

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

IVEY MECHANICAL COMPANY

PLAINTIFF

VS.

CIVIL ACTION NO.: 1:06cv236-M-D

COASTAL CRANE & EQUIPMENT, INC.

DEFENDANT

MOTION FOR SUMMARY JUDGMENT

Defendant, Coastal Crane & Equipment, Inc. ("Coastal Crane"), pursuant to Federal Rule of Civil Procedure 56 files this Motion for Summary Judgment as follows:

1. On or about April 17, 2006, Ivey rented a crane from Coastal Crane for use on the HealthSouth Rehabilitation Hospital in Sarasota, Florida. See Ivey's Complaint at ¶s 4, 5, a true and correct copy of which is attached hereto as Exhibit "A" and made a part hereof.

2. Coastal Crane issued a Customer Purchase Order which provides that "Customer [Ivey] accepts full responsibility for property damage and personal injury occurring while work is done under Customer's direction" A true and correct copy of Coastal Crane's Purchase Order is attached hereto as Exhibit "B" and made a part hereof.

3. The terms Coastal Crane's Purchase Order were negotiated and agreed upon as evidenced by the signature of Rod Hennon, Ivey's project manager. See Exhibit "B".

4. According to the sworn testimony of Dewayne Keller, the Coastal Crane operator, he was under the direction of Ivey. See deposition transcripts from DeWayne Keller deposition, true and correct copies of which are attached hereto as Exhibit "C" and made a part hereof

at pages 13, 14, 21, 24-26.

5. Steve Farah, the owner of Coastal Crane, testified Ivey determined what was necessary to lift the chiller and place it on the concrete pad and that Mr. Keller was instructed by Ivey personal on where to locate the crane. See deposition transcripts from Steve Farah deposition, true and correct copies of which are attached hereto as Exhibit "D" and made a part hereof at pages 6, 22 and 36.

6. David McCoy, one of Ivey's project superintendents, testified that Ivey directed Coastal Crane by giving hand signals. See deposition transcripts from David McCoy deposition, true and correct copies of which are attached hereto as Exhibit "E" and made a part hereof at pages 5, 13-14 and 25.

7. Ivey, in its 30(b)(6) deposition made it clear Ivey was the party who rigged the air cooled chiller and Ivey had the authority to direct where the crane could locate for the lift. See deposition transcripts from Ivey's 30(b)(6) deposition, true and correct copies of which are attached hereto as Exhibit "F" and incorporated herein by reference at pages 6-8 and 11.

9. Clearly, based upon the testimony of both parties, Coastal Crane was under the direction of Ivey and as such, and pursuant to the terms of the Coastal Crane Purchase Order which were freely bargained for and accepted, Coastal Crane does not bear any liability for the damage to the air cooled chiller.

10. Alternatively, if Coastal Crane is liable for Ivey's alleged damages, which is denied, Ivey failed to mitigate its damages by replacing the damaged chiller with a new despite the fact the damaged chiller only sustained minor structural damage and was easily repairable.

See Exhibit "E" at pages 26-28 and Exhibit "F" at pages 26-27, 46-50 and 26-57.

11. Moreover, since the air cooled chiller could be repaired, Ivey's damages are limited to the costs of repair which are less than \$18,000.00. *Id.* at page 48.

WHEREFORE, Defendant, Coastal Crane & Equipment, Inc. requests this Court grant it summary judgment and dismiss all claims against it herein with prejudice, or alternatively, grant partial summary judgment to limit Ivey's damages to the reasonable cost of repair and reduce those damages to the extent Ivey failed to mitigate those damages by purchasing a new chiller.

Respectfully submitted, this 27<sup>th</sup> day of December, 2007.

COASTAL CRANE & EQUIPMENT, INC.

BY: /s/ Jason E. Weeks  
JASON E. WEEKS

OF COUNSEL:

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CERTIFICATE OF SERVICE

This is to certify that I have this day filed the above and foregoing Motion for Summary Judgment, with the clerk in accordance with the Court's electronic filing requirements and notice of same has been provided to the following:

Andrew Kilpatrick, Esq.  
Gore, Kilpatrick & Dambrino, PLLC  
P.O. Drawer 2900  
Ridgeland, MS 39158

Honorable Jerry A. Davis  
United States District Court  
Northern District, Eastern Division  
P.O. Box 726  
Aberdeen, MS 39730

THIS, the 27<sup>th</sup> day of December, 2007.

/s/ Jason E. Weeks  
JASON E. WEEKS