

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CASTO TECHNICAL SERVICES, INC.

Plaintiff,

v.

CIVIL ACTION NO. 12-C

OMEGA FACILITY SOLUTIONS,
SERVICES & SURETY, LLC,

Defendant.

COMPLAINT

COMES NOW Casto Technical Services, Inc. ("CTSI"), and for its Complaint against Omega Facility Solutions, Services & Surety, LLC ("Omega") states the following:

The Parties

1. Plaintiff CTSI is a West Virginia corporation with its principal place of business in Charleston, West Virginia.
2. Defendant Omega is a limited liability corporation incorporated under the law of the State of West Virginia having its principal place of business in Charleston, West Virginia.

Jurisdiction/Venue

3. Jurisdiction and venue are properly established pursuant to W.Va. Code § 56-1-1 based upon the fact that Omega's principal place of business is in Kanawha County, West Virginia.

Statement of the Facts

4. In 2009, Fayette County Board of Education solicited bids for a Performance Contract Energy Management Program ("WVDOE/FCBOE Contract").

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5. At that time, Jeffrey R. Brown was employed as the Vice President of Engineering Services for CTSI and Omega did not exist.

6. At that time, Nate Casto was the President of CTSI and remains in that position at this time.

7. CTSI and Mr. Casto assisted Omega in obtaining necessary bonding that it needed for its WVDOE/FCBOE Contract.

8. CTSI and Mr. Casto assisted Mr. Brown so that Omega could pursue the WVDOE/FCBOE Contract and, if successful, CTSI and Omega would share in the profits generated by the WVDOE/FCBOE Contract.

9. CTSI and Mr. Casto facilitated Omega's successful bid for the WVDOE/FCBOE Contract for the sole purpose of sharing in the profits generated by the WVDOE/FCBOE Contract.

10. CTSI's facilitation efforts included, but are not limited to assisting Omega in securing a bond for the project.

11. In consideration for the facilitation services provided by CTSI, Omega agreed to split the Guarantee Reserve and Gross Margin Overage generated under the WVDOE/FCBOE Contract on a 50%/50% basis ("the Contract").

12. The terms of the Contract are set forth in various documents and correspondence between Nate Casto and Jeff R. Brown.

13. CTSI has fully performed its obligations under the Contract.

14. Omega has partially performed its obligations under the Contract.

15. Specifically, Omega tendered one payment to CTSI under the Contract. On or about October 4, 2011, Omega tendered 50% of the Gross Margin Overage on an audit performed under the WVDOE/FCBOE Contract to CTSI.

16. Since that time, Omega has failed to tender additional payments due and owing to CTSI under the Contract.

**COUNT I
BREACH OF CONTRACT**

17. The allegations set forth in the foregoing paragraphs of this Complaint are hereby realleged with the same force and effect as if fully set forth herein.

18. Omega's failure to tender timely payments to CTSI constitutes a material breach of the Contract.

19. A party who, by words or equivalent acts, conveys a repudiation of his contractual obligation has effectively breached the contract, and is liable to the non-breaching party for any damages that may arise from the breach

20. As a direct and proximate result of Omega's material breach of the Contract, CTSI has been prevented from realizing the benefit of its bargain.

21. CTSI is therefore entitled to recover against Omega damages in an amount representing what CTSI would have realized had Omega performed the Contract.

**COUNT II
DEMAND FOR ACCOUNTING**

22. The allegations set forth in the foregoing paragraphs of this Complaint are hereby realleged with the same force and effect as if fully set forth herein.

23. As set forth above, CTSI was entitled to various funds from Omega and Omega solely has the accounting and billing records related to the services that it is providing under the WVDOE/FCBOE Contract.

24. CTSI is entitled to an equitable accounting from Omega as to its costs, revenue and profit under the WVDOE/FCBOE Contract.

COUNT III SPECIFIC PERFORMANCE

25. The allegations set forth in the foregoing paragraphs of this Complaint are hereby realleged with the same force and effect as if fully set forth herein.

26. CTSI has a valid enforceable Contract with Omega for its 50% share of the WVDOE/FCBOE Contract.

27. CTSI is entitled to specific performance the Contract for the remaining duration of the WVDOE/FCBOE Contract.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, Casto Technical Services, Inc., demands judgment in its favor as follows:

(1) Have Omega perform an accounting of all to its costs, revenue and profit under the WVDOE/FCBOE Contract; and,

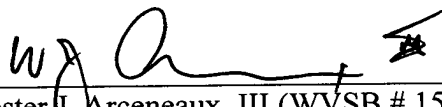
(2) Have Omega specifically perform the Contract in accordance with its terms and pay an amount to be determined at a later date based upon an accounting; or, in the alternative,

(2) Have and recover from Omega compensatory damages plus prejudgment interest and any and all such other, further, different, and additional relief herein as may be just and equitable.

CTSI DEMANDS A TRIAL BY JURY ON ALL MATTERS PROPERLY TRIABLE
BY A JURY.

CASTO TECHNICAL SERVICES, INC.
By Counsel

LEWIS GLASSER CASEY & ROLLINS, PLLC



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