

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
NO. 1:08-CV-460-GCM

FIDELITY AND GUARANTY
INSURANCE COMPANY,

Plaintiff,

v.

CONSTRUCTION ADVANTAGE, INC.,
JAMES H. OGLE, DONNA J. McDANIEL,
and ELIZABETH J. EVANS,

Defendants.

ORDER

This matter is before the Court upon the memorandum and recommendation of United States Magistrate Dennis L. Howell filed 1/19/2010. The parties were advised that pursuant to 28 U.S.C. § 636(b)(1)(C), written objections to the memorandum and recommendation must be filed within 10 days after service of the memorandum. It appears to the Court that the parties have not filed any such objections. After an independent and thorough review of the magistrate's memorandum, the Court concludes that the recommendation to grant Plaintiff's Motion for Summary Judgement for reasons provided in Plaintiff's Memorandum of Law is correct and in accordance with law. There was however a scrivener's error in the Magistrate's memorandum: on page 18 the Magistrate recommends that the motion be "ALLOWED/DENIED, and that JUDGMENT be entered in favor of plaintiff and against defendant in the amount of \$178,343.91, exclusive of any prejudgment interest to which FGIC may be entitled." This judgment reflects the full amount requested by Plaintiff, and it is clear that the Magistrate intended to recommend that the motion be granted in full. Accordingly, the findings and conclusions of the magistrate are affirmed, and the plaintiff is awarded \$178,343.91 plus such prejudgment interest as the

clerk will compute in accordance with the law. The clerk is directed to enter a judgment accordingly.

Signed: February 24, 2010

A handwritten signature in cursive script, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

