Berwick & Smith Co. v. Salem Press, Inc.

117 N.E.2d 825 (Mass. 1953)

In this action of contract the plaintiff had a verdict which was recorded under leave reserved. The question for decision is whether the judge erred in denying the defendant's motion to enter a verdict in its favor. In determining whether such a motion should be granted the same test is applied as in the case of a motion for a directed verdict. . . .

The plaintiff is a corporation engaged in the business of printing books. The defendant, also a corporation, proposed to publish a two volume work called "Masterplots" and desired to have the plaintiff print and bind the work and to supply the paper for it. During the period here material one Walton C. Allen was manager of the plaintiff. He had been in the publishing business since 1920 and during that time had "estimated many thousands of jobs for publishers." In April, 1949, the plaintiff was requested by one Lightbown to submit to Frank N. Magill, general manager and principal officer of the defendant and the author of "Masterplots," estimates for the paper, printing, and binding involved in publishing this work. On April 25, 1949, the plaintiff submitted an estimate for the paper and printing of "Masterplots 2 Volumes Quantity 5,000 each/10,000 each." The plaintiff concedes that this was an estimate for 5,000 or 10,000 sets. Two days later, April 27, the plaintiff submitted a bid for binding "Masterplots Volumes I & II Quantity 5,000/10,000." The price was quoted as "5,000 copies at .561 10,000 copies at .538."

On May 12 Allen and Magill met for the first time and Magill requested Allen to proceed with the work. On May 16 the defendant by one Brown wrote to Allen confirming the "verbal order placed with you on May 12 by Mr. Frank N. Magill, for 5,000 copies of a two volume book known as Masterplots." It is agreed that Brown was authorized to act for the defendant. The books were subsequently printed and delivered to the defendant and a bill was sent to it on July 30, 1949. In the bill the charge for binding was $ .561 per volume. Shortly thereafter the defendant directed the plaintiff's attention to the fact that it had been overcharged with respect to the binding. The defendant's position was that the plaintiff's bid of $ .561 was the price for a set of two volumes; the plaintiff contended that the bid was on a per volume basis. It appeared that "Masterplots" was the defendant's first publication, and that although Magill "was familiar with the printing of books" when he first met Allen "he had never had a book printed before." Allen testified that binding estimates are submitted on a per volume basis and "that is a well recognized custom in the book production business and that he was aware of it when he first met Magill." . . .

. . . The controversy here stems from the different interpretations placed by the parties on the expression "5,000 copies at .561 10,000 copies at .538" contained in the plaintiff's bid of April 27. But this expression was not unambiguous and it was permissible for the plaintiff to explain its meaning by resort to usages of the trade. . . . Restatement: Contracts, § 248 (2), illustration 5. The existence of the usage is a question of fact to be determined by the jury. . . . That Magill may not have known of the usage in the publishing trade referred to in Allen's testimony is not controlling. "Where the usage is established the presumption is that the parties contracted with reference to it." . . . That is especially true where both parties are engaged in the same trade. Restatement: Contracts, § 248 (2). The plaintiff was not obliged to prove actual knowledge of the usage on the part of the defendant. . . . The case was rightly submitted to the jury.

Exceptions overruled.