SMALLWOOD *v.* PETTIT-GALLOWAY COMPANY.

4-2990

Opinion delivered May 8, 1933.

1. CONTRACTS—INSTALLATION OF WATERWORKS.—Where a contractor, having examined the premises where he proposed to install waterworks, and knowing that the other relied on his judgment, agreed to furnish the materials and install the system and plumbing in a workmanlike manner, he impliedly warranted that the system would give reasonable satisfactory service.
2. CONTRACTS—INSTALLATION OF WATERWORKS.—Where a contractor, having agreed to furnish materials and to install a waterworks system in workmanlike manner, furnished an inadequate storage tank, the buyer could deduct from the contract price the cost of a larger tank and the installation thereof.

Appeal from Saline Chancery Court; *Sam W. Garratt*, Chancellor; reversed.

STATEMENT BY THE COURT.

Appellee company brought suit against appellant for the amount claimed to be due for furnishing materials and construction of a waterworks system for her farm house near the Nineteenth Street pike, between Little Rock and Benton.

A deep well was drilled on the farm, and a gas engine attached to the pump. Sometime thereafter she decided to install plumbing in the house, and on August 12, 1929, entered into a contract with Pettit-Galloway Company, appellee herein, to install the waterworks system and plumbing and other materials, for which she agreed to pay appellee $646. Among the items which appellee agreed to furnish and install was a 300-gallon storage tank. After the system was installed, it was found that the tank was too small, and appellant had to buy a 1,000-gallon tank and install it at her own expense, $243.07. The contract provides all work to be completed in a workmanlike manner and guaranteed free of all defective material and workmanship. A part of the plumbing fixtures were not installed and certain extras were added, and this suit was brought to recover $626.58.

In the answer appellant set up that she had been compelled to pay $243.07 to put the system in working order and offered to pay the sum of $362.83, balance.

Pettit, of the appellee firm, visited and examined the premises and wrote appellant a letter on August 12, 1929, saying: "We propose to furnish the material and labor necessary to install the following plumbing in your residence on the Nineteenth Street Pike, for the net sum of six hundred forty-six dollars ($646)."

Among the items particularly specified therein is the following:

"Storage Tank. Furnish and install in pump house and connect with your pumping system one 300-gallon galvanized iron storage tank. Run pipe from pump house to residence and connect with fixtures specified above and put in four pipe hydrants. The piping from pump house to hydrants to be 1½-inch galvanized pipe. One sill cock to be placed on the front wall."

The following guarantee was contained therein: "All work to be completed in a workmanlike manner and guaranteed free of defective material or workmanship."

Pettit, president of appellee company, testified he had been engaged in the plumbing business between 30 and 35 years. Had a contract with Mrs. Smallwood in Saline County. That they did the plumbing and furnished the supplies as they agreed to do. The work was done in accordance with the contract, and Mrs. Smallwood is indebted to them in the sum of $626.58.

Jones, the treasurer of the company, testified that he was manager and treasurer of the company, and the account as filed was the correct amount due from Mrs. Smallwood.

Mayer testified he was a plumber and installed the plumbing covered by the contract in a workmanlike manner as it should have been and in accordance with the contract; and had been engaged in the plumbing business about 20 years.

Pettit, being recalled, testified that they furnished extras as shown by the account. The extras were ordered by the appellant and installed by Mayer. They gave credit for the Vogel toilet not installed, $64.80. When they got into the work, they found the ground was too low to get a flow into the septic tank which they abandoned and gave credit for. Gave credit for the return of the water tank, $85, because she had installed another tank and asked them to take it back. Pettit-Galloway Company furnished the fixtures and bought them from the N. O. Nelson Company, and also stated she selected them herself as he had nothing to do with the selection. Testified that certain items were not in the contract.

Appellant testified she did not wish to evade the bill at all. That in the beginning she told Mr. Pettit she didn't think a 300-gallon tank would work, and he assured her that a 300-gallon tank was ample. After it was installed she wrote Mr. Pettit and told him about the condition, that the outfit would not flush the toilet twice. They had a 320-foot deep well and a 4-inch pipe maybe 185 feet long, which Mr. Pettit changed to a two-inch pipe and the motor pump pulled it off the foundation, and she

had to have that fixed. The tank was too small, as she wrote Mr. Pettit and asked him to come and take it out. He sent Mayer out several times, and he worked on it and tried to get it to work satisfactorily, but it didn't work, and she then bought the 1,000-gallon tank from Camp Pike and had it installed, and with the other items she had to purchase, it cost $243.51. She ordered an extra stove back for which they charged her $20. The tank from Camp Pike cost $80, the hauling $6.60 and completely installed cost $243.51. She furnished Mr. Pettit a statement of the cost of the installation of this tank and deducted the amount thereof from the amount due him under the contract and offered to pay him the balance, $362.83. She stated she bought the 1,000-gallon tank because the other was not large enough, and was impractical to use. She also made explanations about some of the other matters. She had to have some of the pipe changed as the drain was at the wrong end and the pipe would not drain. Mr. Pettit selected the small 300-gallon tank and she told him it was too small to use to begin with. The tank put in by Mr. Pettit did not work, the pressure wouldn't stay in, and she charged Pettit-Galloway Company with $50 for the installation of the 1,000-gallon tank, the whole amount charged to the company for failure to perform the contract in a workmanlike manner being $243, as claimed.

One witness testified that he thought, when appellee designated the kind of materials for constructing the waterworks, that it was done with a view of using electricity for operation instead of a gas engine. Appellant, however, and another witness both testified that Mr. Pettit knew that electricity was not to be used, but only the gas engine, etc.; and she also testified that electricity is now used for lighting in the house, but the waterworks plant is still being operated by the gas engine first installed, and the service has been very satisfactory since the installation of the 1,000-gallon tank.

The court allowed as credits on the account $57.27 for installation of the hydrant in the stock lot and the item of $32.04 for installing the tank and the drayage, and

rendered judgment for $539.67 for appellee, from which decree this appeal is prosecuted.

Verne McMillen, for appellant.

W. R. Donham, for appellee.

KIRBY, J., (after stating the facts). Appellant insists that the court erred in not finding her entitled to a deduction from the price for materials and installation of the waterworks system in the residence as indicated in her statement of the amount required to put it in a usable condition with the purchase of the larger tank as shown to be necessary for its practical operation.

Appellee examined the premises and determined what materials were necessary to be furnished and did the work of installation of these materials into the waterworks system, guaranteeing it should be done in a workmanlike manner, and the warranty was necessarily implied that the materials used would be reasonably fit for the purpose for which they were intended, appellee knowing when the proposal was made that appellant had no information about such materials and the construction of the plant, and that she was necessarily relying upon the judgment of appellee for the right materials to be furnished and the work properly done in order to supply and distribute the water through said system.

The law implies that, where chattels or machinery are sold for a particular purpose and the purchaser knows nothing about such materials or their use, he necessarily relies on the judgment and good faith of the vendor that the articles purchased are reasonably fit for the purpose for which they are intended, the law implying the warranty that they are of such character. *McCaskey Register Co.* v. *McCurry,* 181 Ark. 649, 26 S. W. (2d) 1108; *Dyke* v. *Magdalena,* 171 Ark. 225, 283 S. W. 374; *Western Cabinet & Fixture Co.* v. *Davis,* 121 Ark. 370, 181 S. W. 273.

When there is an agreement that the work, for which the materials were agreed to be and are furnished by the contractor, shall be completed in a workmanlike manner, it covers not only the construction and installation, but also the system used to accomplish the result desired and contracted for. There was a waterworks system to be

installed by appellee on premises that had already been inspected by it for distributing and carrying water for domestic use throughout the premises from a well already dug, and the contractors are bound to the construction of such a system under the agreement that it shall be done in a workmanlike manner, and will, upon completion, give reasonably good and satisfactory service, since he knew what was to be done, the result to be accomplished, and that the manner or method of accomplishing the desired result was left to his judgment, knowledge and experience. The law will import into the contract an implied agreement that the waterworks or system of distributing the water will be proper and suitable for the purpose for which it was designed, namely, the proper distribution of the water through the house and premises, it being a contract for the doing of certain work to accomplish certain results. *Miller* v. *Winters,* 144 N. Y. Supp. 351.

The testimony shows that the materials for construction of the waterworks were suggested and selected by appellee, who was familiar with the construction of such systems, and appellant had as much right to expect reasonably satisfactory service from this plant when it was completed as though it had already been completed and sold to appellant for such use as it was proposed to be put to in its construction under the contract. The testimony shows the service rendered was not reasonably satisfactory because of either wrong construction or the wrong selection of materials for construction by the appellee, who was experienced in such matters and had the sole selection of materials to be used, knowing that appellant was altogether unfamiliar with such matters.

The preponderance of the testimony discloses that the waterworks as constructed by appellee were inadequate, and did not distribute the water throughout the premises as appellant under her contract had the right to expect would be done; and that appellee was notified of this fact, and finally, not remedying the condition, appellant had to install certain other machinery, tanks, etc., for securing the service she was entitled to expect under the contract made.

The chancellor erred in not allowing her credit on the contract price for the cost of the larger tank and the installation thereof, which should have been deducted from the contract price. The cause therefore must be reversed, and it will be remanded with directions to allow the credit of appellant for $243.51 and render judgment for the balance due under the contract, $362.83. It is so ordered.