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SID J. WHITE

JAN 4 1995

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

**IN THE SUPREME COURT
OF THE STATE OF FLORIDA
TALLAHASSEE, FLORIDA**

QUALITY ENGINEERED INSTALLATION, :
INC., a Florida corporation, :

Petitioner/Cross-Respondent, :

v. :

CASE NO.: 83,468

HIGLEY SOUTH, INC., a Florida :
corporation, and RELIANCE :
CONSTRUCTION COMPANY, a Florida :
corporation, d/b/a HIGLEY-RELIANCE, :
a Joint Venture, and THE FEDERAL :
INSURANCE COMPANY, a foreign :
corporation, :

Respondents/Cross-Petitioners.:

**ON APPEAL FROM THE DISTRICT COURT OF APPEAL
SECOND DISTRICT OF FLORIDA
LAKELAND DIVISION**

RESPONDENTS' CROSS-REPLY BRIEF

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REPLY ARGUMENT ON
CROSS APPEAL

I.

THE SECOND DISTRICT ERRED WHEN IT RULED THAT THE TRIAL COURT WAS NOT REQUIRED TO FOLLOW THE MANDATES OF THE ARBITRATION AWARD LIMITING ATTORNEY FEES TO TIME SPENT PREPARING AND PRESENTING THE SUBCONTRACTOR'S CLAIM IN ARBITRATION.

In an obvious attempt to confuse the issue raised by the Contractor and Surety on cross-appeal, the Attorneys argue that this issue has previously been decided by this Court. Specifically, the Attorneys spend considerable time complaining that the cross-appellate argument is contrary to this Court's decisions in Parkshore Development Corp. v. Higley South, Inc., 556 So. 2d 439 (Fla. 2d DCA 1990) and Fewox v. McMerit Construction Co., 556 So. 2d 419 (Fla. 2d DCA 1989), both affirmed by Insurance Company of North America v. Acousti Engineering Company of Florida, 579 So. 2d 77 (Fla. 1991). The certified issues in those cases and addressed by this Court were as follows:

Do the attorney's fees recoverable under Section 627.428 include those incurred during arbitration proceedings?

Does Section 682.11, Florida Statutes (1987), prohibit an award of attorney's fees incurred during the arbitration proceedings or does it merely prohibit the arbitrator from making such an award?

These issues certified to this Court only address the issue of entitlement to attorneys fees. Because a trial court had never determined the amount of the fee, this Court did not address the issue of amount of fees in Insurance Company of North America. Conversely, this appeal emanates from the remand to the trial court for a determination of the fee amount. It was in this context that

the Contractor and Surety argued that the trial court should have followed the arbitration award in determining the amount of the attorney fee. This Court has, therefore, never addressed this issue of whether the arbitration award limited the amount of the fee and this issue is properly before this Court.

Recognizing that this Court may have not addressed this issue, the Attorneys argue that the arbitration award does not limit the amount of a fee to which they are entitled. According to the Attorneys, a "reading of the award does not, in any way, indicate an intent by the arbitrators to limit attorneys fees. . ." This statement ignores the express language of the award, as well as the facts underlying the award. As noted in the Initial Brief of the cross-appeal, there is no ambiguity contained within the following language:

[r]eimbursement of reasonable legal fees for legal services necessary to prepare and present the Quality Engineered Installation, Inc.'s claim.

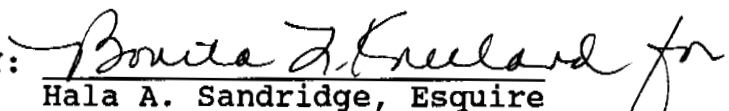
(R.1339) On the face of the award, the arbitrators limited the fees to which the Attorneys were entitled. Notably, the arbitrators did not broadly state "a reasonable fee" was to be awarded. Instead, the arbitrators were specific in their limitation of fees to the time it took the Attorneys to prepare and present the Subcontractor's claim. As the trier-of-fact, the arbitrators recognized that the Attorneys should recover no more than the time it took to prepare and present the Subcontractor's claim.

As also noted in the Answer Brief of the cross-appeal, there is a logical basis for the arbitrators' decision to limit the fee

award. The Subcontractor was operating under two burdens. The first was to present its claim against the Contractor. The Subcontractor retained McLean, Schecht, and Williamson to do so. These attorneys accepted the offer of the arbitrators not to be present during the entire arbitration. (R.2452-2453) The Subcontractor testified that its entire claim was presented in 1 1/2 day's time on August 29th and August 30, 1988. (R.2534) The Subcontractor was also defending against the allegations of the owner, not the Contractor and Surety. This defense was different in form and in substance from the claim made by the Subcontractor. Nothing in the arbitration award indicates that the Attorneys were to be award attorney's fees for the time spent preparing and presenting a defense to the owner's allegations of defective workmanship. In any event, the Attorneys were compensated for this time by Jaimie Juardo, the guarantor on the bond. Thus, there is certainly no inequity in enforcing the arbitrators' award, as expressly stated. For all the foregoing reasons, this Court should affirm the Second District's opinion in all respects, except to require the lower court to limit the attorney fees to time spent preparing and presenting the Subcontractor's claim in arbitration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has furnished by U.S. Mail to: LEON WILLIAMSON, Esquire, Post Office Box 18192, Tampa, Florida 33679-8192 on this the 3rd day of January, 1995.

Bonita A. Kneeland for
Hala A. Sandridge, Esquire