

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CA 0298 AND

2005 CW 2522

GULF SOUTH SCAFFOLDING, INC.

VERSUS

GULF ISLAND, L.L.C.

Judgment Rendered: December 28, 2006

**Appealed from the
Thirty-Second Judicial District Court
In and for the Parish of Terrebonne, Louisiana
Docket Number 142,080**

Honorable George J. Larke, Jr., Judge Presiding

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BEFORE: CARTER, C.J. WHIPPLE AND McDONALD, JJ.

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WHIPPLE, J.

This is an appeal from a judgment of the Thirty-Second Judicial District Court in Terrebonne Parish. Plaintiff, Gulf South Scaffolding, Inc., filed suit against defendants, Gulf Island, L.L.C. and Gulf Island Fabrication, Inc., for specific performance and damages for defendants' alleged breach of a contract for scaffolding services between the parties when defendants informed plaintiff that they would no longer need plaintiff's services.

Defendants filed a motion for summary judgment, contending that there was no dispute that the contract between plaintiff and Gulf Island, L.L.C.¹ provided that plaintiff would perform scaffolding work for Gulf Island, L.L.C. on an "as needed" basis, thereby establishing a choice on the part of Gulf Island, L.L.C. as to whether it needed plaintiff's scaffolding services. Plaintiff responded by filing a motion for partial summary judgment, contending that it was entitled to judgment in its favor on the issue of liability for defendant's breach of contract.

Following a hearing on the motions, the trial court rendered judgment in favor of defendants, denying plaintiff's motion for summary judgment, granting defendants' motion for summary judgment and dismissing plaintiff's claims against them with prejudice. In oral reasons for judgment, the trial court found that the contract language provided that plaintiff's services would be used only "as needed" for the agreed-upon price and that there was no exclusivity provision in the contract requiring Gulf Island, L.L.C. to use the services of plaintiff or preventing Gulf Island, L.L.C. from providing for its own scaffolding needs.

¹The record establishes that the contract at issue was between plaintiff and Gulf Island, L.L.C., and that Gulf Island Fabrication, Inc. was not a party to the contract.

From the judgment dismissing its claims, plaintiff appeals, contending that the trial court erred in determining that Gulf Island, L.L.C. did not breach the three-year agreement entered into by the parties when it unilaterally terminated the agreement six months into the three-year term. Plaintiff also filed a writ application, contending that its motion for partial summary judgment on the issue of liability should have been granted. Plaintiff's writ application was referred to this panel for consideration in conjunction with this appeal. Gulf South Scaffolding, Inc. v. Gulf Island, L.L.C., 2005 CW 2522 (La. App. 1st Cir. 3/7/06)(unpublished).

SUMMARY JUDGMENT

A motion for summary judgment is properly granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to material fact, and that the mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966(B).

Pursuant to LSA-C.C.P. art. 966(C)(2), if the moving party will not bear the burden of proof on the issue at trial and points out that there is an absence of factual support for one or more elements essential to the adverse party's claim, action or defense, then the non-moving party must produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial. If the opponent of the motion fails to do so, there is no genuine issue of material fact and summary judgment will be granted. Keller v. Case, 99-0424 (La. App. 1st Cir. 3/31/00), 757 So. 2d 920, 922, writ denied, 2000-1874 (La. 9/29/00), 770 So. 2d 354.

In determining whether summary judgment is appropriate, appellate courts review evidence de novo under the same criteria that govern the trial

court's determination of whether summary judgment is appropriate. Keller, 99-0424, 757 So. 2d at 922.

INTERPRETATION OF THE CONTRACT

The primary issue in this case is contractual interpretation. A contract has the effect of law upon the parties, and, as they bind themselves, they shall be held to a full performance of the obligations flowing therefrom. Freeport-McMoran, Inc. v. Transcontinental Gas Pipe Line Corporation, 2004-0031 (La. App. 1st Cir. 10/14/05), 924 So. 2d 207, 212, writ denied, 2005-2358 (La. 3/31/06), 925 So. 2d 1256. When the words of a contract are clear and explicit and lead to no absurd consequences, no additional evidence may be considered, and no further interpretation may be made in search of the parties' intent. LSA-C.C. art. 2046; Freeport-McMoran, Inc., 2004-0031, 924 So. 2d at 213; Frankel v. Exxon Mobil Corporation, 2004-1236 (La. App. 1st Cir. 8/10/05), 923 So. 2d 55, 64.

Whether a contract is clear and unambiguous is a question of law. Appellate review of questions of law is simply whether the trial court was legally correct or legally incorrect. Freeport-McMoran, Inc., 2004-0031, 924 So. 2d at 213.

In the instant case, we find no error of law in the trial court's conclusion that, by its very terms, the contract clearly and unambiguously provided only that plaintiff would "furnish labor and material to erect, modify and dismantle scaffolds **as needed** in [Gulf Island, L.L.C.'s] yard on Thompson Road." (Emphasis added). By agreeing to provide scaffolding services on an "as needed" basis, plaintiff agreed to take direction from Gulf Island, L.L.C. as to when its services would be utilized. Moreover, we are unable to say that this language in the contract obligated Gulf Island, L.L.C. to offer a definable amount of work to plaintiff under the contract. See

generally U.S. for Use and Benefit of Gulf States Enterprises, Inc. v. R.R. Tway, Inc., 938 F. 2d 583, 587 (5th Cir. 1991).

Additionally, while the contract did provide in the section entitled “SCAFFOLD PRICING” that plaintiff was obligated to bill at an agreed-upon rate for any services provided for the period of November 1, 2003 through October 31, 2006, this provision in the contract likewise did not provide that Gulf Island, L.L.C. was obligated to exclusively utilize the services of plaintiff for its scaffolding needs during that period or that Gulf Island, L.L.C. was prohibited from providing for its own scaffolding needs. Accordingly, we are unable to say the trial court erred as a matter of law in its interpretation of the express terms of the contract. Gulf Island, L.L.C. was not in breach of the contract when it informed plaintiff that it would no longer need its services for scaffolding work. Thus, defendants have demonstrated that they were entitled to judgment in their favor as a matter of law. LSA-C.C.P. art. 966(B). For these reasons, plaintiff’s writ application challenging the denial of its motion for partial summary judgment on the issue of liability is also denied.

CONCLUSION

For the above and foregoing reasons and in accordance with Uniform Rules—Courts of Appeal, Rule 2-16.1(B), the October 13, 2005 judgment, dismissing plaintiff’s claims with prejudice, is affirmed. Additionally, plaintiff’s writ application filed with this court and assigned docket number 2005 CW 2522 is also hereby denied. Costs of this appeal are assessed against plaintiff, Gulf South Scaffolding, Inc.

AFFIRMED; WRIT DENIED.