

IN THE COURT OF CLAIMS OF OHIO

2014 OCT -8 PM 3: 12

GRAND VALLEY LOCAL SCHOOL DISTRICT)
BOARD OF EDUCATION, et al.,)

Plaintiffs,)

vs.)

BUEHRER GROUP ARCHITECTURE &)
ENGINEERING. INC. et al.)

Defendants,)

ORIGINAL

Case No. 2014-00469-PR

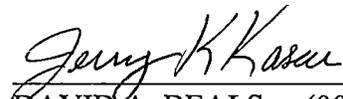
Judge Patrick M. McGrath

**MOTION FOR LEAVE INSTANTER OF PLAINTIFFS/COUNTERCLAIM
DEFENDANTS OHIO SCHOOL FACILITIES COMMISSION AND GRAND VALLEY
LOCAL SCHOOL DISTRICT BOARD OF EDUCATION TO FILE A REPLY
MEMORANDUM**

Now comes the Plaintiffs/Counterclaim Defendants, the Ohio School Facilities Commission ("OSFC") and the Grand Valley Local School District Board of Education ("Grand Valley" or "School District") by and through counsel, and respectfully requests, pursuant to Loc. R. 4(C), this Court grant its Motion for Leave Instanter to File a Reply Memorandum. The reasons supporting this motion are more fully explained in the accompanying Memorandum.

Respectfully submitted,

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Ohio Attorney General



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MEMORANDUM IN SUPPORT

I. Introduction

This matter is an action by the State and the School District to recover the cost to fix numerous construction and design defects in a new Kindergarten through 12 School Facility ("Project") constructed and designed by the Defendants in this case for benefit of the School District. This matter was originally filed in February of 2014, in the Ashtabula County Common Pleas Court against: Buehrer Group Architecture & Engineering ("Buehrer"), the architect for the Project; Jack Gibson Construction Company ("Gibson"), the general trades prime contractor on the Project; McMillan Construction Company ("McMillan"), the paving and site prime contractor; along with Hartford Insurance Company and Merchants Bonding Company, the respective sureties for Gibson and McMillan. Defendant Gibson filed a Counterclaim to Plaintiffs' Complaint and Petitioned for removal of this action to the Court of Claims.

On July 15, 2014, Plaintiffs filed a Motion for Summary Judgment or in the Alternative Motion for Judgment on the Pleadings. Plaintiffs' Motion was based, in part, on the failure of

Defendant Gibson to plead, and possess, the existence of a contract with Plaintiffs enabling it to file a counterclaim. Defendant Gibson, after receiving extensions, served its Memorandum in Opposition on Plaintiffs on October 1, 2014. In that Memorandum in Opposition Defendant Gibson referred to a Memorandum of Understanding (“MOU”) and the attachments to that MOU as argument that there are facts alleged that a contract existed. However, Defendant Gibson appears to misconstrue to the language of both the MOU and the attachments to the MOU. The references made by Defendant Gibson do not accurately reflect the language of the MOU in attempting to establish the existence of a written contract with a public body. Additionally, Defendant Gibson cannot point to any document which would even remotely indicate that the School District Board approved a contract in the amount of \$156,000 to Defendant Gibson.

The Reply of Plaintiffs will simply address the language of the MOU not accurately depicted by Defendant Gibson and attach actual copies of the MOU, which were attached to Defendant Gibson’s Counterclaim. This argument is less than six pages and will assist the Court in deciding the pending Motion and whether this matter should be remanded back to Common Pleas Court.

II. Conclusion

For the above stated reasons, Plaintiffs’ Motion for Leave Instanter to File A Reply is appropriate and should be granted by the Court. Justice requires such, and no other party to this matter will be prejudiced.

Respectfully submitted,
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CERTIFICATE OF SERVICE

A copy of the foregoing Motion for Leave Instantly to File Reply was sent via regular U.S. Mail and email, to the following counsel this 8th day of October 2014:

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