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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2022-CP-42-03123
Appellate Case No. 2023-001752

MECO, Inc. of Augusta.
Appellant,

v.

Alex Sayed a/k/a Arshad M. Sayed a/k/a Arshed Sayed; NEPA Ventures LLC; NEPA Trading &
Investments, LLC.....
Respondents.

RECORD ON APPEAL - VOLUME II OF II

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August 6, 2024
Augusta, Georgia

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MECO, INC. OF AUGUSTA,)
)
Plaintiff,)
)
vs.) CIVIL ACTION FILE
) NO. 2022-CP-42-03123
ALEX SAYED a/k/a ARSHAD M.)
SAYED a/k/a ARSHED SAYED; NEPA)
VENTURES LLC; NEPA Trading &)
Investments, LLC,)
)
Defendants.)

ORIGINAL

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- - - - -

1 conversation six years ago.

2 Q. Was there anything else that you recall?

3 A. Not that I can remember.

4 Q. Getting back to -- so I want to -- I want to get back
5 to some more general questions about MECO. What does MECO do?

6 A. We are a sales, service, and installation company for
7 petroleum equipment products.

8 Q. Okay. So do you-all manufacture any petroleum
9 equipment products?

10 A. No, sir.

11 Q. Okay. So you don't do any manufacturing; is that
12 correct?

13 A. Correct.

14 Q. So -- so MECO's role is to purchase from third
15 parties and then you handle the installation; is that correct?

16 A. Correct.

17 Q. So sort of like a contractor for a house; is that
18 accurate?

19 A. Correct.

20 Q. Where the contractor -- he's not cutting the wood or,
21 you know, forging the doorknob, he is supplying the materials
22 and then what he's doing is the service of putting it all
23 together; is that accurate?

24 A. Yes, sir, that is.

25 Q. That's what MECO does, correct?

1 A. Correct.

2 Q. Is that -- and that's what MECO did on this project,
3 correct?

4 A. Correct.

5 Q. Okay. Let me -- I'm gonna mark this as Exhibit
6 Number 1.

7 MR. BACH: This is your copy.

8 MR. KELLY: Thanks, Adam.

9 (Defendants' Exhibit Number 1 was marked for
10 identification purposes.)

11 Q. (By Mr. Bach) I'm gonna hand you -- I'm gonna hand
12 you what's been marked as Exhibit Number 1. This is the
13 30(b)(6) notice that my office sent that we are here on today,
14 and you are MECO's designee to testify about the topics that
15 are listed 1 through 13. Do you understand that?

16 A. Yes, sir, I do.

17 Q. Have you seen this notice before and these topics?

18 A. Yes, sir, I have.

19 Q. Have you reviewed them?

20 A. Yes, sir, I have.

21 Q. Have you taken some time to go and become educated on
22 these topics and to determine what knowledge MECO might have
23 about these topics?

24 A. Yes, sir, I have.

25 Q. Okay. And throughout -- I've got -- this has a

1 MR. KELLY: For the record, Magee is spelled
2 M-a-g-e-e.

3 Q. (By Mr. Bach) Okay. What -- what does an install
4 manager do?

5 A. He handles scheduling, oversight.

6 Q. Oversight of who?

7 A. Of the installation department.

8 Q. Okay. Is he in -- installation department within
9 MECO?

10 A. Yes, sir.

11 Q. Are they the people who are actually providing the
12 service like putting their hands -- shovels in the ground, that
13 sort of thing?

14 A. Yes, sir.

15 Q. Okay. And so as they are work -- so did -- well, let
16 me ask you this way. Is there one installation department or
17 are there multiple installation departments in MECO?

18 A. There is one installation department in Augusta that
19 is in-house. Our Greenville branch uses subcontractors.

20 Q. Okay. So -- and I'm primarily interested in the
21 project at issue. Since Westar is near the Greenville branch,
22 would this have been done by subcontractors?

23 A. No. It was done in-house in Augusta because it was a
24 very detailed project, and we took on that responsibility with
25 our branch down here.

1 Q. So explain that to me. So when you say it was done
2 here in Augusta -- from somebody who doesn't know anything
3 about your business, what does that mean?

4 A. The Augusta branch is a larger branch. We do much
5 more construction out of this branch. That's a smaller branch
6 up there. The expertise of the crew down here handles larger
7 projects. Most of the smaller projects and retrofits out of
8 the Greenville branch are handled by subcontractors because
9 they're not as in depth.

10 Q. When you say it was handled here in-house, do you
11 mean that there was actual work done here or you're just saying
12 that it was the crew from here?

13 A. I'm saying it was my crew from Augusta that did the
14 work in Cowpens.

15 Q. Okay. So they traveled to Cowpens?

16 A. Correct.

17 Q. Is there -- is there one crew in Augusta? When you
18 say crew, I'm just trying to figure out how many people -- is
19 it multiple crews? Is it...

20 A. Today, I have multiple crews. Then, it was one
21 four-man crew.

22 Q. That did the install for complicated projects?

23 A. Correct.

24 Q. Okay. I gotcha. And then if there was something
25 more minor in that area, you would handle with subcontractors?

1 fertilizer. It's highly corrosive. It's the opposite. What
2 it is stored in corrodes and affects the fluid itself.

3 So if you took a penny and dropped it in
4 8,000 gallons of DEF underground, it would null and void that
5 entire tank of DEF. It would no longer be any good. So normal
6 applications, diesel is dropped directly into a belowground
7 tank through an adaptor and a bucket straight off a truck.
8 DEF, if you did that, every time they open the lid, water and
9 contaminants could go straight into the tank, and it would ruin
10 the fluid that it is stored in. So we call it a remote fill
11 because we have to have a box away from the tank that the truck
12 can directly hook into. That way we know that no contaminants
13 can run down into the -- into the tank.

14 **Q. Okay. And so you worked on that portion too?**

15 **A. Yes, sir, I did.**

16 **Q. All right. If you could then in your own words just**
17 **explain -- provide to me what did -- what was MECO hired to do**
18 **at the -- at the plaza -- the travel plaza?**

19 **MR. KELLY:** Let me object to the form of the
20 question, and ask for clarification of when.

21 **Q. (By Mr. Bach) Initially.**

22 **A.** My understanding from Roger was that he had older
23 dispensers that did not take cards and communication at the
24 pumps. So when the trucks pulled in, they had to get out and
25 go inside to a register and tell them what account they were.

1 And then they would authorize them to have fuel and trucks
2 would stack up. So this was also the time where the credit
3 card chips were starting to come out, and everybody was having
4 to upgrade to a different type of authorization to be able to
5 take payment.

6 He had older existing tanks and outdated piping that
7 was not up to code. And, originally, he just wanted to upgrade
8 the dispensers. And he had a small DEF tank at the very first
9 island closest to the building. And they were doing more
10 volume because more trucks had started to have this DEF on
11 them, and they were running out.

12 And so he wanted to make it where he had
13 communication where the truck drivers did not have to go back
14 inside to communicate. He wanted them to be able to punch a
15 code on the dispensers and it speed up transactions. And he
16 needed a larger capacity for DEF because there was only one
17 island that could have the DEF, and he wanted DEF in all the
18 islands so that he could increase his DEF sales.

19 MR. KELLY: For the record, when he refers to DEF,
20 it's an acronym, D-E-F. All capitalized.

21 THE WITNESS: So we were going to take the existing
22 diesel tank. We had to tear of a portion of it to be able
23 to get into the underground containment to take out the
24 old pipe. We had to bring it up to code with new
25 containment because the motors themselves were sitting in

1 dirt, and that was not to code. It has to be inside of a
2 containment in case there was a spill. We had to put in
3 the new piping to all the new dispensers, and we were
4 putting new dispensers with new communications at every --
5 every lane.

6 Q. (By Mr. Bach) And -- and just to make sure that I'm
7 clear about your answer, this is what the defendants originally
8 requested MECO to do; is that accurate?

9 A. When I was brought into it, this is what Roger
10 Carpenter and Alex was discussing. I didn't have the original
11 conversations with Alex on the project, so I can't speak on
12 that behalf on what originally was discussed between Roger and
13 him on the project.

14 Q. But your understanding -- or MECO's testimony today
15 is the things that you -- I don't have to go back over all of
16 it.

17 A. Sure. Sure.

18 Q. The things that you just described is what MECO was
19 hired to do initially?

20 A. That is exactly what MECO was hired to do.

21 Q. Was -- was keeping some of the pumps open so the
22 trucks could continue to come through and get gas part of the
23 conversation at that time?

24 A. We would never take a site half down if we could take
25 it fully down. It turns into two projects. It's much more

1 Q. Had y'all ever done a project like this before where
2 you've taken half down?

3 A. Yes, we have.

4 Q. In that area?

5 A. Not in that area. Many times in the Augusta area.

6 Q. So it's something y'all had a fair amount of
7 experience with?

8 A. A large amount of experience with.

9 Q. And you were familiar with the variables before you
10 ever met Mr. Sayed, correct?

11 A. Correct.

12 Q. Okay. Was -- one of the things I want to ask you,
13 you said dates equipment will arrive. Do y'all order the
14 equipment that's gonna be installed before it's set to be
15 installed and then try to time the arrival, or are you able to
16 warehouse it?

17 A. We warehouse the smaller equipment. The larger
18 equipment -- the tank comes direct from the manufacturer
19 straight to the site, and sometimes we get the dates we want.
20 Sometimes they give us the date that they can make it.

21 Q. And then in order for the tank to go in the -- well,
22 let me ask you this: Is there any way to keep the tank at the
23 project before it's installed, or does it have to go straight
24 from the manufacturer into the ground?

25 A. If it is a diesel or gas tank, we could store it on

1 rock at the site if it wasn't ready to go in. With a
2 fiberglass DEF tank, because of the volatility of the tank
3 being clean, it has to go straight off the truck straight into
4 the ground.

5 Q. Is -- okay. So -- so you have to have your work --
6 the dig or whatever else --

7 A. I have to have the dig ready to go for it to come in.

8 Q. And is that MECO's standard practice with regard to
9 all of the tanks, or do y'all sometimes store the tanks at the
10 site?

11 A. We try to go in and have the tank hole ready way
12 before the tank is ready to arrive.

13 Q. How about the pumps? Do y'all warehouse the pumps or
14 do you --

15 A. We warehouse the pumps.

16 Q. Here in Augusta?

17 A. Yes, sir.

18 Q. Do you do any of that in -- at Piedmont?

19 A. Yes, sir, we do.

20 Q. Do you know where -- were these warehoused -- were
21 the pumps for this one warehoused?

22 A. The equipment was warehoused in Greenville.

23 Q. In Piedmont?

24 A. Yes, sir.

25 Q. You said that he gave you a competitor's quote to

1 A. Correct.

2 Q. Was there anything that arose as the project went on?
3 And we're gonna look at documents. I'm just trying to get your
4 memory -- what you know without -- but anything went -- as the
5 project went on that was not anticipated at the time you quoted
6 the work?

7 A. Yes. There's things.

8 Q. Okay. What were some of those?

9 A. From the very beginning we were held up on ordering
10 equipment and the tanks because there's a significant amount of
11 time between when the funding was released to us and when we
12 could order the equipment. The dispensers and the tanks, we
13 never order unless we have the existing down payment because
14 they're specialized, and we cannot return them. Other things
15 that arose was we faced -- we faced obstacles with weather,
16 holidays, other things that originally if the project would
17 have started sooner, would not have such an impact.

18 We had concrete that was poured at a portion of the
19 project and it was flagged off and a truck drove through it
20 while it was still wet. And we had to tear out a whole portion
21 and start back over. The way the original piping was run. The
22 reason we didn't realize that that line that was going to the
23 front of the store for the diesel for the one dispenser -- we
24 didn't find out about that issue until we did the second phase
25 of the fueling project.

1 **Q. What issue?**

2 A. The piping that ran to the dispenser. So the -- let
3 me see how I can explain this. You can run -- you can run
4 pipe -- product piping to dispensers two ways. You can run it
5 in sections, or you can run it all in one. Some customers
6 prefer you have one product pipe that goes to every dispenser
7 and it's T'd off and goes into them. The problem with that is
8 if one -- if anything fails, everything's down. If you run it
9 in two sections and say four of the dispensers have a product
10 line running back to the tank and the other four dispensers
11 have a product line running back to the tank, if one section
12 fails, the other section can still run at a later date. That
13 was the way the original piping was run.

14 What we did not know is -- and Alex didn't know it,
15 nobody knew it -- is instead of running from the tank to the
16 front set of auto diesels -- we call it auto because it's small
17 trucks. Instead of them running the line from the existing
18 tank to the front of the building, they tied into one of the
19 product lines on the truck diesel on the back.

20 **Q. So how did that complicate things?**

21 A. When we went to -- to disconnect and start on the
22 second phase of the project closest to the building, he no
23 longer had fuel -- the diesel fuel -- at his pump in the front.

24 **Q. Because it was running to the back?**

25 A. Because it was running to that back piping that we

1 had just disconnected to tear out and redo.

2 **Q. That was the beginning of phase two?**

3 A. Correct.

4 **Q. Okay. Anything else not anticipated at the time of**
5 **your quote?**

6 A. Communication and network issues.

7 **Q. Okay. What do you mean by that?**

8 A. He had existing -- the manufacturer's called Comdata.
9 It's what handles high-volume truck accounts. So a trucking
10 company might have an account with Comdata. And so they give a
11 PIN number when they pull up to a site that has that, and they
12 can buy fuel, but they don't have to give a card every time
13 because it's a network. He had an existing network. We were
14 tying new card readers and new communications on the new
15 dispensers to that existing point of sale. And we were
16 informed by Alex that it would work, and it did not. It had to
17 be upgraded.

18 **Q. Okay. What else?**

19 A. I can't think of anything else.

20 **Q. On the gap in funding --**

21 MR. KELLY: Hold up. Hold on. I think -- are you --
22 are you done? I thought you were thinking and then you
23 moved on. I looked down and so...

24 MR. BACH: No. He said he couldn't think of anything
25 else.

1 THE WITNESS: We...

2 MR. KELLY: I don't know. I'm just asking you if
3 there's -- take a minute and think if there's anything
4 else.

5 THE WITNESS: There was weather, there was timing,
6 there was payment issues. It was many times where we
7 requested payment and it would be a significant amount of
8 days before we would hear anything. We were held at the
9 jeopardy of the third-party banking for all of our
10 financing.

11 Q. (By Mr. Bach) Did y'all ever stop work because of
12 delays in payment?

13 A. We drug our feet at times because we weren't getting
14 paid.

15 Q. Because you weren't getting paid in accordance with
16 the terms of the contract. Is that what you're saying?

17 A. Way outside the terms of the contract.

18 Q. And you drug your feet because of that?

19 A. At times.

20 Q. When you said earlier -- and I'm sorry. I don't want
21 to stop your list. Anything else?

22 A. We had a completely separate request for the very
23 front of the property. The existing pumps could not take the
24 new credit cards with the chips, and he had to upgrade them due
25 to CITGO's rules because the front of the house was CITGO. The

1 A. I do.

2 Q. Okay. And -- and that's something MECO was to
3 provide, correct? I mean, just trying to define terms here.
4 The defendants are customer in that sentence?

5 A. Correct.

6 Q. All right. And they -- so MECO is to provide the
7 defendants a "detailed construction schedule for a 16 day
8 project." What does that mean?

9 A. This is a -- we use a standard scope of work on
10 retail sites because they're mostly the same. It just might be
11 certain different piece of equipment that are being used and
12 moved. I have two copies of this. I have one that has the
13 16-day on it, and I have one that doesn't have the 16-day on
14 it. And they're both identical.

15 Q. Are they both signed?

16 I'll tell you what. Let's do this, we'll take a
17 break for lunch in about an hour, and you can flip through then
18 and see if you can find it.

19 A. Okay. It --

20 Q. And if so just --

21 A. It is. Both of them are signed.

22 Q. Why is -- why were there two different versions?

23 A. I believe that was a grammatical error that was not
24 caught when he was using Word to write up a scope of work to
25 match the contract.

1 Q. The 16-day project?

2 A. Correct.

3 Q. Okay.

4 A. Because it's 28 days just for the concrete alone, and
5 so that's just a grammatical error that occurred.

6 Q. Okay. So you think that the "for 16 day project" was
7 inserted by mistake?

8 A. I believe it could have been inserted by mistake, or
9 it was from an existing scope of work that he was changing and
10 just did not see that portion.

11 Q. Was there anything else in here that was included by
12 mistake that you -- that you see?

13 A. There was one other thing where it says, "Install
14 bollards around remote fill and tank." It should have just
15 said remote fill. The tank itself is in the middle of a drive
16 lane and you cannot have metal bollard posts sticking up out of
17 the ground in the middle of a parking lot. Those are used for
18 around aboveground structures that are not in a drive lane.

19 Q. All right. So did Mr. Carpenter draft this document?

20 A. Yes, he did.

21 Q. Did you talk to him about whether or not those two
22 terms were included by mistake?

23 A. I have not had that conversation with him.

24 Q. Do you know whether or not Mr. Sayed was informed
25 that those were a mistake?

1 A. I can't answer that.

2 Q. So -- well, you would agree with me that the "provide
3 customer detailed construction schedule," that was not by
4 mistake?

5 A. That was not by mistake, no.

6 Q. Okay. Was a detailed construction schedule provided
7 to the customer here?

8 A. There's documentation we provided where we discussed
9 the parameters of the construction schedule.

10 Q. Was that -- is that what you're referring to when you
11 say detailed construction schedule?

12 A. Correct.

13 Q. How long is that schedule? How long would a
14 construction schedule for this project -- how long should it
15 have been if not 16 days?

16 A. There's a lot of variables. The way we did it, it
17 would've been a minimum of three months because you have two
18 28-day pours on top of all of the work that had to be done.

19 Q. Three months?

20 A. That would have been a minimum because there was
21 two -- we made it into two projects.

22 Q. Okay. So 28 -- so 56 days for the concrete to set
23 and then an additional 34 days for the rest of the -- rest of
24 the project?

25 A. Yes. Giving in weather and everything else we would

1 have figured in that much time.

2 Q. So about 90 days?

3 A. Uh-huh.

4 Q. Is that a yes?

5 A. Yes, sir. If everything went exactly as planned.

6 Q. I just want to -- if we look down -- I don't know how
7 to define -- there's a -- there's one that says, "Verify that
8 all systems are working properly before leaving site." Do you
9 see that?

10 A. I do.

11 Q. Okay. Do you know if that was done on this project?

12 A. It was because we can't do startup from the
13 manufacturer of the dispensers, and we can't get DHEC approval
14 that we provided unless it's working properly.

15 Q. How do you define the end of a project like where it
16 says here or before leaving site? How do you -- how do you
17 define that?

18 A. If everything is up and running and they are pumping
19 fuel and taking transactions.

20 Q. Do you know about when that occurred on this project?

21 A. I do not know.

22 Q. It says, "Provide a 'close out book' complete with
23 photos, inspection reports, and permits." Do you know if that
24 was provided?

25 A. It was not.

1 Q. All right.

2 A. -- to bid a project.

3 Q. So this is just the price list?

4 A. This is a price list from the manufacturer.

5 Q. Okay. All right. Let me hand you what I've marked
6 as 13.

7 (Defendants' Exhibit Number 13 was marked for
8 identification purposes.)

9 MR. KELLY: Adam, just -- we provided what we thought
10 was responsive to your request.

11 MR. BACH: Yeah. That's fine.

12 MR. KELLY: That's why I do think it's responsive
13 notwithstanding the point you made.

14 MR. BACH: I mean --

15 MR. KELLY: We tried to give you everything we could.

16 MR. BACH: It sounds like it is. I just wanted to
17 make sure.

18 MR. KELLY: Right.

19 MR. BACH: You know, I didn't exactly understand it.

20 Q. (By Mr. Bach) All right. So, okay. So it looks
21 like, this is, again, following the same e-mail chain. So this
22 is August 30, 2018. This is in response to the e-mail from
23 Roger on August 24, 2018, saying, "Patriot has gotten an okay
24 from us to send the deposit as requested." And then Roger said
25 to you, "Please see Alex's comments (finally)." So Patriot had

1 gotten permission to send the \$250,000 deposit or \$257,000
2 deposit, correct?

3 A. Yes.

4 Q. All right. And so at that point, nothing else was
5 due from -- from Mr. Sayed, correct? From --

6 A. At that point in time, no.

7 (Defendants' Exhibit Number 14 was marked for
8 identification purposes.)

9 Q. (By Mr. Bach) Okay. This is Exhibit 14. All right.
10 So this is -- this is an e-mail that are from -- this is
11 fast-forwarding a couple months. This is from October, and it
12 says, "Please see the revised estimate for the upgrade kits for
13 your gas dispensers at Westar." What -- what is this
14 referencing, do you know?

15 A. It's the credit card units that we put on the front
16 of the store that had nothing to do with the original contract
17 that he asked us to do in the middle of the project.

18 Q. Okay. So this is -- this is October 18, 2018, and
19 this is for the front of the store?

20 A. Front of the store, those credit card communications.

21 Q. All right. And he replied two days later and said,
22 let's -- "Let's confirm this and start work ASAP" and then
23 signature on this one. So it was approved, correct?

24 A. Correct.

25 Q. All right. Had y'all already started work on the

1 doesn't -- it doesn't say that they've been cut yet, but
2 they're going -- they're -- and it -- well, it is giving you
3 the go-ahead to cut the tags and continue to receive -- to
4 order fuel. So does that mean this is the end of phase two?

5 A. Correct.

6 Q. Okay.

7 MR. BACH: All right. We've been going about an hour
8 since lunch. Let's take a five-minute break.

9 (Off the record from 2:27 p.m. to 2:33 p.m.)

10 (Defendants' Exhibit Number 23 was marked for
11 identification purposes.)

12 Q. (By Mr. Bach) All right. I just handed you what's
13 been marked as Exhibit Number 23. This is an e-mail from Roger
14 to Alex dated July 17, 2019. It says, "Here are the
15 standing -- outstanding invoices we need to get resolved," and
16 it's got a number of invoices attached; is that correct?

17 A. That is correct.

18 Q. Okay. It looks like -- it looks like these invoices
19 range in time from -- actually, I'm sorry. 141 is attached to
20 the back of this on accident. So let's just -- it's okay.
21 It's the IOTV contract. We'll pull that off.

22 MR. KELLY: Tear off 141?

23 MR. BACH: Yeah.

24 MR. KELLY: Gotcha. MECO 141, gotcha. Removed.

25 Q. (By Mr. Bach) So it looks like these are invoices

1 that MECO is saying are due, and they all contain either due
2 upon receipt or net 30 terms, correct?

3 A. That is correct.

4 Q. All right. And these go in time from it looks like
5 the earliest unpaid is September 12th, 2018. That's MECO 137.
6 And they range until April 18th -- I'm sorry, May 18th -- April
7 18th, 2019, correct?

8 A. Correct.

9 Q. So MECO received a payment in the interim here, the
10 \$70,000 that we talked about, correct?

11 A. Correct.

12 Q. How did MECO decide how to allocate that payment?

13 A. We would have allocated it to the earliest invoice
14 installation documents that we had.

15 Q. Okay. So it would have gone early installation
16 first?

17 A. Correct.

18 Q. Change orders came after installation?

19 A. Correct. And the one that you referenced, 137, that
20 is a service call before any of the projects started. That's
21 something we were doing on the site way before any project
22 started. That was just a standard service call.

23 Q. Okay. Okay. But you didn't apply the 70 to that?

24 A. No. Because it had nothing to do with this job.

25 Q. And then you had some in here -- like if you look at

1 MECO 139, it said, nozzle dripping, replace nozzle. And that
2 looks like a couple of work orders from March of 2019 or --

3 A. Those are for premium and regular on the front of the
4 store. So we were still servicing the store on the front side
5 for other equipment other than the phase project.

6 Q. So this wasn't part of the project either?

7 A. No.

8 Q. All right. How about 138?

9 A. This was a service that they called in. The E-stop
10 shuts power to the fuel. Sounds like somebody had to use the
11 E-stop for some reason, and we had to go reset it. It was a
12 service call for the facility.

13 Q. Okay. So that wasn't on the project either?

14 A. No, it was not.

15 Q. So as of July 2019, was this all the outstanding
16 invoices that were owed?

17 A. I would have to look through the invoice document --

18 Q. All right.

19 A. -- that we have, but these are some of them.

20 Q. Okay. Then there's -- I don't know if these go
21 together or not.

22 (Defendants' Exhibit Number 24 was marked for
23 identification purposes.)

24 Q. (By Mr. Bach) I'm gonna mark this as 24.

25 All right. I just handed you what's been marked as Exhibit 24.

1 All right. And this is another e-mail. This one's from
2 Roger -- I'm sorry. This is the -- I apologize. This is the
3 same e-mail with the outstanding invoices, and then he forwards
4 it to you on August 6th; is that correct?

5 A. That is correct.

6 Q. Okay. Why did he send this to you?

7 A. Because I called him and asked him to send me a copy
8 of all the invoices that he had sent him because I was working
9 with my lady in the office to try to figure out exactly how
10 much outstanding money was still owed on the project because I
11 wanted to put my eyes on it and make sure it all matched the
12 job.

13 Q. At this point in time, had you received any payment
14 from the defendants since the February \$70,000?

15 A. No, I had not.

16 (Defendants' Exhibit Numbers 25 and 26 were marked
17 for identification purposes.)

18 MR. BACH: I'm just gonna mark these together. I'm
19 gonna mark these as 25 and 26. So here's 25.

20 MR. KELLY: Thank you.

21 Q. (By Mr. Bach) Here's 26. And so this is an e-mail
22 that was sent by you on -- to Alex on August 7, 2019; is that
23 correct?

24 A. That is correct.

25 Q. And it -- and it refers to an attachment there, and

1 Q. That was what was owed under the contract?

2 A. Not under the -- that was what was owed to MECO for
3 everything.

4 Q. Okay. As of that date?

5 A. As of that date.

6 Q. An easier way of saying it would be to say -- or what
7 I'm -- what I'm trying to ask is that it was MECO's position
8 that as of August 8, 2019, my clients owed this amount on page
9 two pursuant to the contract?

10 A. Not pursuant to the --

11 Q. I mean, pursuant to their agreements with MECO?

12 A. To all agreements and all the work that had been
13 done, not just the original contract.

14 Q. Okay. And that's based on the change orders, the net
15 30 terms on the invoices, the terms in the actual -- the
16 original contract we looked at, correct?

17 A. That and other things.

18 Q. What other things?

19 A. The upgrade kits up front, service tickets, and work
20 that had already been done throughout that time period.

21 Q. And it was not -- it was not like you were sending
22 this saying, hey, this amount of money is coming due or this
23 amount of money may be due in the future. It was due right
24 now?

25 A. It was way past due.

1 Q. Way past due?

2 A. Months and months and months past due.

3 Q. Under the defendants' obligations to MECO?

4 A. Correct.

5 Q. They were in breach of it?

6 A. In all of them.

7 Q. Breach of their obligation to pay you?

8 A. Correct. In every -- in every single line item.

9 Q. And there's -- if we look at this spreadsheet, there
10 is -- I don't think there's any notation. Is there a notation
11 for the payments? I don't see a notation for the payments if
12 there is. Is there a notation for the payments?

13 A. It says posted if money was applied to --

14 Q. Okay.

15 A. -- those invoices.

16 Q. Well, where does it show -- so are -- let me say it
17 this way. Looking through these documents and our records, the
18 last payment that the defendants made was the February payment?

19 A. Correct. That is --

20 Q. They never paid another dime, correct?

21 A. Correct.

22 Q. And if you look at, for example, on about midway down
23 the page, there is three notations that say credit, credit,
24 credit. Do you see that?

25 A. Correct.

1 Q. But those are all -- if you look at the description,
2 the first one is a credit that MECO gave for items not used.
3 They're all credits that MECO gave for returned materials,
4 correct?

5 A. Correct.

6 Q. That doesn't show in -- on -- like, you didn't get
7 any payment from the defendants on July 29, 2019, correct?

8 A. Correct. That was in-house stuff we were using.
9 Other parts and pieces.

10 Q. The last payment that you-all received for anything
11 was the February 14th payment that we looked at a second ago?

12 A. I need to look in the records, but that is what mine
13 shows for the contracted amount.

14 Q. Okay. And were there any other payments that you
15 recall?

16 A. They would have to be in here if they were. I don't
17 have that in front of me. I can look.

18 Q. All right. Well, let me represent to you, I've
19 looked. I don't see any other ones, and my clients looked --

20 A. There might -- there might have been a payment for a
21 service ticket because we continued to regularly do service,
22 and there might have been payments made for small service --

23 Q. But no --

24 A. -- work orders.

25 Q. No payments on a project after February 29th?

1 A. No payments.

2 (Defendants' Exhibit Number 27 was marked for
3 identification purposes.)

4 Q. (By Mr. Bach) I'll hand you what's been marked as
5 Exhibit 27. I'll mark this as Exhibit Number 27. So this
6 is -- this is the rest of that e-mail chain. I think I got it
7 all. It looks like he responds on August 7, 2019, and says, "I
8 think you are misinterpreting the situation and taking a
9 direction that goes nowhere. You breached the contract five
10 months ago by not completing the job in a timely manner and
11 making us incur \$175,000 in losses. We've not threatened you
12 once for legal action but discussed amicable solution." Have
13 you had any conversations with Alex about a "amicable
14 solution"?

15 A. We had one conversation.

16 Q. Okay.

17 A. And I believe it was around about when he sent this
18 e-mail back to me.

19 Q. What did y'all discuss; do you recall?

20 A. I wanted the payments, and I felt like we had held up
21 our end of the deal and finished the job even when there was
22 multiple times where I didn't have to. We continued to still
23 send guys out there for manufacturer's issues because that's
24 how I am. That's how we run the company. And he told me over
25 the phone call, I will give you \$60,000, but you're gonna get

1 A. We were the one doing service work for them, and so
2 DHEC had us as the last record of people at the site.

3 Q. Okay. And then it looks like there were -- part two,
4 violations noted by the inspector. It says, "Failure to
5 correct deficiencies identified with the underlined tank system
6 locations. May lead to delivery prohibition." And it's got a
7 number of issues. Do you see all of that?

8 A. Correct. And this was for the whole site.

9 Q. Okay. Were some of these on the -- on the truck
10 plaza that y'all worked on?

11 A. Correct. Some of it was for the gas. That's most
12 for the diesel side.

13 Q. All right. Which ones were for the work that y'all
14 performed or on the area where y'all performed work?

15 A. Do you want the ones that says actions required or
16 all of them?

17 Q. I guess just all of them.

18 A. Failure to maintain and operate corrosion protection
19 system. 280.31 is -- these original diesel tanks were very
20 old, and they were grandfathered in. And they didn't have
21 up-to-date containment, and they were not double-walled. So
22 you have to have anodes and grounding equipment to make sure
23 that they're not out-of-date. And it was saying that some of
24 those components did not meet the criteria, but that -- it's
25 talking about the diesel tanks, but that doesn't have anything

1 to do with the piping.

2 Q. All right. So would it be the ones that say diesel?

3 A. It is, but some of these are parts of the tank that
4 has nothing with what we touched.

5 Q. Oh, I gotcha.

6 A. 280.40 is us. The leak detector was not detecting
7 like it was supposed to.

8 Q. Okay.

9 A. There are times where we put stuff in and it
10 doesn't -- that was an existing piece of equipment that we took
11 out of the tank and we put back in when we redid it. It wasn't
12 a new piece of equipment. So it could fail at any point in
13 time. I could put a brand new one in and it fail in a week,
14 but that's a violation because the leak detector did not trip
15 like it was supposed to. I don't have the rest of the notes
16 for some of this. It says, "See inspector notes." I don't
17 have the notes.

18 280.40 is saying that the sensor was placed too high,
19 so it didn't cause the system not to work. It didn't cause
20 them not to be able to pump fuel. They just wanted the sensor
21 to be lowered inside of the containment so that it would
22 commence faster. That one's gas. 280.43, I need to see the
23 inspector's notes because I don't know what he said. Automatic
24 line leak -- (sotto voce).

25 Some of these -- some of this stuff had not been done

1 by him. As you can see some of the dates of the last time it
2 was done were in '20. Some of them were '89. Some of them
3 were '19. So some of these violations were stuff that he did
4 not have his annual compliance done for. A couple of these
5 items -- like I said, the sump sensor that was too high was
6 when we reinstalled it. We reinstalled it too high, and we
7 went back out there and fixed it.

8 (Defendants' Exhibit Number 29 was marked for
9 identification purposes.)

10 Q. (By Mr. Bach) All right. Let me hand you what's
11 marked as Exhibit 29. So it looks like -- if you flip to the
12 last page of this looks like there's an e-mail from -- well,
13 it's from Jason Raffensperger, with Pat Cap Finance, September
14 12, 2019. So did you reach out to Patriot Financing -- Patriot
15 Capital about getting paid?

16 A. Yes, I did.

17 Q. Okay. Was this their response on MECO 303, the last
18 page here?

19 A. Correct.

20 Q. All right. And he confirms that they borrowed
21 \$378,000, which was the original contract amount, correct?

22 A. Correct.

23 Q. And that you-all received \$257,000 on 8/29, which we
24 looked at, and then 70k on 2/14/19, correct?

25 A. Correct.

1 Q. And that total balance of \$50,076 was what was left
2 for that project?

3 A. Was what was left for the original signed amount, not
4 the change orders, not the other service tickets, not the kits
5 out front.

6 Q. Okay.

7 A. Just that original amount.

8 Q. All right. And that amount the -- and, again, the
9 last payment was the \$70,000 that he references here?

10 A. Correct.

11 Q. And then if you flip to the front, it says -- I'm
12 sorry. Let's look at MECO -- oh, I'm sorry. On the last page
13 it says that, "Alex will have to sign our final form and he
14 says, 'that the job was not up to satisfaction.'" Had you guys
15 had any further conversations at this point with Alex about any
16 corrective measures or resolving the balance or anything like
17 that?

18 MR. KELLY: At -- at which point?

19 (Simultaneous speaking.)

20 Q. (By Mr. Bach) At the point this e-mail was sent,
21 September of 2019.

22 A. The last conversation I had was in the other exhibit
23 where we had the communication that day.

24 Q. Okay. And the front page is another one -- it looks
25 like from Patriot Capital. This time to Roger. Were you guys

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Aug 06 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
J. Derham Cole, Circuit Court Judge

Case No. 2022-CP-42-03123
Appellate Case No. 2023-001752

MECO, Inc. of Augusta.
Appellant,

v.

Alex Sayed a/k/a Arshad M. Sayed a/k/a Arshed Sayed; NEPA Ventures LLC; NEPA Trading &
Investments, LLC.....
Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that the “*RECORD ON APPEAL*” contains all material proposed
to be included by the parties and not any other material.

/s/ Kyle B. Waddell

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August 6, 2024
Augusta, Georgia

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Aug 06 2024

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Respondents.

PROOF OF SERVICE

The undersigned certifies that a copy of “*RECORD ON APPEAL*” was served upon counsel
of record in the above-entitled action by electronic mail on August 6, 2024, as follows:

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August 6, 2024
Augusta, Georgia