

**Note**

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95001-75001-2412 | 6/23/2016 14:06:30

Consequential Damages Case

1987 WL 8884

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK  
COURT RULES BEFORE CITING.

Superior Court of Delaware.

CONCORD PLAZA ASSOCIATES, INC. et al.

v.

HONEYWELL, INC.

Submitted: March 18, 1987.

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Decided: March 20, 1987.

**Attorneys and Law Firms**

Henry E. Gallagher, Jr., Connolly, Bove, Lodge & Hutz, Wilmington.

David H. Williams, Morris, James, Hitchens & Williams, Wilmington.

**Opinion**

O'HARA, Judge.

\*1 This letter is intended as the Court's decision on the issue whether Concord Plaza Associates, Inc. ('CPA') is entitled to pursue recovery of damages falling under the category of 'Additional Energy Costs.' This issue appeared subsequent to the filing of interrogatory responses by CPA and prompted Honeywell's counsel to seek guidance from the Court in the wake of the Court's previous decision eliminating consequential damages from the case. An office conference was held in Chambers on March 18, 1987 at which time the Court reserved judgment on the issue.

CPA defines 'Additional Energy Costs' as the amount it spent on energy during the period of time in which the Delta 1000 was operating over and above the sums it would have spent on energy had it not purchased the unit from Honeywell. CPA seeks to recover these damages under the theory that Honeywell breached a 90-day warranty of repair. Implicit in CPA's action on this theory is the contention that the Delta 1000 did not

function as it was designed to function and that by operating the unit in an impaired condition CPA consumed additional electrical power. The crux of the complaint is that if Honeywell had restored the Delta 1000 to its proper operating condition CPA would not have received inflated energy bills.

Under these circumstances it would appear that the difference between the energy bills received by CPA while the Delta 1000 was operating in an impaired state and the bills CPA would have received had the unit been functioning properly is an amount appropriately deemed 'damages' stemming from the failure by Honeywell to correct problems with the equipment.<sup>1</sup> This is not what CPA seeks to recover. CPA argues that the breach of the 90-day warranty should permit them to recover the difference between its energy bills while the Delta 1000 was operating and its energy bills prior to installation of the unit. To calculate the damages in this fashion assumes that Honeywell warranted that the machine would yield energy bills at most equal to those experienced prior to installation. In a prior decision in this case the Court held, however, that as a matter of law Honeywell made no warranties to CPA as to the unit's efficiency. The effect of this ruling is to shelter Honeywell from claims based on both the amount of projected energy savings that were not realized and any amounts expended in excess of the pre-installation energy costs resulting from the inherent inefficiencies in the system.<sup>2</sup> Stated simply, CPA is entitled to recover damages attributable to a broken machine but not for an inefficient machine. The proper measure of damages, therefore, is the difference between CPA's energy bills while the unit was operating in an impaired state and the amount it would have been billed had the unit been operating in a 'fixed' state.

That the amount described immediately above is a 'damage' stemming from Honeywell's breach does not necessarily mean that CPA may recover the amount in this case. This Court previously determined that the contractual provision prohibiting the recovery of consequential damages is valid and enforceable. In order to recover the above described amount, therefore, CPA's argument that such an amount does not fall

within the category of consequential damages must be successful.

\*2 Consequential damages have been defined as damages

such as are not produced without the concurrence of some other event attributable to the same origin or cause; such damage, loss or injury as does not flow directly and immediately from the act of the party, but only from the consequences or results of such acts.

25 C.J.S. [Damages § 2](#), at 617 (1966). Consequential damages typically ‘do not arise as an immediate, natural, and probable result of the act done, but arise from the interposition of an additional cause, without which the act done would have produced no harmful result.’ [United States v. Chicago B & Q. R. Co.](#), 8th Cir., 82 F.2d 131, 136, cert. denied,

298 U.S. 689 (1936). It has been said that the commercial context in which a contract is made is of substantial importance in determining whether particular damages flowing from its breach are direct or consequential. [Applied Data Processing, Inc. v. Burroughs Corporation](#), D. Conn., 394 F.Supp. 504, 509 (1975).

The Court has considered the parties' arguments and is satisfied that the amounts representing the excess energy costs incurred by CPA as a result of the use of the Delta 1000 in its alleged state of disrepair are damages arising as an immediate, natural, and probable result of Honeywell's failure to repair the unit. These damages are properly characterized as direct damages and CPA is accordingly entitled to recover such damages as it may establish.

IT IS SO ORDERED.

#### All Citations

Not Reported in A.2d, 1987 WL 8884

#### Footnotes

- 1 In order to be recoverable in this case, however, this amount must be recognizable as either direct or incidental damages.
- 2 It is quite possible that even in a fully operational condition the Delta 1000 might have produced higher energy bills than were experienced prior to its installation.