

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 13-40554
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 6, 2014

Lyle W. Cayce
Clerk

ALOECORP, INCORPORATED,

Plaintiff-Appellee

v.

DAMKEN, L.L.C.,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:11-CV-86

Before WIENER, OWEN, and HAYNES, Circuit Judges.

PER CURIAM:*

Defendant-Appellant Damken, L.L.C. appeals the judgment of the district court implementing the jury's award of damages for breach of the construction contract between Damken and Plaintiff-Appellee Aloecorp, Incorporated. Our review of the record brought forward on appeal, in light of the applicable law as reflected in the appellate briefs of the parties, satisfies us that Damken's claims, including that the district court abused its discretion

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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(1) by denying Damken's motion for partial judgment on the pleadings and for judgment as a matter of law for anticipatory breach, early termination, and repudiation of a construction contract at issue, and (2) by refusing to submit the issue of restitution to the jury, are not sustained by the facts or the law. In sum, we perceive no reversible error and therefor affirm the district court's award of damages, attorney's fees and costs, court costs, and post-judgment interest.

AFFIRMED.