

IN THE COURT OF CLAIMS

Grand Valley Local School District, et al.)

Plaintiff/Counter Defendants,)

v.)

Buehrer Group Architecture &)
Engineering, Inc., et al.)

Defendants,)

v.)

Jack Gibson Construction Co.,)

Defendant/Counter Plaintiff/)
Third Party Plaintiff,)

v.)

J. Williams Pustelak, et al.)

Third Party Defendants,)

v.)

Boak & Sons, Inc.)

Third Party Defendant/)
Fourth Party Plaintiff)

v.)

Hirschmann Construction Services, Inc.,)

Fourth Party Defendant.)

and)

Joseph Hirschmann)

Fourth Party Defendant.)

Case No. 2014-00469-PR

Judge Patrick M. McGrath

ORIGINAL

FILED
COURT OF CLAIMS
OF OHIO
2014 SEP 12 AM 11:50

**ANSWER AND COUNTERCLAIM
OF FOURTH PARTY DEFENDANT,
HIRSCHMANN CONSTRUCTION
SERVICES, INC.**

ON COMPUTER

JURY DEMAND ENDORSED HEREIN

Now comes the Fourth Party Defendant, Hirschmann Construction Services, Inc., by and through legal counsel, and hereby serves its Answer and Counterclaim to the Fourth Party Complaint in the above captioned matter.

ANSWER TO FOURTH PARTY COMPLAINT

1. The Fourth Party Defendant, Hirschmann Construction Services, Inc., admits the allegations contained in paragraphs 1 and 3 of the Complaint.

2. The Fourth Party Defendant, Hirschmann Construction Services, Inc., admits the allegations contained in paragraph 2 to the extent that it alone executed the purchase order with the Fourth Party Plaintiff, and denies that Fourth Party Defendant, Joseph Hirschmann, executed said order in any personal capacity whatsoever. Said purchase order was executed solely in a corporate capacity.

3. The Fourth Party Defendant, Hirschmann Construction Services, Inc., denies the allegations contained in paragraphs 4, 5, 6, and 7 of the Fourth Party Complaint and demands strict proof thereof at the trial of this cause.

FIRST AFFIRMATIVE DEFENSE

4. The Fourth Party Plaintiff fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

5. The Fourth Party Plaintiff fails to join necessary and indispensable parties required for full and proper adjudication of this matter, pursuant to Rules 12, 19, 19.1, 20 and 21 of the Ohio Rules of Civil Procedure.

THIRD AFFIRMATIVE DEFENSE

6. The Fourth Party Plaintiff provided materials to the Fourth Party Defendant,

Hirschmann Construction Services, Inc., to be utilized in performance of the purchase order, that were substandard, defective and/or not in compliance with the specifications required under the original and subsequent construction agreements by and between all of the parties herein this action captioned above. Therefore, the Fourth Party Plaintiff is liable for breach of contract, negligence and/or unclean hands in regards to any and all work performed and materials provided that is deemed to be defective, faulty and/or deficient in any respect.

FOURTH AFFIRMATIVE DEFENSE

7. Any and all work performed and/or materials provided that is deemed to be substandard, defective, faulty and/or deficient in any respect, is the result of the actions of another party, not yet named, discovered and/or legally permitted to be pleaded into this matter.

8. The Defendant reserves the right to add or amend defenses as discovery proceeds, including, but not limited to, estoppel, waiver and laches.

COUNTERCLAIMS AGAINST FOURTH PARTY PLAINTIFF

FIRST CLAIM FOR RELIEF

(Breach of Contract, Negligence, Breach of Express and Implied Warranties)

9. The Fourth Party Defendant/Counter Plaintiff, Hirschmann Construction Services, Inc., hereby incorporates each and every paragraph above as if fully rewritten herein.

10. The Fourth Party Defendant/Counter Plaintiff, Hirschmann Construction Services, Inc., is a for-profit corporation duly organized under the laws of the State of Pennsylvania.

11. The Fourth Party Plaintiff, Boak & Sons, Inc. ("Boak"), and the Fourth Party Defendant/Counter Plaintiff, Hirschmann Construction Services, Inc., entered into a purchase

order for roofing work. A copy of the purchase order is attached hereto as "Exhibit A."

12. Boak provided the materials to be utilized by the Fourth Party Defendant/Counter Plaintiff, Hirschmann Construction Services, Inc. Pursuant to said agreement, said materials were to conform with the specifications under the original and subsequent construction agreements by and between all of the parties herein this action captioned above, as well as be in new, good and/or adequate condition to adequately perform the function to which they were to be utilized.

13. The materials provided by Boak, were substandard, defective and/or not in compliance with the specifications required under the original and subsequent construction agreements by and between all of the parties herein this action captioned above.

14. Should any of the work and/or materials utilized on the construction job that is at issue in this matter be deemed to be defective, faulty and/or deficient in any respect, Boak is liable for any and all damages incurred by and/or judgments awarded against the Fourth Party Defendant/Counter Plaintiff, Hirschmann Construction Services, Inc., due to Boak's actions of breach of contract, negligence and breach of express and implied warranties described above.

**SECOND CLAIM FOR RELIEF
(For Indemnity and Contribution)**

15. The Fourth Party Defendant/Counter Plaintiff, Hirschmann Construction Services, Inc., hereby incorporates each and every paragraph above as if fully rewritten herein.

16. Should any of the work and/or materials utilized on the construction job that is at issue in this matter be deemed to be defective, faulty and/or deficient in any respect, Fourth Party Defendant/Counter Plaintiff, Hirschmann Construction Services, Inc., is entitled to contractual

and common law indemnity and contribution from Boak for any and all damages incurred and/or judgments awarded against it.

WHEREFORE, the Fourth Party Defendant/Counter Plaintiff, Hirschmann Construction Services, Inc., hereby respectfully prays this Court for the following:

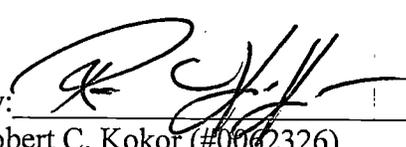
First, that the Fourth Party Complaint be dismissed at the Fourth Party Plaintiff's cost; and

Second, that it be granted judgment of its First and Second Claims for relief in an amount adequate to compensate and indemnify it for any and all damages incurred and or judgments awarded against it, and

Third, for any such other relief to which the Defendants are entitled to in equity or at law.

Respectfully Submitted:

Robert C. Kokor Co., LPA

By: 
Robert C. Kokor (#0062326)
48 West Liberty Street
Hubbard, Ohio 44425
(330) 448-1133
Attorney for Fourth Party Defendant/
Fourth Party Counter Plaintiff,
Hirschmann Construction Services, Inc.

JURY DEMAND

Fourth Party Defendant/Counter Plaintiff, Hirschmann Construction Services, Inc., demands a trial by jury on all claims herein.



Robert C. Kokor (#0062326)
Attorney for Fourth Party
Defendant/Counter Plaintiff
Hirschmann Construction Services, Inc.

CERTIFICATION

This is to certify that a copy of the foregoing was served by regular U.S. Mail this 11th day of September, 2014 upon the following party:

David A. Beals, Esquire
Assistant Attorneys General
Court of Claims Defense
150 E. Gay Street, 18th Floor
Columbus, Ohio 43215
Attorneys for Grand Valley School Dist.

Brian C. Lee, Esquire
Reminger Co., LPA
101 West Prospect Avenue W, #1400
Cleveland, Ohio 44115-1093
Attorney for Buehrer Group

Brian Buzby
Porter Wright LLP
41 S. High Street Attorney for Hartford Fire Insurance Co.
Columbus, Ohio 43215
Attorney for Hartford Fire Insurance Co.

Stephen Withee
Frost Brown Todd LLC
10 W. Broad Street, STE 2300
Columbus, Ohio 43215-3484
Attorney for Merchants Bonding Co.

Joseph A. Gerling
Lane Alton & Horst LLC
2 Miranova Place, STE 500
Columbus, Ohio 43215
Attorney for Jack Gibson Construction Company

Jay Pustelak
9070 Peach Street
Waterford, PA 16441
Defendant

Velotta Asphalt Paving Co., Inc.
P.O. Box 1930
4964 Campbell Road
Willoughby, Ohio 44096
Defendant

Patrick Roche
Davis & Young
1200 Fifth Third Center
600 Superior Avenue E
Cleveland, Ohio 44114-2654



Robert C. Kokor (#0062326)
Attorney for Fourth Party
Defendant/Counter Plaintiff
Hirschmann Construction Services, Inc.

Sep. 10. 2014 11:30AM

No. 2148 P. 2

FROM: HIRSCHMANN CONSTRUCTION

FFX NO. : 724-346-9199

JUL 09 2004 12:43PM P2

JUN-29-2004 09:39 FROM: BUREAU ROOFING

33079338455

70:724 346 9199

P.002/006

Transmittal Order No. 4872

Boak and Sons, Inc.

75 Victoria Rd.

Youngstown, OH 44516

Phone: 330.793.5646 Fax: 330.793.8455

"An Equal Opportunity Employer"

This notice was printed on all transmittal orders. Please do not remove this notice from the transmittal order. If you have any questions, please call the office at 330.793.5646. Fax: 330.793.8455. E-mail: info@boakandsons.com

Date: June 2, 2004

Hirschmann Construction Services

6222 Saddlebrook Drive
Herringsburg, PA 16148

Attention: Joe Hirschmann

Office Contact: Joseph A. Capri

Project Contact: Ken Berthel
Jack Gilman Construction

Telephone: 724-346-9119

Mobile Phone: 440-437-6430

A. Furnish all labor, tools, equipment and supervision required to perform the Vandalized Roof Installation and Reroofing Competition Shingles Roofing work for the Grand Valley New PK-13 Building Project located at 311 North Maple St., Orwell, Ohio 44076, Armstrong County.

B. Contract Documents: All work is to be in strict accordance with all drawings, specifications and addenda as prepared by architect, Beatty Group. Specifications are dated 7/7/03, and drawings for Competition Documents are dated 7/7/03. Contract documents also include Addendum No. 1, dated 7/23/03 and Addendum No. 2, dated 8/13/03. The following drawings have been accepted by the owner and become a part of the contract: G1, G2, G3, G4, G5, G6, G7, G8, G9A, G9B, G10, G11, G12, G13A, G13B, G13C, G14, G15 and G16. See all General Condition requirements as listed in "Table of Contents" pages 1 thru 6 and in particular Article 7 - Changes in the work and Article 15 - Subcontractors & Material Suppliers. Also reference sections 01010 - Summary of Work, 01200 - Project Meetings including Form, 1, 02B Preparatory Pre-Installation Conference, 01310 - Project Schedule, 01600 - Product Options and Substitutions, and 01770 - Project Closeout

C. Specifications: It is the responsibility of each contractor and subcontractor to be fully aware of all conditions and numbers of the work to be performed and to carefully examine all drawings and specifications to fully inform himself of all requirements to complete the work. Reference in particular Sections 01010, 07223 and 07310 of the specifications for the scope and requirements of your work. Also reference your quote. Contract documents shall govern scope & requirements. Include all permits & fees for your work. Your work is to include but not be limited to:

1. Safety is a priority and all OSHA rules and regulations must be followed.
2. All work is to be done in a safe workable manner. Provide cleanup and removal of debris on a daily basis. Protect all existing materials and conditions. Repair all damage caused by your work.

OSHA "Right-to-Know" Hazard Communication Requirements apply to all purchase orders.

Please sign copy and return

BOAK AND SONS, INC.

[Signature]
Accepted For

E.X.N.