

ORIGINAL

FILED
COURT OF CLAIMS
OF OHIO

IN THE COURT OF CLAIMS
STATE OF OHIO

2014 SEP 29 PM 3: 22

**Grand Valley Local School
District Board of Education, et al.**

Plaintiffs

-vs-

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

Defendants

Case No. 2014-00469-PR

Judge McGrath

**MEMORANDUM IN OPPOSITION OF DEFENDANT/COUNTERCLAIM PLAINTIFF
JACK GIBSON CONSTRUCITON COMPANY TO MOTION FOR SUMMARY
JUDGMENT OR IN THE ALTERNATIVE MOTON FOR JUDGMENT ON THE
PLEADINGS**

I. INTRODUCTION

This case concerns the design and construction of a new K-12 school construction project for Plaintiff Grand Valley School District ("Grand Valley") located in Orville, Ohio, constructed between 2001 and 2005 (the "Project"). Jack Gibson Construction Company, Inc. ("Jack Gibson") served as the general trades contractor during the Project.

Plaintiffs, the Ohio Schools Facilities Commission ("OSFC") and Grand Valley Local School District Board of Education (collectively "Plaintiffs"), have moved for judgment on the pleadings Civ. R. 12(C), or alternatively, for summary judgment under Civ. R. 56(C)("Plaintiffs' Motion"). Plaintiffs seek dismissal of a Jack Gibson's counterclaim alleging breach of an agreement entitled "Memorandum of Understanding" ("Agreement") entered into during July of 2013. Pursuant to the Agreement, Plaintiffs agreed to pay Jack Gibson for performing remedial work to the Grand Valley schools

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which Plaintiffs agreed was "betterment" or work that improved upon the original plans and specifications of the architect hired by Plaintiffs, Buehrer Group Architecture & Engineering, Inc., or that was otherwise outside of the scope of work contained in Jack Gibson's original construction contract. The scope of the remedial work was agreed to in advance by Plaintiffs and their consultant. Jack Gibson performed \$156,276.13 worth of work under the Agreement that fell under the category of "betterment" or outside Jack Gibson's original scope of work. Plaintiffs admit in their Motion that they made a partial payment of \$20,000.00 to Jack Gibson for this work, leaving a balance due and owing to Jack Gibson of \$136,376.13.

Plaintiffs allege that the Agreement is not enforceable because it lacks evidence of a "meeting of the minds", a contract price, scope of work and certification of available funds required by R.C. §5705.41. However, Plaintiffs are wrong on all of these points. A "meeting of the minds" is proven by the fact that both parties signed the agreement in July of 2013, Jack Gibson did the work, and Plaintiffs made a \$20,000.00 partial payment to Jack Gibson for this work. Moreover, the Agreement states that the scope of remedial work to be performed by Jack Gibson was established by the parties' consultants and contained in their repair reports attached to the Agreement. As shown below, Ohio law does not require that an exact contract price be stated in order for an agreement to be enforced.

Finally, Plaintiffs are incorrect that the Agreement was unenforceable because it lacked a certification under R.C. §5705.41, which contrary to Plaintiffs' mistaken belief does not apply to school construction projects. R.C. §5705.412 applies to school construction projects. Ohio Courts have held that when a school district pays for

construction work from accounts containing proceeds from bond issues combined with building assistance funds received from the State, a written certification under R.C. §5705.41 is *not* required. Grand Valley has admitted that the account from which it paid Jack Gibson for remedial work contained proceeds from local bond levies and construction assistance funds received from the State.

Plaintiffs' Motion for Judgment on the Pleadings must be denied because Jack Gibson had pleaded facts satisfying all of the elements of the establishment and breach of an enforceable contract. Moreover, there are facts alleged in the Motion (e.g., payment of \$2,513.00 balance, bringing total paid to Jack Gibson for remedial work to \$20,000.00) which were not alleged in the pleadings. Plaintiffs' alternative Motion for Summary Judgment must also be denied because Jack Gibson has pointed to sufficient evidence establishing a genuine issue of material fact requiring a trial to decide as to both the existence of an enforceable Agreement and its breach by the Plaintiffs.

II. FACTS

The following facts are supported by the pleadings, the Affidavit of Jim Breese, (attached as Exhibit 1¹) and the Answers and Responses to Jack Gibson's Request for Admissions, Interrogatories and Request for Production of Documents served on Grand Valley Local School District Board of Education ("Grand Valley") (attached as Exhibit 2).

The Project was constructed between 2001 and 2005 and was paid for by funds generated through local bond levies and received from OSFC. (First Amended Complaint ["FAC"] ¶¶2-6; Affidavit of Jim Breese ¶3). On February 25, 2014, Plaintiffs filed an action in the Court of Common Pleas of Ashtabula County, Ohio captioned *Grand Valley Local School District Board of Education, et al., v. Buehrer Group, et al.*,

¹ This Affidavit was previously filed in support of Jack Gibson's Civ. R. 56(F) Motion.

Case No. 2014-CV-161, in which they alleged claims against their project architect and engineer for breach of contract and professional negligence for errors and omissions in the design of the project. Plaintiffs' Complaint also alleges claims for breach of contract and unworkmanlike performance against McMillan Construction Limited, the site contractor hired by Plaintiffs and Jack Gibson.

On May 8, 2014, Jack Gibson filed an Answer and Counterclaim against Plaintiffs for their breach of the Agreement, which now Plaintiffs admit signing in July of 2013. (Counterclaim ¶7; Breese Aff. ¶4). The Agreement required Gibson to perform certain remedial work and other repairs to the school buildings before this lawsuit was filed.

The Agreement states in relevant part that:

WHEREAS, . . . Owners have agreed that certain aspects of the remedial work will include betterment, and that reasonable compensation will be due Gibson for such items and will need to be evaluated prior to and/or as work progresses, with payment after satisfactory completion of said work; and

WHEREAS, the Owners have also identified certain remedial work that is not the responsibility of Gibson or its subcontractors and Gibson has agreed to correct this work; and

WHEREAS, it is the intent of the Owners to provide reasonable compensation for remedial work that is not attributed to Gibson or its subcontractors as agreed by the Parties; and

WHEREAS, Gibson and the Owners have retained consultants to determine the items of remedial work referenced herein, and the consultants have agreed as set forth in Attachments A and B to the approximate scope of the work; and . . .

(Counterclaim ¶8; Ex. 1 attached thereto).

After the Agreement was executed, Jack Gibson performed the work identified by the consultants for Plaintiffs and Jack Gibson in Attachments A and B. (Counterclaim ¶¶13-14 Breese Aff. ¶6). The value of the work Jack Gibson performed that fell under

the category of "betterment" and/or was not the responsibility of Jack Gibson or its subcontractors, was \$156,276.13. (Counterclaim ¶13; Breese Aff. ¶7). At the time the Counterclaim was filed, Plaintiffs had made a partial payment of \$17,487 to Jack Gibson for the remedial work. (Counterclaim ¶15). Shortly before filing their Motion, Plaintiffs made a second partial payment of \$2,513.00 to Jack Gibson for the remedial work. Plaintiffs admit in their Motion that they have only paid \$20,000.00 to Jack Gibson for the remedial work, leaving a balance due and owing Jack Gibson of \$136,376.13. At no time prior to executing the Agreement, or before Jack Gibson began performing the remedial work, did Plaintiffs inform Jack Gibson that they only intended on paying \$20,000.00 for this work. (Breese Aff. ¶7).

Plaintiff Grand Valley admits in its answers to the Requests for Admissions and Interrogatories that the account number "010" from which it made a partial payment to Jack Gibson for the remedial work only contained proceeds from a bond levy and construction assistance funds received from the State. (Admission No. 13; Interrogatory Answer No. 3). Account "010" did not contain any money from Grand Valley's general operating funds. (Admission No. 14).

III. LAW & ARGUMENT

A. Plaintiffs' Civ. R. 12(C) Motion for Judgment on the Pleadings Should be Denied Because Jack Gibson's Counterclaim Alleges Facts Establishing Both the Existence of a Contract with Plaintiffs and Plaintiff's Breach of Contract.

When a motion for judgment on the pleadings is made under Civ. R. 12(C), the non-moving party is entitled to have all material allegations in the pleadings, with all

reasonable inference to be drawn therefrom, construed in the non-moving party's favor as true. *Peterson v. Teodosio* (1973), 34 Ohio St.2d 161, 297 N.E.2d 113.

"A contract is (1) an agreement, (2) with consideration (i.e., quid pro quo), (3) between two or more parties, and (4) to do or not to do a particular thing." *O'Brien v. Ohio State Univ.*, 10th Dist. No. 06AP-946, 2007-Ohio-4833, ¶44. Jack Gibson's Counterclaim alleges facts, when deemed admitted, establishing (1) that a valid contract exists; (2) performance of the contract by the Jack Gibson; (3) non-performance, or breach, by the plaintiffs; and (4) damages resulting from that breach. *Id.*

The Counterclaim identifies an Agreement requiring clear "quid pro quo" – that is, plaintiffs agreed to pay Jack Gibson for performing remedial work that was classified as "betterment" and outside of Jack Gibson's original scope of work during the Project. A "meeting of the minds" is shown because the Agreement is signed by representatives for Plaintiffs and Jack Gibson, Jack Gibson performed work under the Agreement and received a partial payment for this work from Plaintiffs. The lack of a certification under R.C. §5705.41 does not show that a "meeting of the minds" did not occur or that the Agreement was legally invalid.

Contrary to Plaintiffs' contentions in their motion, a certificate of available funds was not required under R.C. §5705.41. R.C. §5705.41 is a general statute concerning the appropriation of and expenditure of funds by taxing units. R.C. §5705.412, on the other hand, is a specific statute addressing the appropriation and expenditure of funds by school districts. See *Tri-County North Local School Bd. of Educ. v. McGuire & Shook Corp.*, 748 F. Supp. 541, 548 (1989) (explaining the history and application of both R.C. §§5705.41 and 5705.412,).

In *Tri-County*, the United States District Court for the Southern District of Ohio was asked to decide whether a certificate of funding was required to be attached to a school construction contract paid for by a local bond levy and funds from the State. The Court found that the "plain purpose" of the certification requirement under R.C. §5705.41 and its predecessors "was to prevent the incurring of an indebtedness by a municipal corporation beyond the *ordinary sources* of its *revenue* and whereby an annual excess of indebtedness will be created over these revenues . . ." (emphasis added). *Id.*, citing *Youngstown v. First Nat. Bank*, 106 Ohio St. 563, 571, 140 N.E. 176 (1922) (stating that Burns Law [i.e., R.C. §5705.41] was "designed to apply to the usual and ordinary, and every day transactions between the public and the city through its officers"). The District Court explained:

Ohio decisional law (which bespeaks a concern for protecting the ordinary sources of revenue of government) coupled with the omission of the pertinent bond language in O.R.C. §5705.412, leads this Court to the conclusion that when a construction project for a school district is to be funded through proceeds from a bond issue combined with state building assistance funds, certification would neither be relevant nor necessary since the contract could not affect the general source of funds which is available to operate the ordinary services of government.

The Plaintiff has moved this Court for summary judgment on the ground that no genuine issue of material fact exists with respect to the validity of the Defendant's contract with the Board. On the contrary, this Court holds that the absence of certification as defined under O.R.C. §5705.412 is *not* a bar to the validity of the contract in question.

Tri-County, at 549 emphasis added).

As explained in *Tri-County*, after passage of R.C. § 5705.412, R.C. § 5705.41 no longer applied to school boards. *Id.* at 548-549. A certificate of adequate funding is *not* required by R.C. §5705.412 to pay for school construction where the debt contracted for

was to be paid from the proceeds of a bond issue, combined with state school building assistance funds, kept in accounts separate and apart from the operating revenues of the school district. *Id.* at 549.

As was the case in *Tri-County*, a written certification was not required to be attached to the present Agreement because the remedial work performed by Jack Gibson was in fact paid for from the Grand Valley District account number 010, which was funded from proceeds from a local bond levy and construction assistance funds from the State. (Admission No. 13; Interrogatory Answer No. 3). Account "010" did not contain any money from Grand Valley's general operating funds. (Admission No. 14). Therefore, a certificate of adequate funding under R.C. §5705.4 did not need to be attached to the Agreement.

Plaintiffs further allege that the Agreement is not enforceable because it does not identify a contract price or scope of work. However, the Agreement clearly states that the scope of remedial work to be performed by Jack Gibson was agreed to by the parties' consultants and contained in their repair reports attached as Exhibits A and B to the Agreement.

Nor does the lack of a stated contract price render the Agreement unenforceable. In *Oglebay Norton, Oglebay Norton Co. v. Armco*, 52 Ohio St.3d 232, 556 N.E.2d 515 (1990), the Supreme Court of Ohio was asked to review the enforceability of a contract that lacked a stated contract price. The Court held that "agreements to agree" are enforceable when the parties to a contract clearly manifest an intention to be bound. *Id.* at 236. The Court explained that "if it is found that the parties intended to be bound, the court should not frustrate this intention, if it is reasonably possible to fill in some gaps

that the parties have left, and reach a fair and just result." *Id. quoting Litsinger Sign Co. v. American Sign Co.*, 11 Ohio St.2d 1, 14, 227 N.E.2d 609 (1967). The Court in *Oglebay Norton* cited with approval the following language from 1 Restatement of the Law 2d, Contracts (1981) 92, Section 33, Comment a:

*** The actions of the parties may show conclusively that they have intended to conclude a binding agreement, even though one or more terms are missing or are left to be agreed upon. In such cases courts endeavor, if possible, to attach a sufficiently definite meaning to the bargain.

'An offer which appears to be indefinite may be given precision by usage of trade or by course of dealing between the parties. Terms may be supplied by factual implication, and in recurring situations the law often supplies a term in the absence of agreements to the contrary. ***'

Therefore, even when a contract price is not stated in an otherwise enforceable agreement, extrinsic evidence such as a past course of dealing or actual performance of the agreement may be used by the court to determine the missing or ambiguous pricing term. *Id.* In the present case, there is no dispute that the Agreement was executed by Plaintiffs and that Plaintiffs made a partial payment to Jack Gibson for work performed under the Agreement. (Counterclaim, ¶¶13-15). Therefore, Plaintiffs' Motion for Judgment on the Pleadings should be overruled as Jack Gibson has pleaded facts establishing both the existence of an enforceable contract and Plaintiffs' breach of it. Moreover, Plaintiffs have alleged facts outside of the pleadings which are not proper for consideration under Civ. R. 12(C).

B. Plaintiffs Motion for Summary Judgment Should be Denied Because Jack Gibson has Pointed to Sufficient Evidence of a Genuine Issue of Material Fact Requiring a Trial to Decide.

Pursuant to Civ.R. 56(C), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Therefore, summary judgment is appropriate only under the following circumstances: (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the non-moving party, reasonable minds can come to but one conclusion, that conclusion being adverse to the non-moving party. *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46 (1978). Because summary judgment is a procedural device to terminate litigation, courts should award it cautiously after resolving all doubts in favor of the non-moving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358-359, 1992-Ohio-95, 604 N.E.2d 138 (1992).

In *Oglebay Norton*, the District Court held that the issue of whether parties intended to be bound by an agreement (even when specific pricing terms are absent) is a question of fact for the trier of fact to decide. 52 Ohio St. 3d at 235. See *Normandy Place Assoc. v. Beyer*, 2 Ohio St. 3d 102, 106, 443 N.E. 2d 161, 164 (1982) ("Whether the parties intended a contract remains a factual question, not a legal one, and as such is an issue to be resolved by the finder of fact."); see also *America's Floor Source, L.L.C. v. Joshua Homes*, 191 Ohio App.3d 493, 2010-Ohio-6296, 946 N.E.2d 799, ¶ 44

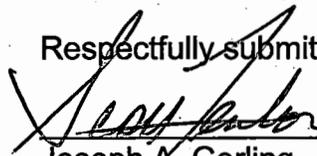
(10th Dist.) ("It is well established that the existence of a contract * * * is an issue for the trier of fact").

In the present case, Jack Gibson has pointed to facts supported by proper documentary evidence, as required by Civ. R. 56(C), establishing the existence of a binding agreement, its performance by Jack Gibson and breach by Plaintiffs of the Agreement. (See Breese Aff. ¶¶4-8). The remedial work performed by Jack Gibson included \$156,276.13 for "betterment" and/or remedial work that were not the responsibility of Gibson or its subcontractors. (Id. ¶7). Plaintiffs have only paid \$20,000 of this amount leaving a balance due and owing Jack Gibson of \$136,276.13. (Id.). Therefore, Jack Gibson has met its burden under Civ. R. 56(E) by pointing to sworn testimony establishing genuine issues of material fact requiring a trial to decide concerning the existence, enforceability and breach of the Agreement by Plaintiffs.

IV. CONCLUSION

For the above reasons, Jack Gibson respectfully requests that the Court deny Plaintiffs' Motion for Judgment on the Pleadings and alternative Motion for Summary Judgment as there are genuine issues of material fact requiring a trial to decide.

Respectfully submitted,



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**Counsel for Defendant Jack Gibson
Construction Company**

AFFIDAVIT OF JIM BREESE

STATE OF OHIO)
) SS:
COUNTY OF TRUMBULL)

I, Jim Breese being duly sworn and cautioned according to law, state as follows:

1. I am over the age of 18, I have personal knowledge of the statements made in this affidavit, and I am competent to testify regarding same.
2. During all times relevant to this case, I have been employed by the Jack Gibson Construction Company, Inc. ("Jack Gibson"). Between 2001 and 2003, I served as Vice President of Operations. On January 15, 2003, I became Jack Gibson's President.
3. Between 2001 and 2005, Jack Gibson served as the general trades contractor to build a new K through 12 school construction project for plaintiff Grand Valley School District ("Grand Valley") located in Orville, Ohio. Jack Gibson did not perform any design or site work.
4. Attached as Exhibit 1 to Jack Gibson's Answer and Counterclaim is a true and accurate copy of a Memorandum of Understanding ("MOU") executed by Jack Gibson on July 3, 2013.
5. The MOU states that plaintiffs would pay Jack Gibson for remedial work that was "betterment" or improvements to the plaintiffs' original contracts or for work that was outside of the scope of work contained in Jack Gibson's original contract.



6. Jack Gibson performed the work identified by the parties' consultants, attached as Exhibits A and B to the MOU.

7. The value of the work that was classified as "betterment", or outside the original scope of Jack Gibson's work, was \$156,276.13. Plaintiffs admit in their motion that they only paid \$20,000 of this amount which leaves a balance of \$136,376.13 owned to Jack Gibson. At no time prior to signing the MOU or performing the remedial work were we told by plaintiffs that they only intended to pay Jack Gibson \$20,000 for "betterment" or work outside of Jack Gibson's original contract. Jack Gibson has suffered a substantial economic hardship by plaintiffs' breaking their promise in the MOU to pay for this work.

8. As explained in Jack Gibson's Counterclaim, plaintiffs breached the MOU by failing to pay Jack Gibson for remedial work performed that was "betterment" and for work that was outside of Jack Gibson's original scope of work.

9. We believe that both the original construction and remedial work may have been paid for by funds obtained from local bond levies and through state construction assistance provided through the OSFC. We further believe that these funds may have been maintained in accounts separate and apart from Grand Valley's general operating funds. Although we believe that the statements contained in this paragraph are true, Jack Gibson's employees lack "personal knowledge" to offer sworn testify on these matters. Therefore, we need to seek sworn testimony directly from Grand Valley concerning the source of the funding for the original construction and remedial work.

10. Jack Gibson minimally needs a 50-day continuance of its time to file a memorandum opposing plaintiffs' motion in order to (1) serve upon both plaintiffs a brief set of requests for admission, interrogatories and requests for production of documents asking plaintiffs to identify the sources of funding for the original project and remedial work that plaintiffs agreed to reimburse Jack Gibson for; (2) afford plaintiffs the time required under Civil Rules and Local Rules to serve responses; (3) sufficient time to review plaintiffs' discovery responses; and (4) prepare a memorandum in opposition to plaintiffs' motion for summary judgment.

Further affiant sayeth naught.



Jim Breese, President
Jack Gibson Construction Company

Sworn to before me and subscribed in my presence this 6th day August 2014.



Notary  Sharon C. Morgan
Notary Public, State of Ohio
Recorded in Portage County
My Commission Expires
March 3, 2018

**COURT OF CLAIMS
STATE OF OHIO**

**Grand Valley Local School
District Board of Education, et al.**

Plaintiffs/Counter Defendants

-vs-

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

Defendants

and

Jack Gibson Construction Co.

**Defendant/Counter
Plaintiff/Third-Party Plaintiff**

-vs-

Boak & Sons, Inc., et al.

Third-Party Defendants.

Case No. 2014-00469-PR

Judge McGrath

**JACK GIBSON CONSTRUCTION COMPANY'S REQUEST FOR ADMISSIONS,
INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS TO
GRAND VALLEY LOCAL SCHOOL DISTRICT BOARD OF EDUCATION**

Pursuant to Ohio Rules of Civil Procedure 26, 33, 34 and 36, Jack Gibson Construction Company ("Jack Gibson") requests that Plaintiff Grand Valley Local School District Board of Education (the "District") which shall respond fully, in writing and under oath, to the following Requests for Admissions, Interrogatories and Requests for Production of Documents ("Discovery Requests") to Lane, Alton & Horst, Two Miranova Place, Suite 500, Columbus, Ohio 43215 within twenty-eight (28) days from service hereof. This request is continuing and must be supplemented where appropriate as required by Rule 26(E) of the Ohio Rules of Civil Procedure.



DEFINITIONS

1. "Certificate of Contraction Completion" shall have the same meaning as used in Section 10.4.1 of the General Conditions governing the Contract Documents.

2. "Communication" as used herein includes but is not limited to all written, recorded, electronic, graphic or verbal exchange of words, symbols, signs and any type of information, however produced or reproduced, whether privileged or not, including hearsay, pertaining in any way to the subject matter of this action. This definition includes all documents as defined above and any other verbal form of communications, whether in person, by telephone or by means of any other electronic communication devise.

3. "Construction Funds" refers or relates to money available to the Grand Valley School District to pay for the design and construction of the new kindergarten through 12 schools facility project which started in 2001 and was substantially completed in 2005.

4. The "District" refers or relates to the Grand Valley Local School District.

5. "General Operating Funds" refers to or relates to money that the District uses to run school operations including payroll.

6. "OSFC" refers or relates to the Ohio Schools Facilities Commission.

7. "Permanent Improvement Funds" refers or relates to money spent by the District which is spent on improving facilities that have a life span of over five years.

8. "Person" or "person" shall mean and include an actual person, partnership, firm, or corporation, or any other business or legal entity, its agents, or employees.

9. "Project" refers to the design and construction for Grand Valley of the new PK-12 School Building located at 111 Grand Valley Avenue West, Orwell, Ohio 44076, which occurred between 2001 and 2005.

10. "Repairs" or "Remedial Work" refers or relates to repairs made to the roofing and/or masonry after the Certificate of Contract Completion was issued.

11. The "State" refers or relates to the State of Ohio.

12. The words "document," and "documents," "writing," or "writings," shall include without limitation all written, electronic, recorded or graphic matters, however produced or reproduced, whether or not privileged, pertaining in any way to the subject matter of this action, including but not limited to, any and all originals, copies or notes of any and all of the following: records, notes, summaries, schedules, contracts, agreements, notebooks, drawings, sketches, invoices, orders or acknowledgements,

diaries, reports, estimates, forecasts or appraisals, work orders, memoranda or telephone memoranda, correspondence whether written, or electronic including e-mail communications, minutes, bulletins, circulars, instructions, letters, telegrams, telexes, tapes, transcripts or recordings, photographs, pictures or films, computer programs or data or other graphic, symbolic, recorded, or written materials of any nature whatsoever (whether "hard" or electronic format), as well as:

A. The name, address, telephone number, occupation, job title, and employer of the present custodian of the document;

B. The date of the making of the document and the name, address, telephone number, occupation, job title, and employer of each such person whose testimony could be used to authenticate such document and lay the foundation for its introduction into evidence;

C. The identity of each person to whom the document was addressed or distributed; and

D. The nature and substance of the document with sufficient particularity to enable it to be identified.

13. Any document which contains any comment, notation, addition, insertion or marking of any kind which is not a part of a document, or any document which does not contain a comment, notation, addition, insertion or marking of any kind, which is part of another document, is to be considered a separate document.

14. In each instance wherein you are asked to "identify" or describe a communication, your description should include, without limitation:

A. The date, type, method, and location of the communication;

B. The identity of all parties to the communication including without limitation their names, addresses, telephone numbers, occupations, job titles, and employers, both at the time of the communication and the present;

C. The substance of the communication; and

D. A description of any documents reflecting, referring to or relating to the communication.

15. "Refer," "relate" or "reflect" as used herein mean, either directly or indirectly, relevant to, noting, embodying, pertaining, containing, indicating, showing, describing, evidencing, discussing, mentioning, computing or concerning.

16. Masculine terms include the feminine and neuter. Singular terms include the plural and plural terms include the singular. The words "and" and "or" shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of the request all information that might otherwise be construed to be outside its scope.

17. To "identify" a person, or if the answer to any interrogatory refers to a person, state with respect to each such person:

- A. His or her name, address, and telephone number;
- B. His or her company or business affiliation at the date of the transaction, correspondence, or meeting referred to; and
- C. His or her title and duties in the company or business with which he or she was affiliated.

INSTRUCTIONS

1. In answering these Discovery Requests you are required to furnish all information that is available to you or subject to your reasonable inquiry, including information in the possession of your attorneys, accountants, advisors, or other persons directly or indirectly employed by, or connected with, you or your attorneys, and anyone else otherwise subject to your control.

2. In answering these Discovery Requests you must make a diligent search of your records and of other papers and materials in your possession or available to you or your representatives. If an interrogatory has subparts, answer each part separately and in full, and do not limit your answer to the interrogatory as a whole. If an interrogatory cannot be answered in full, answer to the extent possible, specify the reason for your inability to answer the remainder, and state whatever information and knowledge you have regarding the unanswered portion. With respect to each interrogatory, in addition to supplying specific documents referred to, identify and describe all documents to which you refer in preparing your answers. The interrogatories and request for production of documents are continuing and the answers and responses thereto must be supplemented to the maximum extent authorized by law and the applicable rules.

3. If you deem any material sought by these Discovery Requests to be privileged or otherwise protected from discovery, you shall nevertheless provide the following information with respect to the privilege or reason for the refusal to respond:

- A. The nature of the privilege asserted and the person asserting it;
- B. The factual and legal basis for the claimed privilege or specific statutory authority which provides the ground for non-response;
- C. A description of the requested items sufficient to permit Defendant to frame an appropriate demand to compel disclosure, setting forth at least the following:
 - 1). the author and/or signatory of the document;
 - 2). the date appearing on the document;

3). the identity of the addressee and all others who have received or read the document;

4). the identity of those who have knowledge of the matters contained therein;

5). whether the requested documents have any other documents appended, included with, attached to, incorporated by or referred to in them; and

6). whether such other documents have been produced in response to any of the requests herein.

Instructions for Request for Admissions

1. The pronouns "you", "your" and "yours" refer to the plaintiff(s) in this action.

2. Each requested admission should be answered separately and fully by you, in writing, under oath, in the space provided.

3. Your answer to each request for admission shall specifically admit or deny the matter stated, or indicate in detail the reasons why you cannot truthfully do so. A denial shall fairly meet the substance of the requested admission, and when good faith requires that you qualify an answer or deny only a part of a requested admission, you must specify as much of it as is true if qualifying or denying the remainder.

4. You may not give lack of information or knowledge as a reason for your failure to admit or deny any of these requests for admission, unless you have made a reasonable inquiry and the information known or readily obtainable by you is insufficient to enable you to admit or deny, and you so state under oath.

5. Any objections must be stated with specificity, and signed by the attorney making them.

6. You may not, on the ground alone that a matter in which an admission has been requested presents a genuine issue for trial, object to that issue.

7. Pursuant to Civ. R. 36(C), if you fail to admit the truth on any matter as requested, and Defendant thereafter proves the truth of the matter, Defendant will apply to the Court for an Order requiring Plaintiff to pay the expenses incurred in making that proof, including Defendant's attorney fees.

8. The stated matters will be deemed admitted unless your responses are timely made in compliance with Civ. R. 36.

Request for Admission No. 1:

Admit that the original construction of the Project was paid from accounts containing the District's Construction Funds.

ADMIT/DENY:

Deny

Contingent Interrogatory No. 1:

If your response to the foregoing Request for Admission was anything other than an unqualified admission, set forth any and all facts that support your response.

ANSWER:

1. The Construction Manager was paid directly by the Ohio School Facilities Commission. The Accounting for the project at the District level reflects the direct payments.
2. District's Legal Counsel was paid through the General Fund. OSFC's legal counsel was paid by the OSFC.
3. District Administrators responsible for the Project were paid through the General Fund.
4. OSFC's Administrators responsible for the Project were paid by the OSFC.
5. Portions of the Project were paid through locally funded initiatives (003 Fund Permanent Improvements). Specifically, the District added four additional classrooms, a board of education office, and a wood gym floor in the elementary school. These were all paid out of the 003 fund.

6. While the District owned a significant amount of the land for the project, it did purchase additional Land known as the McElroy land acquisition. That land acquisition was paid out of the 001 or General Fund.

Request for Production of Documents No. 1:

Produce all documents that relate to or support your answer to the above Contingent Interrogatory or that are referenced in the above Contingent Interrogatory.

RESPONSE:

Project Agreement

OSFC list of funded vs. non-funded improvements.

Request for Admission No. 2:

Admit that the Construction Funds that paid for the Project were received from a combination of money raised through one or more local bond levies and from construction assistance funding received from the State through the OSFC.

ADMIT/DENY:

Deny

Contingent Interrogatory No. 2:

If your response to the foregoing Request for Admission was anything other than an unqualified admission, set forth any and all facts that support your response.

ANSWER:

See answer to Contingent Interrogatory No. 1 for project expenses paid from funds other than the bond issue and State assistance.

Request for Production of Documents No. 2:

Produce all documents that relate to or support your answer to the above Contingent Interrogatory or that are referenced in the above Contingent Interrogatory.

RESPONSE:

See Above Documents provided to Request for Admission No. 1.

Request for Admission No. 3:

Admit that the construction of the Project was not paid from account(s) containing the District's General Operating Funds.

ADMIT/DENY:

Deny

Contingent Interrogatory No. 3:

If your response to the foregoing Request for Admission was anything other than an unqualified admission, set forth any and all facts that support your response.

ANSWER:

1. Legal Counsel was paid through the General Fund.
2. District Administrators responsible for the Project were paid through the General Fund.
3. The McElroy land acquisition was paid from the General Fund.

Request for Production of Documents No. 3:

Produce all documents that relate to or support your answer to the above Contingent Interrogatory or that are referenced in the above Contingent Interrogatory.

RESPONSE:

OSFC list of non funded items.

Request for Admission No. 4:

Admit that the work performed by Jack Gibson during the Project was paid for from the District's Construction Funds.

ADMIT/DENY:

Deny

Contingent Interrogatory No 4.:

If your response to the foregoing Request for Admission was anything other than an unqualified admission, set forth any and all facts that support your response.

ANSWER:

See answers above

Request for Production of Documents No. 4:

Produce all documents that relate to or support your answer to the above Contingent Interrogatory or that are referenced in the above Contingent Interrogatory.

RESPONSE:

See Documents provided above.

Request for Admission No. 5:

Admit that the work performed by Jack Gibson during the Project was not paid for from the District's General Operating Funds.

ADMIT/DENY:

Deny.

Contingent Interrogatory No. 5:

If your response to the foregoing Request for Admission was anything other than an unqualified admission, set forth any and all facts that support your response.

ANSWER:

A proportional amount of legal fees and administrative personal expenses are allocable to the Gibson contract.

Request for Production of Documents No. 5:

Produce all documents that relate to or support your answer to the above Contingent Interrogatory or that are referenced in the above Contingent Interrogatory.

RESPONSE:

See OSFC list of funded vs. non funded.

Request for Admission No. 6:

Admit that after the Certificate of Contraction Completion was issued on the Project that \$4 million dollars were remaining in account(s) containing the District's Construction Funds and/or Public Improvement Funds with two-thirds of these amounts coming from OSFC and the remaining one-third being the District's.

ADMIT/DENY:

Deny

Contingent Interrogatory No. 6:

If your response to the foregoing Request for Admission was anything other than an unqualified admission, set forth any and all facts that support your response.

ANSWER:

I have assumed that "Contraction" means "Contract" in the Request.

The proportional allocation between the OSFC and the District is 65% OSFC and 35% District for all co-funded expenses.

We do not believe a certificate of contract completion was issued for Jack Gibson.

As we are uncertain as to the date referenced for a fund balance, we cannot admit the correctness of the amount. However, it is unlikely that the amount is correct.

Request for Production of Documents No. 6:

Produce all documents that relate to or support your answer to the above Contingent Interrogatory or that are referenced in the above Contingent Interrogatory.

RESPONSE:

The Project Agreement contains the percentage breakdown between the OSFC and the District.

A history of the 010 fund is including showing all receipts and disbursements. Balances at any point in time can be calculated.

Request for Admission No. 7:

Admit that after Substantial Completion of the Project that Remedial Work was performed to the roofing, masonry and asphalt parking lots which included adding additional drainage below certain portions of the parking lots.

ADMIT/DENY:

Deny

Contingent Interrogatory No. 7:

If your response to the foregoing Request for Admission was anything other than an unqualified admission, set forth any and all facts that support your response.

ANSWER:

Substantial Completion is not defined in the contract documents.

However, remedial work was done to the roof, masonry and parking lots after occupancy by the District.

Additional drainage was added to portions of the parking lots.

Request for Production of Documents No. 7:

Produce all documents that relate to or support your answer to the above Contingent Interrogatory or that are referenced in the above Contingent Interrogatory.

RESPONSE:

Documents relating to the roof, masonry and parking lot repairs are provided on the disc enclosed.

Request for Admission No. 8:

Admit that the Remedial Work performed after Substantial Completion of the Project was not paid for from account(s) containing the District's General Operating Funds.

ADMIT/DENY:

Admit

Contingent Interrogatory No. 8:

If your response to the foregoing Request for Admission was anything other than an unqualified admission, set forth any and all facts that support your response.

ANSWER:

Request for Production of Documents No. 8:

Produce all documents that relate to or support your answer to the above Contingent Interrogatory or that are referenced in the above Contingent Interrogatory.

RESPONSE:

Request for Admission No. 9:

Admit that after Substantial Completion of the Project that Jack Gibson through one or more subcontractors and/or consultants caused to be performed some repairs and/or Remedial Work to the roofing.

ADMIT/DENY:

Admit

Contingent Interrogatory No. 9:

If your response to the foregoing Request for Admission was anything other than an unqualified admission, set forth any and all facts that support your response.

ANSWER:

Request for Production of Documents No. 9:

Produce all documents that relate to or support your answer to the above Contingent Interrogatory or that are referenced in the above Contingent Interrogatory.

RESPONSE:

Request for Admission No. 10:

Admit that after Certificate of Contract Completion was issued on the Project, Jack Gibson caused to be performed and/or assisted in paying for certain Remedial Work and/or Repairs involving the masonry.

ADMIT/DENY:

Deny

Contingent Interrogatory No. 10:

If your response to the foregoing Request for Admission was anything other than an unqualified admission, set forth any and all facts that support your response.

ANSWER:

We have not been able to locate a copy of the certificate of contract completion.

Jack Gibson caused to be performed some masonry repairs. We have no knowledge of what Jack Gibson did or did not pay for.

Request for Production of Documents No. 10:

Produce all documents that relate to or support your answer to the above Contingent Interrogatory or that are referenced in the above Contingent Interrogatory.

RESPONSE:

Jack Gibson has the documentation as to what it paid for.

We have provided the purchase order documenting the \$20,000 for masonry repairs.

Request for Admission No. 11:

Admit that after the Certificate of Completion was issued on the Project that Jack Gibson was paid for certain Remedial Work or Repairs from account(s) that did not contain the District's General Operating Funds.

ADMIT/DENY:

Deny

Contingent Interrogatory No. 11:

If your response to the foregoing Request for Admission was anything other than an unqualified admission, set forth any and all facts that support your response.

ANSWER:

No certificate of contract completion for Jack Gibson can be found. Jack Gibson was paid \$20,000 for remedial masonry work from the 010 fund and not the general fund.

Request for Production of Documents No. 11:

Produce all documents that relate to or support your answer to the above Contingent Interrogatory or that are referenced in the above Contingent Interrogatory.

RESPONSE:

Purchase order is included.

Request for Admission No. 12:

Admit that the funds covered by Purchase Order 3301018, dated 5/22/13, were paid for from "Fund 010" which does not correspond or refer to any account containing the District's General Operating Funds.

ADMIT/DENY:

Admit

Contingent Interrogatory No. 12:

If your response to the foregoing Request for Admission was anything other than an unqualified admission, set forth any and all facts that support your response.

ANSWER:

Request for Production of Documents No. 12:

Produce all documents that relate to or support your answer to the above Contingent Interrogatory or that are referenced in the above Contingent Interrogatory.

RESPONSE:

Request for Admission No. 13:

Admit that the funds paid for remedial work performed by Jack Gibson under Purchase Order 3301018, dated 5/22/13, were taken from account(s) containing the District's Construction Funds and/or Public Improvement Funds.

ADMIT/DENY:

Admit

Contingent Interrogatory No. 13:

If your response to the foregoing Request for Admission was anything other than an unqualified admission, set forth any and all facts that support your response.

ANSWER:

Request for Production of Documents No. 13:

Produce all documents that relate to or support your answer to the above Contingent Interrogatory or that are referenced in the above Contingent Interrogatory.

RESPONSE:

Request for Admission No. 14:

Admit that the Repairs or Remedial Work performed by Jack Gibson under Purchase Order 3301018, dated 5/22/13, were not paid from account(s) containing the District's General Operating Funds.

ADMIT/DENY:

Admit

Contingent Interrogatory No. 14:

If your response to the foregoing Request for Admission was anything other than an unqualified admission, set forth any and all facts that support your response.

ANSWER:

Request for Production of Documents No. 14:

Produce all documents that relate to or support your answer to the above Contingent Interrogatory or that are referenced in the above Contingent Interrogatory.

RESPONSE:

Interrogatory No. 1:

Identify each source of funding for the Project and the accounts in which each source of funding was maintained.

ANSWER:

The District used three funds for the Project. The 010 or OSFC Fund, the 003 or Permanent Improvement fund and the 001 or General Fund.

Additional funding from the OSFC was used for the project (its project administration team, legal counsel and payment of construction management fees). Costs for the construction management are reflected in the 010 Fund. The District did no accounting for the OSFC's personnel costs.

Request for Production of Documents No. 1:

Produce all documents that relate to or support your answer to the above Interrogatory No. 1 or that are referenced in this Interrogatory.

RESPONSE:

Enclosed are:

Fund summary for Fund 003 including object and function information

Fund summary for Fund 010 including object and function information.

Receipt and expense detailed information for Fund 010.

Interrogatory No. 2:

Identify all accounting or funding codes or descriptions used to identify all sources of funds received for the Project.

ANSWER:

Fund, object and function codes are included in the documents enclosed.

Request for Production of Documents No. 2:

Produce all documents that relate to or support your answer to the above Interrogatory No. 2 or that are referenced in this Interrogatory.

RESPONSE:

Interrogatory No. 3:

Identify the origin or source of money for "Fund 010" referenced in Purchase Order 3301018, dated 5/22/13.

ANSWER:

Pursuant to the Project Agreement. 35% of the expenditure is allocable to the District's bond issue and 65% of the expenditure is allocable to State funding. The District's funds were provided by a bond issue. The source of the State's funding must be obtained from it.

Request for Production of Documents No. 3:

Produce all documents that relate to or support your answer to the above Interrogatory No. 3 or that are referenced in this Interrogatory.

RESPONSE:

Interrogatory No. 4:

What does the term "Fund 010", as used in Purchase Order 3301018, dated 5/22/13, refer to?

ANSWER:

District's OSFC Fund as created through the Project Agreement.

Request for Production of Documents No. 4:

Produce all documents that relate to or support your answer to the above Interrogatory No. 4 or that are referenced in this Interrogatory.

RESPONSE:

Project Agreement between the OSFC and District is enclosed.

Interrogatory No. 5:

Explain the types of expenditures that may be made from "Fund 010" referenced in Purchase Order 3301018, dated 5/22/13.

ANSWER: The District's bonds are limited by the purpose clause of the bond issue which was "to pay the local share of school construction under the State of Ohio Classroom Facilities Assistance Program"

The project agreement further provides that no funds can be spent from the 010 fund without the OSFC approval.

Chapter 133 of the Ohio Revised Code provides further guidance as to appropriate expenditures of bond proceeds.

The Ohio School Design Manual provides further details as to the building systems that

are co-funded by the OSFC.

Request for Production of Documents No. 5:

Produce all documents that relate to or support your answer to the above Interrogatory No. 5 or that are referenced in this Interrogatory.

RESPONSE:

The Project Agreement has been provided.

The purpose clause of the bond issue is in Ohio Revised Code Chapter 3318.

Ohio Revised Code Chapter 133 is readily available.

The Ohio School Design Manual is available in electronic format from the OSFC. A physical copy is available for inspection or copying from counsel to the School District or the OSFC.

Interrogatory No. 6:

Does the District use money from "Fund 010", as referenced in Purchase Order 3301018, dated 5/22/13, to pay for expenses related to day-do-day operations such as payroll for District employees?

ANSWER:

No.

Request for Production of Documents No. 6:

Produce all documents that relate to or support your answer to the above Interrogatory No. 6 or that are referenced in this Interrogatory.

RESPONSE:

The list of funded and non-funded items is provided.

VERIFICATION PAGE

STATE OF OHIO :
COUNTY OF Ashland :
: ss.

I, Lisa Moodt, being first duly cautioned and sworn, depose and state that the foregoing Answers and Responses to Jack Gibson Construction Company's Requests for Admission, Interrogatories and Requests for Production of Documents are true to the best of my knowledge, information and belief.

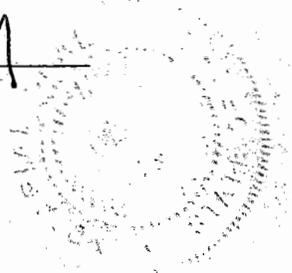
Lisa Moodt

Lisa Moodt, as an Authorized Representative of Grand Valley Local School District Board of Education

Sworn before me and subscribed in my presence this 22nd day of September 2014.

[Signature]
Notary Public

DAVID J. RICEY, Attorney At Law
Notary Public - State of Ohio
My commission has no expiration date.
Section 147.03 O. R. C.



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was served via regular U.S. Mail, postage prepaid, on this 29 day of September 2014, to the following:

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