

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

RIO INDIO FRUIT COMPANY, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 01-2416A  
 )  
 HARBOR ISLAND CITRUS, INC., and )  
 FIDELITY & DEPOSIT COMPANY OF )  
 MARYLAND, )  
 )  
 Respondents. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to Notice, this cause was heard by Linda M. Rigot, the assigned Administrative Law Judge of the Division of Administrative Hearings, on September 25, 2001, in Fort Pierce, Florida.

APPEARANCES

For Petitioner: Theodore W. Herzog, Esquire  
1101 Simonton Street  
Key West, Florida 33040

For Respondent: Fred L. Kretschmer, Jr., Esquire  
Moss, Henderson, Blanton, Lanier,  
Kretschmer & Murphy, P.A.  
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Post Office Box 3406  
Vero Beach, Florida 32964-3406

STATEMENT OF THE ISSUE

The issue presented is whether Respondents Harbor Island Citrus, Inc., and Fidelity & Deposit Company of Maryland are

indebted to Petitioner Rio Indio Fruit Company in the amount of \$80,684.

PRELIMINARY STATEMENT

By Complaint filed with the Department of Agriculture and Consumer Services on April 23, 2001, Petitioner alleged that Respondent is indebted to it in the amount of \$80,684. By Answer filed May 29, 2001, Respondent denied that Petitioner's claim is valid. This cause was thereafter transferred to the Division of Administrative Hearings to conduct an evidentiary proceeding.

Petitioner presented the testimony of Miguel R. Perales and Rafael Viamontes. Respondent presented the testimony of James Morris, Albert Valdes, Dennis Downs, Danny Fresch, and Donald Groves, Jr. Additionally, Petitioner's Exhibits numbered 1-4 and 6-11 and Respondent's Exhibits numbered 1-8 were admitted in evidence.

Although both parties requested leave to file proposed recommended orders after the conclusion of the final hearing, only Respondent did so. That document has been considered in the entry of this Recommended Order.

FINDINGS OF FACT

1. Petitioner Rio Indio Fruit Company operates a citrus packinghouse located in St. Lucie County, Florida. Respondent

Harbor Island Citrus, Inc., operates a citrus packinghouse in Indian River County, Florida.

2. On approximately November 20, 1999, Albert Valdes from Harbor Island contacted Ralph Viamontes from Rio Indio to ascertain if Rio Indio might have a source that Harbor Island could use to obtain colored grapefruit for Harbor Island's annual fund-raising program.

3. It was the industry practice, and Harbor Island's practice, for the fund-raising program to run from late-November through mid-December. During that time period, students in the north sell the fruit to raise money for their projects. The fruit used in such a fund-raising program can be a quality inferior to the quality demanded by the Japanese market, the primary market for Harbor's Island's citrus.

4. Viamontes told Valdes he would see if he could find a grower with colored grapefruit suitable for Harbor Island's fund-raising program. Viamontes telephoned Valdes the following day and said he had located a grower. On that day or possibly the following day Valdes and two other Harbor Island employees, Dennis Downs and James Morris, met Viamontes at the Rio Indio facility. The four men drove in Viamontes' vehicle to the Sorge VII grove in Martin County to look at the grove's colored grapefruit.

5. The amount of fruit in the grove was much larger than Harbor Island needed to fulfill its fund-raising program commitment. Viamontes estimated that the grove contained the equivalent of 30,000 boxes of colored grapefruit. Valdes told Viamontes that Harbor Island might need 18,000 to 20,000 boxes of the grapefruit for its fund-raising program. Viamontes told the Harbor Island employees that they could still make a deal for the grapefruit in the grove because since he had his own packing house, he would take the fruit that Harbor Island did not need.

6. The men discussed that Harbor Island could take 2/3 of the colored grapefruit in the grove, and Rio Indio could take 1/3. They further discussed that the manager of Sorge VII wanted \$5.50 a box for the fruit, that Viamontes would contract to take all the fruit in the grove, that Harbor Island would pay Viamontes \$5.50 a box for the fruit Harbor Island took, and that Viamontes would pay the grower. James Morris from Harbor Island specifically asked Viamontes what would happen if Harbor Island wanted less than 18,000 to 20,000 boxes. Viamontes told the Harbor Island employees that there would be no problem if Harbor Island took less fruit because Viamontes would take whatever was left after Harbor Island took what it wanted.

7. Valdes consulted with Donald Groves, Jr., the owner of Harbor Island to verify that Harbor Island would make the

arrangement suggested by Viamontes, and Groves approved the arrangement. Thereafter, Viamontes entered into a written contact with the manager of Sorge VII to purchase all of the fruit for \$5.50 a box, and that written contract included deadlines for 20,000 boxes of fruit to be picked by December 31, 1999, and the remainder to be picked by the end of February 2000.

8. Rather than the 30,000 field boxes that Viamontes had estimated the grove contained, the grove contained substantially more grapefruit than Viamontes estimated. The record in this cause suggests that the grove may have contained as many as 43,762 boxes of colored grapefruit.

9. In accordance with its understanding of the arrangement with Viamontes, Harbor Island began harvesting colored grapefruit from the Sorge VII grove on November 26, 1999, and completed all picking at the grove on December 8, 1999. During that time Harbor Island picked 9,000 boxes of colored grapefruit for which it was obligated to pay Viamontes \$5.50 per box. Harbor Island paid Viamontes in full for the fruit it took.

10. During the time Harbor Island was at the Sorge VII grove picking colored grapefruit, Rio Indio's crews were there picking grapefruit. Rio Indio's crews also picked fruit at the grove during the months after Harbor Island completed its picking. In addition to Rio Indio's crews knowing that Harbor

Island had completed its picking, James Morris specifically told Viamontes that Harbor Island had taken all the fruit it wanted from the Sorge VII grove as of December 8, 1999.

11. During the months of December 1999, January 2000, February 2000, and the first half of March 2000, Viamontes spoke with Valdes of Harbor Island several times a day to check on the status of other unrelated fruit being packed and sold by Harbor Island for Viamontes. In addition, Viamontes was present at the Harbor Island packinghouse on a weekly basis to pick up checks due to him or Rio Indio for the unrelated fruit being sold by Harbor Island for Viamontes. Yet, at no time between December 8, 1999, and the middle of March 2000 did Viamontes tell anyone that he believed Harbor Island had an obligation to harvest additional fruit from the Sorge VII grove.

12. Rather, in late January 2000 Viamontes asked Valdes if Harbor Island were going to take any more fruit from Sorge VII. When Valdes said the fund-raising program was over, Viamontes told Valdes not to worry because Rio Indio would take the rest. Further, on or about March 1, 2000, during one of Viamontes' visits to the Harbor Island packinghouse, Dennis Downs of Harbor Island asked Viamontes how the harvesting in Sorge VII was proceeding. Viamontes responded that Rio Indio was harvesting the remaining colored grapefruit and that Harbor Island need not

be concerned about any further harvesting at the Sorge VII grove.

13. On or about March 15, 2000, the price and demand for colored grapefruit suddenly and dramatically dropped due to an oversupply of fruit for which the industry was not prepared. After the dramatic decline, Viamontes contacted Valdes from Harbor Island and inquired whether Harbor Island was going to pick any additional fruit at the Sorge VII grove. Valdes responded that Harbor Island had no obligation to pick any additional colored grapefruit from the Sorge VII grove based upon the agreements between Harbor Island and Rio Indio, specifically, Viamontes' continued representations that Harbor Island should not be concerned about picking any additional colored grapefruit from the grove because Rio Indio would take the remainder.

14. In July 2000 Viamontes appeared at Harbor Island and advised Donald Groves, for the first time, that Harbor Island owed Rio Indio the amount of \$80,684 for an additional 20,171 boxes of colored grapefruit from the Sorge VII grove, which Viamontes now contends Harbor Island should have harvested. Rio Indio claims that it suffered a loss of \$4 per box for that additional fruit.

15. The documentation presented by Rio Indio to support its demand is questionable and does not substantiate Rio Indio's

claimed damages. First, the majority of the documents submitted by Rio Indio indicate that the fruit described therein was from a grove in St. Lucie County, and Sorge VII is in Martin County. Second, the majority of the documents indicate that the fruit described therein was from packinghouse eliminations although Viamontes alleges that the fruit went directly from the field to the cannery without going through a packinghouse. Third, the cannery records reflect that the "pound solids per box" are significantly less than what would be expected from fruit coming from the Sorge VII grove based upon the grove's historical production.

#### CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the subject matter hereof and the parties hereto. Sections 120.569, 120.57(1), and 601.66, Florida Statutes.

17. A party seeking to establish the existence of an oral contract has the burden of proving the existence of the oral agreement by the greater weight of the evidence. Theocles v. Lytras, 518 So. 2d 936 (Fla. 3rd DCA 1987). Rio Indio has proven that it entered into an oral contract with Harbor Island by which Harbor Island could harvest up to 2/3 of the colored grapefruit in the Sorge VII grove. Although Harbor Island took less than 2/3 of the fruit, Rio Indio and Viamontes knew that



Harbor Island had taken all that it wanted and verbalized its agreement to the amount taken by Harbor Island as fulfilling Harbor Island's obligation on more than one occasion.

18. Accordingly, Harbor Island complied fully with its obligation under the oral contract with Rio Indio. Even had Harbor Island not done so, the documentation submitted by Rio Indio to support its claim for damages does not do so.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered finding that Harbor Island Citrus, Inc., is not indebted to Rio Indio Fruit Company and dismissing the Complaint filed by Rio Indio Fruit Company in this cause.

DONE AND ENTERED this 12th day of December, 2001, in Tallahassee, Leon County, Florida.

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LINDA M. RIGOT  
Administrative Law Judge  
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Filed with the Clerk of the  
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this 12th day of December, 2001.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.