

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CLARK CONSTRUCTION GROUP, LLC

*Plaintiff and Counterclaim
Defendant,*

v.

PERKINS EASTMAN DC, PLLC

*Defendant and Counterclaim
Plaintiff.*

Civil Action No. . 1:18-CV-00555-ABJ

**CLARK CONSTRUCTION GROUP, LLC'S ANSWER TO PERKINS EASTMAN DC,
PLLC's COUNTERCLAIM**

Pursuant to Rule 8(b) of the Federal Rules of Civil Procedure, Plaintiff and Counterclaim Defendant CLARK CONSTRUCTION GROUP, LLC ("Clark"), by its undersigned counsel, hereby answers Defendant and Counterclaim Plaintiff PERKINS EASTMAN DC, PLLC's ("PEDC") counterclaim (the "Counterclaim"). If an averment is not specifically admitted, it is hereby denied.

ANSWER TO THE COUNTERCLAIM

1. Answering Paragraph 1, Clark admits the allegations contained in Paragraph 1 of the Counterclaim. Clark denies the implication of Paragraph 1 that the provision of design and engineering services were the sole obligations of PEDC under the two contracts.

2. Answering Paragraph 2, Clark admits the allegations contained in Paragraph 2 of the Counterclaim.

3. Answering Paragraph 3, Clark admits the allegations contained in Paragraph 3 of the Counterclaim.

4. Answering Paragraph 4, Clark admits the allegations contained in Paragraph 4 of the Counterclaim.

5. Answering Paragraph 5, Clark admits the allegations contained in Paragraph 5 of the Counterclaim.

6. Answering Paragraph 6, Clark lacks sufficient knowledge or information to form a belief concerning the truth of the factual allegations contained in Paragraph 6 and, on that basis, denies them.

7. Answering Paragraph 7, the allegations in this paragraph constitute conclusions of law to which no response of Clark is required. To the extent a response is deemed required, Clark denies the allegations contained in Paragraph 7 of the Counterclaim.

8. Answering Paragraph 8, Clark denies the allegations contained in Paragraph 8 of the Counterclaim.

9. Answering Paragraph 9, the allegations in this paragraph constitute conclusions of law to which no response of Clark is required. To the extent a response is deemed required, Clark denies the allegations contained in Paragraph 9 of the Counterclaim.

10. Answering Paragraph 10, the allegations in this paragraph constitute conclusions of law to which no response of Clark is required. To the extent a response is deemed required, Clark denies the allegations contained in Paragraph 10 of the Counterclaim.

11. Answering Paragraph 11, the allegations in this paragraph constitute conclusions of law to which no response of Clark is required. To the extent a response is deemed required, Clark denies the allegations contained in Paragraph 11 of the Counterclaim.

12. Answering Paragraph 12, the allegations in this paragraph constitute conclusions of law to which no response of Clark is required. To the extent a response is deemed required, Clark denies the allegations contained in Paragraph 12 of the

Counterclaim.

13. Answering Paragraph 13, the allegations in this paragraph constitute conclusions of law to which no response of Clark is required. To the extent a response is deemed required, Clark admits that PEDC demanded that Clark turn over money but denies that money contractually and legally belongs to PEDC and that Clark has withheld and exercised dominion and control over the money.

14. Answering Paragraph 14, the allegations in this paragraph constitute conclusions of law to which no response of Clark is required. To the extent a response is deemed required, Clark denies the allegations contained in Paragraph 14 of the Counterclaim.

15. Answering Paragraph 15, the allegations in this paragraph constitute conclusions of law to which no response of Clark is required. To the extent a response is deemed required, Clark denies the allegations contained in Paragraph 15 of the Counterclaim.

COUNT 1 – BREACH OF CONTRACT

16. Answering Paragraph 16, Clark incorporates by reference its responses to Paragraphs 1 through 15 of the Counterclaim into the responses hereto as if fully set forth herein.

17. Answering Paragraph 17, Clark admits the allegations contained in Paragraph 17 of the Counterclaim.

18. Answering Paragraph 18, the allegations in this paragraph constitute conclusions of law to which no response of Clark is required. To the extent a response is deemed required, Clark denies the allegations contained in Paragraph 18 of the Counterclaim.

19. Answering Paragraph 19, the allegations in this paragraph constitute conclusions of law to which no response of Clark is required. To the extent a response is deemed required, Clark denies the allegations contained in Paragraph 19 of the

Counterclaim.

20. Answering Paragraph 20, Clark denies the allegations contained in Paragraph 20 of the Counterclaim.

21. Answering Paragraph 21, the allegations in this paragraph constitute conclusions of law to which no response of Clark is required. To the extent a response is deemed required, Clark denies the allegations contained in Paragraph 21 of the Counterclaim.

22. Answering Paragraph 22, the allegations in this paragraph constitute conclusions of law to which no response of Clark is required. To the extent a response is deemed required, Clark denies the allegations contained in Paragraph 22 of the Counterclaim.

23. Answering Paragraph 23, the allegations in this paragraph constitute conclusions of law to which no response of Clark is required. To the extent a response is deemed required, Clark denies the allegations contained in Paragraph 23 of the Counterclaim.

COUNT 2 – CONVERSION

24. Answering Paragraph 24, Clark incorporates by reference its responses to Paragraphs 1 through 23 of the Counterclaim into the responses hereto as if fully set forth herein.

25. Answering Paragraph 25, the allegations in this paragraph constitute conclusions of law to which no response of Clark is required. To the extent a response is deemed required, Clark denies the allegations contained in Paragraph 25 of the Counterclaim.

26. Answering Paragraph 26, the allegations in this paragraph constitute conclusions of law to which no response of Clark is required. To the extent a response is deemed required, Clark denies the allegations contained in Paragraph 26 of the Counterclaim.

27. Answering Paragraph 27, the allegations in this paragraph constitute conclusions of law to which no response of Clark is required. To the extent a response is deemed required, Clark admits that PEDC requested that Clark turn over money but denies that money legally belongs to PEDC.

28. Answering Paragraph 28, the allegations in this paragraph constitute conclusions of law to which no response of Clark is required. To the extent a response is deemed required, Clark denies the allegations contained in Paragraph 28 of the Counterclaim.

AFFIRMATIVE DEFENSES

Counterclaim Defendant Clark pleads the following separate defenses. Counterclaim Defendant reserves the right to assert additional affirmative defenses that discovery indicates are proper.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

The Counterclaim fails to state a claim against Counterclaim Defendant upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Counterclaim Plaintiff has failed to mitigate its damages, if any.

THIRD AFFIRMATIVE DEFENSE

(Affirmative Actions and/or Omissions of Plaintiff)

Any violation of the law or damage suffered by Counterclaim Plaintiff, which Counterclaim Defendant denies, was due to the affirmative actions and/or omissions of Defendant and Counterclaim Plaintiff and does not give rise to any liability of Counterclaim Defendant.

FOURTH AFFIRMATIVE DEFENSE

(Unclean Hands)

The Counterclaim, and each and every cause of action alleged against Counterclaim Defendant therein, is barred, in whole or in part, because, by virtue of its conduct, Counterclaim Plaintiff comes to this action with unclean hands.

FIFTH AFFIRMATIVE DEFENSE

(Waiver)

Counterclaim Plaintiff has waived whatever rights it may have had against Counterclaim Defendant.

SIXTH AFFIRMATIVE DEFENSE

(Estoppel)

Counterclaim Plaintiff is estopped from seeking any relief from Counterclaim Defendant.

SEVENTH AFFIRMATIVE DEFENSE

(Breach of Contract)

Counterclaim Defendant alleges that any obligations owed by it under any alleged contract were excused by Counterclaim Plaintiff's breach of the alleged contract.

EIGHTH AFFIRMATIVE DEFENSE

(Failure of Condition)

Counterclaim Defendant alleges that by virtue of the acts of the Counterclaim Plaintiff, and/or the persons and/or entities acting on Counterclaim Plaintiff's behalf, Counterclaim Plaintiff is barred from prosecuting the purported claims set forth in the Counterclaim because of a failure of the Counterclaim Plaintiff, and/or the persons and/or entities acting on Counterclaim Plaintiff's behalf, to perform all or any conditions, whether precedent, concurrent and/or subsequent, covenants, and/or promises on their part to be performed as between the parties herein.

NINTH AFFIRMATIVE DEFENSE

(Offset)

Counterclaim Defendant alleges that by virtue of the acts of Counterclaim Plaintiff and/or the persons and/or entities action on Counterclaim Plaintiff's behalf, the Counterclaim Defendant has been damaged in an amount equal to or greater than the amount of damages, if any, to which Counterclaim Plaintiff might be entitled. As a result, the Counterclaim Defendant is entitled to an offset against any sums found owing to the Counterclaim Defendant from Counterclaim Plaintiff.

TENTH AFFIRMATIVE DEFENSE

(Unjust Enrichment)

Counterclaim Defendant alleges that awarding Counterclaim Plaintiff the recovery that Counterclaim Plaintiff requests in the Counterclaim would unjustly enrich Counterclaim Plaintiff.

RESERVATION OF DEFENSES

Counterclaim Defendant reserves the right to assert additional defenses as discovery progresses in this case. To the extent that any of the foregoing allegations in the Counterclaim have not been expressly admitted or denied, they are hereby denied.

COUNTER TO PEDC's REQUESTED RELIEF

1. Clark moved to strike PEDC's request for punitive damages. PEDC filed a notice of non-opposition. On that basis PEDC may not seek punitive damages in this matter.

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PRAYER FOR RELIEF

WHEREFORE, Clark prays for relief as follows:

1. That the Counterclaim be dismissed, with prejudice and in its entirety;
2. That Counterclaim Plaintiff take nothing by reason of this Counterclaim and that judgment be entered against Counterclaim Plaintiff and in favor of Counterclaim Defendant;
3. That Counterclaim Defendant be awarded its attorneys' fees and costs incurred in defending this action;
4. That Counterclaim Defendant be granted such other and further relief as the Court may deem just and proper.

Dated this 20th day of August, 2018.

Respectfully Submitted,

CLARK CONSTRUCTION GROUP, LLC
By Counsel

/s/ Scott E. Hennigh
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CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that a copy of the foregoing **CLARK CONSTRUCTION GROUP, LLC'S ANSWER TO PERKINS EASTMAN DC, PLLC's COUNTERCLAIM** was electronically filed and served on this 20th day of August, 2018, to:

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J. Peter Glaws, IV
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/s/ Scott E. Hennigh
SCOTT E. HENNIGH