

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

RECEIVED AND FILED

WYLIE STEEL FABRICATORS, INC.,

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JUL 16 AM 10:50

2013 JUL 16 AM 10:50

Plaintiff,

v.

CIRCUIT CLERK

Civil Action No. 13-C-546  
Hon. Robert A. Burnside, Jr.

CIRCUIT CLERK

ROCK & COAL  
CONSTRUCTION, INC.,

Defendant.

COMPLAINT

COMES NOW the Plaintiff, Wylie Steel Fabricators, Inc. ("Wylie Steel"), by its counsel, John J. Meadows, Esq., and Jason P. Foster, Esq., and the law firm of Steptoe & Johnson PLLC, and for its Complaint against the Defendant, Rock & Coal Construction, Inc. ("Rock & Coal") alleges as follows:

I. PARTIES

1. Plaintiff, Wylie Steel, is a Tennessee corporation with a mailing address of 508 Autumn Springs Court, Suite 1E, Franklin, Tennessee 37067.
2. Defendant, Rock & Coal, is a Kentucky corporation authorized to do business in the state of West Virginia with a place of business at 922 Robert C. Byrd, Sophia, West Virginia, Raleigh County, West Virginia and a mailing address of P.O. Box 1457, Crab Orchard, West Virginia 25827.

II. JURISDICTION AND VENUE

3. Subject matter jurisdiction in this Court is proper pursuant to W. Va. Code § 51-2-2 because this is a case at law which exceeds the statutory minimum dollar value.

4. This Court has personal jurisdiction over Defendant Rock & Coal pursuant to W.Va. Code § 56-3-33, by virtue of its participation in the formation and breach of the contract at issue in this civil action.

5. Venue is proper in this Court by virtue of W.Va. Code § 56-1-1 because the causes of action in this matter arose in Raleigh County, West Virginia and Defendant Rock & Coal has a place of business in Raleigh County.

### **III. FACTS**

6. On September 27, 2011, Rock & Coal submitted a purchase order to Wylie Steel for approximately two hundred seventy-five (275) tons of structural steel (the "Purchase Order").

7. The total price of the Purchase Order was Eight Hundred Fifty Three Thousand Five Hundred Forty-Four Dollars (\$853,544.00).

8. From the price of the Purchase Order, the Parties agreed that Rock & Coal would pay the Tennessee sales tax in the amount of Seventy Two Thousand Two Hundred Sixty-Eight Dollars (\$72,268.00).

9. Wylie Steel satisfactorily performed its obligations under the Purchase Order.

10. To date, Rock & Coal has failed to pay the Seventy Two Thousand Two Hundred Sixty-Eight Dollars (\$72,268.00) owed in Tennessee taxes.

11. Based on Rock & Coal's failure to pay the Tennessee taxes, the taxes will be assessed against Wylie Steel.

### **COUNT I: BREACH OF CONTRACT**

12. Plaintiff incorporates by reference paragraphs 1- 11 of its Complaint as if fully set forth herein, verbatim.

13. By failing to pay the Tennessee taxes assessed against the Purchase Order, Rock & Coal is in material breach of its contractual obligations to Wylie Steel.

14. As a result of Rock & Coal's breach of its contractual obligations, Wylie Steel has been damaged in the amount of Seventy Two Thousand Two Hundred Sixty-Eight Dollars (\$72,268.00).

WHEREFORE, Wylie Steel respectfully requests contract damages from Rock & Coal in the amount of Seventy Two Thousand Two Hundred Sixty-Eight Dollars (\$72,268.00).

**COUNT II: UNJUST ENRICHMENT**

15. Plaintiff incorporates by reference paragraphs 1- 14 of its Complaint as if fully set forth herein, verbatim.

16. The total price of the Purchase Order of Eight Hundred Fifty Three Thousand Five Hundred Forty-Four Dollars (\$853,544.00) was premised on Rock & Coal's contractual obligation to pay Seventy Two Thousand Two Hundred Sixty-Eight Dollars (\$72,268.00) in Tennessee taxes.

17. Had Rock & Coal not agreed to pay Tennessee taxes, Wylie Steel would have included the Tennessee sales tax in the total price of the Purchase Order.

18. Because Rock & Coal agreed to pay the total price of the Purchase Order including the amount of Seventy Two Thousand Two Hundred Sixty-Eight Dollars (\$72,268.00) for the payment of Tennessee taxes but has failed to pay the taxes owed, Rock & Coal has been unjustly enriched by Seventy Two Thousand Two Hundred Sixty-Eight Dollars (\$72,268.00).

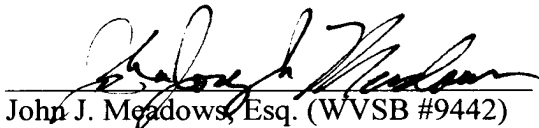
WHEREFORE, Wylie Steel respectfully requests that Rock & Coal be compelled to disgorge the Seventy Two Thousand Two Hundred Sixty-Eight Dollars (\$72,268.00) by which it has been unjustly enriched.

WHEREFORE, the Plaintiff, Wylie Steel, prays that this Court enter Judgment against the Defendant, Rock & Coal in the amount of Seventy Two Thousand Two Hundred Sixty-Eight Dollars (\$72,268.00) and award Wylie Steel its fees, costs, interest, and all other relief the Court deems just and proper.

Respectfully submitted this 11th day of July, 2013.

**WYLIE STEEL FABRICATORS, INC.,**

**By Counsel**



John J. Meadows, Esq. (WVSB #9442)  
Jason P. Foster, Esq. (WVSB #10593)  
**STEPTOE & JOHNSON PLLC**  
707 Virginia Street, East  
P.O. Box 1588  
Charleston, WV 25326-1588  
Telephone: (304) 353-8154  
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IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

WYLIE STEEL FABRICATORS, INC.,

Plaintiff,

v.

ROCK & COAL  
CONSTRUCTION, INC.,

Defendant.

CIVIL ACTION NO. 566

Hon. Robert A. Burnside, Jr.

To the above-named Defendant:

Rock & Coal Construction, Inc.  
c/o Doug Sayre  
922 Robert C. Byrd  
Sophia, WV 25921

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon John J. Meadows, plaintiff's counsel, whose address is P.O. Box 1588, Charleston, WV 25301, an Answer, including any related counterclaim you may have, to the complaint filed against you in the above styled civil action, a true copy of which is herewith delivered to you.

You are required to serve your answer within thirty (30) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred for asserting in another action any claim you may have which must be asserted by counterclaim in the above styled civil action.

Dated: July 16, 2013

Paul H. Flanagan  
Clerk

Angela Vanover  
Deputy Clerk

**CIVIL CASE INFORMATION STATEMENT  
CIVIL CASES**

In the Circuit Court of Raleigh County, West Virginia

RECEIVED AND FILED  
2013 JUL 16 AM 10:51  
cc

**I. CASE STYLE:**

CIRCUIT CLERK                     

**Plaintiff**

Case # 13-C-Sub-B

WYLIE STEEL FABRICATORS, INC.

Judge: Robert A. Burnside, Jr.

vs.

**Defendant**

**Days to  
Answer**

**Type of Service**

ROCK & COAL CONSTRUCTION, INC.

30

Secretary of State

Street

City, State, Zip

Street

City, State, Zip

Street

City, State, Zip

Street

City, State, Zip

Original and 3 copies of complaint furnished herewith.

PLAINTIFF: WYLIE STEEL FABRICATORS, INC.  
DEFENDANT: ROCK & COAL CONSTRUCTION, INC.

RECEIVED AND FILED

CASE NUMBER:

2013 JUL 16 AM 10:51

13-C-566-B

II. TYPE OF CASE:

TORTS	OTHER	CIRCUIT CLERK <i>cc</i> CIVIL
<input type="checkbox"/> Asbestos	<input type="checkbox"/> Adoption	<input type="checkbox"/> Appeal from Magistrate Court
<input type="checkbox"/> Professional Malpractice	<input checked="" type="checkbox"/> Contract	<input type="checkbox"/> Petition for Modification of Magistrate Sentence
<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Real Property	<input type="checkbox"/> Miscellaneous Civil
<input type="checkbox"/> Product Liability	<input type="checkbox"/> Mental Health	<input type="checkbox"/> Other
<input type="checkbox"/> Other Tort	<input type="checkbox"/> Appeal of Administrative Agency	

III. JURY DEMAND: ☐ Yes ☒ No

CASE WILL BE READY FOR TRIAL BY (Month/Year): \_\_\_\_\_

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? ☐ Yes ☒ No

- ☐ Wheelchair accessible hearing room and other facilities.
- ☐ Interpreter or other auxiliary aid for the hearing impaired.
- ☐ Reader or other auxiliary aid for the visually impaired.
- ☐ Spokesperson or other auxiliary aid for the speech impaired.
- ☐ Other: \_\_\_\_\_

Attorney Name: John J. Meadows (WV Bar #9442)  
Jason P. Foster (WV Bar #10593)

Representing:

Firm: Steptoe & Johnson, PLLC

☒ Plaintiff

☐ Defendant

Address: PO Box 1588

☐ Cross-Complainant

☐ Cross-Defendant

Charleston, WV 25326-1588

Telephone: (304) 353-8000

Dated: July 11, 2013

  
Signature

☐ Pro Se

OFFICE OF THE CIRCUIT CLERK  
RALEIGH  
215 MAIN STREET  
BECKLEY

RECEIPT #: 110182

DATE RECEIVED: 07/16/13

RECEIVED FROM: STEPTOE & JOHNSON

155.00

WYLIE STEEL FABRICATORS, INC.

STYLE OF CASE

VS.

ROCK & COAL CONSTRUCTION, INC.

CASE #: 13-C-566

IN PAYMENT OF FILING FEE  
BY Check 715163

Paul Flanagan  
CLERK OF THE CIRCUIT COURT

BY

