

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 114
Trenton, New Jersey 08625
By: Thomas H. Shar
Deputy Attorney General
(609) 292-0822
Attorneys for Plaintiff,
New Jersey Schools Construction Corporation

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DEPUTY CLERK OF SUPERIOR COURT

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MERCER COUNTY
DOCKET NO.: MER-L-3331 - 06

NEW JERSEY SCHOOLS CONSTRUCTION
CORPORATION,

Plaintiff,

vs.

STV ARCHITECTS, INC. and EL TALLER
COLABORATIVO, PC.,

Defendants.

CIVIL ACTION

COMPLAINT

Plaintiff, New Jersey Schools Construction Corporation ("NJSCC"), by way of Complaint against defendants, STV Architects, Inc. ("STV"), and El Taller Colaborativo, PC ("ETC"), alleges as follows:

THE PARTIES

1. NJSCC is a corporation organized under and by virtue of N.J.S.A. 34:1B-159, constituting an instrumentality of the State exercising public and essential governmental functions, acting pursuant to authority duly granted by resolution of the Board of Directors of the New Jersey Economic Development Authority adopted August 13, 2002.

2. STV is a corporation formed under the laws of the State of New Jersey, having a principal place of business located at One Riverfront Plaza, Second Floor, Newark, New Jersey. STV is an architectural firm duly licensed in New Jersey.

3. Upon information and belief, ETC is a professional corporation formed under the laws of the State of New Jersey, having a principal place of business located at 550 Broad Street, Newark, New Jersey. ETC is an engineering firm duly licensed in New Jersey.

BACKGROUND

4. There is an NJSCC project known as Mt. Vernon Elementary School (the "School"), a new elementary school in Irvington, New Jersey (the "Project").

5. NJSCC engaged STV to provide professional architectural and engineering services for the design and construction of the School by written agreement dated May 22, 2003 (the "Design Consultant Agreement").

6. Subsequent to the execution of the Design Consultant Agreement, upon information and belief, STV entered into a written contract with ETC whereby ETC agreed to provide certain professional engineering services, including structural engineering design services for the Project, as a sub-consultant of STV.

7. Pursuant to the Design Consultant Agreement, STV and its sub-consultant prepared plans, specifications and related documents (the "Plans and Specifications") for the Project. NJSCC utilized those Plans and Specifications as the basis for documents provided to certain pre-qualified construction contractors who were invited to bid on the Project.

8. NJSCC then accepted bids for the Project. The bid documents included the Drawings, Technical Specifications, Instructions to Bidders and NJSCC's General Conditions and Special Conditions (the "Contract Documents").

9. On or about January 4, 2005, NJSCC entered into an agreement with the low bidder on the Project, Austin Helle Company, Inc. ("Austin Helle"), whereby Austin Helle agreed to construct the Project in accordance with the Contract Documents for the sum of \$22,269,200 (the "Construction Contract").

10. NJSCC engaged Bovis Lend Lease, Inc. ("Bovis") as the project management firm ("PMF") for the Project by written agreement (the "PMF Contract"). Bovis was responsible to oversee all aspects of the design and construction of the Project on behalf of NJSCC.

11. Austin Helle commenced work on the Project on or about January 4, 2005 utilizing subcontractors and its own forces to perform the work (the "Project Work").

12. During the course of the Project Work and in accordance with STV's obligation under the Design Consultant Agreement, STV and/or ETC, as its sub-consultant, provided professional architectural, engineering and design services.

13. During the course of the Project Work, serious defects in the design of the School became apparent.

14. The defects in the design of the School that NJSCC has discovered to date involve deficiencies in a wide range of structural and ancillary elements including, but not limited to, (i) inadequate structural steel capacity, and (ii) inadequate steel lintel design.

Inadequate Structural Steel Capacity

15. During the course of the Project Work, when the concrete slabs for the second and third floors of the new academic wing were poured, a substantial deflection of the steel beams under the weight of the concrete in these areas became patently clear.

16. When Bovis observed the deflection, Bovis asked STV/ETC for guidance regarding whether the concrete pour should continue.

17. STV/ETC responded to Bovis and instructed that the contractor continue to pour "to level."

18. After the concrete was poured pursuant to STV/ETC's direction, the floors exhibited significant deflection, and there was significant movement of the suspended masonry lintel supports. Both of these conditions were so severe that they were visible to the naked eye.

19. Due to the severity of the conditions, all Project work was stopped so that the conditions could be sufficiently investigated and corrected.

20. Pursuant to a request from Bovis, The Thornton Tomasetti Group ("Thornton Tomasetti") performed a structural engineering peer review.

21. After review, Thornton Tomasetti determined that, as a result of design errors of STV/ETC, the beams and girders on the second and third floors were significantly overstressed and that that "the original design of some of the floor beams and girders [is] defective, specifically, the . . . beams would not support the code prescribed loads . . . within the

allowable stresses. . . . The . . . girders that support the . . . walls do not have the capacity to support the additional concrete.”

22. Thorton Tomasetti recommended several measures by which to reinforce the floor beams and girders so that they would operate within their intended purpose, that is, serve as the structural support for the School.

23. As a result of these conditions, NJSCC has been forced to incur significant costs to correct the deficiencies, and the construction of the School was significantly delayed.

Inadequate Steel Lintel Design

24. At various locations around the perimeter of the building, hung lintels are attached to the perimeter beams. The purpose of these lintels is to support the exterior masonry block walls.

25. However, after installation of the hung lintel framing at the second and third floors and roof level, NJSCC discovered twisting of many of the steel spandrel beams.

26. The hung lintel reinforcement, as originally designed by STV/ETC, did not prevent torsional deflection (rolling and/or twisting) of the spandrel beam support in contravention of applicable professional architectural and design standards.

27. As a result of this condition, NJSCC has been forced to design, fabricate and install additional supports to the hung lintels, including new bracing structures, at substantial expense.

28. As a result of these conditions, NJSCC has been forced to incur significant costs to correct the deficiencies, and the construction of the School was significantly delayed.

29. In summary, NJSCC has discovered multiple deficiencies in the design of the School. In order to correct these deficiencies, NJSCC has spent more than \$3.5 million to date, and continues to feel the effects of the delay to the construction of the School.

COUNT I

(Breach of Contract Against STV)

30. Plaintiff repeats and realleges each and every paragraph above as if set forth at length herein.

31. STV failed to perform architectural services in accordance with the terms of the Design Consultant Agreement.

32. STV failed to properly design the School and to manage and coordinate the services of its sub-consultant, ETC, to ensure that the design of the School was performed and completed in accordance with acceptable design practices.

33. This breach of contract by STV has caused deficiencies in the construction of the School, which deficiencies had to be remedied or repaired by NJSCC.

34. As a result of STV's breach of contract, NJSCC has incurred and will continue to incur substantial expense repairing the various defects in the construction of the School.

WHEREFORE, Plaintiff, New Jersey Schools Construction Corporation, demands judgment against STV as follows:

- (a) compensatory damages in an amount to be determined at trial;
- (b) interest, costs of suit and such other and further relief as this Court deems proper.

COUNT II

(Negligence Against STV)

35. Plaintiff repeats and realleges each and every paragraph above as if set forth at length herein.

36. STV had a duty to perform the design of the School in a skillful manner. STV breached that duty by, among other things, failing to coordinate and perform all design elements such that the School could be constructed properly, and to exercise requisite care, skill and knowledge in accordance with the recognized standards of the architectural profession.

37. STV's breaches of duty resulted in the defective design of the School, and caused NJSCC to incur significant cost to correct the design deficiencies.

WHEREFORE, Plaintiff, New Jersey Schools Construction Corporation, demands judgment against STV as follows:

- (a) compensatory damages in an amount to be determined at trial;
- (b) interest, costs of suit and such other and further relief as this Court deems proper.

COUNT III

(Negligence Against ETC)

38. Plaintiff repeats and realleges each and every paragraph above as if set forth at length herein.

39. ETC had a duty to perform the engineering design of the School in a skillful manner. ETC breached that duty by, among other things, failing to perform structural engineering design with requisite care, skill and knowledge in accordance with the recognized standards of the engineering profession.

40. ETC's breaches of duty resulted in the defective design of the School, and caused NJSCC to incur significant cost to correct the design deficiencies.

WHEREFORE, Plaintiff, New Jersey Schools Construction Corporation, demands judgment against ETC as follows:

- (a) compensatory damages in an amount to be determined at trial;
- (b) interest, costs of suit and such other and further relief as this Court deems proper.

COUNT IV

(Breach of Contract (Third Party Beneficiary) Against ETC)

41. Plaintiff repeats and realleges each and every paragraph above as if set forth at length herein.

42. NJSCC is a third party beneficiary under the contract between STV and ETC.

43. ETC failed to perform engineering services in accordance with the terms of its contract with STV.

44. ETC failed to ensure that the design of the School was performed and completed in accordance with acceptable design practices.

45. This breach of contract by ETC has caused deficiencies in the construction of the School, which deficiencies had to be remedied or repaired by NJSCC.

46. As a result of ETC's breach of contract, NJSCC has incurred and will continue to incur substantial expense repairing the various defects in the construction of the School.

WHEREFORE, Plaintiff, New Jersey Schools Construction Corporation, demands judgment against ETC as follows:

- (a) compensatory damages in an amount to be determined at trial;
- (b) interest, costs of suit and such other and further relief as this Court deems proper.

By: Thomas H. Shar
Thomas H. Shar
Deputy Attorney General

Dated: December 22, 2006

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Thomas H. Shar is hereby designated as trial counsel for Plaintiff, New Jersey Schools Construction Corporation, in the above-captioned matter.

Thomas H. Shar
Thomas H. Shar
Deputy Attorney General

Dated: December 22, 2006

DEMAND FOR DISCOVERY OF INSURANCE COVERAGE

Pursuant to R.4:10-2(b), demand is made upon each defendant that it disclose to plaintiff's counsel whether or not there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or indemnify or reimburse such defendant for payments to satisfy any judgment rendered herein and provide plaintiff's counsel with those insurance agreements or policies, including, but not limited to all and any declaration sheets. This demand shall include not only primary coverage, but also all and any excess, catastrophe and umbrella policies.

Thomas H. Shar
Thomas H. Shar
Deputy Attorney General

Dated: December 22, 2006

CERTIFICATION

Pursuant to R.4:5-1, I hereby certify that the matter in controversy in the within Complaint is not the subject of any other action pending in the Court or of any arbitration proceeding. No other action or arbitration proceeding regarding the matter in controversy is contemplated by the Plaintiff. Plaintiff is not aware at this time of any other parties who should be joined in this action.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Thomas H. Shar

Thomas H. Shar
Deputy Attorney General

Dated: December 22, 2006