

First District affirms Bourbon Marble's recovery of damages and attorneys' fees, ending 17-year lawsuit

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Chicago, IL. Nixon Peabody is pleased to announce its client, Bourbon Marble, Inc., Chicago's premier stone and tile installer, has successfully recovered more than \$4.28 million in damages, litigation fees, post-judgment interest and costs in a breach of contract action against construction goliath Pepper Construction Company (Pepper). In a case-resolving decision, the Illinois Appellate Court (First District) brings a conclusion to a seventeen-year-old dispute that has been the subject of an arbitration, two trials, and three appeals.

The case arises out of a luxury condominium conversion project at the Palmolive Building (formerly, the Playboy Building) in downtown Chicago. Pepper hired Bourbon Marble as a subcontractor to install stone and tile on the project but failed to pay Bourbon in full for its work. In May 2007, before the project was complete, Pepper terminated its own contract and ordered its subcontractors, including Bourbon Marble, off the job, citing project-wide delays, disruptions, and excessive change orders that Pepper blamed on the owner. At trial, however, Pepper's own paid construction expert was forced to admit that Pepper's mismanagement of the project and its unfair treatment of its subcontractors contributed to the problems that doomed the project. Pepper supervisors also testified they tried to make up for these problems by forcing Bourbon Marble and other subcontractors to work harder and do more than they agreed to do under their contracts.

"Pepper told the court it invested its time and resources fighting Bourbon because Pepper did not want to send the 'wrong message' to Pepper's other subcontractors," said Nixon Peabody **Complex Disputes** partner **Ethan Trull**, who led the firm's legal team that advised Bourbon Marble. "We are pleased that the First District has sent a message, albeit not the one Pepper wanted."



The Honorable Patrick Sherlock of the Circuit Court of Cook County first awarded Bourbon Marble its contract damages in 2019. For the past several years the battle centered around attorneys' fees that Judge Sherlock also awarded to Bourbon Marble under the parties' fee-shifting agreement, based on his findings that Bourbon Marble prevailed at every stage of the litigation and that "Pepper failed to prevail on *any* significant issue." Pepper unsuccessfully sought to have that decision set aside on appeal and even argued that Bourbon should be ordered to reimburse Pepper for the more than \$5 million Pepper spent defending the case. But on March 22, 2024, the First District put the issue to rest and affirmed Judge Sherlock's award, noting that: "The trial court's thoughtful and careful review does not suggest an abuse of discretion."

"I couldn't be happier for Bourbon Marble," said Nixon Peabody **Construction and Real Estate Litigation** attorney **Keith Edeus**. "It is no easy thing for a small, family-owned local business to go toe-to-toe with, and prevail against, a major construction player willing to invest so much time and money to avoid paying one of its subcontractors. I am very gratified to see Bourbon Marble finally receive the justice they deserve."

In addition to Trull and Edeus, the Nixon Peabody legal team that advised Bourbon Marble included attorneys **Elizabeth Zamora Meraz** and **Seth Horvath**.