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CLERK OF DIST. COURT  
18TH JUDICIAL DISTRICT  
SEDGWICK COUNTY, KS

IN THE EIGHTEENTH JUDICIAL DISTRICT  
DISTRICT COURT, SEDGWICK COUNTY, KANSAS  
CIVIL DEPARTMENT

TIM AUSTIN, individually and  
d/b/a AM CONSULTING, INC.,

*Plaintiff,*

vs.

Case No. 07 CV 0820

CORNEJO & SONS, INC.,  
CORNEJO MATERIALS, INC., f/k/a  
QUIK SAND, INC., and  
RONALD J. CORNEJO,

*Defendants.*

JOURNAL ENTRY

NOW on this 17<sup>th</sup> day of April 2008, comes on for hearing Defendants' Motion for Summary Judgment. Plaintiff Tim Austin d/b/a AM Consulting, Inc., appears by and through his attorney Kurt A. Harper of Sherwood Harper Dakan Unruh & Pratt, LC. Defendants Cornejo & Sons, Inc., Cornejo Materials, Inc. f/k/a Quik Sand, Inc., and Ronald J. Cornejo appear by and through their attorneys Michelle K. Moe and Christopher M. McHugh of Joseph & Hollander, P.A. There were no other appearances.

THEREUPON, the Court after hearing the evidence and arguments of counsel issued findings of fact and conclusions of law from the bench.

The Court issued the following findings of fact:

1. Cornejo & Sons, Inc., is a Kansas corporation organized and existing under the laws of the state of Kansas.

2. Ron Cornejo is the Chief Executive Officer of Cornejo & Sons, Inc. Cornejo & Sons, Inc., also has an ownership interest in Cornejo Materials, Inc., f/k/a Quik Sand, Inc.

3. Tim Austin is a professional engineer who in the past did work as AM Consulting, Inc.

4. Dave Bayouth is a self-described lobbyist, consultant and former County Commissioner who has worked with City of Wichita officials on various projects. He had established relationships within the City, including with the city manager and staff.

5. The Kingsbury Tract is a 460-acre tract of land owned by the City of Wichita. It is located north and west of Brooks Landfill and is in close proximity to the river and other sand mining operations.

6. In 1999, Austin and Bayouth approached Cornejo. They wanted to acquire the Kingsbury Tract for development of a residential community and golf course. They wanted Cornejo involved to mine the property for sand as a means to create desirable land features, such as lakes.

7. Austin, Bayouth and Cornejo worked together to prepare and submit a proposal for the purchase of the Kingsbury Tract to the City of Wichita.

8. Somehow Austin, Bayouth and Cornejo obtained a copy of a geotechnical report prepared by SCS Engineers for the City of Wichita. Austin did not prepare the geotechnical report but claims he provided a copy of it. Cornejo remembers receiving a copy from Bayouth.

9. The information contained in SCS Engineers geotechnical report was readily

available. Its existence was public knowledge and its contents were not confidential. If someone wanted a copy of the report, they just had to request a copy. It was the City's practice to share the type of information contained in the SCS report because it enhanced the value of the proposals the City received and was in the City's best interest.

10. There was no agreement among Austin, Bayouth and Cornejo about the sharing of profits and losses. They did not share any expenses in connection with the Kingsbury project.

11. Austin, Bayouth and Cornejo submitted a proposal to the City of Wichita to purchase the Kingsbury Tract. In response, the City issued a formal request for proposals.

12. Austin, Bayouth and Cornejo as Kingsbury Communities, Inc., submitted another proposal to the City of Wichita in response to the formal request for proposals.

13. On November 9, 1999, Kingsbury Communities, Inc., was selected by the Wichita City Council as the "preferred developer" for the Kingsbury Tract.

14. On April 11, 2000, the Wichita City Council voted to refer the matter of use of the Kingsbury Tract to the Park Board for consideration of future needs and possibilities.

15. On August 14, 2000, the Park Board voted to retain ownership of the Kingsbury Tract as an acquisition for park purposes subject to a reservation for sand production.

16. At a special meeting on August 18, 2000, the Park Board unanimously voted

to recommended that the City Council vote to retain the Kingsbury Tract for park purposes, subject to a sand production leasing provision.

17. On August 22, 2000, the City Council rejected proposals to sell the Kingsbury Tract and voted to retain the property for future park use and sand extraction. The vote ended Austin, Bayouth and Cornejo's plan to purchase the Kingsbury Tract for development of a residential community and golf course.

18. Austin, Bayouth and Cornejo were never compensated by each other for their time, expense and costs associated with their individual contributions to the Kingsbury project.

19. Austin never sent Cornejo a bill for his work in connection with the Kingsbury project.

20. According to Austin, in approximately 1999, Bayouth told him that he would get Cornejo to pay Austin \$100,000 for his work on the Kingsbury project. Bayouth does not remember this conversation.

21. Quik Sand, Inc., submitted an unsolicited offer to the City of Wichita to lease the Kingsbury Tract for sand and gravel mining on June 13, 2003.

22. The City issued a request for proposals to mine sand and gravel at the Kingsbury Tract on September 11, 2003.

23. Quik Sand submitted its proposal to the City on November 3, 2003.

24. The City Council approved Quik Sand's Lease Agreement for the Kingsbury Tract on October 19, 2004.

25. Austin filed this lawsuit on March 7, 2007.

26. During 2003, Austin continued to provide services in connection with developing the Kingsbury Tract for sand mining purposes.

27. Cornejo retained possession of the geotechnical report.

28. Had the City wanted to make the hydrogeologic studies available to the public responding to the Request for Proposal in 2003, it would normally publish that information in the Request for Proposal.

29. Quik Sand, Inc. was a corporation which was acquired by Cornejo & Sons, Inc., and has since been converted into a division of Cornejo & Sons, Inc.

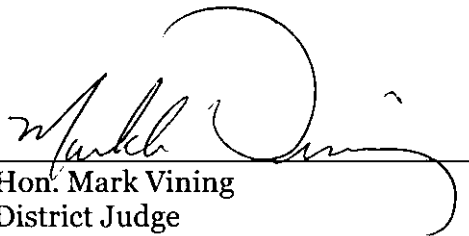
The Court issued the following conclusions of law:

1. Any joint venture between Plaintiff and the Defendants was completed, terminated and dissolved in August 2000. Any contract or quantum meruit claim that Plaintiff had arising out of his involvement with the joint venture should have been filed at that time. Plaintiff did not file timely a claim. His contract and quantum meruit claims arising from 1999 through 2000 are barred by the statute of limitations. Therefore, judgment is rendered to the Defendants.

2. There are no facts to support Plaintiff's claim that he provided valuable services to the Defendants after 2000. Because no valuable services were provided, Plaintiff has no quantum meruit claim. There are no facts to support the existence of a contract between Plaintiff and the Defendants. There are no facts to support a meeting of the minds. Because there was no meeting of the minds, Plaintiff has no contract claim. Having found no remaining issue of material fact, judgment is rendered to the Defendants.

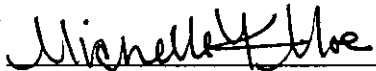
IT IS ORDERED, ADJUDGED, AND DECREED that Defendant's Motion for Summary Judgment is granted. Judgment is entered in Defendant's favor.

IT IS SO ORDERED.

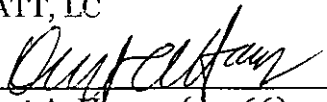
  
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Hon. Mark Vining  
District Judge

PREPARED AND APPROVED BY:

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