



No. PRG-S-S-2361963
Prince George Registry

In the Supreme Court of British Columbia

Between

TEROTECH SOLUTIONS INC.,

Plaintiff

and

SOUTHWEST DESIGN & CONSTRUCTION LTD. and
THE DISTRICT OF MACKENZIE

Defendants

and

TEROTECH SOLUTIONS INC.,

Defendant by Counterclaim

COUNTERCLAIM

Filed by: Southwest Design & Construction Ltd. ("**Southwest**")

To: Terotech Solutions Inc. ("**Terotech**")

This action has been brought by the plaintiffs against the defendants for the relief set out in the notice of civil claim filed in this action.

TAKE NOTICE that the defendant Southwest claims against you for the relief set out in Part 2 below.

IF YOU INTEND TO RESPOND to the claim made against you in this counterclaim, or if you have a set-off or counterclaim that you wish to have taken into account at the trial, YOU MUST FILE a response to counterclaim in Form 4 in the above-named registry of this court within the time for response to counterclaim described below and SERVE a copy of the filed response to counterclaim on the address for service of the defendant(s) bringing this counterclaim.

YOU OR YOUR LAWYER may file the response to counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to counterclaim within the time for response to counterclaim described below.

Time for response to counterclaim

A response to counterclaim must be filed and served on the defendant bringing this counterclaim,

- (a) if you were served with the counterclaim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the counterclaim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the counterclaim anywhere else, within 49 days after that service, or
- (d) if the time for response to counterclaim has been set by order of the court, within that time.

CLAIM OF THE DEFENDANT BRINGING THE COUNTERCLAIM

Part 1: STATEMENT OF FACTS

1. Capitalized terms used in this Counterclaim have the same meaning as the terms defined in Southwest's response to civil claim.
2. Southwest repeats and relies on each and every allegation contained in its response to civil claim.
3. The Plaintiff failed to perform the Subcontract Work in a competent, professional and workman-like manner in accordance with the Subcontract and applicable industry standards.
4. Further, the Plaintiff failed to complete the Subcontract Work.
5. Particulars of the Plaintiff's breaches of the Subcontract include without limitation:
 - (a) the Plaintiff purchased horizontal rather than vertical cladding;
 - (b) the Plaintiff failed to provide required documentation including shop drawing submittals and cut lists; and
 - (c) the Plaintiff provided insufficient manpower to complete the Project within the lead times provided by the Plaintiff.
6. Deficiencies in the Plaintiff's work include without limitation:

- (d) insulation was not installed in accordance with manufacturer's specifications and guidelines;
 - (e) strapping along walls were not level;
 - (f) steel panel siding was not pre-drilled before installation;
 - (g) bolt patterns and elevations were inconsistent;
 - (h) multiple sheets of cladding were cut too short and became unusable;
 - (i) multiple sheets of cladding had double screw holes due to the unlevel strapping;
 - (j) steel cladding could not be used due to its poor aesthetic appearance which was contrary to the architectural specifications;
 - (k) flashing details were incorrectly installed; and
 - (l) extensively damaged the flashing requiring it to be replaced
- (collectively, the "**Deficient Work**").

7. The Plaintiff has failed or refused to remedy the Deficient Work, despite demand.

8. To date, Southwest has incurred costs, damage and expense due to the Deficient Work and completing the unfinished Subcontract Work, which continue to accumulate. Southwest has incurred special damages in the amount of at least \$131,003.30 to date.

9. Southwest may become liable for cost, damage and expense incurred by the District of Mackenzie as a result of the Plaintiff's breaches of the Subcontract.

10. As a result of Terotech's breaches of the Subcontract, Southwest has suffered loss and damage exceeding the balance of the contract price, including without limitation the costs associated with remediating the Deficient Work and completing the unfinished Subcontract Work.

11. Particulars of the loss, damage and expense that Southwest has suffered and will continue to suffer include, without limitation:

- (a) material costs to complete the Subcontract Work and to repair or replace deficient Work, including cladding, installed by the Plaintiff;
- (b) equipment rental costs;
- (c) labour costs to remove, repair and complete the Subcontract Work; and
- (d) such further and other particulars as will be proven at the trial of this matter.

Part 2: RELIEF SOUGHT

- 12. General damages for breach of contract.
- 13. Special damages for breach of contract in the amount of at least \$131,003.30.
- 14. Interest pursuant to the Subcontractor or alternatively pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79, as amended.
- 15. Costs pursuant to the *Supreme Court Civil Rules* on such basis as this Honourable Court deems just.
- 16. Such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

- 17. Terotech has breached the Subcontract.
- 18. Terotech's breaches of the Subcontract have caused Southwest to suffer loss, damage and expense.
- 19. Further and alternatively, Southwest relies on its contractual, common law and equitable rights of set-off.
- 20. Southwest pleads and relies on s. 30(1) and s. 34(3) of the *Builders Lien Act*, S.B.C. 1997, c. 45, as amended.
- 21. Southwest pleads and relies on s. 10 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253, as amended.

Address for service of the defendant
bringing this counterclaim:

BORDEN LADNER GERVAIS LLP
1200 Waterfront Centre
200 Burrard Street
P.O. Box 48600
Vancouver, British Columbia
V7X 1T2
Attention: Kimberly Gosel

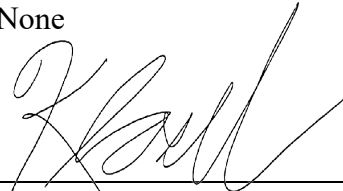
Fax number address for service (if any):

None

E-mail address for service (if any):

None

Date: May 18, 2023



Signature of Kimberly Gosel

☐ filing party ☒ lawyer for filing party

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

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COUNTERCLAIM

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