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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA for
the Use and Benefit of PENN AIR
CONTROL INC., a California
corporation,

Plaintiff,

v.

BILBRO CONSTRUCTION
COMPANY, INC., a California
corporation, and INTERNATIONAL
FIDELITY INSURANCE
COMPANY, a New Jersey corporation
Defendants.

CASE NO.: 3:16-cv-0003-WQH-NLS

**AMENDED JUDGMENT AFTER
JURY TRIAL AND PARTIES'
MOTIONS**

**Judge: Hon. William Q. Hayes
Courtroom: 14B
Trial Date: February 5, 2019
Time: 9:00 a.m.**

And Related Counterclaims.

1 This action came on regularly for trial beginning on February 5, 2019 in
2 Courtroom 14B, the Honorable William Q. Hayes, presiding. Counter-Complainant,
3 and Counter-Defendant BILBRO CONSTRUCTION COMPANY, INC. (“Bilbro”),
4 appearing by attorneys Peter D. Lepiscopo of Lepiscopo & Associates Law Firm
5 and Lori F. Bessler of Denning Moores; Defendant and Counter-Complainant,
6 ALPHA MECHANICAL, INC. (“Alpha”), appearing by attorneys Mark Angert and
7 Andrew C. Myers of Solomon Ward Seidenwurm & Smith, LLP and Counterclaim
8 Defendant SHADPOUR CONSULTING ENGINEERS, INC. (“Shadpour”),
9 appearing by attorneys Michael M. Edwards and Zachary M. Lemley of Bryon &
10 Edwards, APC.

11 The lawsuit was tried as a jury trial before eight jurors regularly empaneled
12 and sworn to try this action. Bilbro brought a claim for relief for Breach of Contract
13 against Alpha. Alpha brought a claim for relief for Breach of Contract against Bilbro
14 and a claim for relief for Contractual Indemnity against Shadpour for Bilbro’s claim.

15 Witnesses were sworn in and testified. After hearing the evidence, arguments
16 of counsel, and instructions of the Court, the jury retired to consider the evidence
17 and the special verdict jointly drafted by the parties and approved by the Court.
18 After deliberation, on February 14, 2019, the jury returned into Court and rendered
19 their verdict denying Bilbro’s claim for Breach of Contract against Alpha and
20 denying any liability of Alpha to Bilbro, and thereby making Alpha’s counterclaim
21 for Contractual Indemnity against Shadpour moot. The jury further granted Alpha’s
22 claim for Breach of Contract against Bilbro, ordering Bilbro to pay Alpha
23 \$323,352.00 for failure to pay monies owed to Alpha under contract and an
24 additional payment of \$1,128,854.00 to Alpha for additional work required by
25 Bilbro and performed by Alpha on the project.

26 On March 19, 2019, the Court entered Judgment [Doc. 286] stating that: (1)
27 Alpha Mechanical, Inc. is entitled to judgment against Bilbro Construction
28 Company, Inc. on Bilbro Construction Company, Inc.’s claims against Alpha

1 Mechanical, Inc. and Bilbro Construction Company, Inc. shall recover nothing from
2 Alpha Mechanical, Inc.; (2) Alpha Mechanical, Inc.'s claim for Contractual
3 Indemnity against Shadpour Consulting Engineers, Inc. is resolved as a result of
4 Number 1, above; and (3) Alpha Mechanical, Inc. is entitled to judgment against
5 Bilbro Construction Company, Inc. on its claim for Breach of Contract and shall
6 recover from Bilbro Construction Company, Inc. the sum of \$1,452,206.00.

7 As the prevailing party, Alpha submitted a Bill of Costs [Doc. 287], and on
8 April 18, 2019, the Clerk of the Court issued an order taxing costs against Bilbro in
9 the amount of **\$28,834.55**. [Doc. 297]

10 Bilbro filed a Motion for New Trial or, in the Alternative, Remittitur of the
11 Verdict. [Doc. 295] Alpha opposed. On September 12, 2019, the Court denied
12 Bilbro's motion on the condition that Alpha accept a reduced judgment of
13 \$1,067,352.00 (\$323,352.00+\$744,000.00). [Doc. 335] On September 13, 2019,
14 Alpha accepted the Court's order agreeing to a reduced judgment of **\$1,067,352.00**.
15 [Doc. 336]

16 Shadpour declared itself the prevailing party against Alpha and submitted its
17 Bill of Costs, which the Clerk of the Court awarded. In response, Alpha filed a
18 Motion to Re-Tax Costs [Doc. 315]. Shadpour also filed a Motion for Attorneys'
19 Fees against Alpha [Doc. 292] which Alpha opposed. Alpha also filed its own
20 Motion for Attorneys' Fees, Costs and Pre-Judgment Interest as the prevailing party
21 against Bilbro [Doc. 289] which Bilbro opposed.

22 On September 18, 2019, the Court issued an Order on (1) Alpha's Motion for
23 Attorneys' Fees, Costs and Pre-Judgment Interest, (2) Shadpour's Motion for
24 Attorneys' Fees and Costs; and (3) Alpha's Motion to Re-Tax Costs. In the Order,
25 the Court granted in part and denied in part Alpha's Motion for Attorneys' Fees,
26 Costs and Pre-Judgment Interest; denied Shadpour's Motion for Attorneys' Fees and
27 Costs finding that Shadpour did not prevail against Alpha and was not the prevailing
28 party in this litigation; and granted Alpha's Motion to Re-Tax Costs against

1 Shadpour, overturning Shadpour's prior award of costs by the Clerk of the Court.
2 [Doc. 340]

3 In granting in part Alpha's Motion for Attorneys' Fees, Costs and Pre-
4 Judgment Interest against Bilbro, the Court awarded Alpha's request for attorneys'
5 fees amounting to **\$695,894.00** (\$720,690.50 total sought - \$24,796.50 in paralegal
6 fees that were denied). The Court also awarded Alpha compound pre-judgment
7 interest of 2.4% from October 15, 2015 on the amount awarded for work performed
8 under the contract - \$323,352.00. The compound interest of 2.4% on \$323,352.00
9 comes out to **\$31,475.32**. Therefore, the total additional amount awarded by the
10 Court under Alpha's Motion for Attorneys' Fees, Costs and Pre-Judgment Interest
11 against Bilbro is **\$727,369.32**.

12 **NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED**
13 **THAT:**

14 1. Alpha Mechanical, Inc. is entitled to judgment against Bilbro
15 Construction Company, Inc. on Bilbro Construction Company, Inc.'s claims against
16 Alpha Mechanical, Inc. and Bilbro Construction Company, Inc. shall recover
17 nothing from Alpha Mechanical, Inc.;

18 2. Alpha Mechanical, Inc.'s claim for Contractual Indemnity against
19 Shadpour Consulting Engineers, Inc. is moot as a result of Number 1, above.
20 Shadpour Consulting Engineers, Inc. is not the prevailing party and shall take
21 nothing from Alpha Mechanical, Inc.; and

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