

COURT OF APPEALS OF TEXAS, EIGHTH DISTRICT, EL PASO

David Nelson, Individually and d/b/a Collective Contracting, a Sole Proprietorship; Collective Contracting, Inc.; and E.E. Hood & Sons, Inc. v. Vernco Construction, Inc.

No. 08-10-00222-CV, Court of Appeals of Texas, Eighth District, El Paso (June 22, 2018)

SUMMARY

The Texas Eighth Court of Appeals vacated its prior judgment and modified the trial court's judgment concerning liability arising from a construction-related dispute. The court characterized E.E. Hood's liability as knowing participation in David Nelson's breach of fiduciary duty, deleted the attorney's-fee award, specified actual and exemplary damages against Hood, affirmed the remainder as modified, and apportioned appellate costs.

CASE DETAILS

COURT	Court of Appeals of Texas, Eighth District, El Paso
WRITING FOR THE COURT	Yvonne T. Rodriguez; McClure, Chief Justice; Yvonne T. Rodriguez, Justice; Hughes, Justice (not participating)
JURISDICTION	Texas
DECIDED	June 22, 2018
DOCKET	08-10-00222-CV
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from the judgment of the 45th District Court of Bexar County, Texas.
PRECEDENTIAL VALUE	published
PARTIES	David Nelson, individually and d/b/a Collective Contracting, a sole proprietorship, Collective Contracting, Inc., E.E. Hood & Sons, Inc. v. Vernco Construction, Inc.

TOPICS

[construction law](#)[breach of contract](#)[damages](#)[remedies](#)[appellate procedure](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the judgment should characterize E.E. Hood's liability as knowing participation in David Nelson's breach of fiduciary duty rather than breach of contract.
2. Whether the attorney's-fee award should be deleted.
3. Whether the judgment should reflect actual and exemplary damages against E.E. Hood individually in the specified amounts.

HOLDINGS

1. The judgment must reflect that E.E. Hood is liable for knowing participation in David Nelson's breach of fiduciary duty, rather than for breach of contract.
2. The attorney's-fee award must be deleted from the judgment.
3. The judgment must reflect actual damages of \$1,702,758.00 and exemplary damages of \$150,000.00 against E.E. Hood individually, for a total of \$1,852,758.00.

KEY QUOTATIONS

"We vacate our judgment dated May 31, 2018. We modify the trial court's judgment to (1) reflect that Appellant E.E. Hood is liable for knowing participation in Appellant David Nelson's breach of fiduciary duty, rather than breach of contract; (2) delete the award of attorney's fees; and (3) reflect an award of actual damages against Hood individually in the amount of \$1,702,758.00 and \$150,000.00 in exemplary damages for a total of \$1,852,758.00. We affirm the remainder of the trial court's judgment as modified."

FACTUAL BACKGROUND

The judgment reflects that David Nelson was found liable for breach of fiduciary duty and that E.E. Hood was found to have knowingly participated in that breach. The trial court also awarded damages and attorney's fees. The appellate judgment corrected the characterization of Hood's liability, deleted the attorney's-fee award, and specified actual and exemplary damages against Hood individually.

PROCEDURAL HISTORY

The appellants appealed the trial court's judgment in trial-court cause number 2006-CI-18807. The court of appeals vacated its prior judgment dated May 31, 2018, modified the trial court's judgment to correct the liability characterization, delete attorney's fees, and impose specified damages against E.E. Hood individually, and affirmed the remainder as modified.

DISPOSITION

other

OPINION

David Nelson, Individually and D/B/A Collective Contracting, a Sole Proprietorship Collective Contracting, Inc. E. E. Hood & Sons, Inc. v. Vernco Construction, Inc.

PER CURIAM.

COURT OF APPEALS

EIGHTH DISTRICT OF TEXAS

EL PASO, TEXAS

DAVID NELSON, Individually and d/b/a §

COLLECTIVE CONTRACTING, A No. 08-10-00222-CV

SOLE PROPRIETORSHIP; §

COLLECTIVE CONTRACTING, INC.; Appeal from the and E.E. HOOD & SONS, INC., § 45th District Court Appellants, § of Bexar County, Texas v. §

(TC# 2006-CI-18807)

VERNCO CONSTRUCTION, INC., §

Appellee.

JUDGMENT

We vacate our judgment dated May 31, 2018. We modify the trial court's judgment to (1) reflect that Appellant E.E. Hood is liable for knowing participation in Appellant David Nelson's breach of fiduciary duty, rather than breach of contract; (2) delete the award of attorney's fees; and (3) reflect an award of actual damages against Hood individually in the amount of \$1,702,758.00 and \$150,000.00 in exemplary damages for a total of \$1,852,758.00. We affirm the remainder of the trial court's judgment as modified. We further order that Appellants and their sureties, if any, see TEX.R.APP.P. 43.5, and Appellee each pay one-half (1/2) the costs of this appeal. This decision shall be certified below for observance. IT IS SO ORDERED THIS 22ND DAY OF JUNE, 2018. YVONNE T. RODRIGUEZ, Justice Before McClure, C.J., Rodriguez, and Hughes, JJ. Hughes, J. (Not Participating)