

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 02-80973-CIV-HURLEY/LYNCH

HOAR CONSTRUCTION, LLC,  
an Alabama limited liability company,

Plaintiff,

vs.

BRUCE A RENDINA, an individual,  
and THE RENDINA COMPANIES, INC.  
a Florida corporation

Defendant.

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**PLAINTIFF'S UNOPPOSED MOTION FOR LEAVE TO AMEND  
COMPLAINT AND INCORPORATED MEMORANDUM OF LAW**

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Plaintiff, Hoar Construction, LLC ("Hoar"), pursuant to Federal Rule of Civil Procedure 15(a) moves this Court for leave to amend its complaint. In support of this Motion Hoar states:

1. On January 9, 2003 this Court entered an Order Granting Plaintiff's Motion for Leave to Amend Complaint, and Denying Defendant's Motions for Summary Judgment and to Strike First Amended Complaint as Moot (DE #26).

2. In the Order at p. 2, the Court stated:

Hoar contends in its proposed amended complaint that it had an oral contract with Mr. Rendina. There appears to be some confusion as to which corporation may have been the intended beneficiary of the alleged oral contract, in all likelihood caused by the defendant(s). *Hoar should be permitted to proceed with some discovery to determine*

*whether any corporations should be joined in the action.*

3. On March 24, 2003 Hoar took the deposition of Bruce Rendina. As a result of that deposition, Hoar has determined that it should add The Rendina Companies as an additional defendant. The proposed Second Amended Complaint is attached as Exhibit 1.

### **ARGUMENT**

Federal Rule of Civil Procedure 15(a) provides that leave to amend a complaint shall be freely given when justice so requires. The federal courts follow this rule with few exceptions:

In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be ‘freely given.’

*McKinley v. Kaplan*, 177 F. 3d 1253, 1258 (11<sup>th</sup> Cir.1999) quoting *Forman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962).

Here, Hoar has moved promptly to amend after taking the deposition of Bruce Rendina. The Second Amended Complaint merely seeks to clear up the confusion that the court referred to in its January 9, 2003 Order. There are no claims for any monies other than those sought by Hoar from the outset and The Rendina Companies was an original defendant. Therefore, the defendants are not prejudiced in any way.

WHEREFORE, Hoar requests that this Court enter an Order granting it leave to Amend.

I hereby certify that the office of the undersigned has conferred with L. Louis Mrachek, counsel for Rendina, who advised that he does not oppose this Motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of **March, 2003**, a genuine copy of the foregoing was faxed (561-655-5537) and mailed to: Roy E. Fitzgerald, Esq., **Counsel for Defendant**, Page, Mrachek, Fitzgerald & Rose, P.A., 505 South Flagler Drive, Suite 600, West Palm Beach, Florida 33401 Florida 33037.

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**SECOND AMENDED COMPLAINT**

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Plaintiff, Hoar Construction, LLC ("Hoar") sues the defendants Bruce A. Rendina and The Rendina Companies, Inc. and states:

PARTIES/JURISDICTION/VENUE

1. Hoar is an Alabama limited liability company with a principal place of business in Alabama.
2. Bruce A. Rendina is an adult resident of Palm Beach Gardens, Palm Beach County, Florida.
3. The Rendina Companies, Inc., is a Florida corporation with its principal place of business in Palm Beach Gardens, Palm Beach County, Florida.
4. This Court has jurisdiction over the subject matter of this dispute by virtue of 28 USC §1332, based upon the complete diversity of citizenship of the parties and



the amount in controversy, which exceeds \$75,000.00, exclusive of interest, attorneys fees and court costs.

5. The causes of action alleged herein arose and venue is proper, pursuant to 28 USC §§1391(a) and 1391(c), in the Southern District of Florida.

6. All conditions precedent to the bringing of this action have occurred, been performed, waived or excused or would have been futile.

**COUNT ONE—BREACH OF CONTRACT**

Hoar restates paragraphs 1 through 6 above and further states:

7. Bruce A. Rendina and the Rendina Companies, Inc. (hereinafter referred to collectively as Rendina) developed, or held itself out as developer, of a project in Palm Beach County Florida known as the Abacoa Town Center (the "Project").

8. Rendina and Hoar entered into an oral contract for Hoar to provide supervisory and field management services on the Project.

9. Hoar performed its work pursuant to the oral contract.

10. Rendina breached the agreement with Hoar by failing to pay for Hoar's services.

11. As a result of Rendina's actions, Hoar has suffered damages.

12. Rendina owes Hoar the sum of \$90,296.79 which has been due and owing since March, 2001.

WHEREFORE, Hoar demands judgment against Rendina for \$90,296.79, plus prejudgment interest, and costs of court.

**COUNT TWO-ACCOUNT STATED**

Hoar realleges paragraphs 1 through 12 and further states:

13. On or about March 14, 2001, Hoar stated an account that was due and payable by Rendina. A genuine copy of that invoice is attached as Exhibit 1.

14. Rendina did not contest the invoice or otherwise dispute the amount owed.

WHEREFORE, Hoar demands a judgment against Rendina for \$90,296.79, plus prejudgment interest, and costs of court.

**COUNT THREE-QUANTUM MERUIT**

Hoar realleges paragraphs 1 through 14 and further states:

15. Hoar performed work for Rendina at the request and the direction of Rendina.

16. Rendina accepted Hoar's services and knew or reasonably should have known that Hoar expected to be paid for its services.

17. Rendina has received and retained the benefit of Hoar's services.

18. Under the circumstances, Rendina would be unjustly enriched if he is allowed to retain the benefit of Hoar's services without paying for them.

WHEREFORE, Hoar demands a judgment against Rendina for damages, plus prejudgment interest, and costs of court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of **March, 2003**, a genuine copy of the foregoing was faxed (561-655-5537) and mailed to: Roy E. Fitzgerald, Esq., **Counsel for Defendant**, Page, Mrachek, Fitzgerald & Rose, P.A., 505 South Flagler Drive, Suite 600, West Palm Beach, Florida 33401 Florida 33037.

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IF: LIBRARY CASES 4191 2020604-IP8682.WPD



March 14, 2001

Mr. Calvin Brown  
Rendina Companies  
3801 PGA Blvd  
Suite 555  
West Palm Beach, FL 33410

Dear Calvin,


Attached is our pay request for services provided by Hoar Construction, LLC during the months of November and December, 2000, at Abacoa Town Center. A summary of each individual's daily cost is included with the appropriate receipts attached as back up. The Daily Wages & Expenses column on each summary includes wages, payroll taxes, insurance, training programs, auto and living allowance and a 10% fee for corporate return.

	<u>November</u>	<u>December</u>	
Bob Keown	\$ 15,634.32	\$ - 0 -	
Steve Dzialo	21,069.88	12,974.82	
Daryl Frey	<u>22,005.98</u>	<u>16,611.79</u>	
TOTAL REQUEST	\$ 58,710.18	+ \$ 31,586.61	= 90,296.79

January's billing will follow within a few days and only includes Daryl Frey through January 18, 2001

We appreciate the opportunity to provide this service and trust the benefits have made a positive impact

Sincerely,

  
David Freeman  
Vice President  
Estimating

cc: Janice Bradberry

HOAR CONSTRUCTION, LLC  
250 North Orange Avenue, Suite 555, West Palm Beach, Florida 33410  
Tel: 561-833-1111 Fax: 561-833-1112

