



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

RESPONSE TO CIVIL CLAIM

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

PART 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Southwest's Response to Facts

1. The facts alleged in paragraphs 4, 10 and 13 of Part 1 of the notice of civil claim are admitted.
2. The facts alleged in paragraphs 1, 2, 5, 6, 7, 8, 9, 11, 12, 14, 15 of Part 1 of the notice of civil claim are denied.
3. The facts alleged in paragraph 3 of Part 1 of the notice of civil claim are outside the knowledge of Southwest.

Division 2 – Southwest's Version of Facts

4. The defendant, Southwest, is a company duly incorporated pursuant to the laws of the Province of Alberta. Southwest has an address for service located at 1200 Waterfront Centre, 200 Burrard Street P.O. Box 48600 Vancouver, British Columbia V7X 1T2.
5. At all material times, Southwest has carried on business as a construction contractor.

6. The plaintiff, Terotech Solution Inc. was previously an Alberta corporation (“Terotech” or the “Plaintiff”). Terotech was struck from the Alberta corporate registry on or around 2 May 2023 for failure to file annual corporate returns and no longer exists as a legal entity.

7. Capitalized terms have the meaning prescribed to them in the notice of civil claim unless expressly defined herein.

A. The Project & the Subcontract

8. On or around 15 September 2020, Southwest entered into a written agreement with the defendant, the District of Mackenzie, whereby Southwest would construct a new fire hall (the “**Project**”).

9. On or around 13 September 2021, Southwest and the Plaintiff entered into a written contract for external cladding services (the “**Subcontract**”). The Plaintiff’s scope of work included, but was not limited to, the supply and installation of cladding, insulation and vapor barrier (the “**Subcontract Work**”). The fixed Subcontract price was approximately \$198,450.00 (the “**Subcontract Price**”).

10. The Plaintiff under-estimated the cost of the Subcontract Work as a result of its own acts or omissions, including without limitation its failure to use accurate measurements.

11. It was an express or implied term of the Subcontract that the Plaintiff would complete the Subcontract Work in accordance with the main schedule and would arrange for materials to be ordered and delivered within the lead times provided by the Plaintiff. Other material terms of the Subcontract include without limitation:

- (a) Each progress application must be accompanied, without limitation, backup for all items billed on a cost-plus basis and by a completed Statutory Declaration and a Workers’ Compensation Board Clearance letter.
- (b) The Plaintiff could not bill in excess of the Subcontract without prior written consent from Southwest.

B. The Plaintiff's Breaches of Contract

12. 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.

13. Further, the Plaintiff failed to complete the Subcontract Work.

14. Particulars of the Plaintiff's breaches of the Subcontract include without limitation:

- (a) the Plaintiff purchased and supplied 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.

15. Deficiencies in the Plaintiff's work include without limitation:

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

(collectively, the "**Deficient Work**").

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

17. 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 \$130,003.30 to date.

18. 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.

C. Changes to the Subcontract Work

19. The Plaintiff never requested, and Southwest never approved, any increases to the Subcontract Price.

20. The Plaintiff did not perform any extra work.

21. If the Plaintiff performed any extra work, which is not admitted but is expressly denied, the Plaintiff did not seek or obtain approval to perform this work before doing the work.

22. In specific response to paragraph 6 of Part 1 of the notice of civil claim, Southwest and the Plaintiff did not enter into any oral agreements pertaining to the Subcontract Work.

23. In response to the whole of the notice of civil claim, Southwest denies that the Plaintiff has performed any work for which it has not been compensated pursuant to the Subcontract. Southwest denies that any amount is owed to the Plaintiff.

24. Southwest has paid all amounts properly owing to the Plaintiff, taking into account the Subcontract Price as well as the incomplete Subcontract Work and the Deficient Work.

D. Builders Lien Security

25. Southwest has complied with all of its obligations at law, including its obligations under the Subcontract and the *Builders Lien Act*, S.B.C. 1997, c 45 and amendments thereto (the "***Builders Lien Act***").

26. On 15 March 2022, the Plaintiff filed claim of builders lien under registration no. CA9788829 against the Lands, alleging that the sum of \$191,839.30 was due and owing to said plaintiff (the "**Claim of Lien**").

27. Pursuant to s. 24 of the *Builders Lien Act* and a consent order entered by this Honourable Court made 26 July 2022 in proceeding no. PRG-S-S-2261088 (the “**Lien Security Order**”), the Plaintiff’s Claim of Lien was removed from title to the Lands upon posting of security by Southwest in the form of cash for the face value of the lien (the “**Security**”). Pursuant to the Lien Security Order, the Security stands in place of the Lands and the holdback.

28. The Plaintiff is not entitled to any liens against the Lands or the improvements, and the Plaintiff is not entitled to any lien for the following reasons, without limitation:

- (a) the Claim of Lien does not comply with the formal requirements of the *Builders Lien Act*;
- (b) the Claim of Lien includes claims that are not lienable;
- (c) to the extent the Plaintiff performed any work in respect of the Project and it is lienable, the sums sought were not and are not due and owing to the Plaintiff or, alternatively, are exaggerated and/or inflated;
- (d) the amounts claimed in the Claim of Lien are not due, owing or payable and, or alternatively, are for work and materials that were not supplied to the Lands or to any improvement in connection with the Lands and, or alternatively, were not requested or necessary; and
- (e) the Claim of Lien is defective.

(collectively, the “**BLA Defences**”)

29. In the alternative, if the Plaintiff is entitled to the Claim of Lien, which is denied, it is not entitled to a lien for the amounts alleged, as the amounts alleged are exaggerated.

30. In the further alternative, if the Plaintiff does have a lien, which is not admitted but is denied, then the lien is a charge upon the Security only and not upon the Lands, holdback, improvements, or material.

E. No Breach of Trust

31. In specific response to paragraph 14 of Part 1 the notice of civil claim, Southwest denies that it has appropriated or converted any trust money to uses not authorized by the trust and puts the Plaintiff to the strict proof thereof.

Division 3 – Additional Facts

32. Nil.

Part 2: RESPONSE TO RELIEF SOUGHT

33. Southwest consents to the granting of none of the relief sought in Part 2 of the notice of civil claim.

34. Southwest opposes the granting of the relief sought in all paragraphs of Part 2 of the notice of civil claim.

35. Southwest takes no position on the granting of none of the relief sought in Part 2 of the notice of civil claim.

Part 3: LEGAL BASIS

36. Southwest has not breached the Subcontract as alleged or at all.

37. The amounts claimed by the Plaintiff in its notice of civil claim are not due, owing or payable by Southwest.

No standing

38. As of the date of this Response to Civil Claim, the company that previously existed as “Terotech Solutions Inc.” does not exist for any purpose and has no legal status or capacity to maintain an action as against a defendant, including Southwest.

No breach of contract

39. Southwest denies that the Plaintiff has suffered any loss or damage as a consequence alleged or at all.

40. In the further alternative, if the Plaintiff has suffered any loss or damage, which is not admitted and is specifically denied, then such loss or damage was not caused or contributed to by Southwest but by the acts or omissions of those for whom Southwest is not responsible at law, including the Plaintiff, and the Plaintiff has failed to take reasonable steps to mitigate that loss or damage.

No lien

41. The Plaintiff is not entitled to a lien as against the Lands or the holdback since the Plaintiff failed to comply with the provisions of the *Builders Lien Act* and Southwest relies on the BLA Defences. In the alternative, the Plaintiff is not entitled to a lien as against the Lands or the holdback in the amount alleged since that amount is exaggerated. In any event, the full extent of Southwest's liability is limited to the Plaintiff's proportionate share of the holdback, provided that the Plaintiff can prove that any amount is owing to it and that it complied with the provisions of the *Builders Lien Act*.

42. In the alternative, if the Plaintiff is entitled to the Claim of Lien, which is denied, it is not entitled to a lien for the amounts alleged, as the amounts alleged are exaggerated.

43. In the further alternative, if the Plaintiff does have a lien, which is not admitted but is denied, then the lien is a charge upon the Security only and not upon the Lands, holdback, improvements, or material.

44. In the further alternative, if the Plaintiff is entitled to a lien against the Lands, which is not admitted but is denied, the Plaintiff's claim is limited by the holdback provisions of the *Builders Lien Act* and the amount that Southwest held back from the Plaintiff in compliance with the terms of the *Builders Lien Act*.

No breach of trust

45. Southwest has not appropriated or converted any trust funds for unauthorized purposes.

Right to set-off

46. Southwest does not owe any amount to the Plaintiff. Alternatively, if Southwest does owe any amount to the Plaintiff, which is denied, Southwest is entitled to contractual, equitable or legal set-off against such amounts the amounts the Plaintiff owes to Southwest as a result of the Plaintiff's breaches of contract.

Legislation and costs

47. Southwest pleads and relies on *Builders Lien Act*.

48. Southwest further pleads and relies on the British Columbia *Business Corporations Act*, S.B.C. 2002, c. 57, s. 375 and Alberta *Business Corporations Act*, R.S.A. 2000, c. B-9, s. 213.

49. In all of these circumstances, the Plaintiff has no claim against Southwest, as alleged or at all, and the action against Southwest ought to be dismissed with special costs or costs pursuant to *Supreme Court Civil Rules*.

Southwest's address for service:

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

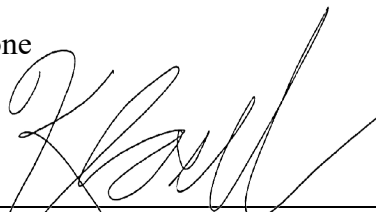
Fax number address for service (if any):

None

E-mail address for service (if any)

None

Date: May 18, 2023



Signature of Kimberly Gosel

☐ defendant ☒ lawyer for the defendant,
Southwest Design & Construction Ltd.

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.

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

RESPONSE TO CIVIL CLAIM

BKG/jmb 443043.000016

BORDEN LADNER GERVAIS LLP

1200 Waterfront Centre

200 Burrard Street

P.O. Box 48600

Vancouver, British Columbia

V7X 1T2

Telephone: (604) 687-5744

Attn: Kimberly Gosel