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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Bentley D. Price, Circuit Court Judge

Case No. 2012-CP-10-00580

Thomas H. MorganRespondent,

v.

John L. Gilbert, Stuart L. Fred, Bella Vista Partnership, A Texas General Partnership, Bomasada Group, Inc., A Texas Corporation, Bomasada Investment Group II, LLC, A Texas Limited Liability Company, Lauralis Management, Inc., A Texas Corporation, and 150 Bee Street, LLC, A South Carolina Limited Liability CompanyDefendants,

Of which John L. Gilbert, Stuart L. Fred, Bella Vista Partnership, A Texas General Partnership, Bomasada Group, Inc., A Texas Corporation, Bomasada Investment Group II, LLC, A Texas Limited Liability Company, and Lauralis Management, Inc., A Texas Corporation are theAppellants.

SUPPLEMENTAL
RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON) CASE NO.: 2012-CP-10-580
3 THOMAS H. MORGAN,

4 Plaintiff(s),

5 -vs-

6 JOHN L. GILBERT, STUART L. FRED,
7 BELLA VISTA PARTNERSHIP, A
8 TEXAS GENERAL PARTNERSHIP,
9 BOMASADA GROUP, INC., A TEXAS
10 CORPORATION, BOMASADA
11 INVESTMENT GROUP, II, LLC, A
12 TEXAS LIMITED LIABILITY
13 COMPANY, LAURALIS
14 MANAGEMENT, INC., A TEXAS
15 CORPORATION, AND 150 BEE STREET,
16 LLC, A SOUTH CAROLINA LIMITED
17 LIABILITY COMPANY,

18 Defendant(s).

19 Volume III Arbitration

20 Before Panel: Brewton Hagood, Costa Pleicones,
21 and Paul Dominic

22 Date Taken: Wednesday, November 2nd, 2022

23 Time Taken: 9:00 a.m.

24 Location: Womble Bond Dickinson
25 5 Exchange Street
Charleston, South Carolina 29401

Reported By: Judy W. Galuppo, Court Reporter

A-P-P-E-A-R-A-N-C-E-S

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6 Also Present

7 Jade Alderman, Paralegal

8 Thomas Morgan, Plaintiff

9 John Gilbert, Defendant

10 Ronny Burkett, CPA

Elizabeth Baker

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1 Hightower per the contract.

2 Q Right. So you gave them credit for that
3 because you knew that they got paid that?

4 A Yes.

5 Q Even though you didn't see that in the
6 backup?

7 A Correct.

8 Q Yeah. Now, number 4 has to do with the
9 reconciliation from BIG II, Mr. Shields. So number 4
10 talks about this number, total cost charged to contract
11 per BIG II's internal records. It says, As provided
12 from internal accounting system report produced by BIG
13 II (detail not included herein).

14 Then number 5 applies to this BIG II payment
15 application number 1, 313,110. And it says, Per BIG II,
16 this application consisted of general conditions
17 expenditures such as predevelopment costs for labor,
18 supplies, and construction travel that were paid
19 primarily by BIG, as well as builders risk insurance
20 premiums of \$210,000. As these costs were incurred
21 prior to the creation of Bee Street project in the job
22 costing software, they were not included in the job
23 costing report. No documentation was available to
24 support these costs, therefore we were unable to apply
25 our procedure to this item.

1 In other words, since you didn't have backup
2 you could not apply them to your procedures; is that
3 right?

4 A We could not apply them to our procedures,
5 yes.

6 Q Number 6 applies to both these retainage
7 payments to Hightower in the amounts of 407 and 509,000
8 dollars.

9 Number 6 says, Per BIG II, these payments
10 represent retainage paid to Hightower Construction after
11 contract completion, but were not properly coded and
12 classified in the job cost system. No documentation was
13 available to support these costs, therefore we were
14 unable to apply our procedures to these items.

15 However, we note that total amounts paid to
16 Hightower per the job cost system were \$23,637,582.93,
17 an amount that is only \$184,442.33 higher than the
18 contract amount identified at 3 above. This number
19 indicates that these two retainage payments, totaling
20 \$916,800, were likely already included in the job costs.

21 So in other words, first of all, you didn't
22 get documentation for this, but you doubted it because
23 the amount that they indicated was closer to this amount
24 that you knew was paid; is that right?

25 A We attempted to support that in whatever

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2 COUNTY OF CHARLESTON) CASE NO.: 2012-CP-10-580
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5 -vs-

6 JOHN L. GILBERT, STUART L. FRED,
7 BELLA VISTA PARTNERSHIP, A
8 TEXAS GENERAL PARTNERSHIP,
9 BOMASADA GROUP, INC., A TEXAS
10 CORPORATION, BOMASADA
11 INVESTMENT GROUP, II, LLC, A
12 TEXAS LIMITED LIABILITY
13 COMPANY, LAURALIS
14 MANAGEMENT, INC., A TEXAS
15 CORPORATION, AND 150 BEE STREET,
16 LLC, A SOUTH CAROLINA LIMITED
17 LIABILITY COMPANY,

18 Defendant(s).

19 Volume IV Arbitration

20 Before Panel: Brewton Hagood, Costa Pleicones,
21 and Paul Dominic

22 Date Taken: Friday, November 4th, 2022

23 Time Taken: 9:00 a.m.

24 Location: Womble Bond Dickinson
25 5 Exchange Street
Charleston, South Carolina 29401

Reported By: Judy W. Galuppo, Court Reporter

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Also Present

Jade Alderman, Paralegal
Thomas Morgan, Plaintiff
John Gilbert, Defendant
Ronny Burkett, CPA
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1 testify.

2 MR. GOWDER: He said curious, if I recall.

3 THE WITNESS: I believe I did say curious.

4 BY MR. ELLISON:

5 Q At your deposition you called it inquiry
6 notice, right?

7 A I don't recall what I said at --

8 MR. GOWDER: I'm going to object because
9 inquiry notice is a legal term, it has significance.
10 And he is not an expert that has been identified as
11 someone who is going to testify on this matter.

12 MR. ELLISON: And he used the term at his
13 deposition, and we'll call it up.

14 MR. HAGOOD: Give us a second. Excuse me,
15 sir. I'm sustaining the objection.

16 MR. ELLISON: Okay.

17 BY MR. ELLISON:

18 Q Do you remember using that term at your
19 deposition?

20 A Not specifically, no.

21 Q Okay. Prior to 2009 documents you recall
22 that BIG II had a license to use some pretty specific
23 software in order to keep track of costs?

24 A I don't specifically remember that.

25 Q Do you remember they had one?

1 A There was something they were using, yes.

2 Q They were using something?

3 A Yes.

4 Q At by the time you got involved in the
5 project in 2013, they no longer had that license, did
6 they?

7 A I don't think so they did.

8 Q You were never able -- you were working with
9 Mr. Shields to go from 8 million to 4 million to
10 2.7 million, right?

11 A Correct.

12 Q And you did have the ability to use that
13 software, did you?

14 A We didn't, no.

15 Q If you're -- okay. So you didn't have the
16 ability to use that software when you were doing all of
17 this, right?

18 A Right.

19 Q Right. And Mr. Shields didn't have that
20 ability, to the best of your knowledge, did he?

21 A Not that I know of.

22 Q In this time period.

23 And in your experience with a job that was
24 essentially finished in 2009 or so, if suit had been
25 filed regarding alleged irregularities, say in

1 April 2010, then there would have been more records to
2 review in order to deal with this whole issue of costs,
3 would there not? More likely than not?

4 A More likely than not.

5 Q Okay. More likely than not, software
6 could -- might have been available at that time, right?

7 A It may have been.

8 Q Okay. If Neal Baker -- if you had been
9 charged with determining -- but you weren't. But if you
10 had been charged with determining the reasonableness of
11 expenses, and Neal Baker had been alive, you would have
12 been tasked with asking management, which includes
13 Neal Baker, about the reasonableness of expenses, right,
14 if you had been tasked to do that?

15 A If I had been tasked to do that, yes.

16 Q Okay. And even if suit weren't filed until
17 August of 2011, okay, isn't it more likely than not that
18 there would have been more records available regarding
19 cost inquiries?

20 A I could assume so, but I don't know that.

21 Q Do you believe so, in your experience.

22 A Possibly, yes. Time tends to be the enemy
23 of records.

24 Q And we can go to the report if you want to.
25 But in the discussion draft of August 2014, one of

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Supplemental Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

NOTE: I certify the above transcript pages are submitted as a Supplemental Record on Appeal pursuant to South Carolina Appellate Court Rule 112(b) with the consent of Respondent's counsel.

Respectfully submitted,

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August 30, 2024

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PROOF OF SERVICE

I do hereby certify that on the 30th day of August 2024, I served a copy of the within ***Supplemental Record on Appeal*** on all counsel of record addressed as follows:

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