

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

RALEIGH COUNTY EMERGENCY SERVICES AUTHORITY,

Plaintiff,

v.

Civil Action No. 17-C-253
Judge Andrew Dimlich

J. DAN SNEAD, an individual;
J. DAN SNEAD ASSOCIATES, INC.,
a West Virginia Corporation;
Defendants and Cross-claim Plaintiffs
and
CLINGENPEEL, MCBRAYER & ASSOCIATES, INC.
a West Virginia Corporation.
Defendant and Cross-claim Defendant

ANSWER

COMES NOW the Defendants, J. Dan Snead ("JDS") and J. Dan Snead Associates, Inc. ("JDSA") collectively ("Snead Defendants"), by their counsel, William D. Stover and James G. Anderson, III, and accepts service of and answers that certain Complaint filed against them, as follows:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

1. The Snead Defendants admit the allegations contained in Paragraphs 1,2,3 and 4 of the Complaint.
2. The Snead Defendants admits allegation in Paragraph 5 that it contracted with Authority for design and oversight services of a 911 Center.
3. The Snead Defendants admit allegation in Paragraph 6 that it contracted with CLINGENPEEL, MCBRAYER & ASSOCIATES, INC. ("CMA") for CMA to design the HVAC system for the Authority's 911 Center.
4. Snead Defendants admit the allegations contained in Paragraphs 7 and 8 of the Complaint.
5. The Snead Defendants admit to problems with HVAC for 911 Center as alleged in Paragraphs 9 and 10 of the Complaint but are without sufficient information to either admit or deny the severity of the problems described in Complaint as "unable to control the temperature" with resultant "extreme temperatures" with employees suffering "greatly" while performing duties.

6. The allegation in Paragraph 11 that Authority waited two years for Snead Defendants and CMA to cure HVAC issues at 911 Center is too vague to either admit or deny as no specific time frames are stated.
7. The allegations in Paragraph 12 are admitted to extent that Snead Defendants were ordered off the 911 Center Project prior to HVAC issues being resolved, and that other professionals were thereafter brought in by the Authority.
8. Upon information and belief the allegations in Paragraph 13 are admitted to extent that McKinley and Pennington were hired by Authority for the 911 Center; however, the work performed by these companies for the Authority is not within knowledge or information of Snead Defendants and accordingly are not admitted or denied.

COUNT 1

9. In response to Paragraph 14 of the Complaint the Snead Defendants reassert each response contained in Paragraphs 1 through 8 above as if fully set forth herein.
10. The Snead Defendants admit in Paragraph 15 of the Complaint to entering into a 1997 Edition AIA Document B151-1997 Abbreviated Standard Form Agreement Between Owner and Architect dated July 19, 2002 covering a Project referred to as "New EOC/911 Center" ("AO Contract") with the Authority. The remainder of allegations as to scope of work assumed thereunder by Snead Defendants "to design a building sufficient for the Authority's purpose of housing 911 call dispatchers" are too vague to either admit or deny and will involve questions of law subject to judicial interpretation pursuant to stated terms set forth in Article 2 of the AO Contract "SCOPE OF ARCHITECT'S BASIC SERVICES".
11. The allegations set forth in Paragraph 16 of the Complaint are denied because the duties of Architect for design of 911 Project are set forth in Article 2.3 of AO Contract titled DESIGN DEVELOPMENT PHASE. The allegations in Paragraph 16 of Complaint fail to state an accurate contractual duty for the Snead Defendants as the Architect for the 911 Project.
12. The allegations set forth in Paragraph 17 are denied as to any breach of contract by Snead Defendants. As to as breach of Contract by CMA, the Snead Defendants are without sufficient information to either admit or deny.
13. The Snead Defendants deny any breach of AO Contract by the Snead Defendants as alleged in Paragraph 18 of the Complaint for failure to remedy "HVAC issues".
14. The Snead Defendants deny any material breach of AO Contract by Snead Defendants; therefore, they deny all allegations of responsibility, as stated in Paragraph 19 of Complaint, for additional costs incurred by Owner for the 911 Project and deny any wrongful acts which allegedly proximately caused damages to the Authority.
15. The Snead Defendants deny any material breach of AO Contract; therefore, they deny allegation in Paragraph 20 of Complaint for responsibility for the Authority's continuing costs in pursuing reimbursement for damages for HVAC issues

encountered at 911 Center to include, litigation costs, expenses and attorneys' fees.

AFFIRMATIVE DEFENSES TO COUNT I

1. At all times relevant to this Complaint, the Snead Defendants acted as the authorized agent of the Authority. The Complaint fails to allege a proper cause of action against the Snead Defendants as the Authority's agent: that the Snead Defendants failed to act within authority of agency, in good faith, in the exercise of a fair discretion and in same manner agent would have acted if the subject had been his own. Furthermore, even if a stricter standard is applied of agent with special skills, the Complaint fails to allege that Snead Defendants, as the architect under the AO Contract was negligent in the hiring of CMA to design HVAC for 911 Center, or that such hiring of CMA was a failure by Snead Defendants to exercise reasonable care as an architect. The Snead Defendants were not an insurer of CMA's design work and would not be responsible for an error in judgment in hiring CMA, should the CMA design of HVAC for 911 Center be found deficient. Furthermore, Article 2.6.12 of AO Contract provided that Architect was entitled to rely upon professional design services related to systems required of Contractor by Contract Documents.
2. Snead Defendants, as Architect for 911 Center, were not responsible for alleged HVAC issues or any other alleged defects discovered after Authority signed off on Certificate of Substantial Completion.
3. Snead Defendants, as Architect for 911 Center, are not responsible for any alleged failure of equipment related to alleged HVAC issues encountered at 911 Center or warranty issues related to HVAC equipment components.
4. This Court lacks subject matter jurisdiction because AO Contract requires arbitration of disputes pertaining to services provided by Snead Defendants as the Architect for the 911 Center.
5. The Authority failed to mitigate its damages.
6. The damages alleged in Complaint were proximately caused by other parties, to include but not limited to: CMA and the Contractor, Radford and Radford and/or its subcontractors. Article 2.6.6 of AO Contract provides that Architect shall be responsible for the Architect's negligent acts or omissions and not be required to make exhaustive or continuous on-site inspections to check quality of work. Architect shall not be responsible for construction means, methods, techniques, sequences or procedures, etc. for Work since these are sole responsibility of Contractor under Contract Documents.
7. The work/services of Snead Defendants as Architect under AO Contract were accepted by Authority and bars recovery for any alleged deficiencies encountered thereafter.
8. The Authority failed to present a written claim for damages against Snead Defendants, as Architect under AO Contract, to perfect a right for contractual damages against Snead Defendants.

9. The Authority failed to timely present a written claim for damages pursuant to terms of AO Contract to perfect a right for contractual damages against Snead Defendants.
10. The Snead Defendants as Architect under the AO Contract is not responsible for alleged defects discovered at 911 Center after its contract with the Authority had expired.
11. Any certifications made by Snead Defendants as Architect under AO Contract for payment by the Authority to Contractors or other parties for work done on 911 Center were contractually based upon Architect's best knowledge, information and belief. AO Contract Article 2.6.9.2.
12. The Authority, as Owner under AO Contract, assumed control of alleged problem with HVAC after expelling Snead Defendants and Contractor and others from attempts to remedy alleged HVAC issues; therefore, the Authority assumed liability for costs to remedy alleged HVAC issues.
13. Consequential damages were waived by the Authority pursuant to Article 7.3 of AO Contract.
14. Plaintiff's case is barred by applicable Statute of Limitations.

Wherefore, the Snead Defendants respectfully request that the Plaintiff's Complaint Count 1 be dismissed with prejudice, that the Plaintiff take nothing by its actions for breach of contract, that the Snead Defendants be awarded costs of defending this action, and such other relief that this Court deems just and appropriate.

COUNT II

16. The Snead Defendants reassert each response set forth under Count I in Paragraphs 1 through 15 above as if fully set forth herein in response to Paragraph 21 of Count II of the Complaint.
17. The allegations in Paragraph 22 are admitted.
18. The Snead Defendants admit that the HVAC Contract referred to in the Complaint was for the Authority's 911 Center and neither admits nor denies remainder of allegations in Paragraphs 23 and 24.
19. The allegations in Paragraph 25, 26 and 27 of Complaint pertain to alleged liability of CMA for alleged HVAC issues at 911 Center which do not require responses from the Snead Defendants.

CROSS-CLAIM AGAINST DEFENDANT CLINGENPEEL, MCBRAYER & ASSOCIATES, INC.

Comes now the Defendants, J. Dan Snead and J. Dan Snead Associates, Inc. collectively ("Cross-claim plaintiffs"), by their counsel, William D. Stover and James G. Anderson, III, and for their cross-claim against the Defendant, Clingenpeel, McBrayer & Associates, Inc. ("Cross-claim defendant") and states as follows:

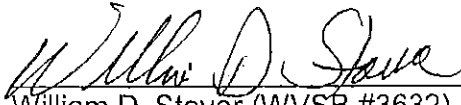
PARTIES

1. Plaintiff, the Raleigh County Services Authority (the "Authority") is an entity established by the West Virginia Legislature to provide emergency response services to Raleigh County, West Virginia which contracted for construction of a new 911 Center.
2. Defendant and Cross-claim plaintiff J. Dan Snead & Associates, Inc. ("JDSA") is a West Virginia corporation engaged in business of providing architectural services.
3. Defendant and Cross-claim plaintiff J. Dan Snead ("JDS") is an architect licensed in West Virginia and is the sole shareholder of JDSA.
4. Clingenpeel, McBrayer & Associates, Inc., does business as CMA Engineering ("CMA"), and is a West Virginia corporation engaged in business of providing engineering services for heating, ventilation and air conditioning ("HVAC").

ALLEGATIONS

5. The Authority filed a civil action against JDSA, JDS and CMA ("Civil Action") which alleged JDSA, Snead and CMA failed to design an adequate air conditioning system sufficient for a newly constructed 911 Center in Raleigh County, West Virginia, and that such failure was a material breach of contract.
6. The Civil Action also alleged that JDSA, Snead and CMA failed to remedy alleged HVAC deficiencies at 911 Center within a reasonable time.
7. The Civil Action sought all available damages for the alleged breaches of contract against JDSA and JDS, to include: compensatory damages, consequential damages, attorneys' fees and expenses, as well as, such other relief as Court deemed appropriate.
8. JDSA and CMA entered an agreement dated January 6, 2005 for work at the 911 Center ("CMA Agreement") for CMA to provide construction documents for HVAC as well as for other engineering services related to HVAC for the 911 Center Project.
9. If the Authority's claim for damages for inadequate design of HVAC for 911 Center is found to be valid against Cross-claim plaintiffs, then CMA should be held liable for all of claim asserted by Authority against JDS and JDSA as a material breach of the CMA Agreement.

Wherefore, JDSA and JDS, as Cross-claim plaintiffs, request judgment against CMA, the Cross-claim defendant, for any damages returned as a verdict against them for the Authority, singularly or jointly, in the Civil Action, together with attorneys' fees and expenses, and such other relief as the Court deems just and appropriate.



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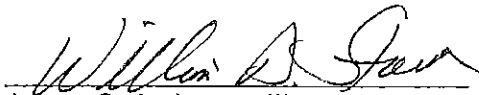
and

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Defendant and Cross-claim Defendant

CERTIFICATE OF SERVICE

We, James G. Anderson, III and William D. Stover, counsel for Defendants and Cross-Claim Plaintiffs, do hereby certify that a true copy of **"ANSWER"** and **"CROSS-CLAIM AGAINST DEFENDANT CLINGENPEEL, MCBRAYER & ASSOCIATES, INC."** was served upon the following person by mailing a true copy thereof by United States Mail, First Class, postage prepaid, this 27th day of July, 2017:

W. Bradley Sorrells
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