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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.

DEFENDANT ELECTRICAL SYSTEMS, INC.'S
PRETRIAL MEMORANDUM

FILED IN 15TH
CIRCUIT COURT
2016 MAY 24 P 3:39

The Circuit Court of Harrison County, West Virginia, has set the above-styled action for a pretrial conference on the 2nd day of June 2016 at 11:00 a.m. The following is submitted on behalf of the defendant, Electrical Systems, Inc.

1. Jurisdiction is admitted.
2. Venue is admitted.
3. Matters remaining to be ruled on by the Court, motions presently offered,

or discovery needed include:

- a. Plaintiff's Motion to Dismiss Counterclaim of the Defendant
4. Brief statement of Defendant, Electrical System, Inc.'s position:

Electrical System, Inc., asserts that the alleged contract debt that is the subject of this lawsuit is not proper because the Plaintiff failed to provide competent labor for the jobsite which resulted in the general contractor, Bilfinger Westcon, rejecting payment to the Defendant. Electrical Systems, Inc., has alleged a counterclaim against the Plaintiff for breach of contract in failing to provide reasonable and competent labor services on the project.

5. Admissions:
None at present.
6. Stipulations:
None at this time.
7. Issues to be tried by the jury:
 - a. Liability; and
 - b. Damages.
8. Defendant's witnesses:
 - a. Todd Kiger, President
 - b. Jerry Karr, Vice-President of Construction
 - c. Wade Gerau, Superintendent
 - f. Any witnesses listed by plaintiff.
9. Defendant Electrical Systems, Inc.'s, exhibits:
 - a. Contract between the parties;
 - b. Invoices for service rendered;
 - c. Correspondence from Bilfinger Westcon denying payment and asserting workmanship claims;
10. Itemized list of special damages:

Electrical Systems, Inc., is claiming reimbursement for all moneys paid to the Plaintiff for labor services that were identified as unreasonable workmanship by Bilfinger Westcon. Because arbitration is ongoing between Electrical Systems, Inc., and the Bilfinger Westcon the exact special damages incurred is unknown at this time.

11. It is anticipated that 2-3 days will be needed.

Dated this 24th day of May, 2016.



Sam H. Harrold, III

(WV State Bar No. 9064)

Attorney for Defendants

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McNeer, Highland, McMunn and Varner, L.C.
of Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of May, 2016, I served the foregoing **DEFENDANT**

ELECTRICAL SYSTEMS, INC.'S PRETRIAL MEMORANDUM 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)

FILED IN 15TH
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2016 MAY 24 PM 3:4