

IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

**CRB CONCRETE CORPORATION,
INC.,**

Plaintiff,

v.

**WILLIAMS BROTHERS
CONSTRUCTION INC. (AKA W.B.C.
OF IOWA, INC.),**

Defendant.

Case No. _____

**PETITION AT LAW AND JURY
DEMAND**

Plaintiff, CRB Concrete Corporation, Inc., files this Petition at Law, and states:

1. This action involves the breach of a construction contract dated October 1, 2013 by Defendant Williams Brothers Construction Inc. and claims of fraud and conversion, and two claims of tortious inference against Defendant Williams Brothers Construction Inc.

THE PARTIES

2. CRB Concrete Corporation, Inc. (“CRB”) is an Iowa corporation with its principal place of business in Fairfax, Iowa.

3. Defendant Williams Brothers Construction Inc. (“WBC”) is a Delaware corporation authorized to conduct business in Iowa.

4. WBC also operates in Iowa under the fictitious name of W.B.C. of Iowa, Inc.

5. Venue is proper in Johnson County because the contract in question is/was to be performed on real property in Johnson County and Plaintiff has sustained damages in Johnson County.

BACKGROUND FACTS

6. The parties entered into a contract dated October 1, 2013 (“Contract”). A copy of the Contract is attached hereto as Attachment A.

7. Under the terms of the Contract, CRB was to perform construction work for the construction of the Hancher Auditorium building on the University of Iowa campus in Johnson County, Iowa City, Iowa (the "Project").

8. CRB began work on the project on or about September 28, 2013.

9. Beginning on or about October 14, 2013, WBC wrongfully refused to pay to CRB overhead amounts owing under the Contract.

10. WBC owes to CRB one hundred and two thousand nine hundred thirty-four dollars and seventy-three cents (\$102,934.73) in unpaid overhead amounts.

11. Beginning with work performed on December 9, 2013, WBC wrongfully refused to pay to CRB amounts for work already performed by CRB and which are due and owing under the Contract.

12. WBC owes to CRB three hundred eighty-nine thousand one hundred thirty-two dollars and thirty-six cents (\$389,132.36) in payments for work already performed.

13. WBC owes to CRB one hundred nine thousand seven hundred sixty-six dollars and fifty-five cents (\$109,766.55) for retainage withheld by WBC.

14. Beginning November 21, 2013, CRB performed additional work for cold weather protection measures for which WBC owes money to CRB under the Contract.

15. WBC owes to CRB thirty thousand three hundred ninety-four dollars and forty-two cents (\$30,394.42) for said cold weather protection measures.

16. WBC had knowledge of CRB's need for prompt payment and that failure to pay promptly would cause immense and irreparable harm to CRB.

17. WBC failed to make payments promptly.

18. On numerous occasions between September 28, 2013 and January 13, 2014, WBC intentionally and improperly interfered with CRB's execution of the Contract, thereby causing CRB further damages.

19. On or about January 10, 2014, WBC notified CRB of its intention to terminate the Contract.

20. CRB has suffered damages from lost profits it would have realized under the Contract had the Contract been executed to completion of the project.

21. CRB had tools and equipment (“Property”) located at the site of the Project.

22. WBC has possession of the Property.

23. CRB had employees and/or independent contractors (“Workers”) working for it in the execution of the Contract.

24. WBC hired the Workers away from CRB.

25. Upon information and belief, WBC had knowledge of other construction contracts to which CRB was a party.

26. WBC intentionally and improperly interfered with those other contracts and with the relationship between CRB and other parties to those contracts by making it impossible for CRB to perform those other contracts.

27. In the course of negotiating the Contract, WBC represented to CRB that WBC desired that CRB perform certain work on the Project (“Work”).

28. In the course of performing the Contract, WBC continued to represent to CRB that WBC desired that CRB perform the Work.

29. In fact, WBC had no intention of allowing CRB to perform all of the Work outlined in the Contract.

30. WBC knew that the Work was much more difficult, complicated, time-consuming, and expensive at the beginning stages of the Work (“Difficult Work”).

31. WBC knew that the later stages of the Work were easier, less complicated, less time-consuming, and cheaper during the later stages of the Work (“Easy Work”).

32. In essence, the Difficult Work was highly customized to the Project whereas the Easy Work was “cookie cutter.”

33. WBC knew that it did not have the training, experience, personnel, resources or expertise to perform the Difficult Work.

34. WBC knew that CRB had what WBC needed to complete the Difficult Work.

35. WBC entered into the Contract with CRB and allowed CRB to perform the Difficult Work.

36. The Easy Work is where the majority, if not the entirety of CRB's profit would be realized by CRB.

37. Once the Difficult Work was completed, WBC planned to, and did in fact, terminate the Contract and complete the Easy Work itself.

38. WBC took possession of the Property, hired away CRB's workers, and performed the cookie cutter work using CRB's own Property and Workers.

39. By terminating the Contract, refusing to pay CRB, hiring away CRB's Workers, and completing the Easy Work itself, WBC was able to save substantial sums of money and pocket the difference.

COUNT I - FRAUD

40. CRB incorporates all previous paragraphs as though fully restated herein.

41. WBC made representations to CRB concerning the Work to be performed on the Project.

42. WBC's representations were false.

43. WBC's representations were material to the Contract and to CRB's decision to enter into the Contract.

44. WBC knew that the representations were false.

45. CRB acted in justifiable reliance upon the truth of WBC's representations when entering into and in its performance under the Contract.

46. WBC's representations were the proximate cause of CRB's damages.

47. CRB has been damaged by WBC's fraud in an amount exceeding the jurisdictional limits of this Court.

WHEREFORE, Plaintiff prays that the Court enter judgment in its favor, award actual damages in an amount to be proven at trial, award punitive damages in an amount in excess of ten

million dollars (\$10,000,000.00), and for such other relief as is appropriate and just in the premises.

COUNT II - BREACH OF CONTRACT

48. CRB incorporates all previous paragraphs as though fully restated herein.

49. The Contract (Exhibit A) constitutes a written contract between CRB and WBC.

50. CRB performed all of its obligations under the Contract.

51. In the alternative, WBC's conduct has prevented CRB from carrying out the terms of the Contract or caused CRB's performance more burdensome, expensive, or impossible. Said conduct could not reasonably have been anticipated, and said conduct is not the fault of CRB.

52. WBC has breached the Contract by failing to make payments owing to CRB.

53. WBC has breached the Contract by failing to make payments to CRB in a timely fashion.

54. WBC has breached the Contract by failing to fulfil its obligations to provide equipment, materials, and labor, which were required by CRB to perform its work.

55. WBC has breached the Contract by wrongfully terminating the Contract.

56. WBC has breached the Contract by intentionally and improperly interfering with CRB's performance.

57. WBC has breached its duty of good faith and fair dealing implied in the Contract.

58. CRB has been damaged by WBC's breach of contract in an amount exceeding the jurisdictional limits of this Court.

WHEREFORE, Plaintiff prays that the Court enter judgment in its favor, award damages in an amount to be proven at trial, and for such other relief as is appropriate and just in the premises.

COUNT III - CONVERSION

59. CRB incorporates all previous paragraphs as though fully restated herein.

60. CRB has a possessory right to the Property.

61. WBC has no possessory right to the Property.

62. WBC has intentionally exercised dominion and control over the Property in denial of or inconsistent with the possessory right of CRB.

63. CRB has been damaged by WBC's conversion in an amount exceeding the jurisdictional limits of this Court.

WHEREFORE, Plaintiff prays that the Court enter judgment in its favor, award damages in an amount to be proven at trial, and for such other relief as is appropriate and just in the premises.

COUNT IV - TORTIOUS INTERFERENCE - WORKERS

64. CRB incorporates all previous paragraphs as though fully restated herein.

65. CRB had contracts with its Workers.

66. WBC knew that CRB had contracts with its Workers.

67. WBC intentionally and improperly interfered with these contracts when it hired the Workers away from CRB and seized control of CRB's Property.

68. WBC's conduct made it impossible for CRB to continue to contract with the Workers.

69. CRB suffered damages as a result of WBC's conduct.

70. CRB has been damaged by WBC's tortious interference in an amount exceeding the jurisdictional limits of this Court.

WHEREFORE, Plaintiff prays that the Court enter judgment in its favor, award actual damages in an amount to be proven at trial, award punitive damages in an amount in excess of ten million dollars (\$10,000,000.00), and for such other relief as is appropriate and just in the premises.

**COUNT V - TORTIOUS INTERFERENCE -
OTHER CONSTRUCTION CONTRACTS**

71. CRB incorporates all previous paragraphs as though fully restated herein.

72. CRB had contracts with other third-parties to perform construction work during and after the Work on the Project ("Other Construction Contracts").

73. WBC knew that CRB had Other Construction Contracts.

74. WBC intentionally and improperly interfered with these Other Construction Contracts when it committed fraud, breached the Contract, hired the Workers away from CRB, and seized control of CRB's Property.

75. WBC's conduct made it impossible for CRB to perform the Other Construction Contracts.

76. CRB suffered damages as a result of WBC's conduct.

77. CRB has been damaged by WBC's tortious interference in an amount exceeding the jurisdictional limits of this Court.

WHEREFORE, Plaintiff prays that the Court enter judgment in its favor, award actual damages in an amount to be proven at trial, award punitive damages in an amount in excess of ten million dollars (\$10,000,000.00), and for such other relief as is appropriate and just in the premises.

JURY DEMAND

Plaintiff, CRB Concrete Corporation, Inc. demands trial by jury on all issues so triable.

Respectfully submitted,

/s/ Jonathan D. Schmidt

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