

SCANNED

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

AEROTEK ENERGY,

Plaintiff,

vs.

Civil Action No. 16-C-77-2

ELECTRICAL SYSTEMS, INC.,

Defendant.

**ANSWER OF DEFENDANT, ELECTRICAL SYSTEMS, INC.
AND COUNTERCLAIM AGAINST PLAINTIFF, AEROTEK ENERGY**

NOW COMES the Defendant, Electrical Systems, Inc., by and through their counsel, Sam H. Harrold, III, and the law firm of McNeer, Highland, McMunn and Varner, L.C., and responds to the Plaintiff's Complaint as follows:

Because of the nature of the allegations in the Plaintiff's Complaint and the fact that discovery is on-going, in order to preserve important legal rights and protection, the Defendant sets forth below certain affirmative defenses which, based upon the information set forth in the complaint, it believes does or may apply to some or all of the claims raised therein. The Defendant further reserves the right to withdraw or modify some or all of the affirmative defenses set forth below in whole or in part depending upon the nature of discovery in this matter.

FIRST AFFIRMATIVE DEFENSE

The Plaintiff by its conduct is estopped from asserting this cause of action.

SECOND AFFIRMATIVE DEFENSE

The Defendant has at all times acted within its legal right in the conduct of its activities and with just cause.

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THIRD AFFIRMATIVE DEFENSE

Insofar as Plaintiff's complaint is based upon contract, the Defendant affirmatively alleges that the Plaintiff is estopped from asserting said claims for the reason that Plaintiff's own breach of contract could be the proximate cause of any damages of which it complains.

FOURTH AFFIRMATIVE DEFENSE

The Plaintiff's own acts or omissions, or both, were the sole cause for the damages for which it complains.

FIFTH AFFIRMATIVE DEFENSE

If the plaintiff suffered injury or damages as alleged in the complaint, plaintiff assumed the risk of the alleged damages.

SIXTH AFFIRMATIVE DEFENSE

The Plaintiff by its actions has failed to mitigate its alleged damages or, in the alternative, if the Plaintiff has mitigated its damages, the Defendant is entitled to have those mitigated damages credited to those amounts if any owed by the Defendant to the Plaintiff.

SEVENTH AFFIRMATIVE DEFENSE

The Defendant denies that this civil action is one in which attorney fees can be properly awarded and, therefore, affirmatively moves that the portion of the Plaintiff's complaint seeking payment of attorney fees be dismissed.

EIGHTH AFFIRMATIVE DEFENSE

The negligence or fault of another other than the Defendant was either the sole proximate cause of or proximately caused or contributed to the damages allegedly sustained by the Plaintiff.

NINTH AFFIRMATIVE DEFENSE

The negligence or fault of the Plaintiff proximately caused and/or contributed to its alleged damages and, furthermore, the negligence or fault of the Plaintiff equaled or exceeded the negligence or fault, if any, of the Defendant, the existence of such negligence or fault on behalf of the Defendant being denied.

TENTH AFFIRMATIVE DEFENSE

The Defendants reserve the right to assert such additional affirmative defenses as may become apparent during discovery or trial of this civil action.

ELEVENTH AFFIRMATIVE DEFENSE

1. The Defendant incorporates herein by reference all affirmative defenses herein above set forth as if the same were herein set forth verbatim.
2. Upon information and belief, the Defendant admits the allegations contained in Paragraph 1 of the Complaint.
3. The Defendant admits the allegations contained in Paragraph 2 of the Complaint.
4. The Defendant admits in part and denies in part the allegations contained in Paragraph 3 of the Complaint. The Defendant admits that Aerotek Energy did provide labor on behalf of the Defendant for a project in Caditz, OH. However, the general contractor (Bilfinger-Westcon) for the project has alleged faulty workmanship on-site and asserted a breach of contract claim against the Defendant. Therefore, the Defendant respectfully denies the remaining allegations in Paragraph 3 and demands strict proof thereof.
5. In response to the allegations in Paragraph 4 of the Complaint, the Defendant admits in part and denies in part the allegations therein. The Defendant admits it has failed to pay for labor provided by the Plaintiff; however, the Defendant denies agreeing to pay the

amount demanded by the Plaintiff. Further, to the extent the allegation calls for a legal determination of the contractual obligations of the parties, the Defendants must deny the same.

WHEREFORE, the Defendant requests that the Court dismiss the Plaintiff's Complaint and award it attorney's fees and costs incurred in responding to this action along with all other relief that the Court deems proper and just.

COUNTERCLAIM AGAINST AEROTEK ENERGY

COMES NOW Defendant/Counter-Plaintiff Electrical Systems, Inc., ("ESI"), by and through its counsel, Sam H. Harrold, III, and the law firm of McNeer, Highland, McMunn and Varner, L.C., and hereby asserts the following counterclaim against Aerotek Energy ("Aerotek"):

1. ESI is, and at all relevant times was, a corporation formed, organized, and operated under and pursuant to the laws of the State of West Virginia.
2. Upon information and belief, Aerotek's corporate offices are located at 7301 Parkway Drive South, Hanover, Maryland, 21076.
3. On or about February 5, 2015, the parties entered into a contract for Aerotek to provide contract labor on behalf of ESI for a project in Caditz, OH. The general contractor for the project in question was Bilfinger Weston, Inc.
4. In May 2015, Bilfinger Westcon, Inc., refused payment for services rendered by ESI and its subcontractors.
5. On or about June 2015, Bilfinger Westcon, Inc., advised ESI that payment was being refused due to faulty workmanship provided on the project in Caditz, OH.
6. The contract executed by Aerotek required that it provide competent and qualified electricians to perform contract labor at the Caditz, OH, project location.

COUNT ONE - BREACH OF CONTRACT

7. ESI incorporates by reference, as if fully set forth herein, Paragraphs 1 through 6 above.


8. Pursuant to the contract between ESI and Aerotek, Aerotek was to provide competent and qualified electricians to perform contract labor.

9. Aerotek failed to provide competent and qualified electricians to perform contract labor in violation of the contract agreement.

WHEREFORE, ESI respectfully requests that this Court enter judgment and award damages, including, but not limited to compensatory damages, against Aerotek on the claims detailed herein, along with all other relief that the Court deems proper and just.

A TRIAL BY JURY IS DEMANDED.

Respectfully submitted this 6th day of April, 2016.



Sam H. Harrold, III (WV State Bar No. 9064)

Attorney for Defendants

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of April, 2016, I served the foregoing **ANSWER OF DEFENDANT, ELECTRICAL SYSTEMS, INC., AND COUNTERCLAIM AGAINST PLAINTIFF, AEROTEK ENERGY and CCIS FORM** upon counsel for the Plaintiff, by U.S. Mail in an envelope addressed as follows:

Clinton W. Smith, Esq.
Mezzanine Suite 4
405 Capitol Street
Charleston, WV 25301
(Counsel for Plaintiff)



Sam H. Harrold, III (WVSB #9064)

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