

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

RALEIGH COUNTY  
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2017 APR 28 A 11:15

PAUL H. FLANAGAN

RALEIGH COUNTY  
EMERGENCY SERVICES AUTHORITY

Plaintiff,

CIRCUIT CLERK \_\_\_\_\_

v.

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

J. DAN SNEAD, an individual;  
J. DAN SNEAD & ASSOCIATES, INC.,  
a West Virginia Corporation; and  
CLINGENPEEL, MCBRAYER & ASSOCIATES, INC.,  
a West Virginia Corporation.

Defendants.

COMPLAINT

COMES NOW the Raleigh County Emergency Services Authority ("the Authority") and says as follows for its Complaint against J. Dan Snead ("Dan Snead"), and J. Dan Snead & Associates, Inc. ("Snead Inc." and, collectively, the "Snead Defendants"), and Clingenpeel, McBrayer & Associates, Inc. ("CMA"):

1. The Authority is a public entity established by the West Virginia legislature in order to provide emergency response services to Raleigh County, West Virginia.
2. Snead Inc. is a West Virginia corporation engaged in the business of providing architectural services.

3. Dan Snead is an architect licensed in West Virginia and is the sole shareholder of Snead Inc.

4. CMA is a West Virginia corporation and is engaged in the business of providing engineering services, including such services for heating, ventilation, and air conditioning (HVAC).

5. The Authority contracted with the Snead Defendants to design and oversee the construction of a new building that would host 911 call dispatchers (the "911 Center").

6. The Snead Defendants hired CMA as a subcontractor to design the HVAC system for the 911 Center.

7. Substantial completion of the 911 Center occurred in June, 2007.

8. The 911 Center experienced several HVAC issues immediately after the substantial completion date.

9. These HVAC issues rendered the 911 Center unable to control the temperature, resulting in extreme temperatures within the building—especially in the summer and winter.

10. The 911 dispatchers who worked at the 911 Center suffered greatly when they had to perform their already stressful jobs in extreme heat and cold because the HVAC system failed to function.<sup>1</sup>

11. The Authority waited approximately two years while the Snead Defendants and CMA unsuccessfully attempted to cure the defects in the 911 Center.

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<sup>1</sup> 911 dispatchers perform the incredibly difficult job of answering phone calls to 911, delegating state emergency services to callers who need help, and staying on the phone with people as they face the worst moments of their lives. Thus extreme temperatures that would burden people with more tranquil careers are even more oppressive for 911 dispatchers during especially stressful phone calls.

12. After waiting that period, with the Snead Defendants still failing to fix the HVAC issues, the Authority instructed them to leave the site and sought the help of other professionals.

13. The Authority ultimately retained McKinley & Associates, Inc. ("McKinley") and Pennington Plumbing and Heating, Inc. ("Pennington") to fix the HVAC issues, and the defects in the building were finally cured.

### **COUNT I**

#### *Breach of Contract against Snead Defendants*

14. The Authority reasserts the allegations of the preceding paragraphs of this Complaint as if fully set forth herein.

15. The Authority and the Snead Defendants executed a contract (the "Design-Build Contract") by signing an AIA Document B151-1997 form contract, in which the Snead Defendants agreed to design a building sufficient for the Authority's purpose of housing 911 call dispatchers.

16. The Snead Defendants had a duty under the Design-Build Contract to design a 911 Center with an adequate and functioning HVAC system.

17. The Snead Defendants materially breached the Design-Build Contract because neither they nor CMA designed an adequate air conditioning system sufficient for the 911 Center.

18. The Snead Defendants also materially breached the Design-Build Contract because they failed to remedy the HVAC issues within a reasonable period of time.

19. As a direct and proximate result of the Snead Defendants' material breach, the Authority incurred substantial costs in paying for the repairs to the 911 Center so that the HVAC system performed correctly.

20. The Authority continues to incur costs (including litigation costs, expenses, attorneys' fees, and other damages) in pursuing reimbursement for the damage it suffered because of the Snead Defendants' material breach.

## **COUNT II**

### *Third-Party Beneficiary against CMA*

21. The Authority reasserts the allegations of the preceding paragraphs of this Complaint as if fully set forth herein.

22. The Snead Defendants and CMA entered into a contract (the "HVAC Contract") for the design of the HVAC system of the 911 Center.

23. The HVAC Contract was for the ultimate benefit of the Authority.

24. The HVAC Contract was for the sole benefit of the Authority.

25. CMA had a duty under the HVAC Contract to design an adequate and functioning HVAC system for the 911 Center.

26. CMA breached the HVAC Contract by failing to properly design a functioning HVAC system for the 911 Center.

27. As a direct and proximate result of CMA's breach, the Authority has been damaged and forced to incur the cost of mitigation and disruption to its primary purpose of serving Raleigh County.

WHEREFORE the Authority demands judgment against the Defendants, and each of them, in an amount sufficient to provide full payment of all damages (special, incidental, and consequential) suffered, attorneys' fees and expenses incurred as a result of the acts and omission asserted above, together with all such other and further relief as the Court deems proper and just.

**RALEIGH COUNTY EMERGENCY  
SERVICES AUTHORITY**

By counsel,

A handwritten signature in black ink, appearing to read 'W. Bradley Sorrells', is written over a horizontal line.

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OFFICE OF THE CIRCUIT CLERK

RECEIPT #: 133209

RALEIGH  
215 MAIN STREET  
BECKLEY

DATE RECEIVED: 04/28/2017

RECEIVED FROM: ROBINSON & MCELWEE

TOTAL: \$200.00

STYLE OF CASE  
RALEIGH COUNTY EOC 911 CENTER  
VS.  
J. DAN SNEAD

CASE #: 17-C-253

IN PAYMENT OF FILING FEE  
BY Check 344799

Paul Flanagan  
CLERK OF THE CIRCUIT COURT

BY

AP

Judge : Andrew Dimlich