



By the order of the court, Judge David A Wiseman

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FOR PUBLICATION

IN THE SUPERIOR COURT

OF THE

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

CENTURY INSURANCE COMPANY,)
LIMITED,)
Plaintiff,)

vs.)

GUERRERO BROTHERS, INC., C.N.M.I.)
PUBLIC SCHOOL SYSTEM,)
Defendants)

Civil Action No. 01-0478

ORDER(S):

GRANTING CNMI PUBLIC SCHOOL
SYSTEM'S MOTION FOR
JUDGMENT AS A MATTER OF LAW

CNMI PUBLIC SCHOOL SYSTEM,)
Counter-claimant,)

vs.)

GUERRERO BROTHERS, INC.,)
CENTURY INSURANCE, INC.,)
COMMONWEALTH DEVELOPMENT)
AUTHORITY,)
Counter-defendants.)

THIS MATTER was heard on October 8, 2008 at 1:30 p.m. in Courtroom 223. Counsel Karen Klaver appeared on behalf of CNMI Public School System (PSS). Counsel Ben Salas appeared on behalf of the Commonwealth Development Authority (CDA).

1 **I. SYNOPSIS**

2 In August, 2008, the second phase of the bifurcated trial was submitted to the jury. The jury
3 reached the following conclusions: 1) Century Insurance (CIC) did not breach its contract to provide
4 interim payments to Guerrero Brothers, Inc. (GBI); 2) CIC did not unreasonably delay in providing
5 performance and payment bonds to GBI; 3) CIC tortiously interfered with the agreement reached
6 between GBI and PSS; 4) GBI suffered no harm as a result of the interference; and 5) CDA was entitled
7 to damages from PSS as a result of PSS's breach of the GBI-PSS agreement in the amount of
8 \$804,049.73. On September 09, 2008, PSS filed a renewed motion for judgment as a matter of law
9 pursuant to Commonwealth Civil Rule of Procedure 50(b) against counter-claimant CDA. PSS has
10 complied with the procedural requirements for filing this motion as directed by Rule 50(b).

11 There are two issues that must be addressed. First, whether pursuant to subrogation and surety
12 law, CIC, as surety under the construction contract, has priority status over CDA to the remaining funds
13 when CIC did not perfect its security interest and CDA had a perfected security interest? Secondly, was
14 there a legal basis and sufficient evidence for a jury to find that CDA was entitled to damages as a third
15 party beneficiary to the PSS-GBI agreement when PSS breached the agreement? The distinction among
16 these issues has been imprecise and the confusion was compounded by the parties' instructions to the
17 jury. Nonetheless, the questions may be properly addressed by this court.

18 First, if the jury's verdict was reached based on the law of subrogation and surety, applicable law
19 was misinterpreted and the jury reached a verdict which was legally barred. Second, it was
20 unequivocally determined that GBI was not harmed by PSS's failure to comply with the PSS-GBI
21 agreement when PSS failed to interplead the remaining Phase I Funds. There was no evidence presented
22 to the jury showing that, *had* the funds been interplead, CDA would have been entitled to them even
23 though GBI was not. Consequently, as a third party beneficiary to the PSS-GBI agreement, CDA was
24 likewise unharmed. Therefore, PSS's motion for judgment notwithstanding the verdict is hereby
25 GRANTED.

1
2 **II. PROCEDURAL BACKGROUND**

3 At the close of the first phase of the bifurcated trial, GBI was found liable to CIC for damages in
4 the amount of \$170,960.49. On August 26, 2008 the second phase of the bifurcated trial commenced
5 with GBI and CDA claiming they suffered damages as a result of the breach of a 2001 settlement
6 agreement between PSS and CIC. GBI sought partial summary judgment on the issue of whether PSS
7 breached its contractual duty to interplead remaining Phase 1 Funds in the amount of \$804,049.73. On
8 August 29, 2008, this court granted GBI's motion. PSS then sought judgment as a matter of law as to
9 GBI asserting GBI failed to present legally sufficient evidence that GBI was harmed by the breach.
10 PSS's motion, as to GBI, was granted by this court; their subsequent motion, as to CDA, was denied by
11 this court.

12
13 **III. LAW GOVERNING JUDGMENT AS A MATTER OF LAW**

14 Renewed motions for judgments as a matter of law are brought pursuant to Commonwealth Rule
15 of Civil Procedure 50(b). Courts interpreting the counterpart Federal Rule of Civil Procedure 50(b)
16 instruct that a renewed motion for judgment as a matter of law under Rule 50(b) is evaluated under the
17 same standard as an initial motion filed pursuant to Rule 50(a). *Weisgram v. Marley Co.*, 528 U.S. 440,
18 447-48 (2000). A court may grant the renewed motion for judgment as a matter of law if there is no
19 legally sufficient evidentiary basis for the verdict. *Id.* Judgment as a matter of law is proper if the
20 evidence, viewed in the light most favorable to the nonmoving party, permits only one reasonable
21 conclusion. *Gaves v. City of Coer D'Alene*, 339 F.3d 828, 838 (9th Cir. 2003) citing *McLean v. Runyon*,
22 222 F.3d 1150, 1153 (9th Cir. 2000).

23 Before a motion for judgment as a matter of law may be properly considered, a motion for
24 judgment as a matter of law must be made at the close of evidence. *Unitherm Food Sys. v. Swift-*
25 *Eckrich, Inc.*, 546 U.S. 394 (2006); *Johnson v. Armored Transport of California, Inc.*, 813 F.2d 1041,

1 1042 (9th Cir. 1987) *see also Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26, 40 (2004). Further, the
2 renewed motion is limited to the issues raised in the pre-verdict motion. *Freund v. Nycomed Amersham*,
3 347 F.3d 752, 761 (9th Cir. 2003).

4 PSS has fulfilled the procedural requirements for filing the present motion against CDA. During
5 the trial on the merits, PSS moved for judgment as a matter of law at the close of CDA's evidence and
6 again at the close of all of the evidence. Both motions were denied and the case was submitted to the
7 jury. Further, the present motion raises issues which are identical to the issues raised in PSS's previous
8 motions.

9 While the court has heard the arguments presented by PSS and previously denied judgment as a
10 matter of law, a court is under no obligation to grant the motion even if the record supports the motion.
11 Motions for judgments as a matter of law may be held under consideration by the court which allows the
12 jury to reach a verdict and minimizes the likelihood of necessitating a new trial. *See Colonial Lincoln-*
13 *Mercury, Inc. v. Musgrave*, 749 F.2d 1092, 1098 (4th Cir. 1984); *see also United States v. Singleton*, 702
14 F.2d 1159, 1172 (D.C. Cir. 1983).

15
16 **IV. ISSUES PRESENTED**

- 17 1) WHETHER PURSUANT TO SUBROGATION AND SURETY LAW, CIC, AS SURETY
18 UNDER THE CONSTRUCTION CONTRACT, HAS PRIORITY STATUS OVER CDA TO
19 THE REMAINING FUNDS WHEN CIC DID NOT PERFECT ITS SECURITY INTEREST
20 AND CDA HAD A PERFECTED SECURITY INTEREST?
21
- 22 2) WHETHER SUFFICIENT EVIDENCE WAS PRESENTED DURING TRIAL TO SUPPORT
23 THE JURY'S VERDICT THAT CDA, AS A THIRD PARTY BENEFICIARY TO THE PSS-
24 GBI AGREEMENT, WAS DAMAGED BY PSS' FAILURE TO INTERPLEAD THE FUNDS?
25

1 **V. DISCUSSION**

2 **A. The Law of Surety and Subrogation**

3 PSS argues that surety law and subrogation control this matter. CIC maintains that as the
4 bonding company in the Tinian High School project (“Project”), subrogation and surety law dictate that
5 their rights are superior to any claims by CDA. (PSS Motion at 4). CDA argues that CIC failed to
6 perfect its security interest pursuant to Article 9 of the Uniform Commercial Code; and therefore, CIC’s
7 interest is subordinate to CDA’s rights as a lien creditor.¹ As there is no written or customary law
8 governing sureties in the Commonwealth, the RESTATEMENT (THIRD) OF SURETYSHIP AND GUARANTY
9 (1995) is the controlling law on these issues to the extent that the presented issues are covered by the
10 Restatement.

11 The material facts are not in dispute. Neither party presents any argument that the relationship
12 between PSS, GBI and CIC was anything other than a suretyship. And, under the principles of the
13 Restatement, this court agrees. REST. (THIRD) OF SUR. & GUAR. §1 (1995). Here, PSS is the obligee,
14 GBI is the principal obligor, and CIC is the secondary obligor. *Id.* Further, the parties agree that CDA
15 was the lien holder and a guarantor of loans made from the Bank of Saipan to GBI.

16 The US Supreme Court has considered the relative priorities of a surety who performs under
17 payment and performance bonds versus a lender who voluntarily extends credit to the contractor. The
18 doctrine of equitable subrogation is not a statutory creature; rather, it has its roots in judicial concepts of
19 fairness and equity. For reasons of equity, courts have consistently held that sureties have priority status

20 ¹ CDA also argues that CIC was not entitled to contract proceeds earned by GBI because there was no valid
21 indemnity agreement and GBI did not assign their contract rights to CIC. The indemnity agreement, CDA argues,
22 was signed by five individuals but none of the signatories signed either for or on behalf of GBI and secondly, the
23 document was not dated. CIC justifiably relied on the signatures as agents of GBI. Further, GBI and CIC course of
24 dealings undoubtedly indicate the signatures were on behalf of GBI. Most importantly, neither GBI nor CIC have
25 contested the agreement.

1 over parties who are volunteer lien creditors. *Henningsen v. United States Fidelity and Guaranty*
2 *Company of Baltimore, Maryland*, 208 US 404, 410 (1907); *Prairie State Bank v. United States*, 164 US
3 227, 232 (1868) *see also National Shawmut Bank v. New Amsterdam Casualty Co.*, 411 F.2d 843
4 (1969)(balancing the equities between a surety and a lender).

5 In *Prairie State Bank*, the court holds that the surety’s right to assert the equitable doctrine of
6 subrogation is “elementary.” 164 US at 231. The requirements to assert the right are:

7
8 1, that the person seeking its benefits must have paid a debt due to a third party before
9 he can be substituted to that party’s rights; and, 2, that in doing this he must not act as
10 a mere volunteer, but on compulsion, to save himself from loss by reason of a superior
11 claim. . . . The right is never accorded in equity to one who is a mere volunteer paying
12 a debt of one person to another.

13 *Prairie State Bank*, 164 US at 231 *quoting Aetna Life Insurance Company v. Middleport*, 124 US 534,
14 548 (1888).

15 The holding is applicable to this case. The suretyship which existed between PSS and CIC was
16 created by law. As provided by the Restatement “[a] legally mandated bond is a secondary obligation
17 required by law, whether the obligee or beneficiary is a government, a class of persons to whom the
18 principal obligor may owe an obligation, or a particular person. The law requiring the secondary
19 obligation may be legislation, administrative act, or regulation, or court rule.” REST. (THIRD) OF SUR. &
20 GUAR. §71(1) (1995). As a requirement of the construction contract with PSS (a government entity),
21 GBI was statutorily required to provide assurance that both the project would be completed, provided by
22 the performance bond; and provide assurance that laborers and suppliers would be paid, provided by the
23 payment bond. GBI’s default triggered CIC’s mandatory obligation to perform.

24 In stark contrast, CDA was a volunteer lender of funds. To fund the construction of the Project,
25 GBI applied for a loan from CDA. CDA refused to make a direct loan but agreed to guaranty a loan

1 which GBI subsequently sought from the Bank of Saipan. On three separate occasions, CDA and the
2 Bank of Saipan executed a guaranty of the loans. CDA's first guaranty was on an \$800,000 loan. After
3 CDA executed the first guaranty, GBI fell behind on the construction schedule.

4 In January of 1995, GBI was granted its first of many extensions to complete the Project.
5 Further, additional expenses were accrued and GBI requested their \$800,000 line of credit be increased
6 to \$1.3 million dollars. Again, the Bank of Saipan refused the increase without a further guaranty from
7 CDA. On August 4, 1995, CDA and the Bank of Saipan executed the second guaranty. In January,
8 1996, GBI requested yet another contract extension from PSS and an additional loan extension from the
9 Bank of Saipan. At this time, GBI was more than one year behind the construction deadline.
10 Nevertheless, PSS once more extended GBI's construction deadline and the Bank of Saipan agreed to
11 delay repayment of the \$1.3 million if CDA would further guaranty the loan. On March 13, 1996, the
12 third guaranty was executed.

13 In the following months, an excess of construction delays arose and the project fell into further
14 disarray. GBI halted work on the project and was unable to make any payments to Bank of Saipan.
15 Three months after the third guaranty expired, the Bank of Saipan demanded payment from CDA. CDA
16 complied and made payment to the Bank of Saipan.²

17 ² In a related case heard before the CNMI Supreme Court between CDA and GBI, the Court determined that the
18 contracts between GBI, CDA, and the Bank of Saipan, created a suretyship as defined by REST. (THIRD) OF SURE. AND
19 GUAR. § 1(1) (1995). *Commonwealth Development Authority v. Guerrero Brothers, Inc.*, 2207 MP 32, ([Unpublished]
20 Opinion). GBI is the principal obligor. The Bank of Saipan is the obligee. CDA is the secondary obligor. *Id.* at ¶15.
21 The Court concluded that GBI had a duty to reimburse CDA as secondary obligor of the loan. The Court held that
22 reimbursement of CDA was inappropriate under a theory of subrogation which requires "total satisfaction" of the
23 underlying obligation. REST. (THIRD) OF SURE. AND GUAR. § 1(27) (1995). Rather, the Court held CDA's recovery was
24 appropriate under the theories of reimbursement and restitution. *Commonwealth Development.* at ¶¶ 20-23; 24. The
25 Court found that CDA, to recover its payment of GBI's debt, could proceed with foreclosure proceedings against GBI

1 With knowledge of GBI's failures to meet construction deadlines and with escalating risks, CDA
2 continued to guarantee increasing loan amounts. Unlike CIC, the continuing loans made to GBI and
3 guaranteed by CDA were made on the faith of an agreement between GBI and CDA. Furthermore,
4 CDA was under no obligation to guaranty the loans rather, on their own volition, made a conscious
5 business decision to do so.

6 For reasons of equity, courts have consistently found that sureties have priority status over
7 parties who are volunteer lien creditors. Here, the rationale of these holdings is applicable and equity
8 demands a similar pronouncement. This court finds no reason to depart from these holdings. Therefore,
9 as a matter of law, CIC had priority to any remaining funds.

10 11 **B. The Consequences of the Uniform Commercial Code**

12 CDA also argues that CIC's failure to perfect its security interest in the contract proceeds results
13 in their claim being subordinate to CDA's rights as a lien creditor. (CDA Motion at 5-6). While the US
14 Supreme Court has not spoken on the issue, the majority of jurisdictions have and all are in agreement
15 that subrogation rights are not "security interests" within the meaning of Article 9 of the Uniform
16 Commercial Code, which has been adopted by the CNMI. *National Shawmut Bank supra* at 847-848;
17 *General Ins. Co. of Am. v. Mezzacappa Bros., Inc.*, 110 Fed. Appx. 183, 184 (2nd Cir. 2004); *In re*
18 *Alcon Demolition*, 204 B.R. 440, 447 (3rd Cir. Bankr. D.N.J. 1997); *State Bank & Trust Co. v.*
19 *Insurance Co.*, 132 F.3d 203, 206 (5th Cir. 1997); *In re Don's Electric, Inc.*, 65 B.R. 399, 404 (7th Cir.
20 Bankr. W.D. Wis. 1986); *Mickelson v. Aetna Cas. & Sur. Co. (In Re Gleason Co.)*, 452 F.2d 1219, 1222

21 _____
and concluded that GBI cannot "skirt their financial obligation" to CDA on a basis of insufficient collateral. *Id.* at ¶35.

22 While, this holding clearly articulates GBI's obligation to repay their debt to CDA, this holding does not alter the
23 relationship between PSS and CDA. CDA, as a secondary obligor, is simply a beneficiary of the PSS-GBI contract.

24 The holding does, however, undermine CDA's claim that they are entitled to repayment of voluntary loans made to GBI
25 from any party other than GBI.

1 (8th Cir. 1971); *In re Alliance Properties, Inc.*, 104 B.R. 306, 312 (9th Cir. Bankr. S.D. Cal. 1989); *In re*
2 *Ward Land Clearing & Drainage, Inc.*, 73 B.R. 313, 315 (11th Cir. Bankr. N.D. Fla. 1987). CDA did
3 not cite any authority to the contrary, persuasive or otherwise, and this court was unable to find any
4 jurisdiction which has held otherwise.

5 The court in *National Shawmut Bank v. New Amsterdam Casualty Co.*, held that compliance with
6 the requirements of Article 9 was unnecessary to preserve the sureties dominant right to funds. *Id.* at
7 847-48. The court reasoned, “[t]he business of a construction contract surety is not one of ordinary
8 insurance, for the risk is not actuarially linked to premiums, nor is there a pooling of risks” *citing*
9 *Pearlman v. Reliance Ins. Co.*, 371 U.S. 132, 140 (1962). Similar to the analysis above, equity demands
10 this result. As the court in *National Shawmut Bank* logically reasoned:

11 Assuming that its confidence is misplaced, the surety receives very little from the
12 contractor but the right to complete the job. Unlike a bank, it does not face specific
13 requests for funds which it is able to link to suitable collateral with subsequent requests
14 determined by assessment of current management and currently available additional
15 security. In case of default, the bank takes its security; the surety must go ahead and
16 perform.

17 411 F.2d at 845.

18 This court finds no reason to depart from this widely accepted analysis. Therefore, CIC’s
19 failure to perfect its security interest is inconsequential. As discussed above, CIC had a greater legal
20 and equitable claim to the remaining funds than CDA. Therefore, the only plausible legal conclusion
21 the jury could have reached in awarding CDA \$804,049.73 was finding that CDA, as a third party
22 beneficiary, was harmed by PSS’s breach of the PSS-GBI agreement.

1 **C. Damages Pursuant to CDA’s Status as a Third Party Beneficiary**

2 PSS argues that as the third party beneficiary, CDA was not harmed by PSS’s failure to
3 Interplead the funds because GBI was not harmed by the breach. Hence, if GBI was not entitled to
4 funds, CDA was not entitled to the funds. CDA contends that PSS-GBI agreement to interplead the
5 funds was necessary because PSS and GBI could not agree on whether the remaining funds were due to
6 GBI for labor and materials already earned or funds which could be used to reimburse CIC for
7 completion of the project. (CDA Motion p. 2). In their opposition motion, CDA argued that as third
8 party beneficiary to the PSS –GBI Settlement, they were entitled to have PSS interplead the funds and as
9 a result of PSS failure to do so, they were harmed and entitled to damages. (CDA Motion p. 8).

10 Two plausible theories would prevail in proving that CDA was entitled to damages as a result of
11 the breach of contract. One, CDA could have shown that funds were due to GBI, and as a result of PSS
12 failing to interplead funds, GBI never received the owed funds; therefore, CDA could not collect from
13 GBI. Or two, that CDA – as the third party beneficiary – suffered damages as a result of the breach,
14 irrespective of GBI’s entitlement to the funds. Neither of these theories was supported by the evidence.

15
16 *1. Receiving Funds Through GBI*

17 The RESTATEMENT (SECOND) OF CONTRACTS§ 321 (1981) provides that an assignment of a
18 “right to payment expected to arise out of. . .continuing business relationship is effective in the same
19 way as an assignment of an existing right [and]. . . a purported assignment of a right expected to arise
20 under a contract not in existence operates only as a promise to *assign the right when it arises* and as a
21 power to enforce it.” (Emphasis added). GBI may have expected payment to arise out of the agreement
22 with PSS. However, it was determined that GBI was not harmed by that breach. Thus, the only logical
23 conclusion is that GBI was not entitled to any of the funds. GBI could not have assigned a greater
24 expectation than they themselves had in the PSS agreement.

1 CDA argues that GBI's failure to produce evidence that they were damaged by PSS's breach of
2 contract does not prevent CDA from recovering damages as a result of the breach. (CDA Opp. Motion
3 at 8). However, CDA is mistaken. While PSS inexcusably breached the PSS-GBI agreement when they
4 failed to interplead the Phase 1 Funds, GBI was not injured by the breach of contract. If GBI was not
5 injured by the breach, then obviously, GBI was not entitled to any remaining Phase 1 Funds. Had GBI
6 had rightful claim to the funds, PSS's failure to interplead those funds would certainly have caused
7 damages to CDA. However, PSS breach of contract had no impact on CDA's damages or their ability to
8 recover their losses from GBI. While CDA was no doubt harmed (in the form of accrued interest) by
9 *GBI's failure* to pay their owed monies to the Bank of Saipan, this harm is not a result of the breach of
10 the PSS-G.I. agreement. Consequently, CDA cannot now seek to recover their losses from PSS.

11
12 2. *CDA Damages as a Third Party Beneficiary – Irrespective of GBI*

13 A promise in a contract creates a duty in the promisor to both the promisee and any intended
14 beneficiaries and the beneficiary may enforce the promise. REST. (SECOND) OF CONTRACTS §304
15 (1981). The jury was instructed on this issue as requested by CDA, albeit complexly, on the law of
16 intended and incidental beneficiaries. (Jury Instruction No.26.) For our purposes, we will assume the
17 jury understood the instruction and concluded that CDA was an intended beneficiary of the PSS-GBI
18 contract.

19 CDA cites RESTATEMENT (SECOND) OF CONTRACTS (1981) as a source of legal damages for
20 PSS's breach of contract. (CDA Opp. Motion at 8). Section 345 provides judicial remedies which are
21 available for the protection of contractual interests. Those interests which are protected are referenced
22 in §345 and enumerated in §344. *Id.* The protected interests are as follows: 1) expectation interests; 2)
23 reliance interests and; 3) restitution interests. *Id.* at §344. Clearly, none of these interests are applicable
24 to CDA in awarding them damages. Expectation damages are appropriate when the court attempts to
25 put the aggrieved party in the same position as they would have been had the contract been performed.

1 As discussed above, had PSS interplead the funds pursuant to the agreement, GBI still would not have
2 received any of the interplead funds. Further, between CIC as the surety and CDA as the lien holder, the
3 law dictates that CIC has priority status. Therefore, had PSS performed as promised, CDA would not
4 have had no entitlement to the remaining funds.

5 Reliance damages are those damages which reimburse “for loss caused by reliance on the
6 contract.” *Id.* at §344(b). As a third party beneficiary, CDA was entitled to rely on the promise PSS
7 made to GBI. REST. (SECOND) OF CONTRACTS §90(C) (1981). Here, however, no evidence was
8 presented that CDA relied on PSS’s promise. CDA’s contractual relationships with GBI arose long
9 before the PSS-GBI agreement. Furthermore, no evidence was presented which suggested that CDA in
10 any way changed their position in reliance on the PSS-GBI agreement. Additionally, PSS’s breach of
11 the agreement does not alter CDA’s ability to seek repayment from GBI directly for damages caused by
12 GBI’s failure to make payments.

13 Finally, restitution interest is the party’s interest in having restored to him any “benefit that he
14 has conferred on the other party.” *Id.* at §344(c). CDA presented no evidence supporting such a
15 finding. Rather, CDA argued that they were harmed by the breach of the PSS-GBI agreement as a third
16 party beneficiary because they accrued interest on GBI’s unpaid debts. This loss cannot be recovered
17 from PSS simply because of PSS’s breach of agreement with GBI which resulted in no harm to GBI.
18 This loss is attributable exclusively to GBI.

19 Section 344 and 345 of the Restatement provides no legal basis for recovery by CDA because no
20 evidence was presented which would support the jury award based on these principles.

21 22 **VI. CONCLUSION**

23 CDA had no direct claim to the remaining funds under the laws of surety and subrogation. There
24 was only one finite source of funds in which to pay for construction of the Project. After numerous
25 extensions and increasing loans, GBI spectacularly failed to complete the Project. At which time, CIC,

1 as the surety, was *required* to complete the Project. CIC satisfactorily did so and was certainly entitled
2 to payment for the completion. PSS reached an agreement, equal to the amount of remaining funds,
3 which satisfied their debt to CIC as the party who finished the construction. The Phase 1 Funds were
4 *intended* for construction of the Project and it is clear that CIC was entitled to those funds.

5 Further, CDA's alternative claim to the funds was via GBI or with proof that they otherwise
6 damaged by the breach of contract. This court finds no evidence which was presented during trial which
7 supports a finding that CDA, as third party beneficiary, suffered damages as a result of the breach of the
8 PSS-GBI agreement.

9 For the foregoing reasons, PSS's motion for judgment as a matter of law is GRANTED.

10
11 **So ORDERED** this 24th day of October, 2008.

12
13 /s/
14 David A. Wiseman, Associate Judge
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