

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH
DISTRICT

Shir Bensusan v. Design Engineering Group, LLC

Bensusan · No. 4D2024-1340 · Decided December 3, 2025

SUMMARY

The Florida Fourth District Court of Appeal affirmed in part and reversed in part a judgment awarding Design Engineering Group, LLC 92% of contractual retainage against Shir Bensusan under an unconditional and absolute guaranty. The court held that the guaranty permitted recovery without first pursuing the principal and that the evidence supported the retainage award. It reversed the award of 10% contractual interest, holding that statutory prejudgment and post-judgment interest applied instead, and remanded with instructions.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fourth District
WRITING FOR THE COURT	Shepherd, J.; Gross, J.; Forst, J.
JURISDICTION	Florida District Court of Appeal, Fourth District
DECIDED	December 3, 2025
DOCKET	4D2024-1340
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a final judgment awarding Design Engineering Group, LLC 92% of contractual retainage and 10% interest against Shir Bensusan under a construction-related guaranty.
STANDARD OF REVIEW	Contract interpretation is reviewed de novo. The appellate court is bound by factual findings supported by competent, substantial evidence. The denial of a motion to continue trial is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Shir Bensusan v. Design Engineering Group, LLC

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QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by denying Shir Bensusan's motion to continue trial.
2. Whether the guaranty was unconditional and absolute, making Shir Bensusan liable for the unpaid contractual retainage without prior pursuit of the principal.
3. Whether the trial court properly awarded DEG 92% of the retainage based on the guaranty and the evidence.
4. Whether the trial court properly awarded 10% contractual interest against Shir Bensusan, or whether DEG was limited to statutory prejudgment and post-judgment interest.

HOLDINGS

1. The trial court did not reversibly err in denying Shir Bensusan's motion to continue trial.
2. The guaranty was an unconditional and absolute guaranty of payment, making Shir Bensusan liable upon Costa's nonpayment without DEG first pursuing Costa or exhausting remedies against it.
3. DEG was entitled to recover 92% of the contractual retainage from Shir Bensusan under the unconditional guaranty.
4. The trial court erred by awarding 10% contractual interest against Shir Bensusan. DEG was entitled instead to statutory prejudgment and post-judgment interest.

KEY QUOTATIONS

“As to an absolute guaranty, the guarantor becomes liable immediately upon default in payment by another, whereas under a conditional guaranty, the guarantor does not become liable until the occurrence of certain conditions.” (2)

“Where the guaranty is absolute, the guarantor becomes liable upon non-payment by the principal, and the person in whose favor the guaranty runs has no duty to first pursue the principal before resorting to the guarantors.” (2-3)

“In sum, the guaranty’s unconditional language supports the trial court’s award.” (4)

“The trial court has no discretion regarding awarding prejudgment interest and must do so applying the statutory rate of interest in effect at the time the interest accrues.” (4)

FACTUAL BACKGROUND

Design Engineering Group, LLC was a subcontractor on a construction project and recorded a construction lien after the property developer failed to timely pay for work. The lien included \$176,751.91 in retainage that DEG had already earned. To induce DEG to resume work after a stoppage, the developer and DEG entered supplemental agreements, and Moses Bensusan and Shir Bensusan signed a guaranty stating that it was

unconditional, absolute, irrevocable, and direct. DEG resumed work, completed approximately 92% of the project, and stopped after the developer failed to pay a subsequent bill.

PROCEDURAL HISTORY

Design Engineering Group, LLC sued to recover contractual retainage from guarantors after the property owner failed to pay for construction work. The Broward County Circuit Court entered final judgment awarding DEG 92% of the retainage and 10% interest. Shir Bensusan appealed, challenging the denial of a continuance, the interpretation and enforceability of the guaranty, the retainage award, and the interest award.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for correction of the judgment to remove the 10% interest award and award DEG statutory prejudgment and post-judgment interest against Shir Bensusan.

CASES CITED

- Marshall v. MacWilliam, 391 So. 3d 446, 450 (Fla. 4th DCA 2024)
- Richardson v. Everbank, 152 So. 3d 1282, 1287-88 (Fla. 4th DCA 2015)
- Lahodik v. Lahodik, 969 So. 2d 533, 535 (Fla. 1st DCA 2007)
- Fort Plantation Invs., LLC v. Ironstone Bank, 85 So. 3d 1169, 1171 (Fla. 5th DCA 2012)
- Anderson v. Trade Winds Enters., Corp., 241 So. 2d 174, 177 (Fla. 4th DCA 1970)
- Allstate Ins. Co. v. Revival Chiropractic, LLC, 385 So. 3d 107, 113 (Fla. 2024)
- MRI Assocs. of Tampa, Inc. v. State Farm Mut. Auto. Ins. Co., 334 So. 3d 577, 583 (Fla. 2021)
- Lab'y Corp. of Am. v. Davis, 339 So. 3d 318, 324 (Fla. 2022)
- Sterling Vill. of Palm Beach Lakes Condo. Ass'n, Inc. v. Lacroze, 255 So. 3d 870, 872 (Fla. 4th DCA 2018)
- Summerton v. Mamele, 711 So. 2d 131, 133 (Fla. 5th DCA 1998)

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