

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.

NS CORPORATION,
Plaintiff

v.

LM HEAVY CIVIL CONSTRUCTION LLC,
THE LANE CONSTRUCTION CORP.,
LMH-LANE CABOT YARD JOINT VENTURE,
ZURICH AMERICAN INSURANCE CO.,
FIDELITY AND DEPOSIT CO. OF MARYLAND,
LIBERTY MUTUAL INSURANCE CO.,
NATIONAL UNION FIRE INSURANCE CO.
OF PITTSBURGH, PA,
BERKSHIRE HATHAWAY SPECIALTY
INSURANCE CO.

Defendants

COMPLAINT UNDER M.G.L. C. 149, §29

INTRODUCTION

1. This is an action by train wash equipment subcontractor NS Corporation (“NS Corp.”) to recover \$420,250.00 for labor and equipment furnished to defendant general contractor LMH-Lane Cabot Yard Joint Venture and its joint venture members LM Heavy Civil Construction LLC and The Lane Construction Corp. (collectively “LMH-Lane”) whose prime contract was terminated by the Massachusetts Bay Transportation Authority (“MBTA.”) Plaintiff NS Corp. also seeks an award of legal fees under G.L. c. 149, §29, interest and costs from the payment bond sureties that furnished a labor and materials payment bond on this public project under G.L. C. 149, §29.

PARTIES

2. Plaintiff train wash equipment subcontractor NS Corp. is a corporation registered to do business in Massachusetts with a registered agent at 84 State Street, Boston, Suffolk County MA.

3. Defendant LM Heavy Civil Construction LLC is a Massachusetts corporation with a place of business at 100 Hancock Street, Suite 901, Quincy, Norfolk County MA.

4. Defendant The Lane Construction Corp. is a corporation registered to do business in Massachusetts with a registered agent at 155 Federal Street, Suite 700, Boston, Suffolk County MA.

5. Defendants LM Heavy Civil Construction LLC and The Lane Construction Corp. are members of a joint venture named LMH-Lane Cabot Yard Joint Venture, with a place of business at One Wadleigh Place, Suite 301, South Boston, Suffolk County MA.

6. Defendant Zurich American Insurance Co. is a surety authorized to do business in the Commonwealth of Massachusetts, with a place of business at 1299 Zurich Way, 5th Floor, Schaumburg IL 60196-1056.

7. Defendant Fidelity and Deposit Co. of Maryland is a surety authorized to do business in the Commonwealth of Massachusetts, with a place of business at 1299 Zurich Way, 5th Floor, Schaumburg IL 60196-1056.

8. Defendant Liberty Mutual Insurance Co. is a surety authorized to do business in the Commonwealth of Massachusetts, with a place of business at 175 Berkeley Street, Boston MA 02116.

9. Defendant National Union Fire Insurance Co. of Pittsburgh PA is a surety authorized to do business in the Commonwealth of Massachusetts, with a place of business at 1271 Avenue of

the Americas, 37th Floor, New York, NY 10020-1304.

10. Defendant Berkshire Hathaway Specialty Insurance Co. is a surety authorized to do business in the Commonwealth of Massachusetts, with a place of business at 1314 Douglas Street, Suite 1400, Omaha NE 68102-1944.

FACTS

11. Plaintiff subcontractor NS Corp. entered into a written subcontract dated February 6, 2019 with general contractor LMH-Lane to furnish certain train wash equipment specified under LMH-Lane's prime contract in the renovation of a public project known as Cabot Yard & Maintenance Facility at 275 Dorchester Ave, Suffolk County, Boston MA ("Project.")

12. On or about February 3rd and 4th 2020, both the MBTA and LMH-Lane inspected NS Corp.'s equipment at its factory and approved the equipment.

13. In or about July 2021, NS Corp. delivered the train wash equipment to LMH-Lane per the MBTA approved submittal drawings, and that equipment has remained in the custody of LMH-Lane and/or the MBTA ever since.

14. On or about August 3, 2021, NS Corp. invoiced LMH-Lane for the train wash equipment that it delivered to the Project.

15. Throughout the remainder of 2021 and into 2022, LMH-Lane failed to invoice the MBTA for the equipment that NS Corp. delivered.

16. LMH-Lanes' failure to invoice the MBTA for the train wash equipment was without justification.

17. On or about February 1, 2022, LMH-Lane directed NS Corp. and other subcontractors to "cease further work under the Subcontract and to demobilize from the Project" for reasons unrelated to NS Corp.'s work.

18. On or about February 11, 2022, the MBTA in writing terminated LMH-Lane's Prime Contract with the MBTA for reasons unrelated to NS Corp.'s work. That termination of the Prime Contract automatically terminated LMH-Lane's subcontracts on the Project, including NS Corp.'s subcontract.

**COUNT ONE - PAYMENT BOND CLAIM UNDER G.L. C. 149, §29
FOR BREACH OF CONTRACT**

19. NS Corp. realleges paragraphs 1 through 18 of this complaint.

20. NS Corp. had substantially performed and was substantial performing its subcontract work and the extra demobilization work ordered by LMH-Lane in good faith when LMH-Lane was terminated by the MBTA through no fault of NS Corp., thereby breaching and terminating LMH-Lane's subcontract with NS Corp.

21. NS Corp. furnished \$1,054,500 of its sub-subcontract work when its subcontract was breached and terminated.

22. NS Corp. furnished extra demobilization work ordered in writing by LMH-Lane, the fair value of which was \$15,000.

23. The total of the sub-subcontract work and extra demobilization work that NS Corp. furnished is \$1,069,500.

24. LMH-Lane paid \$649,250, leaving \$420,250 due, for which NS Corp. demanded payment, but LMH-Lane failed to pay.

25. General contractor LMH-Lane, as principal, and defendant sureties Zurich American Insurance Co., Fidelity and Deposit Co. of Maryland, Liberty Mutual Insurance Co., National Union Insurance Co. of Pittsburgh PA and Berkshire Hathway Specialty Insurance Co. ("Defendant Sureties") executed a bond required by G.L. c. 149, §29 securing payment of labor and materials used or employed in construction of the Project.

26. This complaint was filed within one year after furnishing the last of the labor and materials for which payment is claimed due.

27. All conditions precedent to the maintenance of this action have been performed.

WHEREFORE, NS Corporation demands judgment against LM Heavy Civil Construction LLC, The Lane Construction Corp., LMH-Lane Cabot Yard Joint Venture, Zurich American Insurance Co., Fidelity and Deposit Co. of Maryland, Liberty Mutual Insurance Co., National Union Insurance Co. of Pittsburgh PA and Berkshire Hathway Specialty Insurance Co., jointly and severally for \$420,250, legal fees under M.G.L. c. 149, §29, interest from August 3, 2021 under M.G.L. c. 231, §6C and costs.

**COUNT TWO - PAYMENT BOND CLAIM UNDER G.L. C. 149, §29
FOR QUANTUM MERUIT**

28. NS Corp. realleges paragraphs 1 through 20 of this complaint.

29. The fair value of the train wash equipment and demobilization work NS Corp. furnished is \$1,069,500.

30. NS Corp. realleges paragraphs 24 through 27 of this complaint.

WHEREFORE, NS Corporation demands judgment against LM Heavy Civil Construction LLC, The Lane Construction Corp., LMH-Lane Cabot Yard Joint Venture, Zurich American Insurance Co., Fidelity and Deposit Co. of Maryland, Liberty Mutual Insurance Co., National Union Insurance Co. of Pittsburgh PA and Berkshire Hathway Specialty Insurance Co., jointly and severally for \$420,250, legal fees under M.G.L. c. 149, §29, interest from August 3, 2021 under M.G.L. c. 231, §6C and costs.

**COUNT THREE- UNFAIR BUSINESS AND SETTLEMENT PRACTICES
UNDER G.L. C. 93A AND C. 176D**

31. NS Corp. realleges paragraphs 1 through 30 of this complaint.

32. All parties named in this complaint are engaged in trade or commerce as defined under G.L. C. 93A.33. LMH-Lane's failure and refusal to invoice the MBTA for NS Corporation's equipment and work without legal justification so as to refuse payment to NS Corp. of its subcontract balance on this project after NS Corp.'s work was inspected and approved without objection, are unfair and deceptive practices wrongfully intended to deprive NS Corp. of the fruit of its labor, and are knowing and willful violations of c. 93A, §§ 2 and 11 and c. 176D.

34. Defendant Sureties' blatant departure from and breach of the payment bonds terms, so as to refuse payment to NS Corp. after NS Corp.'s work was inspected and approved without objection, are unfair and deceptive practices wrongfully intended to deprive NS Corp. of the fruit of its labor, and are knowing and willful violations of c. 93A, §§ 2 and 11 and c. 176D.

35. LMH-Lane's and Defendant Sureties' wrongful withholding of monies due NS Corp. to force NS Corp. to litigate a clearly valid claim, are knowing and willful violations of c. 93A, §§ 2 and 11 and c. 176D.

36. Defendant Sureties' failure and refusal to timely investigate this claim, provide coverage, and pay this claim after all relevant documents were produced is an unfair and deceptive business practice and settlement practice, and knowing and willful violations of G.L. c. 93A and c. 176D.

37. As a result, NS Corp. suffered damages.

WHEREFORE, NS Corporation demands judgment against LM Heavy Civil Construction LLC, The Lane Construction Corp., LMH-Lane Cabot Yard Joint Venture, Zurich American Insurance Co., Fidelity and Deposit Co. of Maryland, Liberty Mutual Insurance Co., National Union

Insurance Co. of Pittsburgh PA and Berkshire Hathway Specialty Insurance Co., jointly and severally for three times \$420,250, legal fees under M.G.L. c. 149, §29 and c. 93A, §11, interest from August 3, 2021 under M.G.L. c. 231, §6C and costs.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL COUNTS SO TRIABLE

August 26, 2022

NS CORPORATION
By its Attorneys,

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