



Doc#: 0432903067  
Eugene "Gene" Moore Fee: \$34.50  
Cook County Recorder of Deeds  
Date: 11/24/2004 11:39 AM Pg: 1 of 6

MEMORANDUM  
OF  
JUDGMENT

To be recorded  
Against the  
Property with  
The Attached  
Legal Description  
On Exhibit "B"

Property of Cook County Clerk's Office

IN THE UNITED STATES DISTRICT COURT OF ILLINOIS  
FOR THE NORTHERN DISTRICT, EASTERN DIVISION

FIRST NATIONAL INSURANCE COMPANY )  
OF AMERICA, a Washington State )  
Corporation, )

Plaintiff, )

v. )

BELMONTEE KAPLAN DEVELOPMENT )  
CORPORATION, an Illinois Corporation, )  
MARK J. GIZYNSKI, an Illinois citizen, )  
KAPLAN DEVELOPMENT CORPORATION, )  
an Illinois Corporation, )  
Defendants. )

No. 03 C 8114

MEMORANDUM OF JUDGMENT

• Judgment Rendered Against:

Belmontee Kaplan Development Corporation and (jointly and severally)  
Mark J. Gizynski  
Both Judgment Debtors' Address: 4944 West Belmont Avenue. Chicago, Illinois 60641

• Judgment rendered on September 3, 2004 in the amount of \$264,547.93

• Judgment rendered In Favor of:

First National Insurance Company  
Judgment Creditor's Address: 2800 West Higgins Road, Hoffman Estates, Illinois

\*\*\* See Judgment Order, attached hereto as Exhibit "A" \*\*\*

AFTER RECORDING MAIL TO: John E. Sebastian, Leo & Weber, 1 N. LaSalle, Ste. 3600,  
Chicago, Illinois 60602

# UNOFFICIAL COPY

CERTIFIED COPY (Rev. 7/98)

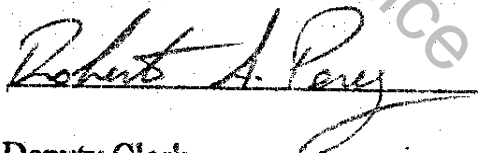
*United States District Court  
Northern District of Illinois  
Eastern Division*

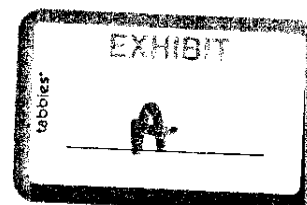


I, Michael W. Dobbins, Clerk of the United States District Court for the Northern District of Illinois, do hereby attest and certify that the annexed document(s) is(are) a full, true, and correct copy of the original(s) on file in my office and in my legal custody.

IN TESTIMONY WHEREOF: I have hereunto  
subscribed my name and affixed the seal of the  
foresaid court at Chicago, Illinois, on NOV 22 2004

MICHAEL W. DOBBINS, CLERK

By:   
Deputy Clerk



**UNOFFICIAL COPY**

AO 450 (Rev. 5/85) Judgment in a Civil Case

**United States District Court**  
**Northern District of Illinois**  
 Eastern Division

**DOCKETED**  
 SEP 03 2004

FIRST NATIONAL INSURANCE  
 CO

**JUDGMENT IN A CIVIL CASE**

v.

Case Number: 03 C 8114


BELMONTTEE KAPLAN  
 DEVELOPMENT CORP et al

- Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury rendered its verdict.
- Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that judgment in favor of plaintiff First National Insurance Co. and against defendants Belmonttee Kaplan Development Corporation and Gizynzki in the amount of \$264,547.93. This action is dismissed in its entirety.

Michael W. Dobbins, Clerk of Court

Date: 9/2/2004

  
 J. Smith, Deputy Clerk

25

Minute Order Form (06-97)

# UNOFFICIAL COPY

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	James F. Holderman	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	03 C 8114	DATE	September 2, 2004
CASE TITLE	FIRST NATIONAL INSURANCE CO vs. BELMONTEE KAPLAN DEVELOPMENT CORP et al		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

**MOTION:**

**DOCKET ENTRY**

- (1)  Filed motion of [ use listing in "Motion" box above.]
- (2)  Brief in support of motion due \_\_\_\_\_
- (3)  Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.
- (4)  Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5)  Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (6)  Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7)  Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8)  [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9)  This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
 FRCP4(m)  Local Rule 41.1  FRCP41(a)(1)  FRCP41(a)(2).
- (10)  [Other docket entry] Plaintiff's motion for summary judgment is granted. Enter judgment in favor of plaintiff and against defendants Belmontee Kaplan Development Corporation and Gizynzki in the amount of \$264,547.93. This action is dismissed in its entirety.
- (11)  [For further detail see order (on reverse side of/attached to) the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input checked="" type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	10:00 AM SEP 03 2004 10:00 AM SEP 03 2004	number of notices SEP 03 2004 date docketed [Signature] docketing deputy initials date mailed notice mailing deputy initials	Document Number 24
IS [Signature] courtroom deputy's initials	Date/time received in central Clerk's Office		

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03 C 8114

On November 12, 2003, plaintiff First National Insurance Company of America filed its complaint against defendants Belmontee Kaplan Development Corporation, Mark J. Gizynski, and Kaplan Development Corporation seeking indemnification for expenses incurred in investigating and discharging claims under bonds plaintiff issued on behalf of defendants. Plaintiff, on June 25, 2004, moved, pursuant to Federal Rule of Civil Procedure 56, for summary judgment. For the reasons explained below, plaintiff's motion is granted.

Under Rule 56(c), summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In ruling on a motion for summary judgment, the evidence of the nonmovant must be believed and all justifiable inferences must be drawn in the nonmovant's favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). This court's function is not to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial. A party who bears the burden of proof on a particular issue, however, may not rest on its pleadings, but must affirmatively demonstrate, by specific factual allegations, that there is a genuine issue of material fact that requires trial. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). In considering a motion for summary judgment, this court is not required to scour the record in search of evidence to defeat the motion; the nonmoving party must identify with reasonable particularity the evidence upon which that party relies. Johnson v. Cambridge Indus., Inc., 325 F.3d 892, 898 (7th Cir. 2003).

In the case at hand, defendants do not contest liability. (Resp. at 1.) They, however, disagree with the amount of damages claimed. The indemnity agreement between the parties provides that "[a]n itemized statement of loss and expense incurred by Surety [plaintiff], sworn by an officer of Surety, shall be prima facie evidence of the fact and extent of the liability of Undersigned [defendants] to Surety in any claim or suit by Surety against Undersigned." (Pl.'s 56.1 Stmt. ¶ 13.) Plaintiff has attached to its motion an affidavit from the claim attorney handling the claims at issue in this case that provides an itemized statement of plaintiff's losses and expenses. (Pl.'s Mot. for S.J., Ex. B.) The affiant, with support including an itemized list showing disbursements and receipts, provides a breakdown of claim payments, recoveries, and un-reimbursed losses to plaintiff. This satisfies plaintiff's contractual burden. Defendants, in response, fail to provide any counteraffidavits or persuasive rebuttal evidence. See United States Fid. & Guar. Co. v. Klein Co., 190 Ill. App. 3d 250, 258, 558 N.E.2d 1047, 1052 (1st Dist. 1990). Defendants have failed to show how the consulting and attorneys' fees are unreasonable. In addition, if plaintiff is reimbursed (or has been reimbursed) in amounts not reflected in the itemized statement, plaintiff admits that if it receives funds in excess of its current loss, it will return such excess funds. (Reply at 5.) Consequently, defendants have failed to set forth specific facts showing that there is a genuine issue for trial. See Anwest Surety Ins. Co. v. Szabo, No. 00 C 2716, 2003 WL 21789033, at \*5 (N.D. Ill. July 23, 2003).

Moreover, defendants have failed to comply with Local Rule 56.1. Defendants did not file a response to plaintiff's 56.1 statement. Pursuant to L.R. 56.1(b)(3)(B), "All material facts set forth in the statement required of the moving party will be deemed to be admitted unless controverted by the statement of the opposing party." Here, because defendants failed to file any response to plaintiff's statement of material facts, plaintiff's statements, including the amount owed, are deemed admitted. As set forth in paragraph 19 of plaintiff's statement of material facts, plaintiff is entitled to \$264,547.93. This court cannot award any additional unsupported amount, particularly when plaintiff did not seek to update any expenses incurred since June 2004.

Accordingly, because no material facts are in dispute, plaintiff First National Insurance Company's motion for summary judgment is granted. Defendants Belmontee Kaplan Development Corporation f/k/a Kaplan Development Corporation and Mark Gizynski are liable in the amount of \$264,547.93. Judgment shall be entered. This case is dismissed in its entirety.

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**PIN AND LEGAL DESCRIPTION FOR**  
**4238-44 West Belmont Ave, Chicago, IL 60641**

PIN NO.: 13-21-421-026-0000

LOT 30 IN BLOCK 5 IN EDWARDS SUBDIVISION OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 21 TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Send to:  
John E. Sebastian  
Leo & Weber, P.C.  
1 North LaSalle Street  
Suite 3600  
Chicago, IL 60602

