

Clem (Cleam) CALDWELL, Appellant, v. BECHTEL, INC., Appellee UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA CIRCUIT 631 F.2d 989 (1980)

OPINION BY: MacKINNON

[*992] We are here concerned with a claim for damages contractual duties, which are imposed by agreement of the by a worker who allegedly contracted silicosis while he was parties to a contract, a duty of due care under tort law is mucking in a tunnel under construction as part of the based primarily upon social policy. The law imposes upon metropolitan subway system. The basic issue is whether a individuals certain expectations of conduct, such as the consultant engineering firm owed the worker a duty to expectancy that their actions will not cause foreseeable injury protect him against unreasonable risk of harm. to another. These societal expectations, as formed through the common law, comprise the concept of duty.

The Shea-S&M-Ball joint venture (hereinafter Shea) entered into a contract with the Washington Metropolitan Area Transit Authority (hereinafter WMATA) in the construction of tunnels for the Washington Metro Subway system and appellant Clem Caldwell was employed by Shea as a heavy equipment operator. Appellee Bechtel, Inc. (hereinafter Bechtel) was also under contract with WMATA, as a consultant to provide, inter alia, "safety engineering services" with respect to work to be done by various contractors pursuant to their contracts with WMATA. Among the duties that Bechtel undertook to perform for and on behalf of WMATA under the contract between the parties was the function of overseeing the enforcement of safety provisions [*993] in relevant safety codes, and inspecting job sites for violations. ... This appeal attacks the district court's grant of defendant Bechtel's motion for summary judgment.

The essence of Caldwell's complaint is that Bechtel "had the function, duty and responsibility, as consultant to Metro (WMATA) to provide, inter alia, overall direction and supervision of safety measures and regulations in effect, or needed during the course of construction . . ." (App. 5), and that Bechtel was aware or should have been aware of the danger posed by high levels of silica dust and inadequate ventilation in the Metro tunnels, but failed to take the steps it was duty-bound to take to rectify the situation. This failure, Caldwell alleges, was not only in violation of Bechtel's contract with WMATA and applicable safety codes, but more importantly constituted gross negligence toward Caldwell who was working in the tunnels.

... The issue in this case, then, is whether the contractual authority vested in Bechtel with respect to job site safety regulations [**4] created a special relationship between Bechtel and Caldwell under which Bechtel owed a duty to Caldwell to take reasonable steps to protect him from the foreseeable risk to his health posed by the dust laden Metro tunnels. We find that under applicable tort law principles Bechtel was indeed duty-bound. Accordingly, we reverse the decision of the district court.

...

In attempting to convince the court that it owes no duty of due care to take reasonable steps to protect him from the of reasonable care to protect appellant's safety, Bechtel foreseeable risk of [*1003] harm to his health posed by the argues that by its contract with WMATA it assumed duties excessive concentration of silica dust in the Metro tunnels. only to WMATA. Appellant has not brought this action, We remand so that Caldwell will have an opportunity to however, for breach of contract but rather seeks damages for prove, if he can, the other elements of his negligence action.

an asserted breach of the duty of reasonable care. Unlike parties to a contract, a duty of due care under tort law is based primarily upon social policy. The law imposes upon individuals certain expectations of conduct, such as the expectancy that their actions will not cause foreseeable injury to another. These societal expectations, as formed through the common law, comprise the concept of duty.

Society's expectations, and the concomitant duties imposed, vary in response to the activity engaged in by the defendant. If defendant is driving a car, he will be held to exercise the degree of care normally exercised by a reasonable person in like circumstances. Or if defendant is engaged in the practice of his profession, he will be held to exercise a degree of care consistent with his superior knowledge and skill. Hence, when defendant Bechtel engaged in consulting engineering services, the company was required to observe a standard of care ordinarily adhered to by one providing such services, possessing such skill and expertise.

A secondary but equally important principle involved in a determination of [*998] duty is to whom the duty is owed. The answer to this question is usually framed in terms of the foreseeable plaintiff, in other words, one who might foreseeably be injured by defendant's conduct. This secondary principle also serves to distinguish tort law from contract law. While in contract law, only one to whom the contract specifies that a duty be rendered will have a cause of action for its breach, in tort law, society, not the contract, specifies to whom the duty is owed, and this has traditionally been the foreseeable plaintiff.

It is important to keep these differences between contract and tort duties in mind when examining whether Bechtel's undertaking of contractual duties to WMATA created a duty of reasonable care toward Caldwell. Dean Prosser expressed the relationship in this terse fashion:

By entering into a contract with A, the defendant may place himself in such a relation toward B that the law will impose upon him an obligation, sounding in tort and not in contract, to act in such a way that B will not be injured. The incidental fact of the existence of the contract with A does not negative the responsibility of the actor when he enters upon a course of affirmative conduct which may be expected to affect the interests of another person. ...

We reverse the summary judgment of the district court, and hold that as a matter of law, on the record as we are required to view it at this time, Bechtel owed Caldwell a duty