

CONFIRMED FILE DATE: 5/30/2013

CAUSE NO. 2013-32278

FILED lepp
Chris Daniel
District Clerk
MAY 30 2013
Time: _____
By _____
Harris County, Texas
Deputy
2:25pm

FORT BEND MACHANICAL, LTD

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IN THE DISTRICT COURT OF

VS.

HARRIS COUNTY, TEXAS

HOUSTON INDEPENDENT
SCHOOL DISTRICT

125 JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, FORT BEND MECHANICAL, LTD, Plaintiff in the above-entitled and numbered cause, complaining of HOUSTON INDEPENDENT SCHOOL DISTRICT, Defendant, and for causes of action would respectfully show unto this Honorable Court the following:

I.

Discovery should be conducted under level 2, Rule 190.1, TRCP.

II.

FORT BEND MECHANICAL, LTD, ("FBM") is a limited partnership and has its principal place of business in Fort Bend County, Texas.

HOUSTON INDEPENDENT SCHOOL DISTRICT ("HISD") is a school district located in Houston, Harris County, Texas and may be served with process by serving its Superintendent of Schools Terry Grier at 4400 West 18th Street, Houston, Texas 77092.

Jurisdiction and venue are proper in this Court. Plaintiff is seeking damages within the jurisdictional limits of this Court. Defendant's principal office is located in Harris County, Texas and all or a substantial part of the events or omissions giving rise to Plaintiff's causes of action occurred in Harris County, Texas.

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III.

FBM seeks monetary relief over \$1,000,000.

IV.

HISD has waived sovereign immunity. HISD is authorized to enter into contracts and did enter into the contracts at issue herein. HISD breached the contracts. Tex. Local Gov. Code Sec. 271.152.

V.

FBM entered into multiple contracts with HISD to provide labor and materials for work done on HISD schools: Jane Long Middle School, Westbury High School, Johnston Middle School., Kashmere Gardens Elementary School, Waltrip High School and Worthing High School. FBM properly performed its work and despite repeated demands, HISD has failed and refused to pay FBM for a substantial portion of the amounts owed for the work, change orders, retainage, extra work, materials and storage costs, for which, FBM seeks recovery herein.

VI.

From the beginning of work on the school projects, and throughout the construction, FBM experienced delays, costs and damages due to the acts and omission of HISD. For example, at the Worthing High School project, HISD failed to procure the services of a required Hazardous Abatement Consultant for the Project prior to issuing the Notice to Proceed to FBM on May 9, 2012. This failure delayed FBM in the required State of Texas 10-Day Notice to allow abatement until June 19, 2012. FBM incurred expenses and damages for the cost of personnel onsite and ready to work as well as rental equipment. Another example is HISD failed to prepare structural

drawings of the new mezzanine. It was mid-July before the drawings were prepared and submitted to the City of Houston for approval. When the new mezzanine was fabricated in accordance with the drawings, there were major issues with the design requiring FBM to remove and redesign HVAC piping, HVAC ductwork, and existing plumbing lines, as well as installing more drains for the new equipment and reroute new electrical work, all due to the design of the new mezzanine that did not fit as shown. When the City of Houston Building Inspectors inspected the new mezzanine, it failed the inspection because HISD failed to denote the required fire rated sheet rock and fire dampers. FBM was forced to remove major sections of finished work, install new sheetrock and install fire dampers with the associated wiring, all at considerable cost and damages to FBM. Also, HISD failed to contact Center Point Energy about moving existing electrical lines and gas lines. The power lines and gas lines were not removed from the construction site until November, 2012 causing five months of delay, at additional cost and damages to FBM. A further example is there were two sets of drawings for the project, the project set of bid drawings and the permitted set of drawings that were approved for construction by the City of Houston. The drawings are contradictory and substantially different. Substantial time and money was expended by FBM in dealing with this problem on site and in dealing with HISD, the architect and the engineer as was required by the contract. The drawings failed to indicate utility lines, HVAC lines, plumbing lines and electrical lines in the path of excavation. FBM was continuously told by HISD that the problems were being rectified, but until they were, FBM was to "hand dig" all unforeseen lines to determine their origination and termination. This was a tremendous cost and damages to FBM.

VII.

At the Waltrip High School project, FBM contacted Center Point Energy early in construction about the new, larger transformer and the path of the electrical supply lines, known as "Terms and Conditions". As it turned out, there were no Terms and Conditions for the Waltrip High School project. HISD had entirely failed to provide Center Point Energy with the critical information required to design and build the new transformer and had failed to establish the required easement. HISD should have had the transformer on order before construction commenced. This failure on the part of HISD caused delay of almost seven months. None of the new systems designed to operate with the new transformer could be installed. Temporary panels and temporary wiring had to be installed during this delay and later removed. FBM incurred additional cost and damages. There was a substantial amount of unanticipated asbestos in Waltrip High School which required abatement. Because the cost of abatement would likely exceed the initial cost of \$400,000.00 approved by a Construction Change Directive, FBM and its abatement subcontractor met with the program manager, the project manager and the senior construction manager for the Waltrip High School project to express their concerns of payment. FBM and its subcontractor were expressly told that they would be paid for the asbestos abatement. Although the abatement work was done, FBM has not been paid.

VIII.

On December 18, 2012, FBM informed HISD that it intended to continue work at the schools over the school winter break which was agreed to by HISD. On December 21, 2012, HISD then informed FBM that it could not work on any of the projects as

previously agreed thereby forcing FBM to secure the schools, move tools and equipment to its premises, conduct an inventory and store material in rental storage containers, all at considerable cost and damages to FBM. HISD replaced the locks on the storage containers with its own locks but has entirely failed to pay FBM for the stored materials. FBM continued to pay the rental cost of the storage containers.

IX.

By this suit, FBM seeks its damages from HISD, including but not limited to, amounts owed for the work, change orders, retainage, extra work, materials and storage costs in the amount of \$9,843,124.00.

X.

All conditions precedent have been performed or have occurred.

XI.

Plaintiff has made demand for payment from HISD in accordance with Chapter 38 of the Texas Civil Practice and Remedies Code.

XII.

The actions of HISD have made it necessary for FBM to employ the undersigned attorney to bring this suit. FBM requests that it be awarded its attorney's fees for the trial hereof, post-trial motions and hearings, any and all appeals, its costs, prejudgment interest, post-judgment interest and statutory interest as provided by law.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, FORT BEND MECHANICAL, LTD, prays that Defendant, HUOSTON INDEPENDENT SCHOOL DISRICT, be cited to appear and answer herein according to law and that upon final hearing of this cause, Plaintiff have and recover judgment against Defendant for its damages, attorney's fees for

the trial hereof, post-trial motions and hearings, any and all appeals, costs, pre-judgment interest, post-judgment interest and statutory interest, all as provided by law, and for all other relief, general and special, at law and in equity, to which it may be justly entitled.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael T. McGann", written over a horizontal line.

Michael T. McGann
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ATTORNEY FOR PLAINTIFF