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JUL 29 1992

LOS ANGELES
SUPERIOR COURT

6 Attorneys for C. E. BUGGY, INC.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

12 SWINERTON & WALBERG, etc., et al.,
13 Plaintiff,
14 vs.
15 HUNTINGTON HOTEL PARTNERS, et al.,
16 Defendants.

No. BC 029478

And Consolidated Cases

OPPOSITION OF C. E. BUGGY
TO BANK'S MOTION TO
EXTEND DISCOVERY CUTOFF

Hearing

DATE: August 6, 1992

TIME: 1:30 PM

DEPT. 3

17 AND CONSOLIDATED ACTIONS

19 Discovery Cut-off 8/15/92
20 Motions Cut-off 9/30/92
21 Trial Date None Set

21 I. ARGUMENT IN OPPOSITION TO DAI-ICHI-KANGYO BANK'S
22 MOTION TO EXTEND DISCOVERY CUT-OFF DATE

24 Generations to come will hear lawyers tell
25 of the Case of the Huntington Ritz-Carlton Hotel.
26 It is the stuff of construction law lore—
27 how law firms now numbering over two score
28 slugged it out for months, and then on into years,

1 while their fee bills confirmed all their clients' worst fears.
2 It seemed for a time that total deforestation
3 Would come from the paper used in this litigation.
4 But one day a ray of hope appeared—
5 Lien claimants and counsel in one voice all cheered.
6 That was the day that Commissioner Levin
7 handed us one little piece of heaven
8 by stating *ex cathedra*, as we all remember
9 "This case will go to trial no later than December."
10

11 I represent C. E. Buggy, a subcontractor
12 who in this case is but one small factor.
13 He's owed forty thousand--a decent amount,
14 but in a pool of ten million it doesn't much count.
15 All Buggy can do is offer his prayers
16 that despite the gymnastics of the megabuck players,
17 someday soon—maybe in just a little while—
18 This titanic struggle will go to trial.
19 In our hearts there burns one tiny ember:
20 The case will start trial this year come December.
21

22 Now something has happened—The bank got new lawyers.
23 With more and more ravenous paper destroyers,
24 these new gladiators put their staffs to new tests—
25 One day they served seventy discovery requests!
26 New bebies of lawyers in their lofty aeries
27 Demanded the utmost from their secretaries.
28 Scores of depositions were hastily set

1 and they're still not through noticing depositions yet.
2 Because after all those, there are sure to be minions
3 of experts, in depo, with well trained opinions.
4 It may all be necessary, but just the same
5 it's darn hard for Buggy to stay in this game.
6 The battle of paper has become so extensive
7 that just keeping the file open is very expensive.
8 To make matters worse, the new guys want to extend
9 the discovery that was long ago scheduled to end
10 on August 15 (which was set back in May
11 by Commissioner Levin as the very last day).

12
13 One can't fault Bank's new guys for giving their all
14 when they've only just now had to pick up the ball.
15 But while I understand what they're trying for their clients,
16 the claimants and their counsel have placed much reliance
17 on Commissioner Levin's pledge from the bench
18 into which they would now throw a big monkey wrench.

19
20 Sure, Bank says the trial date won't be affected
21 by extending discovery to the date they've selected.
22 But I have to say, with all respect,
23 that sooner or later we will have to expect
24 a Motion to Continue the trial based upon the need
25 of clients and counsel and experts to read,
26 understand and give a lot of thought
27 to all the discovery responses they've got.
28 The discovery garnered will do them no good

1 If they don't get more time, to get it all understood.
2 So while they say "we won't throw the trial off track,"
3 I say "Heed this warning: In November, they'll be back."
4 Extending discovery for even just a short while
5 sows a potential need for delaying the trial.
6 To encourage such a delay there is no real need
7 because the existing cutoff was not only ordered, but agreed.

8
9 Besides, more time means more discovery served
10 and the claimants are already sufficiently unnerved
11 by the voluminous, duplicative requests they've received
12 (which really do have to be seen to be believed).
13 As claimants, we don't find this all very funny—
14 Our cases are all "We did the work--you owe us the money."

15
16 (Of course there are competing claims of delays,
17 but they don't affect most of the claimants in this case;
18 Most subs and suppliers had their suits instituted
19 over amounts which are essentially undisputed.
20 The problem on this project is not the delays,
21 or that it was not completed within so-many days.
22 When finally stripped of all the posturing trash,
23 the problem is simple: Owner ran out of cash!)

24
25 Please rein-in this bloodbath as much as you can
26 by rejecting the extension-of-discovery plan.
27 The new lawyers all want to test their mettle,
28 but the claimants just want this darn mess to settle.

1 Nothing settles cases like a trial date
2 and there's no good reason to extend our wait.
3 Extending discovery by any amount
4 potentially delays the day of account.
5 Keep bright the star which has been beckoning—
6 A December 1992 Ritz-Carlton Day of Reckoning.
7

8 II. AUTHORITY

9 The moving papers do not establish good cause for the extension per
10 CCP §2024(e).

11 BANK's moving papers do not demonstrate diligence in pursuing
12 discovery (CCP §2024(e)(2)).

13 The extension is likely to prevent the case from going to trial as
14 presently contemplated, for the reasons set forth above (CCP §2024(e)(3)).
15

16 KAMINE, STEINER & UNGERER

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19 by Matt Steiner,
20 Attorneys for C. E. BUGGY, INC.
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Matt J. Steiner

Matt Steiner specialized in construction industry claims and litigation for thirty years, focusing on public and private construction contract disputes. He represented contractors, subcontractors, architects, engineers, school districts, special districts and other public and private owners.

Aside from litigating mechanics lien, stop notice, and payment bond claims, Mr. Steiner handled a full range of construction claims, including bid protests and bid disputes, bid withdrawals and bid bond forfeitures, subcontractor listing law issues and substitution hearings, changed condition claims and all manner of delay, extra work and change order disputes. He also advised clients in drafting contracts and agreements.

Mr. Steiner was an arbitrator for the American Arbitration Association from 1990 until his death. In this role, he acted as a neutral in construction disputes in matters that ranged from a half day to those with over thirty days of hearings.

Matt was also general counsel for the Southern California Antique Radio Society and the California Council of Parent Participation Nursery Schools.

Education

Loyola Law School, Los Angeles (J.D., 1981)
St. Edmund Hall, Oxford (Summer, 1980)
University of California, Los Angeles (B.A., 1978)

Bar Admissions

California State Bar 1981
U. S. District Court, Central District, 1982
U. S. District Court, Southern District, 1982
U. S. Court of Military Appeals, 1991
U. S. Supreme Court, 1991

Speaking Engagements and Presentations

Matt often spoke at ECA and AGC functions, and regularly presented legal seminars for Lorman Group on mechanics lien law and related construction remedies.

Publications

Client Alert - Don't Miss Your Deadline: Statutes of Limitation for Construction Defect Claims

Client Alert - Mechanic's Lien Claimants Beware: New Requirements May Nullify Your Lien

Client Alert - Court of Appeal Decision Broadens Exceptions to Prompt Payment Requirements on Public Projects

Client Alert - Contractors License Not Required for Construction Manager on Private Works Project

Client Alert - Avoiding the Pitfalls from Private to Public Works

Client Alert - Recent California Court of Appeal Decision Broadens the Rights of Prime Contractors to Replace Subcontractors on Projects

Client Alert - California Court of Appeal Decision Reinforces Contractor Claimant's Need To Comply With Government Claims Act

Client Alert - Recent Court of Appeal Decision Allows Contractors to Act Quickly to Collect Money Owed by Private Owners

Memberships and Associations

American Arbitration Association, Member, National Panel of Arbitrators (1990 to 2013).

Associated General Contractors of California Legal Advisory Committee (1992 to 2013).

Los Angeles County Bar Association

Construction Law Subsection - (Chair 1990-1992, Steering Committee 1988 to 2013).

Temporary Judge Program, L. A. Superior and Municipal Courts (1989 - 1993).

Contributor of articles to AGC, ECA, SCCA magazines and other construction industry publications.

Speaker at Lorman Group and Sterling seminars relating to mechanics lien law and other construction law topics; presenter at School Facilities construction and other industry conferences.