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10-28-2008

Order and Final Judgment (CHARLES L.  
MARSH)

Elizabeth E. Long  
*Superior Court of Fulton County*

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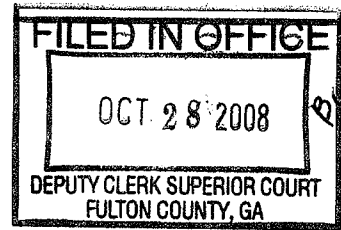
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**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

**CHARLES L. MARSH,** )  
 )  
 **Plaintiff,** )  
 )  
 **v.** )  
 )  
 **BDI LAGUNA HOLDINGS, INC.** )  
 **and JAY L. WERTHEIMER,** )  
 )  
 **Defendants.** )

**CIVIL ACTION**

**FILENO. 2004CV84536**



**ORDER AND FINAL JUDGMENT**

This action came before the Court for a hearing on September 24, 2008 on Defendant BDI Laguna Holdings, Inc.’s Motion for Judgment Notwithstanding the Verdict and Alternative Motion for New Trial, Plaintiff’s Conditional Motion for a New Trial or in the Alternative Conditional Notice of Cross Appeal and Defendants’ Motions to Include Evidentiary Proffer filed August 14, 2008 and September 19, 2008.

Plaintiff’s claims against BDI Laguna Holdings, Inc. (“BDI”) for breach of contract, promissory estoppel, and for a determination as to liability for attorneys fees and costs of litigation pursuant to O.C.G.A. § 13-6-11 were tried to a jury. On July 15, 2008, the Court entered judgment on the verdict in favor of the Plaintiff Charles Marsh for the sum of “Two Million, Two Hundred Eight Thousand, Seven

Hundred Twenty Four and 00/100 dollars (\$2,208,724.00) as compensatory damages against Defendant BDI Laguna Holdings, Inc., plus Four Hundred Thousand and 00/100 dollars (\$400,000) in attorneys fees and expenses of litigation recoverable pursuant to the jury's verdict under O.C.G.A. § 13-6-11, together with post-judgment interest as provided by law." On August 14, 2008 Defendant BDI Laguna Holdings, Inc. filed its Motion for Judgment Notwithstanding the Verdict and Alternative Motion for New Trial. On August 14, Plaintiff Charles Marsh filed his Conditional Motion for New Trial or in the Alternative Conditional Notice of Cross Appeal.

After considering the briefs and arguments at the September 24 hearing, the Court pronounced its rulings which are now and hereby formally entered as the Court's Order and Final Judgment.

**A. Defendant BDI Laguna Holdings, Inc.'s Motion for Judgment Notwithstanding the Verdict and Alternative Motion for New Trial**

Defendant BDI Laguna Holdings, Inc.'s Motion for Judgment Notwithstanding the Verdict and Alternative Motion for New Trial ("JNOV Motion") is GRANTED IN PART and DENIED IN PART. BDI's JNOV Motion is GRANTED as to the Plaintiff's claim for a tax "gross-up" in the amount of Six Hundred Thirty One Thousand Sixty Four and 00/100 (\$631,064.00). BDI's JNOV Motion is DENIED as to all remaining claims. BDI's Motion for New Trial is DENIED.

The Court directs the entry of judgment as follows: the Plaintiff is awarded the sum of One Million, Five Hundred Seventy Seven Thousand, Six Hundred Sixty and 00/100 dollars (\$1,577,660) as compensatory damages from Defendant BDI Laguna Holdings, Inc., plus Four Hundred Thousand and 00/100 dollars (\$400,000) in attorneys fees and expenses of litigation recoverable pursuant to the jury's verdict under O.C.G.A. § 13-6-11, together with post-judgment interest as provided by law.

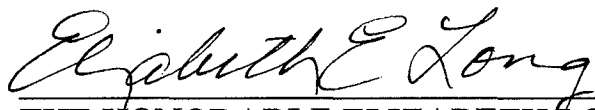
**B. Plaintiff's Conditional Motion for a New Trial or in the Alternative Conditional Notice of Cross Appeal**

Plaintiff's Conditional Motion for a New Trial or in the Alternative Conditional Notice of Cross Appeal was withdrawn by the Plaintiff.

**C. Defendants' Motion to Include Evidentiary Proffer filed August 14, 2008 and September 19, 2008.**

Defendants' Motion to Include Evidentiary Proffer filed August 14, 2008 and September 19, 2008 are hereby GRANTED.

IT IS SO ORDERED, this <sup>th</sup>28 day of October, 2008.

  
THE HONORABLE ELIZABETH LONG  
SENIOR JUDGE  
SUPERIOR COURT OF FULTON COUNTY  
(BUSINESS COURT DIVISION)