IN THE DISTRICT COURT OF GEARY COUNTY, KANSAS
(Pursuant to Chapter 60 of K.S.A.)

WAN KYU KANG, **Plaintiff,**	
vs.	**Case No. 07 CV 282**
AMERICAN DREAM DEVELOPMENT, LLC **and** **JEFFREY M. BURTON,** **Defendants and Counterclaimant.**	

MEMORANDUM DECISION

The court having heard the evidence and being fully advised makes the following judgment in the above captioned matter:

FACTUAL FINDINGS:

1. Plaintiff and American Dream Development, LLC (ADD) entered into discussions in the Fall of 2006 with regard to the construction of building which is now known as Rivergate Shopping Center (RSC) and which is located at 204 Grant Avenue, Junction City, Kansas. Plaintiff and ADD entered into a construction contract as documented by a standard form AIA Document A111-1997.

2. The court finds that the AIA documents are a part of the contract agreed upon by both parties. Testimony from the defendant Burton convinces the court that he expected and was aware that the total contract incorporated the AIA documents. The court further finds that the contractor (ADD) was bound to follow the architect's drawings and the engineering plans prepared by Brent Deam and Kaw Valley Engineering (Leon Osburn). Further, defendants have contended throughout their briefs and arguments that the court enforce parts of the AIA documents but not others. This is inconsistent and the court finds that the AIA documents are not ambiguous and, except those items crossed out, will be enforced by the court.

The written documents pertaining to construction of the Rivergate Shopping Center in evidence consist of:

a. The Deam Drawings

b. The Civil Drawings prepared by Kaw Valley

c. An agreement between Kang as Owner and Deam as Architect based on AIA document B141-1997 dated February 2, 2007,with two attachments consisting of an extension of §15.1 of the AIA form and lists the contract documents. The other attachment is a letter dated January 30, 2007 to Bob Henderson from Deam which Deam described as "adjustments" to the final plans for the shopping center.

d. An agreement between Kang as Owner and American Dream as Contractor based on AIA Document A-111-1997;

e. A document entitled "General Conditions of the Contract for Construction" based on AIA document A-201-1997, which was incorporated by reference into the AIA agreements between Owner and Architect and Owner and Contractor.

3. Section 15.1.6 of AIA Document A111-1997 references and incorporates a letter dated January 30, 2007 bearing the letterhead of Brett Deam which is a part of Exhibit 1. Included on that letter are two handwritten statements and the initials of Jeffrey Burton as agent of ADD and the initials "W.K.". The handwritten portion of this letter states that the "cival (sic) documents do not apply". Under the various AIA documents, American Dream Development was solely responsible for the outcome of construction. This supposed amendment was not approved by the architect and violates the City's building requirements. As to this particular document, the court finds that it is ambiguous and the court is unable to decipher its meaning or intent. Whatever it means is up subject to conjecture. The court will not attempt to translate the document or enforce it.

4. Those arguments respecting the Civil Drawings would make it impossible for Deam to exercise his functions as Architect under the various AIA documents because Burton did not present Deam with any specifications, standard of performance nor cost estimates before or during construction. Under those circumstances, any risks or problems relating to the changes in the Civil Drawings to construction must be borne by ADD as the Contractor.

5. The maximum guaranteed price stated in AIA Document A111-1997 for the construction of the RCS is $776,000.00. The maximum guaranteed price is the sum of the cost of the work and the contractor's fee. The cost of the work is defined in Article 7 of AIA Document A111-1997.

6. ADD ceased work on the RSC on or about October 15, 2007, pursuant to a notice of termination which Plaintiff issued through his attorney, pursuant to Article 13 of AIA Document A111-1997. ADD received through August, 2007 payments totaling $594,509.81. In September, 2007 ADD received $23,033.53 which was a portion of its draw request. To date, ADD has received a total of $614,543.34 from Plaintiff.

7. It is undisputed that ADD is a supplier under the Kansas Consumer Protection Act.

8. It is undisputed that Plaintiff is a consumer under the Kansas Consumer Act.

9. It is undisputed that Burton did communicate directly with Plaintiff and his representatives, Robert Henderson and Brett Deam with regard to the construction of the RSC prior to entering into a contract for said construction.

10. It is also undisputed that Burton was the representative of ADD prior to and during the construction of RSC. Pursuant to the case of *Heller v. Martin, supra,* Burton is held to be a supplier.

11. The court finds that there is competent evidence to support a breach of contract claim against ADD for a violation of AIA, A201 Sec. 3.9.1 (failure to employ a competent supervisor who shall be at the project site during performance of the work.) The testimony convinces the court that while Burton was a competent supervisor, he was rarely at the construction site and did not properly supervise the construction.

12. Burton testified and the evidence is clear that he, in many significant ways, disregarded the Engineering plans of Kaw Valley. The first and perhaps most significant was building the structure a foot below the grade required by the engineer. This failure and others including the 2 inch asphalt and the failure to follow the engineer's plans concerning drainage constitute breach of the contract.

13. The contract was terminated by cause by the owner pursuant to Sec. 14 of A201. The contract provides for damages upon this event in Sec. 14.2.4. The section indicates that the amount to be paid to the contractor …shall be certified by the Architect…

14. The owner had sufficient legal reason to terminate the contract for cause.

THE RICEROOM DISPUTE:

15. With regard to the rice room floor tile, the Court further finds that ADD engaged an appropriate expert with regard to the installation of the "kitchen and rice room tile" after the first attempt was not satisfactory to Plaintiff. The Court heard the testimony of Paul Holt that the rice room floor tile, with its present slope, was installed pursuant to and with the express agreement of both Robert Henderson and Plaintiff, both of whom were present when the installation of the sloped rice room tile was completed. If Plaintiff desires some slope other than what is presently existing in the rice room, then such cost should be born by Plaintiff. Plaintiff has not been billed for and has paid nothing for the installation of the sloped rice room tile.

16. Plaintiff complains of and presented evidence concerning the adequacy of the installation of the rice room tile. The cost of $8,000.00 for the installation of the rice room tile was paid by Plaintiff to ADD upon approval of Brett Deam. The complaints of Plaintiff regarding the rice room tile are the manner of installation concerning the sloping of the tile and not a defect in the installation of the tile which has caused its failure which would have been hidden or undiscoverable at the time of the approval of the payment. There has been no evidence presented concerning why the payment of the initial installation of the rice room tile was approved if in fact the manner of installation was not as contemplated or expected by Plaintiff.

17. The installation of the retaining wall at a cost of $4,374.35 has been contested. The retaining wall replaced a curb and eliminated the need for installing drainage grates and subsurface drainage pipes in the West end of the parking lot. Plaintiff has presented no evidence from an engineer that the retaining wall was not necessary. Defendant has presented an expert opinion by a civil engineer stating that the retaining wall was appropriately installed and constructed and was necessary because of the height differential between the tract of ground to the West of the RCS tract. Payment for the retaining wall was made and the documents indicate that a claim by Plaintiff concerning the retaining wall was not made within 21 days of its construction, even though it was open and obvious. There is credible evidence that the retaining wall

successfully replaced a curb, two grate drains, drainage pipe and a retaining wall at the northwest corner of the RGS property.

PARKING LOT DISPUTE:

18. Burton asked Musser and Hackley of Konza Construction Co., Inc. to give American Dream bids for the parking lot consisting of 2 inches of asphalt and 6 inches of sub-base. Both Musser and Hackley warned that 2 inches of asphalt would not give satisfactory performance, would prematurely fail and Konza would only warrant the installation of a minimum of 4 inches of asphalt and would in no way guarantee the performance of 2 inches of asphalt. Burton replied that he would get someone else to do the job if Konza was not willing to pave the parking lot with 2 inches of asphalt as Burton requested.

19. Deam, Henderson and Burton all agree that they discussed the thickness of the parking lot after Deam discovered that Burton had ordered the installation of 2 inches instead of 4 inches of asphalt. Burton testified that he then assured Henderson and Deam that he would "guarantee" the performance of the parking lot for ten years because 2 inches of asphalt in a parking lot was a ten year surface, as opposed to twenty years of surface which 4 inches of asphalt would give.

20. Burton testified that he had gotten those estimates of performance from Musser or Hackley, but both of them denied that they had had any such conversations or given such estimates about the expected performance years of 2 inch and 4 inch asphalt pavements.

21. Installation of the parking lot was delayed because of wet weather. Hackley said that at one point, Burton told him to proceed with installation despite the weather because Burton wanted to make a "quick killing" on the project.

22. The "final" preconstruction estimates given by American Dream to Kang, Deam and the Bank included $40,000.00 to install an asphalt parking lot. Konza Construction Co. billed American Dream $24,977.95 for installation of the two inches of asphalt pavement plus six inches on the parking lot. Hackley testified that the costs of removing and replacing the asphalt in the parking lot, using the original Civil Drawings would cost $34,500.00, including $5,500.00 to remove the existing surface and $29,000.00 to install a new surface. Thus, the costs which Kang has or will incur to

install a satisfactory parking lot will cost about $42,000.00, including the $7,500.00 to repair the west end of the parking lot and with the $34,500.00 to remove and replace the parking lot.

23. Deam, Musser and Hackley testified that they believe that all of the asphalt parking lot is failing and needs to be replaced except for the asphalt along the west side of the building. Musser, Hackley and Burton all testified that the cause of the multiple cracks in the asphalt which were evident at the time of trial was caused by the fact that the base rock under the asphalt was too wet at the time that the asphalt was laid.

24. Failure of the defendant ADD to properly install the asphalt and follow the engineering plans constitutes breach of the contract.

GENSTONE DISPUTE:

25. The construction specifications required American Dream to install GenStone on the front and sides of the Rivergate Shopping Center. GenStone is an overlapping product, which means that it has a "right side up' and a "wrong side up". It comes in panels which are two feet wide and four feet long. If the GenStone is installed correctly, its overlaps will direct water away from and towards the exterior of the siding. If the GenStone is installed incorrectly, its overlapping pieces will direct water towards the back of the Genstone and thus into a building.

26. The proper installation of GenStone involves affixing it to a building with hidden screws and the use of caulking between the overlaps which is hidden from view.

27. American Dream caused or permitted the installation of GenStone in an upside down fashion on the front of Kang's restaurant building and extending along the rental spaces from west to east up to the end building occupied by Papa John's Pizza.

28. Deam and Henderson asked Burton to remove and reinstall the GenStone on the front of Kang's restaurant when they discovered that it was upside down. Burton first denied that there was anything wrong with the installation and then later caused it to be removed and replaced right side up. Close inspection of the resulting installation convince the court that the GenStone installation is substandard and its installation constituted breach of the contract in general and violation specifically of Sec. 1.14.1 of AIA A201.

29. There is a dispute as to the cost of replacement of the GenStone. Stanley Pearson amended his assessment of costs shortly before trial. The court finds that that

amendment caused no prejudice to the plaintiff and will consider the amended amount as the cost of replacement.

30. Stanley Pearson testified that the cost for the installation of a vent on the north and south sides of the RSC to be $3,000.00. A vent on the south side of the RSC is depicted in the architectural drawings prepared by Brett Deam but there is no vent depicted for the north side. The lack of a vent in not noted in any pre-termination correspondence to ADD. Since there were no plans incorporated into AIA Document A111-1997, ADD is not bound by such plans and if vents are desired by Plaintiff, such is at his cost and expense.

OTHER DISPUTES:

31. Plaintiff complains the replacement of a suspended grid and tile ceiling is necessary. The only testimony concerning this claim is that it is not aesthetically as Plaintiff wished. There was no evidence present that this ceiling does not function or serve Plaintiff adequately. Further, the condition of the ceiling and grid was not noted by Plaintiff during the onsite inspection and such damage claim is unsupported by the evidence in this matter. Further, there was no testimony on behalf of Plaintiff concerning the cost of replacing this ceiling even if replacement is necessary. That claim should be denied.

32. Plaintiff complains of a drainage grate which is located in the RSC parking lot. Plaintiff presented the testimony of Leon Osburn stating that the drainage grate was required to be compliant with the ADA. The ADA addresses the whole openings in drainage grates which are within a pedestrian walkway as described in 28 CFR Part 36 and ADA guidelines published in 2002. The drainage grate in question is located in the middle of a parking lot which is not adjacent to a parking stall or sidewalk. The drainage grate is clearly avoidable and does not require that it be traversed by any person either handicapped or not handicapped. Its presence does not violate the ADA.

33. Plaintiff commenced occupancy of the RSC with his own restaurant and tenants during the summer and early fall of 2007. The construction of the RSC was substantially complete at that time.

34. ADD submitted claims and filed its mechanic's lien against the RSC which was then amended to reflect after Plaintiff settled the claim with Standard Plumbing directly to reflect a lien amount of $84,969.66.

35. Claims in this matter were brought by ADD against American Building Systems, CW Concrete, Inc. and J.D. Construction, LLC, both subcontractors on the RSC project, concerning the installation of the roof and the sidewalks, which claims were settled by Plaintiff, ADD, American Building Systems, CW Concrete, Inc. and J.D. Construction, LLC. A portion of that settlement agreement provided for ADD and CW Concrete, Inc. to reduce its claim for concrete work performed by $7,965.00. Accordingly, the lien amount now claimed by ADD against the RSC is $77,004.66.

36. Brett Deam was the payment "gate keeper" on this project, and American Dream Development can only obtain such payments as Deam may approve. In *Neale Construction Co. vs. Topeka Township Sewer District No. 1*, 178 Kan. 359 (1955), a contractor sued an owner for the costs for some extra work on the installation of a sewer line which the contractor claim had been caused by some changes in the construction drawings made by the owner's engineer. The construction agreement provided that the engineer would supervise the work, determine the quality and acceptability of the materials and workmanship and that the engineer's approval was a condition precedent to any final payments. The *Neale* court held that the contractor could not recover because the engineer had not approved the request for payment in the absence of any allegations of fraud or other misconduct by the engineer. The *Neale* court further quoted in 178 Kan. at 359 with approval from a legal encyclopedia the following statements:

> " *In cases of this character the approval of the party so designated becomes a condition precedent to a recovery for the price. In the absence of fraud or bad faith in the conduct of such party in respect of his approving or withholding his approval, his judgment or determination is to be accepted as final and conclusive. No mere error or mistake of judgment will vitiate his determination. The very object of his appointment is to prevent and exclude contention and litigation; and hence nothing short of fraud or mala fides in the exercise of his power to reject or approve the article contracted for will dispense with the strict legal effect of the condition precedent."*

37. The contract documents give Brett Deam, as architect, control over the acceptance or rejection of American Dream Development's work and payments as follows:

"The Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts. The Architect will have authority to reject Work that does not conform to the Contract Documents." AIA Doc. A201 §§ 4.2.5 and 4.2.6.

"A Claim is a demand…seeking, as a matter of right, …payment of money…"

"The Architect will approve or reject Claims by written decision, which will state the reasons therefore and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of the Claim by the Architect shall be final and binding on the parties but subject to mediation and . . . .." AIA Doc. A201 §§ 4.3.1 and 4.2.11.

"The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner…." AIA Doc. A201 § 9.5.1.

38. Where the contract documents so provide, the findings of an architect respecting the acceptance or rejection of working materials is finally conclusive on the parties. *Neal Construction Co v. Topeka Township Sewer District #1*, 178 Kan. 359 (1955). (Opinion of engineer was "final and conclusive" where engineer rejected money request for costs of unexpected construction conditions.)

39. Defendants in this case have not contended nor argued that Deam is guilty of fraud or bad faith. American Dream may only recover the balance due on the contract (and the lien) as approved Brett Deam in the amount of $22,431.20, as an off-set against any sum which might be due and owing from American Dream to Kang.

40. The parties both request attorney fees pursuant to K.S.A. 16-1801. The court has reviewed the Statute and does not find it applicable to the present case. Therefore, attorney fees as well at interest of 18% under that statute are denied.

CONSUMER PROTECTION VIOLATIONS:

41. Plaintiff alleges consumer protection violation were committed by Burton and ADD. They have contended that Burton made misleading statements concerning his experience in commercial building. The court finds that Burton may have "puffed" about his credentials but he was capable of taking on and successfully completing the project. His previous building experience was impressive and he was licensed by the proper

authority to build commercial building. Therefore, the claim of a consumer protection violation on that ground is denied.

42. However, defendant American Dream Development and defendant Jeffrey Burton are each guilty of a deceptive act and practices consisting of the false claim or representation and demand that plaintiff Kang pay defendant American Dream Development $24,690.00 for the Standard Plumbing invoice. As the evidence clearly shows, Burton asked Standard Plumbing to prepare an invoice showing the amount payable for HVAC work. Evidence shows that Standard Plumbing never intended to bill the amount and did not intend to get paid. Thereafter, Defendants filed with the clerk of the District Court a mechanics lien including said amount. This constitutes a deceptive act under the statute.

DAMAGES:

43. Damages for breach of contract as found herein by the court are the cost of repairs and completion of the building as contracted. The court grants judgment against ADD for the costs to complete the building as contracted as follows:

Total replacement of the parking lot: $42,000.00

Total replacement of the GenStone: $24,888.00

Remove and replace front overhand: $450.00

ADD is allowed a setoff of those amounts of $22,431.20 for a total judgment of $44,906.80.

44. Further, defendants ADD and Burton are jointly and severally sanctioned a civil penalty of $10,000.00 for a violation of the Consumer Protection Act.

45. Further, defendants ADD and Burton are jointly and severally assessed the costs for court reporting made payable to Prater Court Reporting, Lori A. Prater, C.S.R., P.O. Box 1426, Hutchinson, KS 67504-1426 for reporting services including mileage on April 24, 2010 and April 25, 2010 in the sum of $404.00. This assessed cost shall be paid from defendants ADD and Burton to Prater Court Reporting.

46. Lastly, plaintiff is granted attorney fees for a violation of the consumer protection in an amount to be determined after hearing on the matter of fees. Plaintiff is directed to file a motion with justification of fees and set it for hearing within 30 days.

Wherefore, plaintiff is granted judgment against ADD in the amount of $44,906.80. Plaintiff is further granted judgment against ADD and Burton, jointly and

severally in the amount of $10,000.00. And judgment for Plaintiff's attorney fees in an amount to be determined.

This memorandum shall serve as a final order on all matters decided and no further order is necessary.

Costs are assessed to the defendants.

IT IS BY THE COURT SO ORDERED.

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STEVEN HORNBAKER,
District Judge

IN THE DISTRICT COURT OF GEARY COUNTY, KANSAS
(Pursuant to K.S.A. Chapter 60)

WAN KYU KANG,	)	
Plaintiff,	)	
vs.	)	**Case No. 07CV282**
	)	
AMERICAN DREAM DEVELOPMENT, LLC,	)	
and	)	
JEFFREY M. BURTON,	)	
Defendants.	)	
	)	

ORDER DENYING DEFENDANT'S MOTION TO AMEND JUDGMENT

This matter comes on for decision upon the motion of the Defendants for amendment to the judgment pursuant to K.S.A. 60-259. The Court has heard the oral argument of the parties and reviewed the exhibits in the case as well as the filings and briefs.

For the reasons as stated herein, the motion is denied.

This Court in making its initial decision in this case struggled greatly in making the final order and award. The reason that the Court had difficulty is because the AIA, document A11-1997 is a cost plus contract which has a guaranteed maximum. This Court does not believe that a guaranteed maximum price contract guarantees the performer of the contract maximum. Rather it places a lid on the total cost of the project. (See Lauro v. Visnapuu, 351 S.C. 507; 570 S.E.2d 551) In that case, the arbitrator held that the contractor "certainly shouldn't be entitled to recover his entire guaranteed maximum when he didn't perform all the work." The maximum guaranteed contract does not become a self-fulfilling prophecy.

In this case, the court has likewise considered the contractual provisions in view of

the language contained in both the AIA-A11-1997 and AIA, document A201-1997. AIA document A201-1997 purports to, in Section 14, determine payment to be received in the event of a termination of the contract for cause. However, it does not contemplate nor does it address what payments are due in a cost plus contract with a guaranteed maximum amount. Any findings in the court's initial decision that contemplates Section 14 governs the damage issue in this case or the final payout are specifically nullified. Section 14 does not govern those issues because of the hybrid nature of the party's agreements.

Defendants, in this case, did not come into the court with clean hands. The Court believes that it would be repugnant to the law for the Defendants to come out of this case with the award of an additional $136,025.46 as has been suggested to the Court in Defendant's motion to amend. In making that suggestion to the court, defendant contemplated payment of the entire contract guaranteed maximum of $776,000.00. This approach by the defendants fails to acknowledge that the contract was never completed and is not, as of the hearing date, yet complete.

Defendant's motion to amend contemplates the maximum contract price of $776,000.00 as being "guaranteed" when it is not. Most certainly, the contract could have come in underbid. If the final cost for completion of the building were $600,000.00, the owner would not owe the contractor $776,000.00 but rather $600,000.00.

Defendants herein apparently are under the mistaken belief that they were entitled to $776,000.00 no matter how much it cost to complete that building. They were under a grave misunderstanding which lead them to take action affecting the building's structural integrity. First, they saved thousands of dollars by not building the lot up a foot and placing it on the elevation that was required by the architect and the engineer. Secondly,

their workmanship and manner of building the building was in question throughout the entire process as was their supervision. They saved untold money on a parking lot of two inches when both the architect engineer and the asphalt company (Konza) all recommended that there be a four inch overlay and Konza even told them that the asphalt would fail and that they (Konza) would not guarantee the lot. The end result is that the asphalt failed. Then, the Defendants placed Gen-Stone on the building upside down in an un-workman like manner and in breach of contract. Now, defendant's suggest that, because they paid for the asphalt and Gen-Stone (payment of the Gen-Stone is somewhat in dispute) ,there is a double recovery by the Plaintiff because they are not credited those amounts. This is a ludicrous argument from the legal standpoint. Defendants were attempting to cut corners while affecting the integrity of the building in violation of the contract because they thought that they were going to get $776,000.00 no matter what it cost them to complete it.

That's why the architect finally took things into hand and refused to allow and approve any further bills as submitted. Section 4.4.1 of the contract states "claims including those alleging an error or omission by the architect but excluding those arising under Section 10.3 through 10.5 shall be referred initially to the architect for decision and initially chosen by the architect shall be required as an instant proceeding to mediation or litigation of all claims between the contractor and owner arising prior to the final date payment is due, unless 30 days have passed after the claim has been referred to the architect with no decision having been rendered by the architect." So far as the architect's decisions are concerned, Section 9.5.1 says "that the architect may withhold a certificate for payment in whole or in part, to the extent reasonably necessary to protect the owner, if in the architect's opinion the representations to the owner required by Section 9.4.2 cannot

be made. If the architect is unable to certify payment in the amount of the application, the architect will notify the contractor and owner. . . The architect may also withhold a certificate for payment or, because of subsequently discovered evidence, may nullify the whole or a part of a certificate for payment previously issued, to such extent as may be necessary in the architect's opinion to protect the owner from loss for which the contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of: 1. Defective work not remedied . . . and 7. Persistent failure to carry out the work in accordance with the contract documents."

The Court finds that the architect simply was doing the job as required by him under the contract. He was trying to protect the owner from a contractor who had violated the contract in so many respects that it was almost laughable. In a case somewhat similar to the instant case, the Supreme Court of Illinois also dealt with the interpretation of a cost plus contract with a maximum price provision. Again, the Court held that the damage to the owner needs to be calculated on the basis of the amount the owner needs to complete the project. (Robinhorne Construction Company vs. Jack O. Snyder, 47 Ill. 2d 349; 265 N.E.2d 670 (1970).

The Court finds that, frankly, the damages assessed by the Court were probably low. It may be that the cost of the retaining wall and other items that were done by the contractor in violation of the contract also should not have been credited to him. Filing a mechanic's lien indicating an amount due to Standard Plumbing of over $25,000.00 may even have some criminal ramifications since the mechanic's lien was sworn to and is certainly false. The Court will not consider any award in favor of the Defendants based upon their actions in violation of breach of contract and consumer violations. Contractors

who have not come to court with clean hands and are not entitled, as a matter of law, to any setoffs, mechanic's lien amounts or damages as a result of their actions.

Lastly, the first thing that the Defendants did was decided to build that building one foot lower than specified by the engineer. Grant Avenue flows right into that parking lot and immediately behind the building is the Republican River. This is a watershed area for water coming off the streets of Junction City flowing into that river. This building will never be structurally sound or free of problems because of that.

IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED AND DECREED that the motion to amend the judgment filed herein by the Defendants is denied.

IT IS BY THE COURT SO ORDERED.

STEVEN HORNBAKER
District Judge