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Foltz Martin's Halsey Knapp, right, and Jonathan Hawkins represent real estate developer Blue ribbon LaGrange in its oral contract dispute. Knapp says he has won other cases enforcing oral contracts.

Suit: Builder not as good as its word

LAGRANGE COMPANY CLAIMS Tennessee contractor failed to live up to \$1 million oral agreement

BY JANET L. CONLEY

AT THE VERY LEAST, Halsey G. Knapp Jr.'s client will learn an important lesson from a suit it brought last week in federal court: When dealing with a contract worth nearly \$1 million, get it in writing.

Knapp, a partner at Atlanta's Foltz Martin, represents a South Georgia real estate developer claiming construction companies failed to live up to their end of an agreement to build a shopping center—and committed fraud.

He had no answer for why his client, Blue Ribbon LaGrange Pipeline LLC, inked—

er, didn't ink—a contract for \$988,857 and instead relied on the word of executives at McBrayer Construction Co. of Chattanooga, Tenn. Knapp said he didn't represent Blue Ribbon on the contract and does not know whether the company has transactional counsel for the deal.

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“It’s something they’ll never do again, I guarantee you that,” said Knapp, who added that he has won cases enforcing oral contracts—although none on contracts this big.

Blue Ribbon’s complaint alleges that McBrayer, several affiliated companies and two men—Michael S. McBrayer and Reginald I. Vachon Jr.—not only breached the oral contract at issue but also acted fraudulently and engaged in a pattern of racketeering activity in violation of state RICO laws.

According to the complaint, the contract came into force in March 2006 and provided that McBrayer would act as the general contractor for a retail shopping center project in LaGrange. Blue Ribbon was to pay McBrayer nearly \$1 million, and McBrayer was to pay its subcontractors and materialmen.

But Blue Ribbon’s complaint says that on at least five separate occasions, the defendants asked for money to complete the work or to pay subcontractors and material suppliers, but instead of paying the proper people, “McBrayer Construction ... funneled and diverted those funds” to Diversified Maintenance Contractors, a McBrayer Construction affiliate, “for use on other projects or other matters.”

The unpaid subcontractors and suppliers slapped liens on the property, the complaint alleges, and to get those liens removed, Blue Ribbon had to pay nearly \$150,000 to various electric, plumbing, roofing and other construction-related businesses.

McBrayer also failed to complete all the work agreed to in the oral contract, and Blue Ribbon had to spend an additional \$33,550 to get it done, the complaint says.

Altogether, Blue Ribbon is claiming damages in excess of \$183,000, tripled because of alleged racketeering on the part of the defendants, plus other dam-

ages, costs of litigation and attorney fees.

Knapp said he cannot, at this point, estimate the total amount at issue.

Telephone messages left at the homes of defendants McBrayer and Vachon in Lookout Mountain, Tenn. Telephone numbers for McBrayer Construction Co. and for Diversified Maintenance Contractors, also one of the defendants, had been disconnected.

‘Minimally papered’

Knapp said he doesn’t anticipate the case being tough to win, because he’s previously won several other breach of contract actions involving oral agreements in the construction industry.

“Real estate developers are very hands-on kinds of people, and ... when they think they have a fundamentally sound relationship, often engage in transactions that are minimally papered,” Knapp said. “And so to people who regularly transact business in more sophisticated markets, it would seem odd. But to developers, particularly in the Southeast who know one another—and really reputation is very important—there’s a lot of deals done in the traditional handshake method.”

Jonathan E. Hawkins, also with Foltz Martin, said his firm’s client had previously worked with one of the defendants, Vachon. He wasn’t sure if they’d worked with the McBrayer companies before.

Knapp said one of the keys to winning this case will be getting the contractor to admit that he understood what his instructions were and what he was supposed to be doing.

He also said he didn’t believe he’d run into a problem with the Statute of Frauds, the 17th century English law requiring certain kinds of contracts to be in writing to be valid. The Statute of Frauds should not apply in this case because the contract was partially performed, Knapp said.

Also, Knapp and Hawkins added,


there’s something of a paper trail in the Blue Ribbon case—such as documents related to McBrayer’s bid proposal, written requests asking Blue Ribbon for money and a promissory note agreeing to reimburse Blue Ribbon for its expenses in getting rid of the liens and finishing construction on the project.

This paper trail—particularly the plans and specifications—is more than he’s had to go on in his other oral contract cases, Knapp said. He recalled one of those cases in particular.

Right about the time a judge was set to throw the case out on a directed verdict, Knapp said, “I was able to get the contractor on cross to admit he had a clear understanding of the scope of the project and that he agreed with what I had elicited from the plaintiff on direct about the scope and specifications of the project. ... It takes a lot of chutzpah to argue that at trial, I’ll tell you.”

J.D. Humphries III, a partner at Stites & Harbison who is not involved in the litigation and who has handled construction law matters since the 1970s, called the million-dollar oral contract a “landmine waiting to explode,” not just because of obvious points of dispute such as time of completion and building specifications but also because of insurance issues related to theft on the job site or to natural disasters such as tornados.

“It would be nutty to build a million-dollar project on an oral contract because you’ve got to think about insurance ... who’s buying insurance for the project? Is it the owner? Is it the contractor?” he said.

The case, in the U.S. District Court for the Northern District of Georgia, is *Blue Ribbon Pipeline v. McBrayer Construction*, No. 3:08-CV-00076 (July 3). 

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