

Cite as 2009 Ark. App. 878

ARKANSAS COURT OF APPEALS

No. CA08-1133

FOREVER GREEN ATHLETIC
FIELDS, INC., d/b/a PROGREEN,
KEITH DAY, and DAVID RIPKA and
PROGREEN SPORT SURFACES, LLC
and RAYMOND FRITZ

APPELLANTS/CROSS-APPELLEES

V.

LASITER CONSTRUCTION, INC., and
MICHAEL LASITER

APPELLEES/CROSS-APPELLANTS

Opinion Delivered DECEMBER 16, 2009

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. CV2006-4800]

HONORABLE JAMES MOODY, JR.,
JUDGE

REBRIEFING ORDERED

PER CURIAM

Appellant Forever Green Athletic Fields, Inc. (Forever Green) and appellant Progreen Sport Surfaces, LLC (PSS) appeal the trial court's June 4, 2008 order, which denied their motions for judgment notwithstanding the verdict but granted appellee and cross-appellant Lasiter Construction Company (Lasiter Construction) a new trial, in part, on its claim for breach of contract. Lasiter Construction cross-appeals the court's denial of a new trial on its third-party beneficiary claim and the denial of its motion for judgment notwithstanding the verdict. We order rebriefing because the parties' addenda do not comply with Ark. Sup. Ct. R. 4-2(a)(8).

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These parties became involved with one another in 2004, when Forever Green bid on several construction projects in Arkansas to supply and install ProGreen synthetic grass fields for the Batesville and Rogers School Districts, Pulaski Academy, Shiloh Christian School, and the University of Arkansas (collectively referred to as the Projects). Forever Green was awarded the bid for the Projects but subsequently learned it could not act as the contractor because it did not have a proper contractor's license. Lasiter Construction was awarded the bids, and it negotiated with Forever Green to obtain ProGreen materials for use at the Projects.

In 2006, Forever Green sued Lasiter Construction for the unpaid balance of the materials it supplied. Lasiter Construction answered and counterclaimed for cost overruns that it contended Forever Green agreed to be responsible for and for claims it received by assignment from the University of Arkansas for problems it had with its synthetic field. Lasiter Construction also filed a third-party complaint against appellant PSS and other third-party defendants contending they were jointly and severally responsible for Lasiter Construction's claims against Forever Green. PSS answered and counterclaimed against Lasiter Construction and filed a third-party complaint against Lasiter's president, Michael Lasiter, claiming various tortious conduct for their bad faith in bringing PSS into the lawsuit. A two-week trial, which was submitted to the jury on interrogatories, resulted in a judgment entered April 25, 2008, that denied all the claims and counterclaims of all the parties and awarded no damages. Motions were filed by the parties for judgment notwithstanding the verdict or, in the

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alternative, for a new trial. An order entered June 4, 2008, denied all motions for judgment notwithstanding the verdict but granted Lasiter a new trial, in part, on its breach of contract claim.

In their appeals and cross-appeal, the parties raise numerous points regarding the trial court's grant of a partial new trial, denial of their motions for judgment notwithstanding the verdict and new trial, and orders of the trial court. Rule 4-2(a)(8) requires that an appellant's brief contain an addendum that includes the judgment from which the appeal is taken, along with any other relevant pleadings, documents, or exhibits essential to an understanding of the case and the court's jurisdiction on appeal. Appellants Forever Green and PSS both filed addenda, and appellee cross-appellant Lasiter Construction filed a supplemental addendum. Nevertheless from our review of the parties' addenda, we find the following judgment, pleadings, and documents necessary to deciding their appeals have been omitted:

Judgment entered April 25, 2008 (Record at 3247)

Forever Green's Motion for Judgment Notwithstanding the Verdict
(Record at 3369)

Forever Green's Brief in Support of its Motion for Judgment Notwithstanding
the Verdict (Record at 3402)

PSS's Motion for Judgment Notwithstanding the Verdict (Record at 3416)

PSS's Response to Lasiter Construction's Motion for Judgment
Notwithstanding the Verdict (Record at 3419)

Forever Green's Opposition to Lasiter Construction's Motion for Judgment
Notwithstanding the Verdict (Record at 3432)

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Lasiter Construction's Response to Joint Motions for Judgment Notwithstanding the Verdict (Record at 3441)

Brief in Support of Lasiter Construction's Response to Joint Motions (Record 3474)

Forever Green's Complaint (Record at 1)

Although these pleadings, motions, and papers are in the record, they are not in the addenda. Also, we do not warrant that the items listed are the only omissions in the addenda. The briefs and addenda in this appeal comprise more than two thousand pages, and the parties raise numerous arguments on appeal that not only question the final judgment but also orders disposing of motions filed throughout the proceeding. We strongly recommend that each party review its arguments and addendum to determine whether its addendum should be supplemented with any other pleadings or documents to support its arguments on appeal.

Furthermore, Supreme Court Rule 4-2(a)(7) requires that “[r]eference in the argument portion of the parties’ briefs to material found in the abstract and Addendum shall be followed by a reference to the page number of the abstract or Addendum at which such material may be found.” We note that even though the parties for the most part provide addenda references to the orders disposing of their motions, references are not provided for their motions. Because this case is being returned for rebriefing, we order the parties to include addendum references in the argument portions of their briefs for any pleadings, orders, documents, or exhibits that they address in their arguments. We also refer the parties

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to *In Re: Arkansas Supreme Court and Court of Appeals Rules 4-1, 4-2,4-3, 4-4, 4-7 and 6-9*, 2009 Ark. 534 (per curiam), which becomes effective January 1, 2010.

Appellants have fifteen days from the date of this order in which to file substituted briefs with arguments and addenda that contain the above listed matters. *See* Ark. Sup. Ct. R. 4-2(b)(3). Upon the filing of the substituted briefs, appellee cross-appellant will be afforded fifteen days to revise or supplement its brief if needed. *Id.* If the parties fail to file a brief with complying addendum within the prescribed times, the judgment may be affirmed for noncompliance with Rule 4-2(a)(7)-(8). *Id.*

Rebriefing ordered.