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ASPEN LANDSCAPING CONTRACTING, INC.,

Plaintiff,

vs.

A. JULIANO & SONS CONTRACTORS, INC.,
COUNTY OF UNION, a body politic and
corporate in law in the State of New Jersey,
and XYZ CORPORATIONS, additional lien
claimants, if any,

Defendants.

COUNTY OF UNION,

Third-Party Plaintiff,

vs.

T&M ASSOCIATES (a/k/a "T&M"),

Third-Party Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: UNION COUNTY
Docket No.: UNN-L-1079-08

Civil Action

Third-Party Complaint

Parties, Jurisdiction & Venue

1. Defendant/Third-Party Plaintiff, County of Union ("County"), is a public body, with administrative offices located in the City of Elizabeth, and a defendant in this litigation.

2. Third-Party Defendant, T&M Associates ("T&M"), is a corporation with its principal place of business at Eleven Tindall Road, Middletown, New Jersey 07748.

Allegations Common to All Counts

3. This litigation arises out a project to construct a County-owned park, commonly referred to as the Peter J. Esposito Park Project, construction of athletic fields, site work, and park furnishings, in Clark, NJ ("Project").

4. T&M designed the Project for the County and performed construction management services for the County during construction.

5. On or about November 11, 2006, after public bidding was complete, Juliano was awarded a contract to build the Project for a total "not to exceed" price of \$2,909,730.75.

6. On or about January 22, 2008, the County terminated Juliano and initiated a formal demand upon Juliano's surety, Colonial Surety Company ("Surety"), to take over and complete the Project.

7. The present litigation ensued involving several former subcontractors of Juliano, Juliano itself, the Surety, and the County, with various claims among the parties arising out of the Project.

8. Most of the claims in this litigation settled except for certain stipulated claims that Juliano reserved the right to continue to pursue against the County, which claims are the remaining claims in this litigation being brought against the County.

9. The bulk of Juliano's claims rely on alleged "ambiguities" in the bid documents that were prepared by T&M.

10. Juliano maintains that the primary cause of Juliano's damages was a misunderstanding over whether and to what extent cheaper "Zone 3" soil would be required in performing the Project versus the more expensive "Select Material" soil.

11. Juliano has maintained that the contract documents required mostly "Zone 3" fill rather than the more expensive "Select Material".

12. Juliano has maintained that this misunderstanding arises from inconsistencies and ambiguities in the contract documents, and that those inconsistencies and ambiguities should be resolved in favor of the non-drafting party, which is Juliano.

13. As a result, Juliano seeks the difference between the total "select material" fill that he supplied at the price of \$35.50/cy, and the amount that he was paid for said fill, which was at the bid price of \$19.00/cy, for a total damage claim on this issue of \$631,895.27.

14. Juliano's arguments in support of an "ambiguity" in the bid documents include the contrast between line 6 of the "Bidding Form" with specification § 200.15 entitled "Basis of Payment".

15. The Bidding Form contained a line item (number 6) for "Borrow Excavation, Select Material" by the "cubic yard".

16. On the other hand, the "excavation" portion of the Specifications, at § 200.15, states that "payment will be made under ... Borrow Excavation, Zone 3" by the "cubic yard". No mention is made of payment for "Select Material".

17. Juliano's other claims are still under investigation and may rest on additional allegations of "ambiguities" or other problems in the bid documents prepared by T&M.

Count 1
(Common Law Indemnity)

18. The Plaintiff repeats and realleges each and every allegation contained in the previous paragraphs of this Complaint as though set forth at length herein.

19. If there are any ambiguities or other types of problems in the bid documents, those ambiguities or other problems are primarily the fault of T&M, which drafted the bid documents on the County's behalf, not the County which hired T&M to perform and entrusted T&M with this task.

20. If any ambiguities or other problems are found in the bid documents, and if those ambiguities or other problems cause damage to the County, then T&M is responsible for indemnifying the County completely for any and all loss arising therefrom.

21. To the extent that the County has already been damaged, including having to defend itself against claims of alleged "ambiguities" in the bid documents, the County is entitled to complete indemnification from T&M for all such loss, including but not limited to attorneys fees and costs.

22. The County is entitled to complete indemnification from T&M for all losses that the County has or may incur, including but not limited to attorneys fees and costs, any potential settlement with Juliano that the County deems is necessary to avoid the risks and costs of litigation, or any judgment that might be rendered against the County.

WHEREFORE, Third-Party Plaintiff demands judgment against Third-Party Defendant for the following relief:

- a. Compensatory damages plus interest;
- b. Consequential and incidental damages plus interest;
- c. Attorneys fees and costs; and
- d. Any other relief that the Court deems just.

Count II
(Professional Negligence)

23. The Plaintiff repeats and realleges each and every allegation contained in the previous paragraphs of this Complaint as though set forth at length herein.

24. Upon information and belief, T&M breached its professional duty of care to the County, which is the proximate cause of the damage that the County has incurred and may incur in the future defending against the claims of Juliano.

25. The County is entitled to complete indemnification from T&M for all losses that the County has or may incur, including but not limited to attorneys fees and costs, any potential settlement with Juliano that the County deems is necessary to avoid the risks and costs of litigation, or any judgment that might be rendered against the County.

WHEREFORE, Plaintiff demands judgment against all Defendants for the following relief:

- a. Compensatory damages plus interest;
- b. Consequential and incidental damages plus interest;
- c. Attorneys fees and costs; and
- d. Any other relief that the Court deems just.

Dated: Woodland Park, NJ
August 17, 2011

WEBER DOWD LAW, LLC
Counsel for Defendant, County of Union

By: _____
Guido S. Weber, Esq.

CERTIFICATION PURSUANT TO R.4:5-1

I certify to the best of knowledge and belief that the matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding.

I further certify to the best of knowledge and belief that no other action or arbitration proceeding is contemplated at the present time.

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.

Dated: Woodland Park, NJ
August 17, 2011

WEBER DOWD LAW, LLC
Counsel for Defendant, County of Union

By: _____
Guido S. Weber, Esq.