

**SERVICE AND PROCESSING OF CLAIMS**

Plaintiff or Claimant: Hopkins Mechanical + Design

Date: 6/13/17

Case Code 30301, 30303

Case No. 2017 CV 004751

In-person

Process Server

Claimant

Other \_\_\_\_\_

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- Forwarded to Attorney's Office by Ann Marie or Janel
- Response from Attorney's Office
- Common Council Agenda: Yes  No

Hopkins Mechanical & Design, LLC vs. City of West Allis

Electronic Filing Notice

Case No. 2017CV004751  
Class Code: Money Judgment

FILED  
06-09-2017  
John Barrett  
Clerk of Circuit Court  
2017CV004751  
Honorable Glenn H  
Yamahiro-34  
Branch 34

CITY OF WEST ALLIS  
7525 W. GREENFIELD AVENUE  
WEST ALLIS WI 53214

*Monica Schultz*  
*6-13-17*  
*10:45 AM*

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If you have questions regarding this notice, please contact the Clerk of Circuit Court at 414-278-4120.

**BY THE COURT:**

Electronically signed by John Barrett  
Clerk of Circuit Court

06-09-2017  
Date

RECEIVED  
JUN 13 2017  
CITY OF WEST ALLIS  
CITY CLERK

FILED  
06-09-2017  
John Barrett  
Clerk of Circuit Court  
2017CV004751  
Honorable Glenn H  
Yamahiro-34  
Branch 34

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY  
BRANCH \_\_\_

HOPKINS MECHANICAL & DESIGN, LLC  
4608 North 31<sup>st</sup> Street  
Milwaukee, WI 53209

Plaintiff,

Case No. \_\_\_\_\_

Case Code: 30301, 30303

v.

CITY OF WEST ALLIS  
7525 West Greenfield Avenue  
west Allis, WI 53214

Defendant.

RECEIVED

JUN 13 2017

CITY OF WEST ALLIS  
CITY CLERK

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**SUMMONS**

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THE STATE OF WISCONSIN, To each person named above as a Defendant: You are hereby notified that the Plaintiffs named above have filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is Milwaukee County Courthouse, 901 N. 9<sup>th</sup> Street, Milwaukee, WI 53233, and to Jacob Miota, Esq., Plaintiff's attorney, whose address is Miota Law LLC, 1400 East Olive Street, Shorewood, WI 53211. You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment

may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 9th day of June, 2017.

**MIOTA LAW LLC**

By: s/ Jacob Miota

Jacob E. Miota, SBN 1055381

1400 E. Olive Street

Milwaukee, WI 53211-1828

Direct dial: 414.973.9305

Fax: 414.386.4675

*[jmiota@miotlaw.com](mailto:jmiota@miotlaw.com)*

Attorney for Plaintiff Hopkins  
Mechanical & Design LLC

**Co-Counsel:**

Frank J. Liska, Jr., SBN 1014843

11821 West Edgerton Avenue

Hales Corners, WI 53130-1076

(414) 531-6219

[fliska@liskalaw.com](mailto:fliska@liskalaw.com)

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY  
BRANCH \_\_\_

HOPKINS MECHANICAL & DESIGN, LLC  
4608 North 31<sup>st</sup> Street  
Milwaukee, WI 53209  
Plaintiff,

Case No. \_\_\_\_\_

Case Code: 30301, 30303

v.

CITY OF WEST ALLIS  
7525 West Greenfield Avenue  
west Allis, WI 53214

Defendant.

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**COMPLAINT**

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Plaintiff Hopkins Mechanical & Design, LLC (“Hopkins”), by its attorneys Miota Law LLC and Frank J. Liska, Jr., for its Complaint against Defendant the City of West Allis (the “City”) alleges as follows:

1. Plaintiff Hopkins is a Wisconsin limited liability company with its principle place of business located at 4608 N. 31<sup>st</sup> Street, Milwaukee, WI 53209. Hopkins is engaged in the business of designing and construction buildings.

2. Defendant the City is a Second Class City as defined by the Wisconsin Statutes with a principle address of City Hall, 7525 W. Greenfield Ave, West Allis, WI 53214.

3. In addition to other functions, the City operates the Community Development Authority of the City of West Allis (the “Authority”) which, as part of its mission, contracts with builders like Hopkins to construct homes for residents of the City.

**Background**

4. In the fall of 2015, the Authority issued Request for Proposal 1290 related to the construction of a single family home to be located at 8614<sup>th</sup> W. Mitchell Street in West Allis (the

“RFP”). The over 200 page document set forth a host of requirements and specifications, but did not include actual blueprints for the proposed building. Instead, it included concept drawings prepared by Kuls Quality Homes, Inc., a winner of Authority RFPs in the past. The Kuls’ concept drawing were insufficient to actually build the proposed house.

5. Hopkins complied with the each of the numerous and onerous requirements set forth in the RFP and submitted the low bid. The profit margin to Hopkins on the submitted bid was over \$100,000.

6. Hopkins and the City, through the Authority, entered into a contract for the construction of a single-family home based upon Hopkins’ successful bid on March 8, 2016. Thereafter, on April 8, 2016, Hopkins was given authority to proceed with the project.

7. Floyd Hopkins, owner of Hopkins Mechanical & Design, LLC, immediately went to the City to obtain a building permit. He first met with Shelly Kerwin at the Department of Building Inspection and Neighborhood Services. Ms. Kerwin had no record of any plan being approved by her office, and further stated that no blueprints or surveys were on file, and therefore she could not issue the building permit.

8. Mr. Hopkins next went to Robert Ahlm, the Rehabilitation Specialist for the City and a contact person listed on the RFP. Mr. Ahlm acknowledged that the RFP did not contain a blueprint sufficient to construct the house, and advised Mr. Hopkins that he would have to design the house and submit blueprints to the City before he could obtain a building permit. Mr. Ahlm further acknowledged that said work was beyond the scope of work in the RFP and assured Mr. Hopkins that Hopkins would be remunerated beyond the contract price for completing the drawings.

9. Mr. Hopkins then contacted Cindy Kuhs, owner of Kuhs Quality Homes, the designer of the concept drawings included in the RFP and prior builder of homes for the Authority.

Ms. Kuhs acknowledged that neither she nor her firm included sufficiently detailed plans in the RFP to actually construct the home and that the City had not asked her to include more than concept drawings. She also maintained that she did not have such blueprints prepared to give or to sell to Hopkins.

10. Over the next two weeks, Mr. Hopkins himself prepared detailed blueprints based upon requirements in the RFP and given to him by Mr. Ahlm, as well as a pre-construction meeting attended by one someone from Mr. Ahlm's office.

11. Mr. Hopkins next took his detailed plans back to Ms. Kerwin. Ms. Kerwin still refused to issue a building permit, but did go through the blueprints with Mr. Hopkins and made handwritten notes on them.

12. Hopkins then engaged building designer Ian Blaire at Inkovate LLC to finalize the detailed plans and incorporate Ms. Kerwin's notes. Mr. Blair worked with Ms. Kerwin and a building inspector, Bob Johnson, in preparing the final plans.

13. In an email to Mr. Ahlm on May 17, 2016, Mr. Hopkins informed the City of his intention to submit the finalized building application, plans, and other required materials on May 20, 2016. On May 20, Mr. Hopkins indeed personally delivered these materials and met with Ms. Kerwin, who verbally approved the plans at that time. She indicated that a permit would be issued the following week.

14. At no time during this meeting or prior did the City ever indicate that it was dissatisfied in any way with Hopkins' performance or progress under the contract. Nevertheless, on May 19, 2016, the City apparently terminated the contract with Hopkins via a certified letter. Even though Mr. Hopkins met with the City and Ms. Kerwin the next day, and even though Ms. Kerwin verbally approved the building permit, no one informed Mr. Hopkins that the City was terminating the contract.

15. No reason was given for the City's termination of the contract. Subsequent to the termination, the City proffered various pre-textual reasons for the termination, reasons that it never communicated to Mr. Hopkins in any of his many contacts and meetings with the City.

16. The contract calls for the City, in the event of a termination, to reimburse Hopkins for his costs incurred and to pay it for the portion of the work performed until the date of termination. The value of the blueprints prepared, the cost of the bonding required, the surveying, and Mr. Hopkins work on the project totaled \$65,596.74, which amount Hopkins invoiced the City. The City has refused to pay the invoice.

17. Subsequent to the termination, the City apparently awarded the contract to Kuhs Quality Homes, the author of the concept drawings in the RFPO, and upon information and belief, the City's preferred bidder and preference from the start.

18. Despite the fact that it terminated the contract for pre-textual reasons and without giving Hopkins any opportunity to perform, the City claimed submitted a claim on the bond it required from Hopkins in the amount of \$21,108.74, the difference in bid prices between Plaintiff and Kuhs Quality Homes. Although no payment has been made on the bond, the City's claim itself has damaged Hopkins and its ability to get bonding for other projects.

19. The City never returned the blueprints it obtained from Hopkins, and upon information and belief, has retained and used them in the construction of the project without compensation to Plaintiff

20. Hopkins filed a Notice of Claim against the City on August 22, 2016. That claim was denied in a Notice of Disallowance dated December 9 2016, and served thereafter.

**FIRST CLAIM**  
**(Breach of Contract)**

21. Plaintiff realleges and incorporate the prior paragraphs of the Complaint as if fully set forth herein.



22. Hopkins and the City were parties to a valid and enforceable contract, which the City terminated without cause, although it later offered pre-textual reasons. Further, the City refused to pay Hopkins' expenses and improperly claimed on the bond required by the contract, depriving Hopkins of the benefit of his bargain, including his expected profit on the deal, and causing other damages.

23. Hopkins was damaged in an amount to be determined at trial.

**SECOND CLAIM**  
**(Unjust Enrichment)**

24. Plaintiff realleges and incorporate the prior paragraphs of the Complaint as if fully set forth herein.

25. In reliance on the contract and the representations of the City, in particular Ms. Kerwin and Mr. Ahlm, Plaintiff created detailed designs/blueprints of the house he contracted with the City to build, despite the fact that such work was beyond the scope of the contract.

26. Plaintiff delivered those plans/blueprints to the City and the City has retained them, despite the City not owning them, The City has further, upon information and belief, used Hopkins' plans/blueprints to complete the project with another builder.

27. Defendant's retention and use of those plans/blueprints without paying for them is unjust, and the City should reimburse Plaintiff for his time and money expended in creating them.

**THIRD CLAIM**  
**(Promissory Estoppel)**

28. Plaintiff realleges and incorporate the prior paragraphs of the Complaint as if fully set forth herein.

29. The promises and representations of the City to the Plaintiff were of such a substantial and definite character on its part as to induce the Plaintiff to perform work, and provide

such goods and services to the detriment of the Plaintiff and to the benefit of the Defendant which benefit the Defendant retained and used.

**WHEREFORE**, Plaintiff demands judgment on the Complaint as follows:

- A. An award to Plaintiff of damages in an amount to be determined at trial;
- B. An award to Plaintiffs of all other appropriate relief, including an award of attorney's fees, costs and disbursements, that this Court deems just and equitable.

Dated this 9<sup>th</sup> day of June, 2017.

**MIOTA LAW LLC**

By: s/ Jacob Miota  
Jacob E. Miota, SBN 1055381  
1400 E. Olive Street  
Milwaukee, WI 53211-1828  
Direct dial: 414.973.9305  
Fax: 414.386.4675  
*jmiota@miotlaw.com*

Attorney for Plaintiff Hopkins  
Mechanical & Design LLC

**Co-Counsel:**

Frank J. Liska, Jr., SBN 1014843  
11821 West Edgerton Avenue  
Hales Corners, WI 53130-1076  
(414) 531-6219  
*fliska@liskalaw.com*