

ORIGINAL

FILED
COURT OF CLAIMS
OF OHIO

IN THE COURT OF CLAIMS OF OHIO

2014 JUL 22 PM 3: 28

OHIO DEPARTMENT OF
TRANSPORTATION,

Plaintiff/Counter-Defendant,

v.

E.J. WARD, INC.,

Defendant/Counter-Plaintiff.

Case No. 2014-00405-PR

DEFENDANT E.J. WARD, INC.'S ANSWER TO THE AMENDED COMPLAINT

For its Answer to the Amended Complaint of the Ohio Department of Transportation ("ODOT"), Defendant E.J. Ward, Inc. ("E.J. Ward") states as follows:

1. In response to Paragraph 1, E.J. Ward states that the documents attached to the Amended Complaint speak for themselves and denies any allegation that alters or mischaracterizes the content or meaning of the documents. E.J. Ward denies all remaining allegations in Paragraph 1.

2. E.J. Ward denies the allegations of Paragraph 2.

3. In response to Paragraph 3, E.J. Ward admits that ODOT paid E.J. Ward \$2,130,243.84 of the \$6,048,809.00 contract price in connection with E.J. Ward's work on the system. E.J. Ward denies all remaining allegations of Paragraph 3.

4. E.J. Ward denies the allegations of Paragraph 4.

THE PARTIES

5. Upon information and belief, E.J. Ward admits the allegations of Paragraph 5.

6. E.J. Ward admits the allegations of Paragraph 6.

ON COMPUTER

JURISDICTION AND VENUE

7. The Amended Complaint does not contain any paragraphs numbered 7 through 9.

8. In response to Paragraph 10, E.J. Ward states that the common pleas court had jurisdiction over ODOT's original Complaint prior to E.J. Ward's Petition for Removal.

9. In response to Paragraph 11, E.J. Ward states that Exhibit B speaks for itself and denies any allegation that alters or mischaracterizes the content or meaning of Exhibit B. E.J. Ward admits the remaining allegations of Paragraph 11.

10. E.J. Ward admits the allegations of Paragraph 12 as it relates to the original Complaint. Answering further, E.J. Ward states that this action is properly venued in this Court following E.J. Ward's Petition for Removal.

COUNT I. BREACH OF CONTRACT

11. E.J. Ward incorporates by reference the above-numbered paragraphs as though set forth herein.

12. In response to Paragraph 14, E.J. Ward states that Exhibit A speaks for itself and denies any allegation that alters or mischaracterizes the content or meaning of Exhibit A. Answering further, E.J. Ward is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding ODOT's intent, and therefore denies same. E.J. Ward denies all remaining allegations of Paragraph 14.

13. In response to Paragraph 15, E.J. Ward states that Exhibit C speaks for itself and denies any allegation that alters or mischaracterizes the content or meaning of Exhibit C. E.J. Ward admits the remaining allegations of Paragraph 15.

14. In response to Paragraph 16, E.J. Ward states that Exhibit A speaks for itself and denies any allegation that alters or mischaracterizes the content or meaning of Exhibit A. E.J. Ward admits the remaining allegations of Paragraph 16.

15. In response to Paragraph 17, E.J. Ward states that Exhibits D and E speak for themselves and denies any allegation that alters or mischaracterizes the content or meaning of the Exhibits. E.J. Ward admits the remaining allegations of Paragraph 17.

16. In response to Paragraph 18, E.J. Ward admits that the installation of the system started sometime in the fall of 2012. E.J. Ward denies the remaining allegations of Paragraph 18.

17. E.J. Ward denies the allegations of Paragraph 19.

18. In response to Paragraph 20, E.J. Ward admits that ODOT improperly terminated the contract with E.J. Ward. E.J. Ward denies the remaining allegations of Paragraph 20.

19. E.J. Ward denies the allegations of Paragraph 21.

20. E.J. Ward denies the allegations of Paragraph 22.

21. E.J. Ward denies the allegations of Paragraph 23.

COUNT II. BREACH OF EXPRESS WARRANTY

22. E.J. Ward incorporates by reference the above-numbered paragraphs as though set forth herein.

23. In response to Paragraph 25, E.J. Ward states that the terms of the applicable contracts and RFP speak for themselves and denies any allegation that alters or mischaracterizes the content or meaning of the contract and/or RFP. E.J. Ward denies all remaining allegations of Paragraph 25.

24. In response to Paragraph 26, E.J. Ward states that the terms of the applicable contract speak for themselves and denies any allegation that alters or mischaracterizes the content or meaning of the contract or any of its terms.

25. E.J. Ward denies the allegations of Paragraph 27.

26. E.J. Ward denies the allegations of Paragraph 28.

27. E.J. Ward denies the allegations of Paragraph 29.

28. E.J. Ward denies the allegations of Paragraph 30.

COUNT III. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

29. E.J. Ward incorporates by reference the above-numbered paragraphs as though set forth herein.

30. Paragraph 32 contains legal conclusions and therefore no responsive pleading is required. To the extent such is required, E.J. Ward denies same and leaves ODOT to its proof.

31. E.J. Ward denies the allegations of Paragraph 33.

32. E.J. Ward denies the allegations of Paragraph 34.

33. E.J. Ward denies the allegations of Paragraph 35.

34. E.J. Ward denies the allegations of Paragraph 36.

**COUNT IV. BREACH OF IMPLIED WARRANTY OF FITNESS
FOR A PARTICULAR PURPOSE**

35. E.J. Ward incorporates by reference the above-numbered paragraphs as though set forth herein.

36. E.J. Ward denies the allegations of Paragraph 38.

37. E.J. Ward denies the allegations of Paragraph 39.

38. E.J. Ward denies the allegations of Paragraph 40.

39. E.J. Ward denies the allegations of Paragraph 41.

COUNT V. UNJUST ENRICHMENT

40. E.J. Ward incorporates by reference the above-numbered paragraphs as though set forth herein.

41. E.J. Ward denies the allegations of Paragraph 43.

42. E.J. Ward denies the allegations of Paragraph 44.

43. E.J. Ward denies the allegations of Paragraph 45.

44. E.J. Ward denies the allegations of Paragraph 46.

PRAYER FOR RELIEF

45. In response to the un-numbered "WHEREFORE" Paragraph and its subsections, E.J. Ward denies same.

46. E.J. Ward denies each and every allegation contained in ODOT's Amended Complaint not specifically admitted herein as true.

AFFIRMATIVE AND OTHER DEFENSES

FIRST AFFIRMATIVE DEFENSE

47. The Amended Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

48. The Amended Complaint is barred, in whole or in part, by the doctrines of estoppel, waiver, and laches.

THIRD AFFIRMATIVE DEFENSE

49. The Amended Complaint is barred by the applicable statutes of limitation.

FOURTH AFFIRMATIVE DEFENSE

50. The Amended Complaint is barred, in whole or in part, by ODOT's failure to mitigate damages.

FIFTH AFFIRMATIVE DEFENSE

51. The Amended Complaint is barred, in whole or in part, by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

52. The Amended Complaint is barred, in whole in in part, by ODOT's breach of the contract.

SEVENTH AFFIRMATIVE DEFENSE

53. ODOT's damages, if any, are subject to the doctrine of set-off due to ODOT's improper termination of the applicable contract(s).

EIGHTH AFFIRMATIVE DEFENSE

54. The Amended Complaint is barred, in whole or in part, because allowing ODOT to recover damages would unjustly enrich ODOT by permitting it to knowingly and unjustly retain a benefit that E.J. Ward conferred on ODOT through performance of the gap analysis and fuel management system design, installation, and delivery.

NINTH AFFIRMATIVE DEFENSE

55. The Amended Complaint is barred, in whole or in part, by warranty limitations and/or disclaimers.

TENTH AFFIRMATIVE DEFENSE

56. The Amended Complaint is barred, in whole or in part, by ODOT's own conduct and/or inaction.

ELEVENTH AFFIRMATIVE DEFENSE

57. ODOT's claims are barred, in whole or in part, by ODOT's failure to exhaust all contractual remedies.

TWELFTH AFFIRMATIVE DEFENSE

58. ODOT's claims are barred, in whole or in part, by ODOT's failure to exhaust all administrative remedies.

THIRTEENTH AFFIRMATIVE DEFENSE

59. ODOT's claims are barred, in whole or in part, for failure to satisfy conditions precedent.

FOURTEENTH AFFIRMATIVE DEFENSE

60. E.J. Ward reserves and asserts all affirmative defenses available under any applicable federal or state law, including the Ohio Rules of Civil Procedure.

FIFTEENTH AFFIRMATIVE DEFENSE

61. E.J. Ward reserves the right to supplement and amend its Answer and affirmative defenses with additional defenses that become available or apparent during the course of investigation, preparation, or discovery.

WHEREFORE, E.J. Ward demands that ODOT's Amended Complaint be dismissed with prejudice and that E.J. Ward recover all of its attorneys' fees, expenses, and costs, and for such other relief as the Court may deem just and proper.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing DEFENDANT E.J. WARD'S ANSWER TO THE AMENDED COMPLAINT was sent via regular U.S. mail, postage prepaid, this 22nd day of July, 2014 to:

William C. Becker
Richard Silk, Jr.
Principal Assistant Attorney General
Court of Claims Defense
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130
Counsel for Plaintiff Ohio Department of Transportation



Nicole R. Woods