

**IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI  
FIRST JUDICIAL DISTRICT**

**W&G PROPERTIES, LLC, and  
MAGNOLIA LABEL CO., INC.**

**FILED**

**PLAINTIFFS**

**V.**

**APR 25 2013**  
**BARBARA DUNN, CIRCUIT CLERK**  
**BY \_\_\_\_\_ D.C.**

**CIVIL ACTION NO. 251-06-279CIV**

**HINDS COUNTY ECONOMIC  
DEVELOPMENT DISTRICT**

**DEFENDANT**

**OPINION AND ORDER**

This CAUSE came on to be heard for trial before this Court sitting without a jury. Having announced their readiness for trial, the parties presented their respective testimony and evidence to the court. On the first day of trial, the plaintiffs chose to proceed only on the claim for breach of contract with a request for legal and equitable relief. Accordingly, all other claims were dismissed and the Court now issues a ruling with respect to the breach of contract claim.

**FINDINGS OF FACT**

1. Magnolia Label Co, Inc. ("Magnolia Label") is a Mississippi corporation that manufactures labels for consumer products. W&G Properties, LLC, ("W&G"), is a Mississippi L.L.C. formed for the purpose of holding and leasing real estate and equipment to Magnolia Label.
2. Hinds County Economic Development District ("HCEDD") is an economic development district created and operating pursuant to Mississippi Code § 19-5-99, *et seq.* (1972, as amended).
3. In early 2004, HCEDD's then-Executive Director, Jason Brookins, met with Wally Fields, CEO of Magnolia Label, to discuss the possibility of Magnolia Label relocating its operations to the J.C. "Sonny" McDonald Industrial Center ("McDonald Park" or "industrial

park”), in Hinds County, Mississippi, on the frontage road adjacent to Interstate 55 at the Wynndale Road exit.

During the meeting Fields advised Brookins that sewer lines and 3-phase power were necessities for Magnolia Label. Brookins gave Fields promotional literature that described the industrial park as having sanitary sewer lines and 3-phase power “on-site” and encouraged Fields to inspect the property. Brookins believed there were sewer lines running underground along the frontage road at the industrial park. Brookins’ belief was based on uncertified engineering maps that indicated sewer lines ran in the area of the industrial park bordering the frontage road.

4. In February 2004, Fields and his daughter, Kathy Priddy, President of Magnolia Label, went to the industrial park where they met with HCEDD representative, Benjie Barham. At the meeting, Fields and Priddy inspected four acres of frontage road property. Barham pointed to sewer manholes located along the frontage road portion of the property. Barham told them the sewer lines were underground beneath the manholes. Barham told Fields and Priddy that 3-phase electrical power was readily available “on-site.”

5. On March 3, 2004, using a form provided by HCEDD, Fields, through Magnolia Label, made an offer to purchase the four acres for \$11,250.00 per acre. On March 30, 2004, Brookins sent a letter to Fields, as CEO of Magnolia Label, advising that HCEDD wanted \$20,000.00 per acre for the property. Brookins explained this price would be used to “offset the cost of the bonds used to buy the land and install the water and sewer lines as well as provide a location for industry to locate within Hinds County.” Dr. George French, then-President of HCEDD’s Board of Trustees, testified that retiring those bonds was “*the* factor” in determining the price of the property.

6. On April 12, 2004, Fields offered \$16,000.00 per acre. Upon the advice of his accountant, Fields made the offer in the name of W&G. The offer was submitted on a form titled *Agreement for the Purchase and Sale of Real Estate* that HCEDD drafted and provided for Mr. Fields to fill out. Before April 12, 2004, Brookins had never heard of W&G. Brookins further testified the purpose of the sale was to relocate Magnolia Label to the industrial park. All references to this transaction in the HCEDD Board of Trustees meeting minutes involved "Magnolia Label." W&G was not mentioned in any of HCEDD's minutes.

7. On April 28, 2004, HCEDD's Board met and approved the sale of property at \$16,000.00 per acre. The duly witnessed and attested minutes from this meeting state:

*Jason [Brookins] updated the trustees on the negotiations of the purchase price of the four plus acres of land in McDonald Park to Magnolia Label. Magnolia Label offered \$16,000 per acre. A discussion followed.*

*Upon a motion...it was*

***RESOLVED*** to approve the sale of the property to Magnolia Label at the price of \$16,000 per acre.

There was no other mention of the sale, nor was any document attached to the minutes.

8. On May 10, 2004, HCEDD closed on the property and delivered a Warranty Deed to W&G. HCEDD retained a reversionary interest should the property not be used for manufacturing purposes.

9. On June 15, 2004, HCEDD held a groundbreaking ceremony for Magnolia Label. W&G was not mentioned in the ceremony announcement. On July 15, 2004, HCEDD published its "Inside the District" newsletter announcing the groundbreaking and describing the benefits of HCEDD's partnership with Magnolia Label. The newsletter advised that Magnolia Label planned to be in its new location by December 2004. There was no mention of W&G.

10. In July 2004, W&G began construction of Magnolia Label's new operating facility. On August 2, 2004, W&G paid \$50.00 and filed an application for a permit to attach to the sewer lines.

11. In August 2004, when W&G's contractor prepared to attach to the electrical power, he discovered there was no power on the property. Contrary to Barham's representations, 3-phase was not even available on the same side of Interstate 55 as the industrial park, much less "on-site." W&G and Magnolia Label contacted HCEDD about the power. On August 23, 2004, a request for power was faxed to Entergy, Mississippi, Inc. ("Entergy"). Lee Hall, an Entergy representative, testified that temporary power to Magnolia Label was turned on November 4, 2004. Construction was delayed while the temporary power was installed. Upon receipt of the August 23 request for power Entergy also began working to install 3-phase power. In order to run 3-phase power lines across Interstate 55 and up to the Magnolia Label site, Entergy was required to obtain a permit from the Mississippi Department of Transportation. That permit was granted on November 22, 2004.

12. On September 15, 2004, Magnolia Label committed to buy a new, custom 8-color press from MarkAndy Corporation in Chicago, Illinois. With its relocation, Magnolia Label intended to upgrade its production capabilities and grow its production output. As a result of this commitment, MarkAndy began building the press to Magnolia Label's custom specifications. Magnolia Label planned to have the press by December 2004 in time for its relocation. Around the time it committed to buy the new press, Magnolia Label also committed to sell one of its 6-color presses through HCMiller Press with a planned ship date of December 2004.

Because of the construction delay, Magnolia Label's facility was not completed by December 2004, however, in order to maintain its commitment, Magnolia Label shipped its 6-

color press. Because the facility was not complete, Magnolia Label could not receive the 8-color press and put it into production. Due to the construction delays the original scheduled December shipment of the 8-color press was also delayed. As a result, Magnolia Label's production capabilities declined beginning in late December 2004.

13. In the first part of January 2005, W&G's plumbing contractor prepared to connect the plumbing at the new facility to the sewer lines running along the frontage road. The plumber, however, could not locate any sewer lines. When Magnolia Label contacted HCEDD, Brookins and Barham were surprised to learn there were no sewer lines. W&G and Magnolia Label demanded the problem be fixed.

14. On January 26, 2005, Brookins advised HCEDD's Board about the lack of sewer lines. HCEDD's Board minutes reflect that Brookins "explained that [the] McDonald Park has sewer/water service only in the back of McDonald Park, but property has been sold to businesses along the frontage road of the park."

15. On February 7, 2005, HCEDD's Board attached to its minutes for the first time the April 12, 2004, *Agreement for Purchase and Sale of Property*.

16. On February 21, 2005, 109 days after Entergy turned on the temporary power, 3-phase power was turned on.

17. On March 9, 2005, HCEDD installed a septic tank as a temporary measure to handle Magnolia Label's sewage discharge. The septic tank was not designed to handle the levels of discharge produced by Magnolia Label. At the time of the trial, there were no sewer lines on the property and Magnolia Label's facility was still serviced by a temporary septic tank.

18. In March 2005, HCEDD advised it would install a parking lot for Magnolia Label. Estimates for the lot ran \$92,400.00 and higher. Ultimately, W&G installed a substandard parking lot at a cost of \$39,724.75.

19. W&G also contends it incurred \$963.00 in plumbing charges to try to connect to the non-existent sewer line, and \$107.00 in extra charges for portable toilets incurred from January to April 2005.

### CONCLUSIONS OF LAW

***Breach of Contract*** - On March 3, 2004, Magnolia Label offered to purchase four acres of property for \$11,250.00 per acre. This offer, made on a form provided by HCEDD, was rejected when HCEDD sent a March 30, 2004, counter-offer for Magnolia Label to purchase the four acres for \$20,000.00 per acre. On April 12, 2004, on an HCEDD form, a counter-offer was made for W&G to purchase the four acres for \$16,000.00 per acre. On April 28, 2004, this counter-offer was rejected when HCEDD's Board resolved to sell the four acres for \$16,000.00 to Magnolia Label rather than W&G. On May 10, 2004, the property was transferred at closing to W&G properties and payment of \$64,000.00 was made to HCEDD. The closing on this conveyance amounted to a counter-offer. "A reply to an offer which purports to accept it but is conditional on the offeror's assent to terms additional to or different from those offered is not an acceptance but a counter-offer." Restatement (Second) of Contracts § 59. The Court finds HCEDD accepted this counter-offer by closing on the property.

The Court further finds HCEDD agreed to sell the property in the McDonald Park with sewer lines running through the frontage road portion of said property and 3-phase electrical power on-site. The evidence at trial established that all of the parties believed sewer lines ran directly underneath the property along the frontage road and 3-phase power was within the

confines of the industrial park. Barham, Brookins and Dr. French all admitted they believed there were sewer lines running through the property at the time it was sold. Additionally, Barham testified that he represented 3-phase power was located "on-site."

The Court concludes the presence of sewer lines across the property and the ready availability of 3-phase power on-site were material, mutually agreed upon terms to the contract. At the time the contract was formed all the parties believed those terms had already been met. The Court further finds it was HCEDD's intent to have Magnolia Label locate in the industrial park rather than W&G. The evidence produced at trial establishes Magnolia Label was the party HCEDD intended to contract with. Brookins testified the sole purpose of the sale was to bring Magnolia Label to the industrial park. Moreover, HCEDD's marketing efforts were directed to Magnolia Label, *not* W&G. But the clearest expression is found in HCEDD's April 28, 2004, Board minutes in which it approved the sale of the property to Magnolia Label, *not* W&G. That Magnolia Label was the intended party to the contract is reinforced by HCEDD's post-sale conduct. HCEDD published a newsletter in which it announced the groundbreaking of Magnolia Label's new facility and touted the benefits of its partnership with Magnolia Label. HCEDD's intent is consistent with the requirements of Mississippi Code § 19-5-99(5)(a) in that such sales of industrial park land be "found in the best interests of the public..." Clearly, it was in the public's best interest to locate the operating business of Magnolia Label in the park rather than a holding company such as W&G.

At the closing, however, HCEDD assented to W&G's ownership of the property for use by Magnolia Label. "The assent of the parties in the formation of a contract must necessarily be gathered from their words, acts and outward expressions." *Hill v. Capps*, 160 So.2d 186, 190-91

(Miss. 1964) (citing 17 C.J.S. Contracts Sec. 32, pp. 640-43). This Court, therefore, finds that the HCEDD's contract was with both Magnolia Label and W&G.

The Court next determines whether there are writings between the parties sufficient to satisfy the statute of frauds. HCEDD contends the *Agreement for Purchase and Sale of Real Estate* dated April 12, 2004, between HCEDD and W&G is controlling. The Court disagrees. As it asserted at trial, HCEDD is an economic development district that speaks through the minutes of its Board of Trustees. *See* Miss. Code § 19-5-99(5)(a). HCEDD's Board did not attach the April 12, 2004, *Agreement for Sale and Purchase of Real Estate* to its minutes until February 7, 2005, *after* Magnolia Label complained about the lack of utilities. Moreover, the document was attached without any reference to it in the minutes.

The Court does, however, look to HCEDD's minutes for guidance. On April 28, 2004, HCEDD approved the sale of "four plus acres of land in the McDonald Park to Magnolia Label ... at the price of \$16,000.00 per acre." This was the only entry in HCEDD's Board minutes reflecting and approving the agreement. These signed and attested minutes constitute a "writing" sufficient to satisfy the statute of frauds and to be enforced against HCEDD. *See Putt v. City of Corinth*, 579 So.2d 534 (Miss. 1991). Other writings in evidence memorializing the agreement include marketing materials representing that sanitary sewer and 3-phase power are "on-site," and correspondence between the parties regarding the lack of sewer.

### CONCLUSION

The evidence established there were no sewer lines running through the frontage road portion of the property and that 3-phase electrical power was not readily available on-site. The Court finds the contract was breached and now considers the measure of damages.

a. *Benefit of the Bargain* - W&G paid \$16,000.00 per acre for 4 acres of land for a total of \$64,000.00. Magnolia Label and W&G contend they did not receive the benefit of this bargain because the price was based on receiving land with sewer lines and readily accessible 3-phase power. The Court agrees with Magnolia Label and W&G.

Fields testified that prior to this contract he was offered approximately 20 acres of undeveloped land in south Hinds County for an asking price of \$2,000.00 per acre. According to Fields, the property was similar to the industrial park property in that both were in southern Hinds County and neither included utilities. A comparison of the property prices yields a difference of \$14,000.00 per acre. HCEDD did not cross-examine Fields in this respect nor did it refute this evidence. The Court awards W&G damages in the amount of \$14,000.00 per acre for 4 acres for a total of \$56,000.00.

b. *Out of Pocket Recovery* – Magnolia Label claims out of pocket damages with respect to lost gross profits it suffered as a result of the delays in construction due to the lack of utilities. The plaintiffs offered the testimony of Christy Pickering, CPA, who calculated these delays resulted in \$137,034.95 in lost profits for Magnolia Label between January and April 2005. Mrs. Pickering directly attributed these losses to the delays caused by lack of power and sewer. The Court finds Magnolia label should be awarded damages in the amount of \$137,034.95 for lost profits.

W&G claims out of pocket damages with respect to the following expenses incurred as a result of the lack of utilities: \$963.00 in plumbing charges; \$50.00 sewer permit fee; and \$107.00 in charges for portable toilets. The Court finds W&G should be awarded damages in the amount of \$1,120.00 for these out of pocket expenses.

W&G also claims it is entitled to be reimbursed for the amount it paid to install

the parking lot. The Court disagrees and, therefore, awards no damages related to the parking lot.

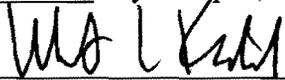
**IT IS THEREFORE, ORDERED AND ADJUDGED** that the plaintiffs are hereby awarded the following damages:

- a. \$56,000.00 --- difference between the value of the property as it was represented and the value of what was actually received;
- b. \$137,034.95 --- lost profits;
- c. \$1,120.00--- out of pocket damages;

Total Damages - \$ 194,154.95.

**IT IS FURTHER ORDERED AND ADJUDGED** that on or before May 3, 2013, the plaintiffs shall submit a proposed Judgment setting forth the damages awarded herein.

**SO ORDERED AND ADJUDGED**, this the 25<sup>th</sup> day of April, 2013.

  
\_\_\_\_\_  
**WINSTON L. KIDD**  
**CIRCUIT COURT JUDGE**