

COPY

FILED
COURT OF CLAIMS
OF OHIO

IN THE COURT OF CLAIMS OF OHIO

2015 MAR 19 AM 10:30

TRANSAMERICA BUILDING
COMPANY, INC.

Plaintiff,

v.

OHIO SCHOOL FACILITIES
COMMISSION

Defendant/Third Party Plaintiff,

v.

STEED HAMMOND PAUL, INC. dba
SHP LEADING DESIGN, et al.

Third-Party Defendant/Fourth Party
Plaintiff,

v.

LEND LEASE (US) CONSTRUCTION,
INC.

Third Party Defendant/Third (Fourth)
Party Plaintiff.

CASE NO.: 2013-00349

JUDGE: McGrath

REFEREE: Wampler

**ANSWER OF FOURTH PARTY
DEFENDANT, BERARDI PARTNERS,
INC. TO FOURTH PARTY
COMPLAINT**

(With Jury Demand Endorsed Hereon)

Now comes Fourth Party Defendant, Berardi Partners, Inc. (herein after as "Berardi"), by and through undersigned counsel, and for its answer to the Fourth Party Complaint of Steed Hammond Paul, Inc. dba SHP Leading Design (herein after "SHP"), states as follows:

1. Berardi incorporates all allegations in the Fourth Party Complaint solely for the purpose of its response and not as an admission of the truth or falsity of any such allegations.

2. Berardi admits only that SHP subcontracted a portion of its architectural work on the subject project. Further answering, Berardi states that the documents attached to SHP's Fourth Party Complaint speak for themselves.

ON COMPUTER

3. Berardi denies the allegations contained in Paragraph 3 of the Fourth Party Complaint.

4. Berardi denies the allegations contained in Paragraph 4 of the Fourth Party Complaint.

5. Berardi denies the allegations contained in Paragraph 5 of the Fourth Party Complaint.

AFFIRMATIVE DEFENSES

1. The Fourth Party Complaint fails to state a claim upon which relief may be granted.

2. The Fourth Party Complaint is barred by the Doctrine of Laches.

3. Any damages suffered by Fourth Party Plaintiff were caused by Fourth Party Plaintiff's own errors or omissions and/or those of other persons and/or entities over whom Berardi had no responsibility or control.

4. Fourth Party Plaintiff's right to relief is barred by the Doctrine of Unclean Hands.

5. Fourth Party Plaintiff was comparatively negligent and/or assumed the risk of the damages for which it now complains.

6. Fourth Party Plaintiff has failed to reasonably mitigate its damages.

7. Berardi incorporates and asserts all Affirmative Defenses raised by all other Parties to this action.

WHEREFORE, Berardi respectfully requests that the Fourth Party Plaintiff's Complaint be Dismissed, with Prejudice and at the Fourth Party Plaintiff's costs.

Respectfully submitted,

/s/ Brad J. Barmen

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CERTIFICATE OF SERVICE

This is to certify that a true copy of the forgoing Notice Appearance was sent via U.S. mail and facsimile this 16th day of March, 2015 upon:

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March 16, 2015

Via Regular US Mail to:

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Ohio Judicial Center
65 South Front Street,
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Columbus, OH 43215

**Re: Transamerica Building Co. v. Ohio School Facilities, et al.
Court of Claims of Ohio
Case No.: 2013-00349**

Dear Clerk,

Enclosed for filing are the original and two (2) copies of *Answer of Fourth Party Defendant, Berardi Partners, Inc. to Fourth Party Complaint*.

Kindly file the original with the Court and return a time-stamped copy to the undersigned in the enclosed self-addressed, stamped envelope. *BJB*

If you have any questions or concerns, please do not hesitate to contact this office.

Kindest Regards,

Brad J. Barmen

Brad J. Barmen
MANNION GRAY

BJB/hko
Enclosures
cc: Donald Gregory
David Rickert
William Becker
Craig Paynter
Steven Janik