

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 TO CROSS-CLAIM

COMES NOW the defendant and cross-claim defendant, Clingenpeel, McBrayer & Associates, Inc., formerly doing business as CMA Engineering ("CMA"), and states as follows for its Answer to the Cross-claim filed by defendants and cross-claim plaintiffs J. Dan Snead ("Snead") and J. Dan Snead & Associates, Inc. ("JDSA") (collectively, the "Snead Defendants") in the above-captioned matter:

1. CMA admits the allegations in Paragraph 1 of the Cross-claim.
2. CMA admits the allegations in Paragraph 2 of the Cross-claim.
3. CMA admits that Snead is an architect licensed in West Virginia. CMA is without knowledge or information sufficient to form a belief as to the truth of remaining allegations contained in Paragraph 3 of the Cross-claim.

4. In response to Paragraph 4 of the Cross-claim, CMA admits that it is a West Virginia corporation that was engaged in the business of providing mechanical and electrical engineering services, including the design of HVAC systems. CMA has requested corporate dissolution by delivering articles of dissolution to the secretary of state. The request is currently pending. CMA is not currently engaged in any business, and denies any allegation to the contrary in Paragraph 4.

5. CMA admits the allegations in Paragraph 5 of the Cross-claim.

6. In response to Paragraph 6 of the Cross-claim, CMA admits that Raleigh County Emergency Services Authority ("the Authority") alleges in the Complaint that the Authority "waited approximately two years while the Snead Defendants and CMA unsuccessfully attempted to cure the defects in the 911 Center", and further admits that the Authority alleges that the Snead Defendants materially breached their contract with the Authority by failing to remedy the HVAC issues within a reasonable period of time. CMA denies all remaining or contrary allegations contained in Paragraph 6.

7. CMA admits the allegations in Paragraph 7 of the Cross-claim.

8. CMA admits that, in or around January 2005, JDSA and CMA entered into an oral contract for CMA to provide construction documents for HVAC as well as other related engineering services for the 911 Center project. CMA denies all remaining or contrary allegations contained in Paragraph 8.

9. CMA denies the allegations in Paragraph 9 of the Cross-claim.

ADDITIONAL AND AFFIRMATIVE DEFENSES

1. To the extent the Authority has suffered damages, those damages were caused by others for whom CMA is not responsible.
2. CMA is not responsible for any alleged failure of equipment related to the alleged HVAC issues.
3. To the extent the Authority has suffered damages, those damages were caused in whole or in part by the negligence or breaches of Snead and/or JDSA, barring their cross-claims against CMA.
4. The Snead Defendants' cross-claims are barred by the applicable statute of limitations.
5. The Snead Defendants' cross-claims are barred by the statute of repose.
6. The Snead Defendants' cross-claims are barred by the doctrine of laches.
7. The Cross-claim fails to state a claim upon which relief can be granted.
8. The Cross-claim does not state a viable claim for recovery of attorneys' fees.
9. Service of process on CMA was insufficient.
10. The Snead Defendants' cross-claims are barred by waiver, in that the services provided by CMA were accepted by JDSA.
11. CMA reserves the right to amend its Answer to add additional Affirmative Defenses to the extent that additional defenses are revealed through investigation or in discovery.

JURY DEMAND

CMA demands a trial by jury for all issues so triable.

Respectfully submitted,

**CLINGENPEEL, MCBRAYER &
ASSOCIATES, INC.**

By: 
Counsel

Mark S. Brennan, Sr. (WV 6233)
VANDEVENTER BLACK LLP
901 E. Byrd Street, Suite 1600
P.O. Box 1558
Richmond, Virginia 23219-1558
Telephone: (804) 237-8800
Fax: (804) 237-8801
E-mail: mbrennan@vanblacklaw.com

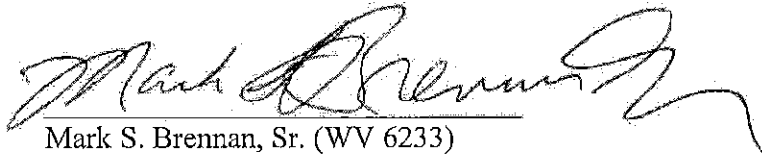
CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2017 I served a true copy of the forgoing by First Class U.S. Mail, postage prepaid, and e-mail, to:

W. Bradley Sorrells, Esq.
wbs@ramlaw.com
David K. Higgins, Esq.
dkh@ramlaw.com
Robinson & McElwee PLLC
P.O. Box 1791
Charleston, WV 25301
Counsel for the Plaintiff

James G. Anderson, III, Esq.
Anderson & Stansbury, L.C.
207 South Heber Street
Beckley, WV 25801
aslc@suddenlinkmail.com

William D. Stover, Esq.
P.O. Box 5007
Beckley, WV 25801
starshipstover@aol.com
Attorneys for Defendants and Cross-claim Plaintiffs



Mark S. Brennan, Sr. (WV 6233)
VANDEVENTER BLACK LLP
901 E. Byrd Street, Suite 1600
P.O. Box 1558
Richmond, Virginia 23219-1558
Telephone: (804) 237-8800
Fax: (804) 237-8801
E-mail: mbrennan@vanblacklaw.com