

COURT OF APPEAL FOR ONTARIO

RE: A. DYNASTY ROOFING (WINDSOR) LTD. (Plaintiff/  
Respondent) – and MARATHON CONSTRUCTION  
SERVICES (1991) INC. (Defendants/Appellant)

BEFORE: MORDEN, GILLESE, and ARMSTONG JJ.A.

COUNSEL: Arthur M. Barat for the defendant/appellant  
Claudio Martini and Joe Barile for the plaintiff/respondent

HEARD: October 20, 2003

RELEASED ORALLY: October 20, 2003

On appeal from the judgment of Justice Joseph G. Quinn of the Superior Court of Justice dated March 11, 2002.

**ENDORSEMENT**

[1] We are satisfied that the trial judge's reasons do not reflect any palpable or overriding error in his conclusion that the bidding process resulted in a contract which obliged the defendant to award the roofing subcontract to the plaintiff, the lowest bidder. In particular, we refer to the evidence that the defendant considered the plaintiff to be bound to it by its bid to perform the subcontract at the price set forth in it.

[2] Mr. Gignac, for the defendant, testified that in the industry the lowest bidder would normally be awarded the contract. In general, only pre-qualified bidders could participate in the bidding process and there was a closing date and time.

[3] With respect to damages, while the amount appears to be high, there was evidence to support the trial judge's award. The plaintiff has not persuaded us that the trial judge made any error in law in his consideration of this evidence.

[4] On the facts of this case there was no failure on the part of the plaintiff to mitigate its loss. The defendant was not in breach of contract until it had awarded the subcontract to Smith Peat.

[5] The appeal is dismissed with costs.

[6] [Costs submissions] The costs are fixed in the amount of \$6,900.

“J.W. Morden J.A.”

“E.E. Gillese J.A.”

“R.P. Armstrong J.A.”