

IN THE COURT OF CLAIMS

Grand Valley Local School District, et al.)

Case No. 2014-00469-PR

Plaintiff/Counter Defendants,)

Judge Patrick M. McGrath

v.)

ORIGINAL

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

Defendants,)

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

v.)

Jack Gibson Construction Co.,)

Defendant/Counter Plaintiff/
Third Party Plaintiff,)

v.)

J. Williams Pustelak, et al.)

Third Party Defendants,)

**ANSWER AND COUNTERCLAIM
OF FOURTH PARTY DEFENDANT,
JOSEPH HIRSCHMANN**

v.)

Boak & Sons, Inc.)

Third Party Defendant/
Fourth Party Plaintiff)

v.)

Hirschmann Construction Services, Inc.,)

Fourth Party Defendant.)

and)

Joseph Hirschmann)

JURY DEMAND ENDORSED HEREIN

Fourth Party Defendant.)

ON COMPUTER

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

ANSWER TO FOURTH PARTY COMPLAINT

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

2. The Fourth Party Defendant, Hirschmann Construction Services, Inc., denies the allegations contained in paragraphs 2, 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, pursuant to Rule 12 of the Ohio Rules of Civil Procedure..

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 has misjoined the Fourth Party Defendant, Joseph Hirschmann, as Mr. Hirschmann at no time acted in a personal capacity in regards to the purchase order at issue, but as an agent in his corporate capacity. As such, this Court lacks subject matter jurisdiction and jurisdiction over his person, pursuant to Rule 12(B) of the Ohio Rules of Civil Procedure.

FOURTH AFFIRMATIVE DEFENSE

7. Should the Fourth Party Defendant, Joseph Hirschmann, be found to be a proper party herein, the Fourth Party Plaintiff provided materials 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.

FIFTH AFFIRMATIVE DEFENSE

8. 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.

9. The Fourth Party 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)

10. The Fourth Party Defendant/Counter Plaintiff, Joseph Hirschmann, hereby incorporates each and every paragraph above as if fully rewritten herein.

11. The Fourth Party Defendant/Counter Plaintiff, Joseph Hirschmann, is and was a resident of the State of Pennsylvania at all times relevant herein.

12. Should the Fourth Party Defendant, Joseph Hirschmann, be found to be a proper

party to his action herein, then a purchase order for construction work was executed herein. A copy of the purchase order is attached hereto as "Exhibit A."

13. Boak provided the materials to be utilized on the construction job. 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.

14. 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.

15. 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, Joseph Hirschmann, 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)**

16. The Fourth Party Defendant/Counter Plaintiff, Joseph Hirschmann, hereby incorporates each and every paragraph above as if fully rewritten herein.

17. 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, Joseph Hirschmann, 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, Joseph Hirschmann, 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 on his First and Second Claims for relief in an amount adequate to compensate and indemnify him for any and all damages incurred and or judgments awarded against him, and

Third, for any such other relief to which the Defendant is 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

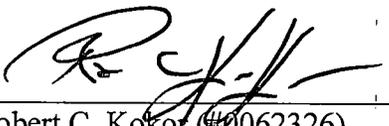
Attorney for Fourth Party Defendant/

Counter Plaintiff,

Joseph Hirschmann

JURY DEMAND

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


Robert C. Kokor (#0062326)

Attorney for Fourth Party

Defendant/Counter Plaintiff

Joseph Hirschmann

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
Joseph Hirschmann

FROM : HIRSCHMANN CONSTRUCTION

FAX NO. : 724-346-9199

Jul. 09 2004 12:43PM P2

JUN 25 2004 09:38 FROM: BOAK ROOFING

3307938455

TO: 724 346 9199

P.002/006

Purchase Order No. 4972

Boak and Sons, Inc.
75 Victoria Rd.
Youngstown, OH 44516
Phone: 330.793.5646 Fax: 330.793.8455
"An Equal Opportunity Employer"

This order contains all correspondence, plus a shipping paper issued in duplicate. Acceptance of this purchase order indicates conditions stated on the back hereof apply. Articles 2, 4, 7, and 9 do not apply to material orders only.

To: Hirschmann Construction Services
6222 Saddlebrook Drive
Hermitage, PA 16148

Attention: Joe Hirschmann

Telephone: 724-346-9119

Date: June 2, 2004

Office Contact: Joseph A. Coops

Jobite Contact: Ken Hendrick
Jack Gilman Construction

Intake Phone: 440-437-5430

A. Furnish all labor, tools, equipment and supervision required to perform the Ventilated Roof Installation and Fiberglass Composition Shingle Roofing work for the Grand Valley New PK-12 Building Project located at 311 North Maple St., Orwell, Ohio 44076, Ashland County.

B. Contract Documents: All work is to be in strict accordance with all drawings, specifications and addenda as prepared by architect: Beutler Group. Specifications are dated 7/7/03, and drawings for Construction Documents are dated 07/03. Contract documents also include Addendum No. 1, dated 7/23/03 and Addendum No. 2, dated 8/13/03. The following alternatives have been accepted by the owner and become a part of this contract: G1; G2; G3; 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 - Change in the Work and Article 15 - Subcontractors & Material Suppliers. Also reference Sections 01010 - Summary of Work, 01200 - Project Meetings including Para. 1.02E Preparatory Pre-Installation Conference, 01310 - Project Schedule, 01630 - Product Options and Substitutions, and 01770 - Project Closeout.

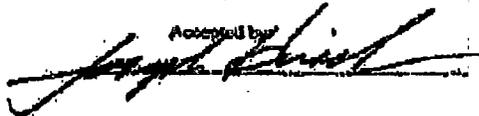
C. Clarifications: It is the responsibility of each contractor and subcontractor to be fully aware of all conditions and limitations of the work to be performed and to carefully examine all drawings and specifications to fully inform himself of all requirements to complete the work. Reference in particular Sections 01010, 07225 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 neat workmanlike 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.

Accepted by


"Ex. A"