

ORIGINAL

FILED
COURT OF CLAIMS
OF OHIO

IN THE COURT OF CLAIMS OF OHIO

2014 JUN 10 PM 3:16

GRAND VALLEY LOCAL SCHOOL :
DIST. OF EDUCATION, et al., :

Plaintiff :

v. :

BUEHRER GROUP ARCHITECTURE :
& ENGINEERING, INC. et al., :

Defendants. :

Case No. 2014-00469-PR

Judge Patrick M. McGrath

**ANSWER TO DEFENDANT/COUNTER PLAINTIFF JACK GIBSON
CONSTRUCTION COMPANY'S COUNTERCLAIM**

Plaintiffs and Counterclaim Defendants, Grand Valley Local School District Board of Education ("Grand Valley") and the Ohio School Facilities Commission ("OSFC") (collectively, the "Owners" or "Plaintiffs") for their answer to the counterclaim filed by Defendant and Counterclaim Plaintiff Jack Gibson Construction Company ("JGCC"), allege and aver as follows:

1. Paragraph 1 of JGCC's counterclaim requires no substantive response.
- 2-4. Plaintiffs state that the contracts referenced in Paragraphs 2, 3 and 4 of the counterclaim speak for themselves.
5. Plaintiffs admit that JGCC breached a number of contractual duties owed to Plaintiffs and that Plaintiffs were dissatisfied with JGCC's poor workmanship and supervision and control over its subcontractors as alleged in Paragraph 5 of the counterclaim.
6. Plaintiffs deny the allegations contained in Paragraph 6 of the counterclaim.
7. In response to Paragraph 7 of the counterclaim, Plaintiffs deny that OSFC demanded that JGCC agree to the terms of a Memorandum of Understanding Agreement ("MOU") and further answering state that the MOU speaks for itself. Plaintiff deny for lack of knowledge

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- the remaining allegations contained in Paragraph 7 of the counterclaim.
- 8-10. Plaintiffs state that the MOU referenced in Paragraphs 8, 9 and 10 of the counterclaim speaks for itself. Further answering, Plaintiffs deny all other allegations contained in Paragraphs 8, 9 and 10 of the counterclaim.
- 11–14. Plaintiffs deny the allegations contained in Paragraphs 11, 12, 13 and 14 of the counterclaim.
15. Plaintiffs admit to a payment to JGCC in the amount of \$17,487.00 as stated in Paragraph 15 of the counterclaim, but deny that the amount paid was a “partial payment” and that a “balance due” was owed to JGCC.
16. Plaintiffs deny the allegations contained in Paragraph 16 of the counterclaim and state that the MOU speaks for itself.
17. Plaintiffs deny the allegations contained in Paragraph 17 of the counterclaim.
18. Paragraph 18 of the counterclaim does not require a substantive response.
19. Plaintiffs deny the allegations contained in Paragraph 19 of the counterclaim.
20. Plaintiffs deny the allegations contained in Paragraph 20 of the counterclaim and, further answering state that the MOU speaks for itself.
21. Plaintiffs admit to a payment to JGCC in the amount of \$17,487.00 as stated in Paragraph 21 of the counterclaim, but deny that the amount paid was a “partial payment” and that a “balance due” is owed to JGCC.
- 22–24. Plaintiffs deny the allegations contained in Paragraphs 22, 23 and 24 and, further answering, state that the MOU speaks for itself.
25. To the extent Paragraph 25 requires an answer, Plaintiffs state that O.R.C. § 2721 speaks for itself and, further answering, state as follows:
- A. The MOU speaks for itself; and

B–E. Plaintiffs deny the allegations contained in Paragraph 25, B, C, D and E of the counterclaim.

AFFIRMATIVE DEFENSES

26. JGCC's counterclaim fails to state a claim upon which relief can be granted.
27. JGCC's claims are barred, in whole or part, by its own breach of contract.
28. JGCC's claims are barred, in whole or part, to the extent that such were caused by JGCC's own acts or omissions.
29. JGCC's claims are or may be barred in whole or in part by an accord and satisfaction.
30. JGCC's claims are or may be barred by its failure to mitigate its alleged damages and losses.
31. JGCC's losses and damages, if any, were caused in whole or part by the conduct of others.
32. If Plaintiffs owe any amount to JGCC, which is denied, Plaintiffs may be entitled to set-offs, credits and recoupment against any amount due.
33. JGCC's claims are or may be barred by JGCC's failure to comply with the Contract's Dispute Resolution Procedures.
34. JGCC's claims may be barred by the doctrines of waiver and estoppel.
35. JGCC's claims are or may be barred as a matter of law pursuant to the terms of the Contract and Ohio Revised Code Section 153.12.
36. JGCC's claims are or may be barred, in whole or in part, by its own breach of contract.
37. Plaintiffs reserve the right to add additional affirmative defenses as discovery proceeds.

Wherefore, having fully answered, Plaintiffs move that JGCC's counterclaim be dismissed with prejudice, at JGCC's expense, and that this Court award Plaintiffs the costs and expenses that have been incurred in defending JGCC's counterclaim.

Respectfully submitted,

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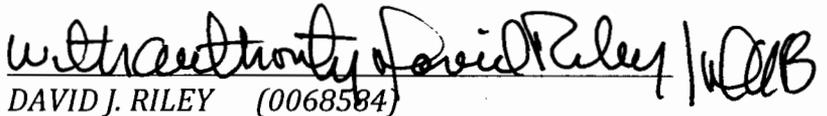
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by electronic mail and regular U.S.

Mail, postage prepaid, this 10th day of June, 2014, to the following Counsel:

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| <p>McMillan Construction Limited c/o David O. McMillan 26457 State Route 58 Wellington, OH 44090</p> <p><i>Defendant McMillan Construction Ltd aka McMillan Construction Company</i></p> | <p>Patrick F. Roche Davis & Young 1200 Fifth Third Center 600 Superior Avenue East Cleveland, OH 44114</p> |



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