

TAGLaw International Lawyers

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AUG 25 2016

CITY OF WEST ALLIS
CITY CLERK

August 22, 2016

VIA PERSONAL SERVICE8/25/16
11/16/16

Monica Schultz
City Clerk
City of West Allis
7525 W. Greenfield Ave., Room 108
West Allis, WI 53214

RE: Hopkins Mechanical & Design, LLC v. City of West Allis

Dear Ms. Schultz:

Our office represents Hopkins Mechanical & Design, LLC ("Hopkins"). Pursuant to Wis. Stat. § 893.80(1d)(a), Hopkins hereby provides notice of a claim against the City of West Allis (the "City") in the amount of \$65,596.74. The basis of this claim is summarized as follows and in the enclosed invoice.

Hopkins executed a contract with the Community Development Authority for the City on March 8, 2016. Hopkins was given authority to proceed on April 6, 2016. On April 6, 2016, Mr. Floyd Hopkins, owner of Hopkins, went to the Building Inspection and Neighborhood Services Department where he spoke with Ms. Shelly Kerwin. Mr. Kerwin told Mr. Hopkins that she had no record of the plan being approved in her office. She further stated that there were no blueprints, surveys or other required documents on file, and therefore no building permit could be issued.

Mr. Hopkins then consulted with Robert Ahlm, the Rehabilitation Specialist for the City. He informed Mr. Hopkins that the only prints that the City had were in the bid package. Mr. Hopkins advised Mr. Ahlm that the drawing included in the bid package was not a blue print, but simply a concept drawing. Mr. Ahlm then told Mr. Hopkins that his company had to design the house and submit the drawings to the City before starting work. Mr. Hopkins objected because this was not within the scope of work he bid on, and Mr. Ahlm acknowledged this fact. Mr. Hopkins obtained a list of the requirements and then left the building to start the process of having the City's concept house designed.

After Mr. Hopkins left Mr. Ahlms office, he contacted Cindy Kuhs, the designer of the plans included in the bid package. He asked Ms. Kuhs if she had developed a full set of detailed plans. Ms. Kuhs said she had not and told Mr. Hopkins that the City only asked her to provide a basic set of conceptual plans for a house.

Approximately a week after Hopkins signed the contract, Mr. Hopkins scheduled a pre-construction meeting with Mr. Ahlms. The two were to meet at a similarly-designed house in West Allis. Instead of Mr. Ahlms, someone else from his office showed up for the meeting. This individual did not have any information about the project and provided no feedback on any of Hopkins' suggestions.

Over the next two weeks, Hopkins prepared its own set of plans based on the Kuhs plans and the pre-construction meeting. Mr. Hopkins then took his plans back to the building inspection department and met with Ms. Kerwin. During that meeting, Ms. Kerwin and Mr. Hopkins walked through his plans, and she made handwritten notations on the plans.

At that point, Hopkins engaged a designer to make the changes suggested by Ms. Kerwin. Hopkins engaged Inknovate LLC, operated by Mr. Ian Blair, to prepare the detailed plans required by the City and Ms. Kerwin. I have personally spoken to Mr. Blair, who advised me that he had a lengthy conversation with Ms. Kerwin about the plans for this project after he was engaged. He called Ms. Kerwin because he was personally surprised that the City was requiring more-detailed designs than what was shown on the Kuhs plans in order to issue Hopkins the permit. Ms. Kerwin told Mr. Blair that detailed plans were, in fact, required and walked him through her handwritten changes to the Hopkins set. Ms. Kerwin also referred Mr. Blair to the building inspector when he asked about what needed to be submitted with the plans in order to obtain a permit. Thereafter, Mr. Blair spoke with Bob Johnson, one of the inspectors, to get this information.

On May 17, 2016, Mr. Hopkins e-mailed Mr. Ahlm to advise him of his intent to submit the building application, plans, and other required materials on May 20, 2016. Hopkins did, in fact, submit those materials on May 20, 2016. Copies of the plans prepared by Inknovate LLC and submitted to the City by Hopkins are attached to this letter. These plans are drawn to scale and show the level of detail required by the City. During this visit to City Hall, Mr. Hopkins personally sat with Ms. Kerwin while she reviewed and approved his company's plans. He was told the permit would be issued the following week.

Unbeknownst to Hopkins, on May 19, 2016, a certified letter was sent from the City advising Hopkins that it had been terminated from the project pursuant to Section 9.01(B) of the contract. Hopkins did not receive this letter right away because it required a signature. Thus, the following Friday, Mr. Hopkins called Ms. Kerwin to inquire about the status of the permit. At that time, he was told that the City had placed a hold on the project and would not issue Hopkins the permit.

The clause under which the City cancelled Hopkins contract allows the City to cancel the contract for any reason at any time upon not less than 10 days' written notice to the Contractor. In section 9.01(C) of the contract, in the event that the City terminates the contract, it shall pay the contractor for the portion of the work performed prior to the date of termination. Attached is an invoice from Hopkins showing that as of the date of termination, it had incurred costs of \$65,596.74 for this job, which includes the expense Hopkins incurred to obtain a survey and detailed plans that the City required. The City has clearly obtained value from the survey and plans, as both are now being used by the replacement contractor, Kuhs Quality Homes (owned by Cindy Kuhs), to construct the home.

We have been in communication with Assistant City Attorney Jenna Merten regarding Hopkins' termination and claim for payment. She has advised that the City terminated Hopkins' contract due to lack of progress and because its dwelling contractor license had lapsed. We believe these are arguments manufactured after the fact to try and place the blame on Hopkins unnecessarily.

The project was certainly proceeding, as should have been known by both Ms. Kerwin and Mr. Ahlms who had numerous conversations and meetings with Mr. Hopkins and his designer about this project. Hopkins believed there was still sufficient time remaining to complete construction by the deadline set forth in the contract. And if it did not, there was a provision which allowed the City to assess liquidated damages against it. There was simply no justification for terminating Hopkins for lack of progress.

The City also points to the fact that Hopkins' dwelling contractor license had expired. However, at the time Hopkins was terminated on May 19, ***neither the City nor Mr. Hopkins knew that his license had lapsed.*** How can the lapse of Hopkins' license constitute a cause for termination when the City did not even know about it? As soon as he was alerted to this fact, Mr. Hopkins immediately submitted the paperwork to reinstate Hopkins' license. There was absolutely no harm to the City that resulted from this license lapse. Hopkins' required coursework was all up to date; it was simply a matter of innocent oversight.

Please contact the undersigned to arrange for payment or if you have any questions.

Very truly yours,

von BRIESEN & ROPER, s.c.



Lauren A. Triebenbach

Enclosure

cc: Hopkins Mechanical & Design, LLC (via e-mail)
Jenna Merten, Esq. (via U.S. mail)

Hopkins Mechanical and Design LLC

Where Quality Calls Home; Quality is not just a word it is our passion.



*A full service General & Mechanical contractor specializing:
Fire, water restoration, new build, & rehab. Commercial & Residential.
Licensed, insured, and bonded*

4608 North 31st Street Milwaukee, Wisconsin 53209

Phone (414) 241-7816 Fax (414) 395-7816

Hopkinsmechanicalanddesign@gmail.com, floydhopkinsiii@gmail.com

7/29/2016

Invoice for pre-construction change orders / addition to contracted scope of work
Community Development Authority
City of West Allis

Re: RFP 1290
8614 W. Mitchell St.

Design / engineering services 15% of estimated total cost of \$260,118.26	\$39,117.74
Reimbursement of bond	\$7,590.00
Surveying and conveyance of property	\$6,889.00
Administrative and logistics 80 hours @ \$150.00/hr	\$12,000.00
Total	\$65,596.74

Contract was cancelled under 9.01B.

Upon receipt of payment in full Hopkins Mechanical and Design, LLC will release and transfer ownership of blue prints and designs to the Community Development Authority of the City of West Allis. Hopkins Mechanical and Design, LLC fully designed and developed the blue prints and project for 8614 W. Mitchell St. and maintains ownership until fully compensated.

Floyd Hopkins III, CEO