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PINNER CONSTRUCTION CO., INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

PINNER CONSTRUCTION CO., INC., a California corporation;

Plaintiff,

vs.

PETER APOSTOLIDES, an individual;

Defendant.

Case No.: 30-2019-01109923-CU-FR-CJC

Judge Robert J. Moss

COMPLAINT FOR DAMAGES:

1. **FRAUD;**
2. **NEGLIGENT MISREPRESENTATION**

DEMAND FOR JURY TRIAL

Plaintiff complains of Defendant, and alleges as follows:

1. Plaintiff, PINNER CONSTRUCTION CO., INC. ("PINNER") is, and at all times relevant hereto was, a corporation duly organized and authorized to conduct business within the State of California, County of Orange. PINNER is a licensed General Contractor regularly engaged in the business of General Contracting for the Construction of schools in Southern California. PINNER regularly contracts with public entities such as school districts within the locale.

McLain P.C.

2. PINNER is informed and believes, and thereupon alleges, that Defendant PETER APOSTOLIDES is, and at all times relevant hereto was, an individual residing within the State of PENNSYLVANIA, and a licensed insurance professional. At all times mentioned in this Complaint, Defendant APOSTOLIDES worked for Arch Insurance Company, a business entity engaged in the business of providing performance and payment bonds for public works construction projects.

3. PINNER is ignorant of the true names, capacities, and bases for liability of Defendants DOES 1 through 10, inclusive, and therefore sues said Defendants by their fictitious names. SCHUTZ will amend this Complaint to allege their true names, capacities, or bases for liability when the same has been ascertained.

JURISDICTION AND VENUE

4. The State of California, and specifically, Orange County Superior Court have proper jurisdiction over this matter and venue is proper in Orange County because the transactions and occurrences that form the basis of this Complaint took place within the locale of Orange County. In addition, PETER APOSTOLIDES has purposely availed himself of the benefits and has established sufficient minimum contacts with the State of California, County of Orange, such that jurisdiction and venue is proper with this Court.

STATEMENT OF FACTS

5. PINNER CONSTRUCTION CO., INC. is a General Contracting Company with its principal place of business located in Anaheim, California. PINNER has been in business for over 100 years and is widely recognized as one of the most proficient and largest builder of schools on the West Coast. It has established a respectable reputation as a proficient contractor for the construction of schools and other public buildings on behalf of various public entities, including school districts and public hospitals.

6. In or about February 2016, Pinner contracted with the State of California for the project commonly known as Patton State Hospital Project. In conjunction with its performance, PINNER contracted with numerous subcontractors to complete the entire scope of work pursuant

to the Prime Contract.

7. PINNER selected and contracted with, Stanton Utilities to perform the plumbing and HVAC work for the Subject Project. As a condition precedent to PINNER'S award of the subcontract to Stanton Utilities, PINNER required Stanton Utilities to provide a faithful performance and payment bond from an acceptable surety. Stanton Utilities complied, and selected Arch Insurance Company as its surety.

8. The subcontract with Stanton Utilities provides several provisions which are included to protect PINNER in the event of a default or failure to perform by the subcontractor. These provisions include, but are not limited to: (a) Article 3 binds the subcontractor to the terms of the Prime Contract; (b) Article 7 requires the subcontractor to indemnify PINNER for any actions instituted by the Labor Commissioner alleging any failure to pay prevailing wages; (c) Article 10 requires the subcontractor to comply with any progress schedule established by Contractor; (d) Article 11 prohibits stopping work as a remedy to any and all disputes including failure to pay by Contractor or Owner; (e) Article 15 required subcontractor to provide notice of claims and potential claims within ten days of the date the event occurred and to comply with the claims provisions of the Prime Contract; and (f) Article 21 states that Pinner may supplement crews without terminating the subcontract if subcontractor is in default.

9. Stanton Utilities' performance on the subcontract (Patton Project) was troubled from the outset and there were volumes of problems concerning the performance throughout the duration of the project. By way of example, numerous notices of default were issued by PINNER to Stanton Utilities, pursuant to the terms of the subcontract:

- On June 10, 2016; September 30, 2016; and November 18, 2016 notices were issued relating to issues of manpower; late submittals and material substitution issues on the underground portion of the subcontract.
- On August 17, 2017, Stanton wrote to PINNER and advised PINNER that it would be abandoning the project and no longer performing under the subcontract.

10. On August 22, 2017 PINNER wrote a fourth notice of default and demanded a meeting with its surety, Arch Insurance Company. On August 24, 2017 Defendant PETER

APOSTOLIDIS, employee of ARCH, appeared for a meeting at Pinner whereby PETER APOSTOLIDIS intentionally and purposefully concealed the identity of its indemnitor and falsely represented that the indemnitor was merely a consultant to ARCH. During the August 24, 2017 meeting, Stanton Utilities agreed to proceed with the subcontract including submission of engineering for key mechanical support systems. Despite these reassured promises and representations, Stanton did not perform.

11. On November 9, 2017 PINNER again notified Stanton that: (a) The expected engineering would be complete on 11/13/17; (b) Stanton was directed to incorporate the support system into the structure; and (c) Stanton was obligated by the Subcontract to continue performing its work. On November 16, 2017 Pinner notified Arch by telephone that it was giving Stanton one last chance to perform as required by the subcontract and if Stanton failed, Pinner would be calling on Arch to remedy Stanton's default. At all times material to this Complaint, Defendant APOSTOLIDES was the contact person and was otherwise overseeing, the claims process in conjunction with PINNER.

12. There were numerous other problems associated with the subcontractor's performance on the project, ultimately leading to another meeting on February 21, 2018. Specifically, on February 21, 2018 the parties met at PINNER'S office in Anaheim, California to discuss performance under the subcontract. Thereafter, PINNER continue to experience problems with the subcontractor's performance and ultimately needed to supplement manpower and efforts to timely perform the scope of work that was required pursuant to the subcontract with Stanton Utilities.

13. PINNER was significantly concerned about the subcontractor's ability to perform. Accordingly, on March 15, 2018 PINNER consulted with Stanton's surety, by and through PETER APOSTOLIDES, and requested permission from Arch prior to paying Stanton its monthly progress payment. On March 21, 2018 an agreement was reached by telephone by and

between PINNER and Stanton whereby PINNER would supplement the crews so long as the price was reasonable and the surety consented.

14. On April 2, 2018, PINNER'S Chief Administrative Officer (Newton Kellam) spoke with PETER APOSTOLIDES via telephone and specifically addressed the concern that PINNER was willing to supplement the subcontractor's crews so long as the supplementation would not have ANY adverse effect on coverage under Stanton's performance bond. In response, and with the intent for PINNER to rely upon his statements, APOSTOLIDES expressly stated that PINNER had the right to supplement the subcontractor's crews pursuant to the terms of the subcontract. At that time, APOSTOLIDES intentionally concealed the fact that he believed the supplementation of the crew would adversely effect coverage under the performance bond. APOSTOLIDES' actions were purposeful and designed to cause PINNER to rely on these representations to its detriment, such that PINNER would, in fact, supplement the crews, and thereby cause interruption in the surety's obligations under the performance bond. Stated differently, the statements and omissions made by APOSTOLIDES were designed to cause detriment to PINNER so as to benefit ARCH.

15. In conjunction with this call and representations by APOSTOLIDES, PINNER forwarded (email to APOSTOLIDES) a proposal from another subcontractor (PRO CRAFT) which PINNER was considering as a supplement to perform the scope of work. APOSTOLIDES having received the proposal, did not object to the supplementation or the proposed additional subcontractor.

16. On or about April 16, 2018 PINNER issued another notice of default to Stanton Utilities, as their crew did not report for work at the jobsite. On April 20, 2018 PINNER sent a notice of termination of the subcontract, and copied Arch Insurance notifying all concerned that PINNER would be pursuing all available remedies under the performance bond. On April 23,

2018, Newton Kellam again confirmed with Arch, "that Pinner will continue to supplement Stanton's crews pending Arch's response." This supplementation was confirmed yet again on April 24, 2018 whereby PINNER requested substitution of Stanton with a copy to Arch, "that PINNER would continue supplementing Stanton's crews pending hearing on substitution."

17. Thereafter, APOSTOLIDES communicated with PINNER on many occasions in connection with Arch's desire to inspect the project, review documentation, and otherwise review the claim. PINNER complied with all requests and granted all documents, as well as unfettered access to the jobsite. At no time, did APOSTOLIDES mention that PINNER'S supplementation of the crews would adversely effect the claims under the performance bond.

18. On May 15, 2018, Stanton consented, in writing, to the substitution and stated, "PINNER to finish the project as expeditiously as possible."

19. Between July 2, 2018 and August 29, 2018, PINNER provided extensive volumes of documentation and photographs in connection with its claims for relief under the performance bond. On September 13, 2018, Arch makes an offer to settle PINNER'S claims.

20. Inextricably, on October 2, 2018 Arch writes to PINNER denying its claim outright based upon factual assertions that APOSTOLIDES admits were false. Arch's letter states, "***by unilaterally completing the bonded subcontract without providing Arch with a meaningful opportunity to exercise its performance options, Pinner committed a material breach of the bond, rendering it null and void.***" This was despite the fact that APOSTOLIDES and the subcontractor expressly agreed to PINNER's supplementation as early as March 21, 2018.

21. As a direct and proximate result of APOSTOLIDES' false representations and omissions, PINNER has suffered extreme financial damages. PINNER was forced to expend over $5,000,000 in costs to complete the scope of the subcontract, with the expectation that the surety would cover the claims.

FIRST CAUSE OF ACTION

(FRAUD – Against Defendant APOSTOLIDES)

22. PLAINTIFF PINNER CONSTRUCTION CO., INC. repleads and incorporates herein by this reference, as though fully set forth, Paragraphs 1 through 21, inclusive, of its Complaint as set forth above.

23. DEFENDANT PETER APOSTOLIDES' made numerous false statements of material fact and omissions concerning PINNER'S claim for relief under the performance bond and its ability to supplement the crews of its subcontractor and the surety's indemnitor. Namely, APOSTOLIDES concealed the identity of its indemnitor, represented and assured PINNER that it had the right to supplement the crews without adverse impact on coverage, and intentionally omitted the fact that APOSTOLIDES knew that he would utilize the supplementation of the crews to deny coverage to PINNER under the performance bond and otherwise benefit his own interests, such as an employee of the insurance company.

24. At the time APOSTOLIDES made the statements concerning PINNER'S right to supplement the crews, and at the time APOSTOLIDES agreed to the supplementation, APOSTOLIDES knew that he was misleading PINNER and that supplementation would be used by his employer to deny coverage under the performance bond. These statements and omissions were made with the specific intent of causing PINNER to rely to its detriment and actually supplement the crews under the subcontract such that the project would be completed and APOSTOLIDES' employer could escape a claim for $3,500,000 (the penal sum of the bond.)

25. PINNER did, in fact, rely to its detriment on the material misrepresentations and omissions made by APOSTOLIDES in that PINNER expended approximately $5,000,000 to complete the scope of work, all at the approval and consent of APOSTOLIDES.

26. As a direct and proximate result of Defendant's actions, PINNER suffered damages to in that it has lost over $5,000,000 and was denied coverage under the performance bond in the penal sum of $3,500,000.

27. Based upon further information and belief, Defendant's actions were conducted with malice, oppression, and intent to injure Plaintiff such as to justify an award of punitive and exemplary damages.

SECOND CAUSE OF ACTION

(NEGLIGENT MISREPRESENTATION- Against Defendant APOSTOLIDES)

28. Plaintiff repleads and incorporates herein by this reference, as though fully set forth, Paragraphs 1 through 27, inclusive, of the Complaint as set forth above.

29. At all times material to this Complaint, Defendant APOSTOLIDES had a duty to provide truthful, accurate information to PINNER CONSTRUCTION, a Claimant under the performance bond.

30. Defendant APOSTOLIDES breached this duty by making false statements to PINNER CONSTRUCTION concerning its rights to supplement the crews, concerning the impact that supplementation would have on his employer's coverage of the claim, accurate and truthful information concerning his secret intentions, and to otherwise verify the representations that were being made to PINNER in reliance thereon.

31. PINNER actually relied to its detriment on the false and inaccurate representations by APOSTOLIDES and suffered harm. Had PINNER known that Defendant's employer would deny coverage based upon the supplementation of crews, PINNER would have not spent over $5,000,000 in supplementing the crews and thereby providing Arch with an alleged reprieve from coverage. Moreover, had PINNER not relied on APOSTOLIDES' misrepresentations, PINNER would have recovered under the performance bond an amount equal to its penal sum: $3,500,000.

32. Based upon further information and belief, Defendant's actions were conducted with malice, oppression, and intent to injure Plaintiff such as to justify an award of punitive and exemplary damages.

WHEREFORE, Plaintiff prays for judgment as follows:

1. Against Defendant, for general damages in an amount to be proven at trial, but not less than $5,000,000;
2. For the costs of suit;
3. For prejudgment interest;
4. For punitive and exemplary damages;
5. For reasonable attorney fees to the extent permitted; and
5. For such other and further relief as the Court deems equitable and proper.

Date: November 1, 2019

MCLAIN LAW FIRM, PC

By: ______________________
Erik M. McLain
Attorneys for Plaintiff

PINNER CONSTRUCTION CO., INC.

McLain P.C.