

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SIXTH DIVISION**

**ARKANSAS ELECTRIC
COOPERATIVE CORPORATION**

DLS **PLAINTIFF**

V.

CASE NO. CV-2010-7112

FILED 04/01/11 10:11:47
Larry Crane Pulaski Circuit Clerk
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BGT GROUP, INC.

DEFENDANT

FINAL JUDGMENT

On this ___ day of April, 2011, this matter came on before the Court for its consideration of Plaintiff's proof of damages. Based upon this Court's Default Judgment as to Liability entered against Defendant BGT Group, Inc. on March 15, 2011, a copy of which is attached hereto and expressly incorporated herein, the testimony and exhibits presented to the Court at a damages hearing conducted on April 1, 2011, and all other matters presented, this Court finds and rules as follows:

1. Arkansas Electric Cooperative Corporation is awarded Judgment against BGT Group, Inc. in the amount of \$ 17,679,247.42 for compensatory damages with pre-judgment interest at the rate of 5.75 % per annum, plus post-judgment interest at the rate of 5.75 % per annum.

2. Pursuant to Ark. Code. Ann. § 16-22-308, Arkansas Electric Cooperative Corporation is awarded Judgment against BGT Group, Inc. for attorneys' fees in the additional amount of \$ 75,000.00, plus post-judgment interest at the rate of 5.75 % per annum.

IT IS SO ORDERED this 1st day of April, 2011.



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[Signature]
CIRCUIT JUDGE TIMOTHY D. FOX

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SIXTH DIVISION

FILED 03/15/11 09:26:39
Larry Crane Pulaski Circuit Clerk
MC

ARKANSAS ELECTRIC
COOPERATIVE CORPORATION

PLAINTIFF

V.

CASE NO. CV-2010-7112

BGT GROUP, INC.

DEFENDANT

DEFAULT JUDGMENT AS TO LIABILITY ONLY

On this 14th day of March, 2011, this matter comes before this Court for consideration. Based upon the Plaintiff Arkansas Electric Cooperative Corporation's ("AECC") Complaint against Defendant BGT Group, Inc. ("BGT"), AECC's Motion for Default Judgment and Brief in Support pursuant to Ark. R. Civ. P. 55(a), and all other matters presented, this Court finds as follows:

1. AECC is an Arkansas corporation with its principal place of business located in Little Rock, Pulaski County, Arkansas.
2. BGT is a Florida corporation with its principal place of business at 200 Aviation Drive North, Suite 4, Naples, FL 34104-3501.
3. AECC filed the Complaint in this matter on December 14, 2010.
4. BGT was properly served with Summons and the Complaint in the time and manner prescribed by law.
5. Jurisdiction is proper pursuant to Ark. Code Ann. § 16-13-201, and venue is proper in this Court pursuant to Ark. Code Ann. §16-55-213(a)(3).
6. AECC's Motion for Default Judgment has merit and is GRANTED.

7. AECC is an electric cooperative corporation organized and operating under Act 342 of the Arkansas Acts of 1937, as amended. AECC is engaged in the business of generating and transmitting electric power and energy for sale at wholesale to its 17 member electric distribution cooperatives in the State of Arkansas.

8. BGT is engaged in the business of, among other things, providing aero-derivative gas turbine packages to the power-generation, marine, and oil-and-gas industries.

9. On or about January 5, 2007, AECC, as buyer, and BGT, as seller, entered into a contract for the sale of three trailer mounted LM2500 turbine generator sets, which will be referred to herein as Units 1-3. The Units were to be used as generators of electric power at a site to be located near Elkins, Arkansas.

10. The contract established delivery dates of June 8, 2007 for Units 1 and 2 and July 1, 2007 for Unit 3. The site of delivery under the contract was AECC's designated site near Elkins, Arkansas (the "Elkins site").

11. The contract was accepted in Arkansas and contemplated performance in Arkansas. Further, BGT sent its agents to Arkansas in November 2007 to view the Elkins site and discuss progress on the contract.

12. The contract price was \$21,000,000.00.

13. The contract provided that time was of the essence.

14. The contract provided further, and BGT represented, that BGT would perform its due diligence in reviewing the project in detail before representing in its bid

that it could comply with the project at the stated price and at the stated times for delivery.

15. Further, BGT warranted that, “[o]n the date of delivery, the equipment . . . shall be designed and fit for the purpose of generating electric power”

16. AECC relied on these representations in entering into the contract, and would not have entered into the contract but for the representations. Moreover, AECC would not have tendered the monies described below to BGT but for BGT’s representations, both express and implied, that it had the capability of delivering three Units “designed and fit for the purposes of generating electric power” on or about the delivery dates established by the contract.

17. The contract contained a liquidated damages clause that provided that AECC could deduct \$20,000.00 per day from the purchase price should BGT fail to deliver the Units according to the deadlines established by the contract. However, the liquidated damages clause stated that liquidated damages for late delivery could not exceed 10% of the purchase price, or \$2,100,000.00.

18. Despite the specific deadlines for delivery of Units 1, 2, and 3, BGT did not deliver any of the Units to AECC in the time required by the contract.

19. In 2009, BGT delivered Units 1 and 2 to AECC, but the Units were not commissioned for operation until May 1, 2010.

20. To date, Unit 3 has not been delivered and BGT is unable to deliver Unit 3.

21. AECC has paid BGT the full amount owed on the contract. Pursuant to the contract, AECC paid BGT \$10,500,000.00 upon receipt of the initial invoice, on or about

January 8, 2007. Pursuant to the contract, AECC paid BGT \$5,250,000.00 forty-five days after the initial deposit, on or about February 21, 2007. Pursuant to the contract, AECC paid BGT \$3,150,000.00 ninety days after the initial deposit, on or about April 4, 2007.

22. From the summer of 2007 forward, BGT represented to AECC that it would deliver the Units.

23. In reliance on BGT's representations, AECC has incurred damages in constructing, maintaining, and preparing the Elkins site in contemplation of operating the Units there.

24. AECC informed BGT that unless Unit 3 was delivered by the due date established by the contract, AECC would deem the contract repudiated by BGT with respect to Unit 3.

BREACH OF CONTRACT

25. AECC and BGT entered into a valid and enforceable contract, supported by consideration.

26. The contract was for the sale of goods and is therefore governed by ARK. CODE ANN. § 4-2-101, *et seq.*

27. BGT breached the contract by failing to timely deliver Units 1 and 2 and by failing to deliver Unit 3 at all.

28. By virtue of BGT's breach of the contract, AECC has incurred substantial damages, as described above and below.

29. Under ARK. CODE ANN. § 4-2-711, AECC is entitled to cancellation of the contract and return of all monies it has paid pursuant to the contract for Unit 3 in an amount to be determined at a hearing on damages.

30. In addition, under ARK. CODE ANN. § 4-2-713, AECC is entitled to Judgment against BGT for the difference between the market price of a turbine generator comparable to Unit 3 at the time of the breach and the contract price, together with any incidental and consequential damages, in an amount to be determined at a hearing on damages, and for reasonable attorneys' fees as authorized by Ark. Code Ann. § 4-88-113(f).

IT IS THEREFORE CONSIDERED, ORDERED, AND ADJUDGED that Arkansas Electric Cooperative Corporation is awarded Judgment against BGT Group, Inc, on the count of breach of contract in an amount to be determined at a damages hearing the Court will conduct at a future date.

IT IS SO ORDERED.



CIRCUIT JUDGE

MAR 14 2011

DATE