

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

DAR, LLC,

Plaintiff,

v.

Civil Action No. 13-C- 394

TRIAD ENGINEERING, INC.;
KAREN L. KRABILL, P. E.; and
LYDIA WORK;

Defendants.

COMPLAINT

Comes now the Plaintiff, DAR, LLC, by counsel Bowles Rice LLP, and files this Complaint against the Defendants, Triad Engineering, Inc., and Karen L. Krabill, P.E., and in support thereof alleges the following:

Parties

1. The Plaintiff, DAR, LLC, is a limited liability company organized under the laws of the State of West Virginia, with its headquarters located at 325 Willey Street, Morgantown, West Virginia 26505.

2. The Defendant, Triad Engineering, Inc. ("Triad"), is an engineering firm licensed under the laws of the State of West Virginia. The Defendant is doing business at, among others, Berkeley County and Monongalia County, West Virginia.

3. The Defendant, Karen L. Krabill, P.E., is a professional engineer, registered with the State of West Virginia, Reg. No. 12353. At all times relevant to this

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VIRGINIA M. SINE, CLERK

Complaint, Ms. Krabill was the Geotechnical Services Manager for Triad and is jointly liable for defects in the investigation, design, research, field surveying, boundary surveying, geotechnical engineering, testing, permitting, all as alleged in this Complaint.

4. The Defendant, Lydia Work, was, at all times relevant to this Complaint, Regional Manager for Triad, personally involved in and responsible for the design of the Project, and is jointly liable for defects in the investigation, design, research, field surveying, boundary surveying, geotechnical engineering, testing, permitting, all as alleged in this Complaint.

Jurisdiction and Venue

5. The Westminster Apartments is a multi-family apartment complex , constructed by Plaintiff, located in Berkeley County, West Virginia, consisting of 200 units, along with parking areas, located on approximately 20 acres ("Westminster" or "Project").

6. Based on the facts stated above and herein, the Circuit Court of Berkeley County, West Virginia, has subject matter jurisdiction over the causes and claims in this Complaint and personal jurisdiction over each of the Defendants.

7. Based on the facts stated above and herein, venue is proper in the Circuit Court of Berkeley County, West Virginia.

8. In 2008, Defendant Triad contracted with Plaintiff to provide a full property survey, geotechnical engineering, and further agreed to submit and obtain all applicable permit approvals to allow for the design, approval and construction of Westminster.

9. As part of that contract, Defendants had a duty to perform a survey of the entrance road, including, but not limited to, all necessary courthouse research, title searches, review of rights-of-way, boundary surveys and field surveys.

10. Also as part of that contract, Defendants agreed to perform all acts and functions necessary for Plaintiff to obtain approval, from Berkeley County and other applicable authorities, for the design and construction of Westminster.

11. As consideration for Defendants' agreement to perform the acts list above, Plaintiff paid Defendants in excess of \$200,000, excluding permitting and approval fees.

12. Despite Plaintiff's full performance of the contract, Defendants failed to perform according to the relevant standard of care.

13. For example, Defendants failed to conduct an independent title search and review of the entrance way.

14. The Defendants' failure to verify a sufficient right-of-way for the entrance way caused repeated delays in obtaining permit approval from Berkeley County, and additional expense and costs of the project.

15. Moreover, the Defendants' failure to verify a sufficient right of way caused delays in the commencement of construction of Westminster.

16. Upon information and belief, instead of conducting an independent title search and survey of the entrance way, Defendants relied on reports and approvals prepared by others.

17. Upon information and belief, Defendants knew they were designing over one of the neighbor's access and that the physical improvements didn't match the drawings.

18. Upon further information and belief, Defendants relied on a previously approved County Plan for another subdivision and not from the applicable deeds.

19. Defendants' negligent reliance on reports and approvals prepared by others was a breach of the accepted standard of care.

20. Upon investigation, Plaintiff determined that Defendants knew that insufficient space existed for the construction and approval of the entrance way, to obtain approval from Berkeley County, but withheld such information from Plaintiff.

21. Further investigation determined that Berkeley County notified Defendants of width, drainage and other issues with the entrance way, but Defendants withheld that information from Plaintiff as well.

22. Moreover, Defendants failure timely to address and correct the width and drainage issues related to the entrance way caused repeated delays in obtaining necessary approvals from Berkeley County.

23. In addition, the repeated delays in attaining the necessary approvals caused additional engineering costs and fees, delays in construction, additional loan expense, delay in rental income, damage to Plaintiff's reputation, and added legal and other costs.

Count I – Negligence

24. DAR incorporates by reference the allegations contained in paragraphs 1 through 23 of the Complaint, as if fully set out herein.

25. The Defendants jointly and severally owed Plaintiff a duty to exercise reasonable care in the performance of its contract with Plaintiff.

26. The Defendants jointly and severally were required to exercise the reasonable care, technical skills, ability, and diligence ordinarily required of engineers in the same or similar circumstances when preparing the designs, performing the surveys, performing title searches and preparing the permitting for approval by Berkeley County and other authorities.

27. Defendants' failure to adhere to the accepted standard of care in preparing designs, performing surveys, conducting title investigation, and preparing material for approval by Berkeley County was a direct and proximate cause of the delay in construction of the project, and associated added expenses, lost income and damage to reputation.

28. The existence of a contract does not supersede, preempt or negate the duty of care imposed by the common law upon the Defendants, and Plaintiff's rights and remedies are cumulative and additional rather than exclusive or preemptive.

29. As a direct result of the Defendants' failure to properly investigate, design, survey, and obtain necessary approvals from Berkeley County, the Plaintiff has suffered serious damages to its project entitling it to compensatory damages.

30. Plaintiff has been injured by this breach and has incurred damages including, but not limited to, the substantial cost of engineering and permitting, lost profits, lost value of the project itself, loss of tenant goodwill, damage to its reputation, lost opportunity, annoyance and inconvenience, and it will continue to suffer damages into the future.

Count II – Breach of Contract

31. DAR incorporates by reference the allegations contained in paragraphs 1 through 30 of the Complaint, as if fully set out herein.

32. The Defendant Triad also assumed and owed Plaintiff an express contractual duty to do all things necessary to prepare the necessary design and prepare and submit the necessary applications and submittals for Plaintiff to construct Westminster.

33. Defendant Triad's agreement to do the designs, surveys, investigation, title searches, and prepare and obtain the necessary approvals to enable DAR to construct Westminster, is a binding and enforceable contract.

34. DAR fulfilled all of its obligations to Triad under the terms of that contract, including payment for properly submitted and approved invoices.

35. The failure of Triad to properly investigate, design, research and prepare and obtain necessary approvals and permits are material breaches of the contract.

36. The failure of Triad timely to correct and/or amend the submittals for approval by Berkeley County are material breaches of Triad's duties under the contract.

37. As a consequence of Triad's failures and breaches under the contract, the project has been delayed, submittals had to be amended and re-submitted, loans had to be re-financed, and additional costs were incurred.

38. DAR has been injured by these breaches and has incurred damages including, but not limited to, the substantial cost of additional engineering and permitting, lost profits, lost value of the project itself, loss of tenant goodwill, damage to its reputation, lost opportunity, annoyance and inconvenience, and it will continue to suffer damages into the future.

WHEREFORE, the Plaintiff, DAR, LLC, seeks judgment in an amount that will fully compensate it for its losses and expenses incurred, including, but not limited to, its engineering and permitting costs, lost profits, lost value of the project itself, loss of tenant goodwill, damage to its reputation, lost opportunity, annoyance and inconvenience damages, attorney's fees and costs, prejudgment and postjudgment interest, against the Defendants, jointly and severally, in addition to such other relief and remedies which this Honorable Court may determine. In the event Plaintiff determines that Defendants intentionally withheld information or made intentional misrepresentations to Plaintiff or others, Plaintiff reserves the right to seek punitive damages.

Jury Trial Demand

DAR, LLC RESPECTFULLY DEMANDS A JURY TRIAL.

DAR, LLC

By Counsel

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for CCW, III

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