

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CLARK CONSTRUCTION GROUP, LLC.	:	
	:	
Plaintiff and Counterclaim	:	
Defendant,	:	
v.	:	Civil Action No. 1:18-CV-00555-ABJ
	:	
PERKINS EASTMAN DC, PLLC	:	
	:	
Defendant and Counterclaim	:	
Plaintiff.	:	

**PERKINS EASTMAN DC, PLLC’s COUNTERCLAIM AGAINST
CLARK CONSTRUCTION GROUP, LLC**

1. On or about April 15, 2014, Counterclaim Plaintiff Perkins Eastman DC, PLLC (“PEDC”) and Counterclaim Defendant Clark Construction Group, LLC (“Clark”) entered into two contracts whereby PEDC would provide design and engineering services on The Wharf construction project in Washington, DC. (Dkt. 1-3, 1-4.)
2. Under the applicable contracts, PEDC is referred to as the “Designer” and Clark is known as the “Design/Builder.”
3. Under Paragraph 4.3.1 of the applicable contracts, “Payment to the Designer from the Design/Builder shall be made within 30 Days after receipt of payment from the Owner.”
4. Paragraph 4.3.1 of the applicable contracts also state that “The Design-Builder shall not have the right to withhold amounts due to the Designer that have been paid by the Owner.”
5. Paragraph 5.3 of the applicable contracts further provides “Unless otherwise provided in this Agreement or as may be agreed in writing, the Designer and the Design/Builder shall

continue to perform their respective obligations required hereunder and maintain progress during any dispute.”

6. PEDC has sent invoices to Clark for all work performed under the applicable contracts on The Wharf project.
7. In or around mid-2017 and continuing to the present, Clark willfully and intentionally withheld fees invoiced by and owed to PEDC.
8. Upon information and belief, Clark has received payments owed to PEDC from the Owner.
9. Because, upon information and belief, Clark has received payments owed to PEDC from the Owner, under Paragraph 4.3.1 of the applicable contracts, Clark “shall not have the right to withhold amounts due to” PEDC.
10. Because, upon information and belief, Clark has received payments owed to PEDC from the Owner, these funds contractually and legally belong to PEDC.
11. In or about December 2017, Clark admitted orally and in writing that it is withholding more than \$500,000.00 from PEDC.
12. This money is legally and contractually the property of PEDC.
13. In or about December 2017, PEDC demanded that Clark turn over to PEDC the funds which are contractually and legally the property of PEDC, which Clark has withheld and exercised dominion and control over.
14. Clark continues to withhold the funds that contractually and legally belong to PEDC.
15. Clark continues to exercise dominion and control over money and property that contractually and legally is the property of PEDC in a manner that is intentional, reckless, and in willful disregard of PEDC’s ownership rights.

COUNT I – BREACH OF CONTRACT

16. PEDC incorporates the allegations stated in Paragraphs 1-15 as if fully set forth herein.
17. PEDC and Clark are parties to two contracts (Dkt. 1-3, 1-4).
18. The applicable contracts require Clark to pay amounts owed to PEDC within 30 days after Clark receives payment from the Owner.
19. Under the applicable contracts, Clark does not have the right to withhold payments from PEDC if Clark has received payments from the Owner.
20. Upon information and belief, Clark has received payment from the Owner for amounts owed to PEDC.
21. Clark has knowingly and willfully withheld payment of funds to PEDC that, upon information and belief, Clark has received from the Owner.
22. Clark's withholding payment of funds to PEDC that, upon information and belief, Clark has received from the Owner constitutes a breach of the applicable contracts between Clark and PEDC.
23. As a direct and proximate cause of Clark's breaches of contract, PEDC has been damaged in an amount in excess of \$500,000.00.

COUNT II - CONVERSION

24. PEDC incorporates the allegations set forth in Paragraphs 1-23 as if fully set forth herein.
25. Clark has and continues to knowingly and intentionally withhold funds from PEDC that legally and contractually are the property of PEDC.

26. Clark's knowing and intentional withholding of money that is legally and contractually the property of PEDC is an unlawful exercise of dominion and control over PEDC's property.

27. PEDC has expressly requested that Clark turn over money that legally belongs to PEDC, Clark, however, has refused to do so.

28. By knowingly and intentionally withholding property that legally belongs to PEDC, Clark has improperly denied and repudiated PEDC's right to its property.

WHEREFORE, PEDC demands judgment against Clark as follows:

- For breach of contract in an amount that exceeds \$500,000.00 to be proven at trial.
- For return of all property that is legally and contractually the property of PEDC.
- Punitive damages for Clark's intentional, reckless, and willful disregard for PEDC's rights to its property.
- Pre-judgment and post-judgment interest.
- All attorney's fees and costs incurred by PEDC in this litigation.

Respectfully Submitted,

PERKINS EASTMAN DC, PLLC
By Counsel

/s/ J. Peter Glaws, IV

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing *Counterclaim* was electronically filed and served, on this 13th day of April, 2018, to:

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