

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR INDIAN RIVER COUNTY, FLORIDA

PIN-PON CORPORATION,

Plaintiff,

v.

CASE NO. 312009CA012244
Judge Paul B. Kanarek

LANDMARK AMERICAN INSURANCE
COMPANY,

Defendant.

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FINAL JUDGMENT

This matter came on for a non-jury trial on April 18 and 19, 2017, and the court having considered the evidence submitted and argument of counsel and having reviewed the transcript of the trial proceedings which was filed in the court file and the court making the following findings of fact;

1. At the prior trial, relying on Exhibit 98, the plaintiff's architect testified that the total pricing for the code upgrades was \$6,295,946.95. On appeal, *Landmark American Ins. Co. v. Pin-Pon, Corp.*, 155 So.3d 432 (Fla. 4th DCA 2015), the Fourth District Court of Appeal determined that Exhibit 98, an Upgrade Insurance Claim which Pin-Pon submitted in support of its claim for code upgrade damages, was improperly admitted as a business record. The court remanded this matter back to this court and said;

. . . While a Pin-Pon representative testified without objection that the total code upgrade expenses were "upwards of \$6 million," Pin-Pon has failed to prove that the erroneous admission of Exhibit 98 did not contribute to the jury's verdict. Because the court allowed the jury to consider Exhibit 98 in determining the amount of code upgrade damages, we reverse and remand for a new trial as to code upgrade damages only.

Code upgrade damages are those additional costs that would be required to put the building back into the condition it was before the storm as a result of changes in the building code.

2. The plaintiff retained an architect, Mr. Anthony Donadio, to evaluate the subject property to determine what code upgrades were required in order to put the building back to its pre-storm condition without taking into consideration any modifications made by the owner. He testified that the code upgrades to the 2004 Florida Building Code were required because the storm damaged more than 50% of the aggregate area of the building. His report was admitted as Plaintiff's Exhibit #27 and lists all the upgrades required. The court find his testimony credible.

3. Mr. Sandor Scher was the project manager and owners representative for post-storm restoration of the subject property. He testified that as project manager, he had day to day involvement with the construction and was responsible overseeing the costs of the project and to make sure that the project was completed on time and on budget. He took Mr. Donadio's report and created a cost analysis spread sheet admitted as Plaintiff's Exhibit #27. Mr. Scher testified that he obtained the costs included in the spread sheet by reviewing line items in the pay applications for what the plaintiff actually paid the general contractor to do the work (Plaintiffs Exhibit #54). He also spoke with the general contractor, subcontractors, and suppliers and obtained estimates and invoices for any estimates. Mr. Scher also used this information to prepare an executive summary of the code upgrade claims that was admitted into evidence as Plaintiffs Exhibit #25. The spread sheet and executive summary along with supporting information was provided to Landmark.

4. The plaintiff also called Mr. Ricard Dopico as a witness in this matter. Mr. Dopico is the Vice President of Estefan Enterprises, Inc., the parent of Pin-Pon Corporation and testified at the trial as the corporate representative of the plaintiff. He was lead liaison between Pin-Pon,

and its insurers, met with Mr. Scher regularly, received updates on the project and kept the plaintiff apprised of what was going on. He reviewed all pay applications and signed off each such application along with Mr. Scher before they were paid by the plaintiff. He directed Mr. Scher to prepare his costs analysis based on Mr. Donadio's report. Mr. Dopico testified that that the code upgrade costs were supported by pay applications and were either directly related to the amount on the pay application or were lower if it would have cost less to put an item back to what it was originally.

5. Mr. Dopico testified that the amount of code upgrade damages sustained by the plaintiff and submitted to Landmark was \$6,295,946.95. Landmark previously made a payment of \$651,278.16 (including General Conditions at 9% and Contractor Fee at 8%) towards Pin-Pon's code upgrade damages leaving a balance due and owing by Landmark of \$5,644,668.79.

6. The testimony of Mr. Dopico and Mr. Scher, along with the documentary evidence submitted by the plaintiff shows that the cost analysis and the methodology used in preparing it was accurate. It was supported by actual pay applications submitted by the contractor and paid by the plaintiff along with other costs that were supported by estimates provided by subcontractors working on the property.

7. The defendant did not present any testimony regarding the scope of code upgrade repairs required by the 2004 Florida Building Code. It also failed to present any competent substantial evidence establishing that the plaintiff's claimed damages were unreasonable or unnecessary.

It is therefore;

Ordered and Adjudged as follows:

A. Plaintiff shall recover from defendant, Landmark Insurance Company, the amount of \$5,644,668.79, together with statutory interest, for which let execution issue.

B. The court reserve jurisdiction to determine and award prejudgment interest, attorney fees, costs, or any further relief as is just and proper.

Done and Order at Vero Beach, Indian River County, Florida, this 28th day of December, 2017.



PAUL B. KANAREK
Circuit Judge

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