

Court of Appeals of Georgia.

TALIAFARO, INC.

v.

ROSE.

[edited]

Jan. 31, 1996.

Certiorari Denied May 10, 1996.

ANDREWS, Judge.

Rose sued Taliafaro, Inc. for breach of an employment contract. A jury rendered a verdict in favor of Rose, and Taliafaro, Inc. appeals from the judgment entered on the verdict.

Rose, a certified public accountant and a computer specialist, was hired by Taliafaro, Inc. to supervise accounting functions and implement a computer system at the Housing Authority of New Orleans (HANO) as part of Taliafaro, Inc.'s contract with the U.S. Department of Housing & Urban Development (HUD) to manage HANO for the fiscal year ending September 30, 1990. Under the employment agreement, in addition to a base salary, Rose was entitled to a \$10,000 fee for the closing of the HANO books at the end of the fiscal year and a \$10,000 fee for design and installation of a computer system at HANO during the fiscal year. Taliafaro, Inc. contended Rose was not entitled to either of the \$10,000 fees because the HANO books were not closed at the agreed upon time, and the computer system was not implemented. Rose sued to collect the fees and obtained a jury verdict for both \$10,000 fees and for \$8,000 in attorney fees pursuant to OCGA § 13-6-11: ["The expenses of litigation generally shall not be allowed as a part of the damages; but where the plaintiff has specially pleaded and has made prayer therefor and where the defendant has acted in bad faith, has been stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense, the jury may allow them."]

Taliafaro, Inc. contends the trial court erroneously denied its motion for a directed verdict on Rose's claim for \$10,000 for computer design and installation. Citing OCGA § 13-3-4, Taliafaro, Inc. claims the installation of the computer system during the fiscal year was a condition precedent to the payment of the \$10,000 and that, since the computer system was not installed, Rose was not entitled to the \$10,000 fee. Although it was undisputed the computer system was not installed during the fiscal year, Rose produced evidence that he successfully designed a computer system that obtained the necessary HUD approval, but that he was unable to install it because Taliafaro, Inc. failed to carry out its duty to obtain the computer equipment necessary to install the system.

Where a contract provides for performance of an obligation, the party bound to perform the obligation may be relieved and the obligation waived, where the other party to the contract repudiates the obligation by act or word, or takes a position which renders performance of the obligation useless or impossible. [cites omitted] Evidence that Taliafaro, Inc.'s failure to obtain the computer equipment prevented Rose from full performance was sufficient to create a jury question as to whether Rose was entitled to the \$10,000 fee. The trial court correctly denied the motion for a directed verdict.