

THE CURIOUS CASE OF SADDLEBACK UNIFIED'S \$1.4 MILLION LAWSUIT LOSS

Thursday, Apr. 23 2009

By Spencer Kornhaber in School Daze

A head-splitting case of cognitive dissonance awaits anyone who reads this April 16 article in the *Orange County Register*. Skim it, and you get this:

- **Saddleback Valley Unified School District** believes it was duped by **MepCo**, a Downey-based contractor who allegedly walked off a renovation project for Mission Viejo's **Esperanza Special Education School** in 2007.

- Last week, a San Diego judge ordered Saddleback Unified to pay **\$1.4 million** to MepCo as part of a lawsuit judgment.

- The representatives of MepCo call the judgment an "unfortunate waste" of school funds.

Wait, what? If the school district was so wronged, why'd it lose the suit? The majority of the article recounts all the ways that Saddleback Valley Unified feels peeved at MepCo, who allegedly performed shoddy work, delayed a three-month job to become a more-than-eight-month job, and then walked away without finishing. But the article also says a unanimous jury affirmed MepCo's lawsuit against the district, rejected the district's cross-complaint against MepCo, and awarded MepCo more than a million dollars in unpaid fees and legal costs. At first glance, it seems like some sky-is-green, forest-is-blue nonsense.

On top of that, you've got district assistant superintendent **Steve McMahon** saying the school board *might* appeal.

Let's clear this thing up, k?

When contacted by the *Weekly*, both McMahon and district lawyer **Gregory Bergman** say that SVUSD definitely will appeal. They're no longer "considering" it. They're decided.

MepCo spokeswoman **Marla McCutcheon** and lawyer **Anna Carno** think the *Register* article only portrayed the school district's side when a jury of 12 thought MepCo's story was more compelling.

MepCo's case goes something like this. In 2006, MepCo owner and licensed contractor **Elie Abinader** was awarded a bid for the \$1.6 million renovation project, which was to be completed during summer break. The district's hired architect soon began issuing major bulletins altering the plans for the project, which Abinader said were insufficient to begin with: Key components, such as sewer and water for portable classrooms, had been left out. Each bulletin required Abinader to expand his original scope of work, and each bulletin delayed the process by requiring more time not only for construction but also for engineering and planning. He says the district never once notified MepCo asking them to speed up.

The entire process required Abinader to submit more than fifty change orders. Additional delays ensued when the district stalled on approving those orders. Abinader said he completed the job, change orders included, and never saw any money for the extra work he did. That's why MepCo sued the district in June 2007.

The district contends that MepCo ignored its contract and filed frivolous or exaggerated change orders. A cross-complaint was filed by the district, seeking \$1.2 million from MepCo.

Both sides say they didn't want to go to court. In a sign of the extent to which the two parties didn't see eye to eye, MepCo offered to settle the case in exchange for being paid for some of the change orders; the district countered by offering to settle only if *MepCo* would pay.

After a three-week trial, though, the jury decided that MepCo was entitled to get all the payments it asked for, while the District was entitled to get nothing.

MepCo sees it as justice, but the district's representatives say they were astounded by the verdict. Bergman says the judge incorrectly instructed the jury by saying that written contracts could be altered verbally, and erroneously allowed the use of settlement negotiations as evidence.

"I like the trial judge," Bergman says, "but he made some mistakes that impaired the jury's ability to know what their job was."

So, the district will appeal in the next two weeks and hold off on paying MepCo. Carno calls all the legal wrangling a "waste" and points out that taxpayers could see this as throwing "good money after bad." After all, on top of the \$1.4 million judgment against the district, the district has its own legal expenses -- which, McMahon says, come out roughly to the same amount that MepCo's do, putting the cost at more than \$700,000.

It's not clear how much an appeal will cost, but Bergman says the district is confident in their case. Then again, they were confident before, too. Carno says the school district is relying on faulty analysis, and that their continued refusal to pay MepCo sends a bad sign to the public and to the business community.

"The issue is: Was the work done? What is the excuse for nonpayment?" Carno says. "It's just unbelievable that at the end of the day the district is no further than it was at the beginning."