

Case Name:

Plas-Tex Canada Ltd. v. Dow Chemical of Canada Ltd.

Dow Chemical of Canada Limited

v.

Plas-Tex Canada Ltd., Plastex Pipeline Systems Ltd., Plastex Profiles Ltd., Plastex Extruders Ltd. and Jaycan Construction Ltd.

[2004] S.C.C.A. No. 542

File No.: 30657

Supreme Court of Canada

Record created: December 13, 2004.

Appeal From:

ON APPEAL FROM THE COURT OF APPEAL FOR ALBERTA

Status:

Application for leave to appeal dismissed with costs (without reasons) April 28, 2005.

Catchwords:

Commercial law -- Torts -- Contracts -- Negligence -- Exemption clauses -- Damages -- Lost profits -- Applicant selling defective resin to pipeline companies knowing resin was defective and failing to warn -- Contract containing exclusion clause limiting liability to selling price of resin -- Categorizing economic loss: whether shoddy goods or contractual relational economic loss -- Whether the Court of Appeal erred when it held the policy concern of indeterminate liability does not arise and positive policy considerations support finding a duty of care -- Whether damages for economic losses suffered by those in a contractual relation with owners or users of a shoddy goods should be limited to cost of repairing the defect.

Counsel:

Eric Groody (Code Hunter), for the motion.

J. Peter McMahon (MacDonald McMahon), contra.

Chronology:

1. Application for leave to appeal:

FILED: December 13, 2004. S.C.C. Bulletin, 2004, p. 1939.

SUBMITTED TO THE COURT: March 31, 2005. S.C.C. Bulletin, 2005, p. 515.

DISMISSED WITH COSTS: April 28, 2005 (without reasons).
S.C.C. Bulletin, 2005, p. 611.

Before: McLachlin C.J. and Binnie and Charron JJ.

Procedural History:

Judgment

at first instance: Applicant found liable in both contract and tort: Respondents awarded pre-judgment sum of \$2, 784, 458.10, interest in the amount of \$1, 386, 620.40 and costs as a single entity, Court of Queen's Bench of Alberta, McIntyre J., December 17, 2002.

Judgment on appeal: Appeal dismissed.

Alberta Court of Appeal, Conrad, O'Leary and Picard
JJ.A., October 14, 2004.

(2004) 245 D.L.R. (4th) 650; [2004] A.J. No. 1098.

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