

ORIGINAL

FILED
COURT OF CLAIMS
OF OHIO

IN THE COURT OF CLAIMS OF OHIO

2014 JUL -3 PM 3:07

TRANSAMERICA BUILDING
CO., INC.

Plaintiff,

v.

OHIO SCHOOL FACILITIES
COMMISSION

Defendant.

Case No. 2013-00349

Referee Samuel Wampler

**DEFENDANT OHIO SCHOOL FACILITIES COMMISSION'S
PRE-TRIAL STATEMENT**

I. STATEMENT OF THE CASE.

As this Court knows from reading Defendant's Motion for Summary Judgment, Plaintiff was the low bid, lump sum general trades contractor for the construction of the new student dormitories on the campus of the Ohio School for the Deaf and Blind.

Despite agreeing to do this work for a lump sum, the Plaintiff-contractor, by way of claim, seeks to nearly double the price that it agreed to build these dorms for. On that basis alone, Plaintiff's claim has no credibility.

Plaintiff seems to be trying to advance a delay claim – but it really isn't. While it is true that Plaintiff was on the project six months longer than it had anticipated, it only requested an additional twenty days of time during the course of the project. Further, Plaintiff is seeking to be reimbursed for all the work it did during the six month delay period, whether or not it was

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original scope work. Just because a contractor does work later than planned, that doesn't mean it has a delay claim. Plaintiff is seeking a double recovery.

In an effort to take their job cost losses and back into a claim, Plaintiff has also created a lost productivity claim. Such a claim is always a reflection that the contractor did not keep contemporaneous records of the time and money it claimed to be have lost. That is always telling as to the legitimacy of the claim. The loss productivity claim will also fail for a myriad of other reasons that will be established at trial.

Plaintiff has a home office overhead claim that will fail under the Supreme Court's authority of *Complete General v. Ohio Dept. of Transp.*, 94 Ohio St.3d 54, 2002-Ohio-59, 760 N.E.2d 364. Plaintiff also seeks double recovery of home office overhead throughout their claim.

Plaintiff has presented an expert witness who finds fault with the Project's plans and another expert who finds fault with the Project's scheduling. Yet, neither of Plaintiff's experts makes any casual connection between these alleged deficiencies and Plaintiff's claim. Defendant will establish that Plaintiff's losses were self-inflicted. It had to replace two of its own superintendents and defaulted its own sub-contractors. In one instance, Plaintiff even loaned its sub-contractor \$400,000.00.

Plaintiff is really a developer, not a general contractor. It had planned, when putting its bid together, to sub-contract the work. It got in trouble during the course of the project when its subcontractors backed out of their bids and Plaintiff ended up having to self-perform much of the work.

Plaintiff's workmanship was poor, to the point that there were over 700 punch list items to be corrected on just one of the twelve dormitories built by the Plaintiff.

OSFC, on behalf of the School for the Deaf and Blind has brought a counterclaim against Plaintiff for its shoddy workmanship.

II. WITNESSES.

Depending on Plaintiff's case-in-chief, Defendant reserves the right to call as witnesses those who have been deposed in this case. That would include representatives of Transamerica, as on cross-examination; representatives of the Construction Manager, LendLease; representatives of the A/E, SHP, its expert; and Defendant's expert, Andy Englehart.

III. EXHIBITS.

Depending on Plaintiff's case-in-chief, Defendant would reserve the right to introduce any exhibit introduced in the depositions in this case; any exhibit identified by the expert reports and any exhibit from the project record, including, but not limited to, Plaintiff's bid; the contract documents; the project schedules; RFIs, Change Orders, 72 hour and 5/15 Notices; documents assessing LDs; project photographs; Plaintiff's Article 8 claim and the responses thereto; job cost reports; punch lists and Plaintiff's requests for time.

IV. OUTSTANDING MOTIONS.

Defendant's Motion for Summary Judgment has been fully briefed and is awaiting decision by this Court.

V. TRIAL.

The parties were informed by the Court that the trial will be continued due to the pendency of Defendant's motion for summary judgment and mediation. It is anticipated that Defendant can put on its case in two to three days.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Defendant's Pre-Trial Statement was sent by regular U.S. Mail, postage prepaid, this 3rd day of July, 2014, to:

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