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Saddleback district ordered to pay \$2 million to contractor

By SCOTT MARTINDALE
THE ORANGE COUNTY REGISTER

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MISSION VIEJO – A San Diego judge has ordered the Saddleback Valley Unified School District to pay \$2 million to a construction company for a troubled school renovation project, up from a prior \$1.4 million court verdict against the district six months ago.

San Diego County Superior Court Judge Frederic Link ruled April 28 that Downey-based Mepco Services is owed \$2 million in back pay, damages, legal fees and interest for its work renovating Esperanza Special Education School in Mission Viejo. The \$522,193 increase in the award amount since Nov. 2 is to cover additional legal fees and interest accrued during the lengthy appeals process, which Saddleback lost.



The curb in front of Esperanza Special Education School was poured unevenly, according to Saddleback Valley Unified.

FILE PHOTO: SCOTT MARTINDALE, THE ORANGE COUNTY REGISTER

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"The end result is that the taxpayers lose due to a situation that could have been avoided," Mepco's attorney, Andrew Carlton, said in a statement this week. "The school district tried to save face, taking this through the legal system rather than paying a contractor who had every right to be paid."

The \$2 million is to be paid out of Saddleback's facilities improvement fund, money that cannot be used to pay for things like [teacher salaries](#) or classroom supplies, district officials have said. Saddleback, based in Mission Viejo, serves about 32,000 K-12 students.

Saddleback officials did not immediately return a phone call seeking comment.

STALLED RENOVATION

The renovation project, which included gutting much of the interior of the school, was supposed to have taken place over a three-month period in summer 2006 at a cost of \$1.6 million. But Mepco's owner, Elie Abinader, filed 43 change orders, insisting additional work needed to be performed.

Then, the company asked for a five-month extension around the time the project was supposed to be wrapping up – more time than had been budgeted for the entire project, Saddleback officials said in court filings.

Saddleback approved 19 of Mepco's 43 change

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orders, but as friction began building over the remaining disputed work, Saddleback officials said Mepco walked off the job in early 2007, leaving an estimated \$378,000 in uncompleted work – allegations Mepco denied.

Mepco, which maintained it completed the project, sued the district and offered to settle the case for \$474,000. That figure represented the cost of the disputed change orders and the portion of the original \$1.6 million contract that Saddleback hadn't yet paid.

But district officials rejected the offer and instead filed a countersuit against Mepco for purportedly

not finishing the project on time as Mepco was contractually obligated to do.

CASE MOVED TO SAN DIEGO

The case was moved to San Diego to ensure an impartial jury. During the jury trial, Saddleback characterized Mepco as a sloppy, scheming company who sought to bilk the school district for thousands of dollars in additional construction expenses. Saddleback also argued Mepco submitted frivolous change order requests, such as requesting more compensation to demolish a ceiling when the original architectural plan only called for installing a new one.

But Mepco's attorneys successfully countered that the architect's plans were flawed, causing delays and the need for additional work.

The attorneys said Mepco had budgeted for the \$1.6 million project based on just what was in the plans, not additional work such as demolishing a ceiling.

The jury rejected Saddleback's arguments in full and sided completely with Mepco, awarding the company everything it asked for after a nearly two-week trial – back pay, damages, legal fees, expert fees and interest.

APPEALS COURT AFFIRMS VERDICT

When Saddleback appealed the case, the district argued, among other things, that the jury was prejudiced by allowing Mepco's owner to testify that he had to refinance his home and use personal credit to pay his subcontractors during the ordeal. Saddleback also argued a piece of evidence – a letter from Saddleback to Mepco – was improperly admitted.

The appeals court acknowledged the owner's testimony and Saddleback's letter were "improper," but that it was not "reasonably probable" these mistakes affected the outcome of the trial.

"The record is replete with direct evidence – much of it from Saddleback's own witnesses – that Saddleback breached its contract with Mepco, and that it was liable for the damages that Mepco claimed," Fourth Appellate District Justice Cynthia Aaron, writing for a three-justice panel, said in a 73-page ruling on Nov. 2.

Saddleback appealed the case to the state Supreme Court, which declined to hear the case.

Under the terms of the April 28 ruling, the district is required to pay 10 percent interest through April 28, the day the final judgment was made against the district.

"The district made an extreme mistake by taking the case to trial," Carlton said. "Then the district then blew it again when it failed to appreciate the jury's decision was correct the first time around. The district could have saved taxpayers \$1 million if it simply paid for Mepco's change orders, as was indicated by the paperwork."

Contact the writer: 949-454-7394 or smartindale@ocregister.com

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