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Judge Rejects Firm's 'Support' Framing In Racetrack Flaw Suit

By **Nate Beck**

Law360 (October 15, 2024, 4:47 PM EDT) -- A Florida state judge on Tuesday denied an attempt by a British racetrack consultant to define its role as merely providing "support" to the construction of a track that failed during the Formula 1 Miami Grand Prix race in 2022.



The suit alleged that the defendants were hired to ensure a suitable racetrack for a world-class Formula 1 event, but instead, the asphalt failed and "the unraveling was immediate." (Photo by Gongora/NurPhoto via AP)

Judge Thomas Rebull rejected a June request from Apex Circuit Design Ltd. to adopt its interpretation of contract documents before discovery gets underway in the case.

Promoter South Florida Motorsports LLC and construction manager Moss & Associates sued in August 2023 after **pavement bumps and ripples appeared** during the 2022 Formula 1 race.

In addition to Apex, the two plaintiffs named a series of other defendants that had a hand in the project, including materials testing company Universal Engineering Sciences LLC and Roadgrip Ltd., hired to clean, survey and paint the track.

Judge Rebull on Tuesday said parties in the case should prepare summary judgment motions addressing specific flaws in the construction project that can be traced back to the work of parties in the case.

"Once we know what the granular level of specific failures were — if any — then we can work backward: Is this a duty that APEX had?" the judge said.

Consultant Apex had instead argued that contract documents should be read to conclude that the firm was only responsible for supporting various aspects of the work and that lead contractor Moss and lead designer AECOM bore responsibility for the execution of their tasks.

"We did not control the contractors," said Fred Fein of Clyde & Co., representing Apex. "We want a clear understanding for everyone so we don't end up in depositions as to what responsibilities we had."

Meanwhile, Joy Lundeen of Bilzin Sumberg Baena Price & Axelrod LLP, representing promoter South Florida Motorsports, argued that Apex was trying to present a narrow interpretation of the construction contract in order to "mislead" the judge.

Lundeen said an Apex executive had parroted praise for the course in taking credit for the design with an Instagram post one day before the 2022 event. The company also steered the hiring of certain contractors, among other steps that established a role in the pavement failure.

"Attempting to put everything in a term 'support' I think may create more problems than not," Lundeen said.

Judge Rebull said defining Apex's role as "support" wouldn't meaningfully change its ultimate duty to make sure the racetrack didn't fail based on the contract language. He said Apex had failed to show a conflict between its alleged duty to support the work and a duty to manage the project.

"Their duty was not just to provide support but to ensure," the judge said. "So according to even their definitions, [Apex was] ensuring their asphalt mix design was proper. That falls under their definition of 'support.'"

South Florida Motorsports is represented by Joy Spillis Lundeen, Felix X. Rodriguez and A. Nicole Kwapisz of Bilzin Sumberg Baena Price & Axelrod LLP.

Moss & Associates is represented by William C. Davell and Robert L. Scheppske of Tripp Scott PA.

Apex is represented by Frederick J. Fein, Matthew C. Henning and Harold L. Cohen of Clyde & Co. LLP.

Rifenburg Construction is represented by Sean P. Sullivan of Becker & Poliakoff PC.

Roadgrip is represented by Andrew J. Mayts Jr. and Steven E. Nicholas of Shumaker Loop & Kendrick LLP.

Universal Engineering is represented by Thomas H. Justice III of Thomas H. Justice III PA.

The case is South Florida Motorsports LLC et al. v. Apex Circuit Design Ltd. et al., case number 2023-021255-CA, in the Eleventh Judicial Circuit Court of Florida.

--Additional reporting by Carolina Bolado.