

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CA-01094 COA**

GOLDEN TRIANGLE SAND AND GRAVEL, INC. APPELLANT

v.

W. R. PHILLIPS, III AND THOMAS L. PHILLIPS, APPELLEES

**INDIVIDUALLY AND IN THEIR CAPACITIES AS
OFFICERS, DIRECTORS, AND STOCKHOLDERS
OF PHILLIPS CONTRACTING CO., INC.**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	09/13/96
TRIAL JUDGE:	HON. LEE J. HOWARD
COURT FROM WHICH APPEALED:	LOWNDES COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	DAVID W. MOCKBEE J. TYSON GRAHAM
ATTORNEYS FOR APPELLEES:	AUBREY E. NICHOLS M. JAY NICHOLS
NATURE OF THE CASE:	CIVIL - CONTRACT
TRIAL COURT DISPOSITION:	SUMMARY JUDGMENT FOR APPELLEE
DISPOSITION:	AFFIRMED - 1/13/98
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	2/23/98

BEFORE McMILLIN, P.J., KING, AND PAYNE, JJ.

KING, J., FOR THE COURT:

Golden Triangle Sand and Gravel, appellant, entered into a contract with the Phillips Contracting Company, Inc. wherein Phillips Contracting agreed to purchase all concrete sand and concrete gravel requirements for ready-mix operations and highway construction operations from Golden Triangle. W.R. Phillips III and Thomas Phillips, individually and in their capacities as officers, directors and stockholders of Phillips Contracting, and Charles S. Cook and William G. Cook Jr., individually and in their capacities as officers, directors and stockholders of Golden Triangle, acted as guarantors of the contract. Subsequently, Golden Triangle filed a complaint alleging that W.R. Phillips III and Thomas Phillips, in their capacities as officers, directors and stockholders of Falcon Contracting

Company, caused Falcon Contracting to purchase concrete sand and concrete gravel in violation of the Golden Triangle-Phillips Contracting contract. In response to the Phillips' Motion for Summary Judgment, Golden Triangle contended that the contract was ambiguous regarding the contractual obligations of W.R. Phillips and Thomas Phillips. The circuit court granted the motion, finding that the contract was clear and unambiguous. Finding no error, we affirm the circuit court's judgment.

FACTS

Golden Triangle entered into a contract with Phillips Contracting wherein Phillips Contracting agreed to purchase all of its concrete sand and concrete gravel requirements from Golden Triangle.

Subsequently, Golden Triangle brought a breach of contract action against Phillips Contracting and W.R. Phillips, III and Thomas L. Phillips, individually and in their capacities as officers, director and stockholders, alleging that W.R. Phillips, III and Thomas Phillips, in their capacities as officers, directors and stockholders of Falcon Contracting Company caused Falcon to purchase concrete sand and concrete gravel in violation of the Golden Triangle-Phillips Contracting contract.

The contract stipulated the manner of payment of past outstanding debts, future payments of royalties on all sand and gravel mined and shipped, and purchases of concrete sand and concrete gravel. Specifically, it provided that (1) Golden Triangle and the Cooks acknowledged existing indebtedness due Phillips Contracting, the Phillips, and Falcon Contracting from prior agreements and projects, (2) Golden Triangle agreed to pay Phillips Contracting a royalty of seventy-five cents per ton for all sand and gravel mined on specific property owned by Phillips Contracting and (3) Phillips Contracting and the Phillips agreed to purchase all of their concrete sand and concrete gravel from Golden Triangle. Falcon Contracting was not mentioned in contract provisions regarding royalty payments or purchases of concrete sand and gravel.

On Motion for Summary Judgment, Golden Triangle alleged that the contract was ambiguous regarding the contractual obligations of W.R. Phillips and Thomas Phillips. The trial court granted the motion, ruling that the contract was unambiguous. Golden Triangle now appeals the granting of the summary judgment.

STANDARD OF REVIEW

This Court employs a de novo standard when reviewing a lower court's grant of a summary judgment motion. *Short v. Columbus Rubber & Gasket Company, Inc.*, 535 So.2d 61, 63 (1988). "We must review all evidentiary matters before us in the record: affidavits, depositions, admissions, interrogatories, etc." "The evidence must be viewed in the light most favorable to the non-moving party, and the non-moving party is to be given the benefit of every reasonable doubt." *Smith v. Sanders*, 485 So.2d 1051, 1054 (Miss.1986); *Dennis v. Searle*, 457 So.2d 941, 944 (Miss.1984). Ultimately, the motion for summary judgment lies where the moving party is entitled to a judgment as a matter of law. **M.R.C.P. 56(c)**.

DISCUSSION

"When a written instrument is clear, definite, explicit, harmonious in all its provisions, and is free from ambiguity, a court in construing it will look solely to the language used in the instrument itself. In such a case a court will give effect to all parts of the instrument as written." *Pfisterer v. Noble, et.*

al., 320 So.2d 383, 384 (Miss.1975). After reviewing the Motion in Limine, the Order regarding the Motion in Limine, the summary judgment motion and the Order denying the Summary Judgment, and the contract, we find that the following language in the contract clearly delineates that the Phillips were not obligated under the Golden Triangle-Phillips Contracting agreement in their capacities as officers, directors and stockholders of the Falcon Contracting Company and the contract was therefore, clear and unambiguous:

This agreement is entered into this day by and between Golden Triangle Sand and Gravel, Inc., a Mississippi corporation (hereinafter "Golden Triangle"), joined by W. G. Cook, III, Stephen D. Cook, Charles S. Cook and William G. Cook, Jr., individually and in their capacities as officers, directors and stockholders, (herein collectively referred to as "Cook") and **Phillips Contracting Company, Inc. (herein after "Phillips Contracting") joined by W. R. Phillips, III and Thomas L. Phillips, individually and in their capacities as officers, directors and stockholders (herein collectively referred to as "Phillips"), . . .**

Warranties of Phillips Contracting: **Phillips Contracting and Phillips as guarantors**, each having a business and financial relationship with each other, hereby make the following representations and warranties to Golden Triangle which are material in all respects and being relied upon by Golden Triangle . . . ,

Warranties of Golden Triangle: **Golden Triangle and Cook as guarantors**, each having a business and financial relationship with each other, hereby make the following representations and warranties to Golden Triangle which are material in all respects and being relied upon by Golden Triangle . . . ,

Agreement to Purchase Materials: **Phillips Contracting and Phillips hereby covenant and agree to purchase all of their concrete sand and concrete gravel used in their ready mix concrete operations and highway construction operations FOB various pit locations in Lowndes county and Monroe county, Mississippi from Golden Triangle . . .** (emphasis added).

A reading of the contract clearly indicates that any action required of the Phillips in their individual capacities is predicated upon their relationship with Phillips Contracting, and not some other entity. This position is consistent with the specific designation in the contract of non-parties when discussing the payment of prior obligations.

Like the circuit court, we examined and reviewed the Agreement in question and find "no ambiguity with regard to the individual Phillips' contractual obligations thereunder". As the Court noted, "by the clear and unambiguous language of the Agreement, (1) Falcon Contracting Company, Inc. is not a party to the Agreement nor (2) is it a party with purchase obligations of the [Phillips as individuals] relating to the purchases by Falcon Contracting Company, Inc. nor (3) do the terms and provisions of the Agreement create obligations of the [Phillips as individuals] relating to the purchases by Falcon Contracting Company, Inc." We agree and therefore, affirm the circuit court's ruling.

**THE JUDGMENT OF THE LOWNDES COUNTY CIRCUIT COURT IS AFFIRMED.
COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HINKEBEIN,
PAYNE, AND SOUTHWICK, JJ., CONCUR. HERRING, J., NOT PARTICIPATING.**