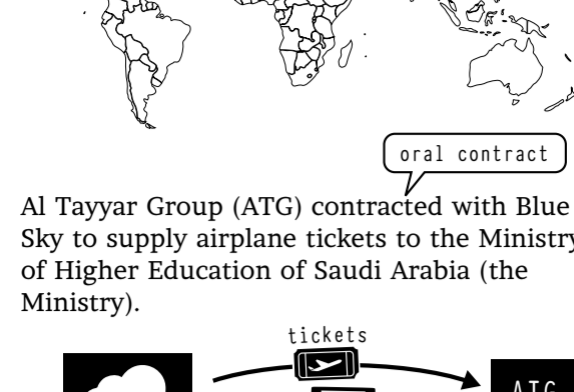
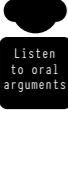


# Blue Sky v Al Tayyar Group

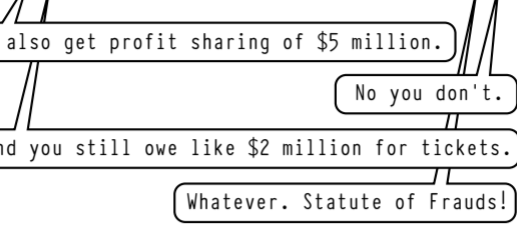
No. 13-2500  
UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT



oral contract

Al Tayyar Group (ATG) contracted with Blue Sky to supply airplane tickets to the Ministry of Higher Education of Saudi Arabia (the Ministry).



This worked for two months until ATG grew dissatisfied with Blue Sky. In those two months they sold 8,500 tickets totalling \$18 million.

I also get profit sharing of \$5 million.  
No you don't.  
And you still owe like \$2 million for tickets.  
Whatever. Statute of Frauds!

Blue Sky initially requests and gets discovery of ATG's invoices to the Ministry.

Blue Sky requests invoices for tickets purchased from 28 other agents.  
Test ATG's claim that they only mark-up 5%.



ATG ignores request.



Judge orders production.



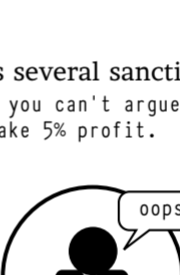
ATG ignores order.



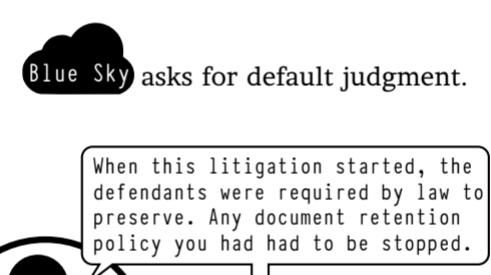
Judge orders production.



ATG ignores order.

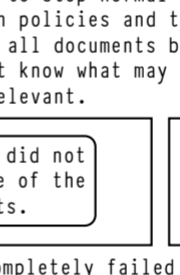


Judge orders production.



Judge issues several sanctions.  
\*Such as - you can't argue that you only make 5% profit.

ATG says they don't retain those invoices.



Blue Sky asks for default judgment.

When this litigation started, the defendants were required by law to preserve. Any document retention policy you had had to be stopped.



Once you are put on notice that there is litigation pending or once litigation starts, you are required to stop normal document retention policies and to preserve all documents because you don't know what may or may not be relevant.

The complaint did not give us notice of the 28 other agents.



You completely failed to fulfill your obligation to preserve documents subsequent to the initiation of this litigation.

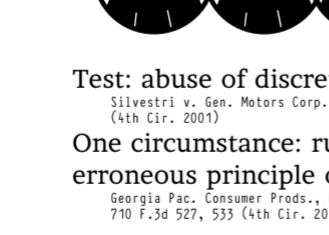
The judge gave the jury and adverse instruction - presume ATG made \$20 million dollars selling the Blue Sky tickets.  
\*ATG could not rebut this because of the sanction.

ATG filed Rule 72 objections. District court denied objections and affirmed adverse instruction.



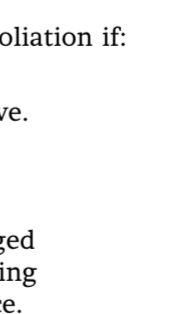
## Trial was bifurcated

Jury decided there was a breached oral contract & award \$2 million damages



Yes

Judge awards \$10 million in lost profits.  
\*remember ATG could not offer rebuttal evidence

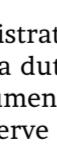


# APPEAL

Test: abuse of discretion  
Silvestri v. Gen. Motors Corp., 271 F.3d 583, 590 (4th Cir. 2001)

One circumstance: ruling on an erroneous principle of law  
Georgia Pac. Consumer Prods., LP v. Von Drehle Corp., 710 F.3d 527, 533 (4th Cir. 2013)

Party may be sanctioned for spoliation if:



1. Duty to preserve.



2. Willfully engaged in conduct resulting in loss of evidence.



3. Knew or should have known evidence could be relevant.

Magistrate held that ATG had a duty to stop document retention and preserve ALL documents.



Magistrate abused discretion. Party is NOT required to preserve ALL documents. Only requirement is to preserve RELEVANT documents.

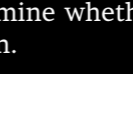
This resulted in SEVERE PREJUDICE

District Court needs to do two things:

Ascertain the date when ATG should have known that invoices could be relevant.



Ascertain the date when ATG destroyed the invoices.



These findings will determine whether ATG committed spoliation.