

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
ST. JOHNS COUNTY, FLORIDA

CASE NO.: CA07-1122
DIVISION: 55

COPY

C.V. ALEXANDER, JR.,
Plaintiff,

v.

QUAIL POINTE II CONDOMINIUM
ASSOCIATION, INC., a Florida
corporation,
Defendant.

QUAIL POINTE II CONDOMINIUM
ASSOCIATION, INC., a Florida
non-profit corporation,
Third Party Plaintiff,

v.

ROMANO ROOFING SERVICES, INC.,
an administratively dissolved Florida
corporation; K & D ROOFING &
CONSTRUCTION CO., INC., a Florida
corporation; ENVIRO-RESOURCES
CORPORATION, a Florida corporation,
MICROTECH WATER DAMAGE
CONTROL, INC., a Florida corporation,
and SCOTT CONSTRUCTION SERVICE,
INC., a Florida corporation,
Third Party Defendants.

FILED
2013 JUN 13 A 11:53
SHERYL STRICKLAND
CLERK OF CIRCUIT COURT
ST. JOHNS COUNTY FL

FINAL JUDGMENT CONFIRMING ARBITRATION AWARD

THIS CAUSE having been considered by the Court upon Defendant, Quail Pointe II
Condominium Associations, Inc.'s Motion for Entry of Judgment to Confirm Arbitration Award,

CA07-1122

Pursuant to Florida Statute §44.103(5) and Florida Rule of Civil Procedure 1.820(h), and after hearing argument of counsel on June 4, 2013, this Court finds as follows:

1. This matter was referred to arbitration, pursuant to the Court's order. (Dkt. Entries #277 & #283)

2. On March 22, 2013, the arbitrator entered his non-binding award.

3. On April 17, 2013, 26 days after the arbitration award, Plaintiff filed his Motion for Trial. (Dkt. Entry #311)

4. On April 17, 2013, Defendant Quail Pointe II Condominium Association moved for entry of judgment confirming the arbitrator's award. (Dkt. Entry #313)

5. Rule 1.820(h), Fla. R. Civ. P., provides in pertinent part that:

If a motion for trial is not made within 20 days of service on the parties of the [non-binding arbitration] decision, the decision shall be referred to the presiding judge, who shall enter such orders and judgments as may be required to carry out the terms of the decision as provided by section 44.103(5), Florida Statutes.

6. Plaintiff failed to timely file a Motion for Trial to avoid entry of a Final Judgment confirming the arbitrator's award.

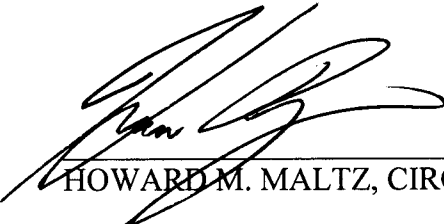
7. Plaintiff's counsel stated during the hearing on this Motion, that the reason he did not timely file his Motion for Trial was because he had not previously handled an arbitration and was unaware that there were rules and statutes governing the process. The Court finds that this does not constitute excusable neglect, especially considering the fact that the Court's order (Dkt. Entry #283) referred to Rule 1.820, and the arbitrator's award referred to Chapter 44, Florida Statutes.

Therefore, it is ORDERED AND ADJUDGED that final judgment is hereby entered in favor of Defendant, Quail Pointe II Condominium Association, Inc., and against Plaintiff C.V.

Alexander, Jr., in accordance with the Arbitration Award attached hereto as **Exhibit A**, which shall serve as final judgment in this matter, pursuant to Florida Statute §44.103 and Fla. R. Civ. P. 1.820(h), that Plaintiff shall take nothing from this action, and that the Defendant shall go hence without day.

DONE AND ORDERED in chambers, at St. Augustine, St. Johns County, Florida, this

13th day of June, 2013.



HOWARD M. MALTZ, CIRCUIT JUDGE

Copies to: 6/13/13, m

- Sean P. Sheppard, Esq.
- Mark M. Heinisch, Esq.
- Jayne Ann Skrzysowski Pittman, Eq.
- Jeffrey M. Wilkins, Esq.
- Edard Booth, Esq.
- Carl D. Dawson, Esq.

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR ST. JOHNS COUNTY, FLORIDA

C.V. ALEXANDER, JR.,
Plaintiff,

CASE NO.: CA07-1122
DIVISION 55

vs.

QUAIL POINTE II CONDOMINIUM
ASSOCIATION, INC., a Florida
corporation,

Defendant.

QUAIL POINTE II CONDOMINIUM
ASSOCIATION, INC., a Florida nonprofit
corporation,

Third Party Plaintiff,

vs.

ROMANO ROOFING SERVICES, INC.,
an administratively dissolved Florida
corporation, K&D ROOFING &
CONSTRUCTION CO., INC., a Florida
corporation, ENVIRO-RESOURCES
CORPORATION, a Florida corporation,
MICROTECH WATER DAMAGE
CONTROL, INC., a Florida corporation,
and SCOTT CONSTRUCTION SERVICE,
INC., a Florida corporation,

Third Party Defendants.

**FINAL ARBITRATION AWARD
NON-BINDING**

March 22, 2013

**FINAL ARBITRATION AWARD
NON-BINDING**

This matter came before the Arbitrator in connection with the above-captioned case as provided for by the Court's underlying Agreed Order Scheduling Non-Binding Arbitration



entered by Judge Maltz on February 5, 2013. The Arbitration took place and was concluded on March 13, 2013.

PRELIMINARY REMARKS

There are a number of preliminary matters that are worthy of note. The Arbitration was conducted pursuant to Chapter 44, Florida Statutes, and as such is at present, Non-Binding on the Parties.

Additionally, one of the major differences with respect to this particular Non-Binding Arbitration from others was the absence of any live sworn testimony. In essence, the Arbitrator heard argument, proffers and presentations of counsel, at times presentations of designated expert witnesses for some of the parties, and the Arbitrator heard argument from the Plaintiff himself, presented to the Arbitrator without objection. So that within the context of this Arbitration Award, it is important to recognize that the basis for the Award in this particular case is predicated upon what the Arbitrator determined to be the “greater weight of the presentations” made, as distinct from any traditional notion of the “greater weight of the *evidence*”. No live “evidence” under oath was received. Rather, the written submissions of the parties received and reviewed by the Arbitrator in advance of the hearing and the presentations received during the hearing fall within the ambit of “presentations” as opposed to strict matters of evidence. That being the case, the liberal rules afforded to the Arbitrator with respect to the administration that would govern the process of the Arbitration allowed for a somewhat informal process with questioning by the Arbitrator, where appropriate, in order to attempt to better understand the positions of the parties and the bases for the respective positions, as opposed to a more traditional process that would typically apply to arbitrations, namely, the receipt of evidence pursuant to sworn live testimony.

By way of further explanation regarding the importance of this distinction between “presentations” and “evidence”, the Arbitrator in some instances received information predicated upon written summaries, underlying correspondence and emails, narratives, written chronologies and summaries, and damage categories, without in some instances also receiving the benefit of what would otherwise typically be presented to an Arbitrator by way of detailed cost accounting and damage methodology calculations. As such, the Arbitrator has been left with the challenge of weighing the relative impact and import of differing levels of information received, some much more detailed in nature than others, some presented through counsel only, and other presented through expert reports, without necessarily providing the underlying backup. In addition, in numerous instances, the Arbitrator received information by way of presentations essentially representing a “proffer” of what the underlying evidence would be were this matter administered more as a formal Arbitration during which live testimony would be received, documentation would be marked and admitted in evidence.

Procedurally, the following parties officially participated in the Arbitration proceeding:

1. Dr. C.V. Alexander, Jr.
2. Quail Pointe II Condominium Association, Inc.
3. Enviro-Resources Corp.
4. Microtech Water Damage Control, Inc.
5. Scott Construction Service, Inc.
6. Romano Roofing Services, Inc.
7. K&D Roofing Construction Co., Inc.

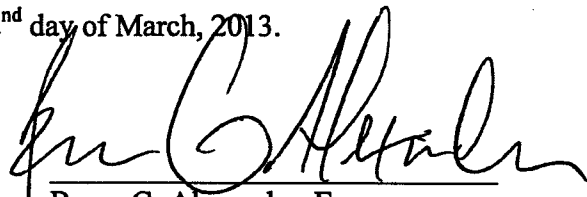
As to the substance of the presentations made, the Arbitrator carefully considered the positions advanced by the respective parties. After a full review of the written presentations, oral presentations, Arbitrator notes, and having carefully reviewed all submitted exhibits, relevant depositions testimony provided to the Arbitrator, and documentation of varying nature, and also

considered the law as presented by the parties through their presentations, and most importantly, predicated upon the inherent limitations which applied to this particular Non-Binding Arbitration, the Arbitrator rules and determines that based upon the greater weight of the presentations, taking all argument and submittals in consideration, that the Plaintiff has failed to meet its burden of proof as to any of the claims asserted against Defendant, Quail Pointe II Condominium Association, Inc. Having so determined, the Arbitrator likewise finds that based upon the same level of review, no liability exists as to any of the Third Party Defendants with respect to the allegations and causes of action asserted against each of them. The greater weight of the presentations did not, in the view of the Arbitrator, support a breach in the standard of care applicable to a Condominium Association, under like circumstances. In essence, the Arbitrator would note with particularity the law relating to the Business Judgment Rule presented in Defendant's Quail Pointe II Condominium Association, Inc's submission as the principal basis for finding that Plaintiff has failed to meet its burden of proof necessary to establish liability on the part of the Defendant Condominium Association. The Business Judgment Rule applicable to the acts of a Condominium Association under Florida law provides for a very broad discretion in the exercise of powers or actions by a Condominium Board. Simply stated, the Plaintiff did not present a sufficient basis to overcome that the Business Judgment Rule was breached, which is the essence and a prerequisite to Plaintiff's entitlement to relief under each of the Counts and Causes of Action asserted against the Defendant, Condominium Association. Given that the greater weight of the presentations supports no finds of liability as to the Defendant Condominium Association, it follows that no damages are awardable against the Defendant Condominium Association.

As to the Third Party Defendants, likewise the Arbitrator finds that the greater weight of the presentations does not support a finding of liability or breach as to the claims asserted against any of the Third Party Defendants. Again, absent liability, no damage claim can follow or be awarded against any of the Third Party Defendants. The Arbitrator would note with emphasis that he gave careful attention and care to the chronology of events presented, the timing of performance, demands, responses of all parties, the means and methods presented as to the contractual scope and actual work undertaken and preformed by each of the Third Party Defendants, and perhaps most importantly, the competing and conflicting expert opinions presented by the Plaintiff (in particular those of Mr. Raymond Burger and the finding set forth in reports issued by Atlas Scientific) contrasted with those opinions expressed by the expert of Defendant Condominium Association, Dr. Ernest P. Chiodo. The Arbitrator would also note that he took into account the deposition transcripts presented, with emphasis given to the sworn testimony of the Plaintiff, Dr. C.V. Alexander, Jr. and Dr. William L. Young.

Finally, and by way of personal commentary, the Arbitrator would like to state for the record that all participating parties to this Non-Binding Arbitration were extremely well prepared, and counsel all presented the highest level of legal ability, demeanor, professionalism and level of presentation. From the perspective of the Arbitrator, it was both a pleasure and an honor to have been given the opportunity to serve as the Non-Binding Arbitrator, in accordance with the Court's and the parties underlying selection process.

RESPECTFULLY SUBMITTED this 22nd day of March, 2013.



Bruce G. Alexander, Esq.
Arbitrator

SERVICE LIST

ATTORNEY FOR C.V. ALEXANDER, JR.
(PLAINTIFF)

Sean P. Sheppard, Esq.
Sheppard Firm, P.A.
500 East Broward Boulevard, Suite 1600
Fort Lauderdale, FL 33394
Phone: 954-765-1988
Email: sean@sheppardfirm.com

COUNSEL FOR QUAIL POINTE

Mark Heinish
Shendell & Pollock, P.L.
2700 N. Military Trail, Suite 150
Boca Raton, FL 33431
Phone: (561) 241-2323
Email: MHeinish@shendellpollock.com

ATTORNEY FOR ENVIRO-RESOURCES

Jayne Ann Skrzysowski Pittman, Esq.
Timothy O. McMahon, Esq.
Conroy, Simberg, Ganon, Krevans, et al.
2 South Orange Avenue, Suite 300
Orlando, Florida 32801-2637
Phone: (407) 649-9797
Fax: (407) 649-1968
E-mail: jpittman@conroysimberg.com
tmcmahon@conroysimberg.com
eserviceorl@conroysimberg.com

ATTORNEY FOR MICRO-TECH and
SCOTT CONSTRUCTION

Jeffrey M. Wilkins, Esq.
Wilkins & Von Mertz
8826 Goodby's Executive Drive, Suite D
Jacksonville, Florida 32217
Phone: (904) 374-9430
Fax: (904) 239-5468
E-mail: jeff@wvmlegal.com
AGillis@wvmlegal.com
MJimenez@wvmlegal.com

ATTORNEY FOR ROMANO ROOFING

Edward Booth, Esq.
Quintairos Prieto Wood & Boyer PA
1 Independent Drive, Suite 1650
Jacksonville, Florida 32202-5019
Phone: (904) 354-5500
Fax: (904) 354-5501
Email: ebooth@qpwbllaw.com

ATTORNEY FOR K&D ROOFING

Carl D. Dawson, Esquire
Dawson | Orr Professional Association
233 East Bay Street, Suite 1010
Jacksonville, FL 32202
904-355-5505
904-357-8534
Email: cdd@dawsonorr.com
slb@dawsonorr.com