

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 COMPLAINT

COMES NOW the defendant, Clingenpeel, McBrayer & Associates, Inc., formerly doing business as CMA Engineering ("CMA"), and states as follows for its Answer to the Complaint filed by Raleigh County Emergency Services Authority ("the Authority"):

1. CMA admits the allegations in Paragraph 1 of the Complaint.
2. CMA admits the allegations in Paragraph 2 of the Complaint.
3. CMA admits that Dan 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 Complaint.
4. In response to Paragraph 4 of the Complaint, 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. In response to Paragraph 5 of the Complaint, CMA admits that J. Dan Snead Associates, Inc. contracted with the Authority for design and oversight services of a 911 Center.

6. In response to Paragraph 6 of the Complaint, CMA admits that J. Dan Snead Associates, Inc. engaged CMA as a subconsultant to design the HVAC system for the 911 Center. CMA denies any remaining allegations in Paragraph 6.

7. CMA is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 of the Complaint.

8. CMA is unable to respond to Paragraph 8 of the Complaint as the allegation that the 911 Center "experienced several HVAC issues" is vague. CMA admits that, in early 2007, after the Authority had occupied the building, CMA was made aware that certain components of the 911 Center's HVAC system were not functioning as intended. CMA denies that these problems resulted from deficiencies in CMA's design. CMA denies all remaining or contrary allegations in Paragraph 8.

9. CMA is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 of the Complaint.

10. CMA is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 of the Complaint.

11. In response to Paragraph 11 of the Complaint, CMA admits that it attempted to address, and in fact resolved problems with the 911 Center's HVAC system in 2007, 2008 and 2009. CMA denies all remaining or contrary allegations in Paragraph 11.

12. In response to Paragraph 12 of the Complaint, CMA admits that, in or around fall of 2009, CMA was informed that that the Authority would no longer allow CMA on the project site. CMA further admits that the Authority engaged other design professionals to evaluate the 911 Center's HVAC system. CMA denies all remaining or contrary allegations in Paragraph 12.

13. CMA is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 of the Complaint.

14. CMA reasserts each response contained in paragraphs 1 through 13 above as if fully set forth herein.

15. In response to Paragraph 15 of the Complaint, CMA admits that the Authority and J. Dan Snead & Associates, Inc. entered a contract in which J. Dan Snead & Associates, Inc. agreed to perform architectural and engineering services for the 911 Center. CMA is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 15.

16. CMA is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 of the Complaint.

17. CMA denies the allegations in Paragraph 17 of the Complaint.

18. CMA denies the allegations in Paragraph 18 of the Complaint.

19. CMA denies the allegations in Paragraph 19 of the Complaint.

20. CMA denies the allegations in Paragraph 20 of the Complaint.

21. CMA reasserts each response contained in paragraphs 1 through 20 above as if fully set forth herein.

22. CMA admits that it and J. Dan Snead & Associates, Inc. entered into an oral contract for mechanical engineering services, including HVAC design, for the 911 Center. CMA denies all remaining or contrary allegations in Paragraph 22.

23. Paragraph 23 of the Complaint contains a legal conclusion for which no response is required. To the extent a response is required, CMA denies the allegations in Paragraph 23.

24. Paragraph 24 of the Complaint contains a legal conclusion to which no response is required. To the extent a response is required, CMA denies the allegations in Paragraph 24.

25. Paragraph 25 of the Complaint contains a legal conclusion to which no response is required. To the extent a response is required, CMA denies the allegations in Paragraph 25.

26. CMA denies the allegations contained in Paragraph 26 of the Complaint.

27. CMA denies the allegations contained in Paragraph 27 of the Complaint.

CMA denies the allegations contained in the Authority's prayer for relief, and expressly denies that it is liable to the Authority for any of the damages alleged in the Complaint. CMA denies all allegations in the Complaint not expressly admitted.

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. The Authority's negligence contributed to or caused the damages alleged in the Complaint.

4. The Authority's claims are barred by the applicable statute of limitations.

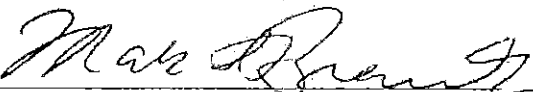
5. The Authority's claims are barred by the statute of repose.
6. The Authority's claims are barred by the doctrine of laches.
7. The Authority has failed to mitigate its damages.
8. The Complaint fails to state a claim upon which relief can be granted.
9. The Authority's claims are barred by waiver, in that the services provided by CMA were accepted by the Authority, and the Authority signed off on the Certificate of Substantial Completion.
10. The Authority assumed the risk of liability of the alleged HVAC issues when it expelled CMA and the Snead defendants from the project site and precluded them from evaluating, addressing, or remedying any alleged problems with the HVAC system.
11. The Complaint does not state a viable claim for recovery of attorneys' fees.
12. Service of process on CMA was insufficient.
13. 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.**

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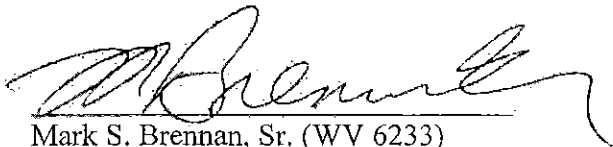
CERTIFICATE OF SERVICE

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:

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