had to be approved before the work was done. I never approved this!"

"The plumber should have gotten approval first but he didn't. Now we have to live with it. I've consulted with our plumbing design consultant, Ell Street, and he said the work had to be done and the price sounded about right to him. The work is clearly not in Hyde's contract, so he must be paid."

Allen then asked, "Why is the work an extra? Wasn't the work shown in the plans and specs?"

Ivor was surprised that Allen had zeroed in so quickly to the crux of the matter. He replied, "No, Allen. The pressure regulator wasn't in the documents."

"Why not? Why should I have to pay extra for something you didn't put in the documents?"

"When I was talking to Ell Street this morning he reminded me that I had written him a letter last January reporting the water pressure as 85 pounds per square inch. That amount of pressure wouldn't have required the pressure regulator. A regulator is needed only when the pressure is over 100. After talking to him I looked into my own file notes to find out where I got the 85 psi figure. That's the value you gave me last January when we were working on the design. Where did you get the 85 pound figure?"

Allen, listening attentively, answered, "Oh, I remember now. You asked me for the water pressure at the new site so I asked Carl Daly to look into it. That's the number he came up with. I'll call him in here and he can tell us about it." He went to the office door to the warehouse and asked one of the dockhands to send Carl in, pronto.

Carl showed up less than a minute later and stood waiting expectantly. Allen told him to pull up a chair. "Carl, do you remember checking on the water pressure at the new site? It would have been last January."

Carl was glad to help, "Oh, sure. I talked to the water company's field engineer. He was very helpful and cooperative. He said that the water pressure varied from 80 to 90 pounds per square inch and that it should be sufficient for anything we'd want to do."

Allen was smiling. "That's fine, Carl. That's what we needed to know."

Carl then helpfully added, "And he said that the water company would be making some improvements in their mains sometime in the future. And he said they expected our pressure would go up to around 130 to 140 pounds. I figured, so much the better. Then we would never have any water pressure problems." Carl was beaming. He liked to be helpful.

Ivor and Allen sat and looked at each other incredulously. They both knew there was nothing else to discuss.

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Points of Law 10

ABC Warehouse VI

Who Pays for the Pressure Regulator?

10.1 The Building Code Requirement

Neither the drawings nor the specifications specifically call for installation of a pressure regulator on the ABC Warehouse job. WC Plumbers installed it because it was required by the city inspector. The inspector required the pressure regulator because the building code requires such devices at projects where water pressure will exceed 100 psi.

The contract documents require Hyde Construction to comply with all building code requirements. That provision is also incorporated into the subcontract between Hyde and WC Plumbers. Therefore the contract requires the installation of the pressure regulator even though it's not specifically called out in the drawings or specifications.

Such being the case, neither WC Plumbers nor Hyde Construction would be entitled to receive extra compensation for installing the pressure regulator except for the fact that Carl Daly, Allen's manager, told architect Ivor Judge that the water pressure was 85 psi. Thus, the failure to spec the pressure regulator was caused by misinformation given by the owner to the architect. Accordingly, the architect was justified in omitting the pressure regulator from the contract documents.

10.2 Implied Promises

Every contract includes an implied promise (legalese: implied covenant) that a contracting party will not do anything to interfere with the ability of the other party to perform and obtain the benefits of the contract.

(An implied promise is a promise that is not expressly written down or stated in the contract but is implied from the very existence of the contract.)

ABC Warehouse, although unintentionally, violated this implied promise when it gave incorrect information that the water pressure would be less than 100 pounds. Giving the false information was therefore a breach of contract that caused Hyde (through its subcontractor CD Plumbing) to omit installation of the pressure regulator required by the building code. This breach of contract caused Hyde (through its subcontractor) to incur the extra expense of installing the pressure regulator. As a result, Hyde is entitled to recover, as damage for breach of contract, the reasonable cost of installing the pressure regulator.

10.3 The Subcontractor

What of CD Plumbing? Since CD Plumbing has no contract with ABC Warehouse, its claim to be paid for the pressure regulator cannot be based on a breach of contract.

10.4 Unjust Enrichment

Here we must examine an ancient legal doctrine known as quantum meruit (“that which he deserves”). This forbidding Latin term embodies the concept that a person who provides valuable goods and services should normally be paid for it, to avoid unjust enrichment.

When Hyde Construction gets paid for the pressure regulator it will be unjustly enriched unless the value of that performance is passed on to CD Plumbing. (Hyde is entitled to deduct its reasonable overhead and profit.)

10.5 Straight Thinking vs. Legal Thinking

The reader may well ask, “Why do we have to go through implied covenants and quantum meruit? It’s a simple problem. It’s the owner’s fault that the pressure regulator was not in the plans, and why should the owner get something without paying for it anyway?”

It’s true that we know intuitively how this case should come out before we put the law to it. Why not rely on a rough sense of justice to resolve such legal problems?

The idea is attractive, but it just doesn’t work in practice. If adverse parties come to agreement by applying the rough sense of justice, as they often do, then there’s no dispute to be submitted to lawyers and courts for resolution. When the rough sense of justice breaks down we resort to formal rules of law that can be applied in a uniform and predictable manner. Under the rule of law, like cases have like results. If a judge does make an error in law, it can be corrected by a Court of Appeal. As the experience of nations with emerging economies makes clear, the existence of a flourishing and vigorous economy depends on rules of law.