

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S. DC - Atlanta
JUN 23 2009
JAMES M. RATTEN, Clerk
Deputy Clerk

UNITED FORMING, INC.)
)
Plaintiff,)
)
v.)
)
BOVIS LEND LEASE, INC., TRAVELERS)
CASUALTY AND SURETY COMPANY OF)
AMERICA, FEDERAL INSURANCE)
COMPANY, FIDELITY AND DEPOSIT)
COMPANY OF MARYLAND, AND)
LIBERTY MUTUAL INSURANCE COMPANY)
)
Defendants.)
)
_____)

CIVIL ACTION
FILE NO.: 1:09-CV-01480-CC

**ANSWER AND AFFIRMATIVE DEFENSES OF
TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA,
FEDERAL INSURANCE COMPANY,
FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
AND LIBERTY MUTUAL INSURANCE COMPANY**

Defendants, Travelers Casualty and Surety Company of America, Federal Insurance Company, Fidelity and Deposit Company of Maryland, and Liberty Mutual Insurance Company (hereinafter referred to collectively as the "Lien Bond Sureties"), hereby answer and defend against the Complaint of United Forming, Inc. ("Plaintiff").

FIRST AFFIRMATIVE DEFENSE AND ANSWER

As their first affirmative defense and as their Answer to the Complaint, the Lien Bond Sureties respond to the specifically enumerated averments of Plaintiff's Complaint as follows:

GENERAL ALLEGATIONS

1. The Lien Bond Sureties lack knowledge sufficient to form a belief as to the truth of the averments contained in paragraph 1 of Plaintiff's Complaint, which therefore stand denied.

2. The Lien Bond Sureties lack knowledge sufficient to form a belief as to the truth of the averments contained in paragraph 2 of Plaintiff's Complaint, which therefore stand denied.

3. The averments contained in paragraph 3 of Plaintiff's Complaint are admitted.

4. The averments contained in paragraph 4 of Plaintiff's Complaint are admitted.

5. The averments contained in paragraph 5 of Plaintiff's Complaint are admitted.

6. The averments contained in paragraph 6 of Plaintiff's Complaint are admitted.

7. The averments contained in paragraph 7 of Plaintiff's Complaint are denied.

8. The Lien Bond Sureties admit that the contract that is the subject of this action was performed in Fulton County, Georgia and that venue is proper in Fulton County, Georgia. Except as admitted, the averments contained in paragraph 8 of Plaintiff's Complaint are denied.

9. The averments contained in paragraph 9 of Plaintiff's Complaint are denied.

COUNT I
BREACH OF CONTRACT
CONTRACT BALANCE AND EXTRA WORK

10. The Lien Bond Sureties reaver and reincorporate all prior enumerated responses as if fully incorporated herein.

11. The Lien Bond Sureties lack knowledge sufficient to form a belief as to the truth of the averments contained in paragraph 11 of Plaintiff's Complaint, which therefore stand denied.

12. The Lien Bond Sureties admit that Plaintiff entered into a subcontract with Defendant Bovis Lend Lease, Inc. ("Bovis"), which contract speaks for itself; any averments inconsistent with the terms of the subcontract are denied. Except as expressly admitted, all other averments in paragraph 12 of Plaintiff's Complaint are denied.

13. The averments contained in paragraph 13 of Plaintiff's Complaint are denied.

14. The averments contained in paragraph 14 of Plaintiff's Complaint are denied.

15. The averments contained in paragraph 15 of Plaintiff's Complaint are denied.

16. The averments contained in paragraph 16 of Plaintiff's Complaint are denied.

17. The averments contained in paragraph 17 of Plaintiff's Complaint are denied.

COUNT II
BREACH OF CONTRACT
DELAY DAMAGES

18. The Lien Bond Sureties reaver and reincorporate all prior enumerated responses as if fully incorporated herein.

19. The averments contained in paragraph 19 of Plaintiff's Complaint are denied.

20. The averments contained in paragraph 20 of Plaintiff's Complaint are denied.

21. The Lien Bond Sureties admit that Plaintiff entered into a subcontract with Bovis, which speaks for itself, and any averments inconsistent with the terms of the subcontract are denied. Except as expressly admitted, all other averments in paragraph 21 of Plaintiff's Complaint are denied.

22. The averments contained in paragraph 22 of Plaintiff's Complaint are denied.

23. The averments contained in paragraph 23 of Plaintiff's Complaint are not directed to the Lien Bond Sureties and therefore require no response and also stand denied.

COUNT III
QUANTUM MERUIT / UNJUST ENRICHMENT

24. The Lien Bond Sureties reaver and reincorporate all prior enumerated responses as if fully incorporated herein.

25. The Lien Bond Sureties admit that Plaintiff provided labor and materials for the construction of the St. Regis Hotel. Except as expressly admitted, all other averments contained in paragraph 25 of Plaintiff's Complaint are denied.

26. The averments contained in paragraph 26 of Plaintiff's Complaint are denied.

27. The averments contained in paragraph 27 of Plaintiff's Complaint are denied.

28. The averments contained in paragraph 28 of Plaintiff's Complaint are denied.

29. The averments contained in paragraph 29 of Plaintiff's Complaint are denied.

30. The averments contained in paragraph 30 of Plaintiff's Complaint are denied.

COUNT IV
GEORGIA PROMPT PAY ACT

31. The Lien Bond Sureties reaver and reincorporate all prior enumerated responses as if fully incorporated herein.

32. The averments contained in paragraph 32 of Plaintiff's Complaint are denied.

33. The averments contained in paragraph 33 of Plaintiff's Complaint are denied.

34. The averments contained in paragraph 34 of Plaintiff's Complaint are denied.

COUNT V
LIEN DISCHARGE BOND

35. The Lien Bond Sureties reaver and reincorporate all prior enumerated responses as if fully incorporated herein.

36. The Lien Bond Sureties admit that Exhibit A of Plaintiff's Complaint is a copy of a document filed with the Clerk of Superior Court Fulton County, Georgia, which speaks for itself. Except as expressly admitted, all other averments contained in paragraph 36 of Plaintiff's Complaint are denied.

37. The Lien Bond Sureties admit that Plaintiff commenced this action within one year of the date from which it last performed work on the St. Regis Hotel. Except as expressly admitted, all other averments contained in paragraph 37 of Plaintiff's Complaint are denied.

38. The averments contained in paragraph 38 of Plaintiff's Complaint are admitted.

39. The averments contained in paragraph 39 of Plaintiff's Complaint are denied.

40. The averments contained in paragraph 40 of Plaintiff's Complaint are denied.

COUNT VI
ATTORNEYS' FEES

41. The Lien Bond Sureties reaver and reincorporate all prior enumerated responses as if fully incorporated herein.

42. The averments contained in paragraph 42 of Plaintiff's Complaint are denied.

43. The averments contained in paragraph 43 of Plaintiff's Complaint are denied.

44. The averments contained in paragraph 44 of Plaintiff's Complaint are denied.

45. Each and every remaining averment of Plaintiff's Complaint and all *ad damnum* pleas of Plaintiff's Complaint are denied.

SECOND DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

The Lien Bond Sureties are entitled to assert and hereby raise and incorporate all legal and contractual defenses available to Plaintiff's contracting party, Bovis, and/or that would have been available to the Project owner under the Georgia Mechanics Lien Laws.

FOURTH DEFENSE

Plaintiff's claims are barred by payment of all or part of the amounts alleged to be due.

FIFTH DEFENSE

Plaintiff's claims are barred by setoff and/or recoupment, as Plaintiff owes money to Bovis.

SIXTH DEFENSE

Plaintiff's claims are barred by virtue of waiver; accord and satisfaction; and estoppel, as Plaintiff has provided periodic waivers and releases to Bovis.

SEVENTH DEFENSE

Some or all of Plaintiff's claims are barred by failure of conditions precedent, including specifically the conditions and terms set forth in Plaintiff's subcontract with Bovis.

EIGHTH DEFENSE

Plaintiff's lien amount is overstated and exaggerated, such that Plaintiff's lien should be reduced or expunged, and lien bond premiums refunded.


NINTH DEFENSE

Plaintiff's lien is legally defective and fails to comply with the Georgia Mechanics Lien laws, and as such should be expunged and this action dismissed as to the Lien Bond Sureties.

WHEREFORE, the Lien Bond Claimants respectfully pray that Plaintiff's Complaint be dismissed, that all fees and costs be awarded to the Lien Bond Claimants, and that Plaintiff go hence without delay.

Respectfully submitted this 23rd day of June, 2009.

SUTHERLAND ASBILL & BRENNAN LLP

By: 

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*Attorneys for Defendants
Travelers Casualty and Surety Company of
America, Federal Insurance Company,
Fidelity and Deposit Company of Maryland,
and Liberty Mutual Insurance Company*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, FEDERAL INSURANCE COMPANY, FIDELITY AND DEPOSIT COMPANY OF MARYLAND, AND LIBERTY MUTUAL INSURANCE COMPANY'S ANSWER AND AFFIRMATIVE DEFENSES via U.S. Mail and facsimile to the following attorneys of record:

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Kamyar Molavi, Esq.
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This 23rd day of June, 2009.

SUTHERLAND ASBILL & BRENNAN LLP

By: _____



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