

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SCHIAVONE CONSTRUCTION CO. LLC,

Plaintiff,

- against -

NEW YORK DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Defendant.

(Catskill Aqueduct Repair and Rehabilitation)

Index No.

Date Purchased:

Plaintiff(s) designate (s) New York
County as to the place of TrialThe basis of the venue is location of
*Defendant's Offices***SUMMONS**Plaintiff(s) reside(s) at:
150 Meadowlands Parkway,
Secaucus, NJ 07094**To The Above-Named Defendants:**

YOU ARE SUMMONED to answer the Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance, on the plaintiff's attorney(s) within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: New York, New York
May 18, 2023McElroy, Deutsch, Mulvaney & Carpenter, LLP
225 Liberty Street, 36th Floor
New York, New York 10281
(212) 483-9490
Attorneys for PlaintiffBy: /s/ Mark A. Rosen
Mark A. Rosen**Defendant's Address:****One Centre Street
New York, New York 10007**

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VERIFIED COMPLAINT

Plaintiff, by its attorneys McElroy, Deutsch, Mulvaney & Carpenter, LLP, as and for its verified complaint against defendant, alleges as follows:

1. Plaintiff Schiavone Construction Co. LLC (“Schiavone”) is a corporation duly authorized to conduct business in the State of New York.
2. On information and belief, defendant NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION (“DEP”) is a municipal agency duly organized and existing under and by virtue of the laws of the State of New York with the ability to sue and be sued.
3. That heretofore pursuant to public bidding and in compliance with the laws made and provided therefor, plaintiff entered into a written contract (“Contract”) with the DEP to perform the labor and furnish the equipment and material required for a project known as the Catskill Aqueduct Repair and Rehabilitation, Contract No. 20181427993 (“Project”).
4. Said Contract was in all respects regularly executed and was in accordance with law.
5. Thereafter, plaintiff entered into performance of the Contract and duly performed

all of the terms and conditions of the Contract on its part to be performed through the date of this complaint except as prevented by the defendant.

6. On or about April 18, 2023, plaintiff duly filed a Notice of Claim with the Comptroller of the City of New York setting forth its claims.

7. More than 30 days have elapsed since the filing of said notice of claim and before the commencement of this action, but defendant and said Comptroller has refused and neglected to pay or adjust plaintiff's said claims.

AS AND FOR A FIRST CAUSE OF ACTION

8. Plaintiff repeats, reiterates and realleges each and every allegation set forth in paragraphs "1" through "7" of the complaint with the same force and effect as though fully set forth herein.

9. Plaintiff's performance of its contract work has been substantially and materially disrupted, interfered with and delayed by circumstances unanticipated by plaintiff which could not have been reasonably foreseen when the contract was bid and entered into and by affirmative, intentional or grossly intentional acts and bad faith by defendant, all of which constitute breaches of defendant's fundamental obligations of the contract.

10. DEP's affirmative, intentional, bad faith or grossly negligent or unanticipated acts and omissions constituting material breaches of fundamental obligations include, but are not limited to, the failure to provide access to the site; the issuance of inaccurate, incomplete and erroneous bid and design documents; the failure to provide a design that was appropriate for the project and free of design errors and omissions; the failure to properly assess and the misrepresentations of conditions at the site; the issuance of an excessive amount of design changes, extra work and change orders; the failure to timely issue and approve required re-

designs necessary for the change orders and extra work and to allow the work to proceed; the failure to timely register change orders; the failure to properly assess hazardous environmental conditions at the site; the direction that respirators must be worn for biofilm removal; the addition of a fourth shutdown for the performance of remaining contract and additional change order work; the direction to suspend work.

11. In addition, the project was impacted by the COVID-19 pandemic and the rules and restrictions as to how work could proceed imposed by various government entities including, but not limited to, the DEP.

12. That by reason of the affirmative, intentional or grossly negligent or unanticipated acts and bad faith of the defendant constituting material breaches of fundamental obligations and the excessive Change Orders and redesigns, plaintiff was prevented from performing and completing the work in accordance with the schedule, phasing and sequencing set forth in the Contract Documents upon which plaintiff relied upon in preparing its bid for the Project and entering into the Contract.

13. That by reason of the foregoing, plaintiff's progress and performance of its work, as well as that of its subcontractors, was substantially interfered with and plaintiff was forced to perform in a non-sequential, disrupted, non-productive manner and the duration of the performance of the contract has been extended well beyond the original contract completion date.

14. Defendant's breaches and misrepresentations were deliberate, willful, reckless and grossly negligent and plaintiff, in bidding this contract based on the bid documents could not have anticipated or contemplated the long delays and interferences resulting from defendant's improper performance of its contractual obligations.

15. That as a result of the foregoing, plaintiff's and its subcontractor's, cost of performing the work was substantially and excessively increased beyond what it otherwise would have cost to complete the contract by reason of increased costs for labor, material, greatly extended field supervision and field overhead and general overhead costs.

16. That by reason of the foregoing plaintiff has been damaged in a sum not less than \$19,325,991.57 no part of which has been paid although duly demanded.

17. Plaintiff reserves its right to payment of all other monies due or to become due under the Contract for work performed or to be performed, including change orders for approved and disputed extra work, and the return of all bonds and other securities deposited to secure payment of monies retained under the Contract.

AS AND FOR A SECOND CAUSE OF ACTION

18. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "17" inclusive of the complaint with the same force and effect as though fully set forth herein.

19. That in submitting its bid for the contract based upon the bid documents presented to it by the defendant, plaintiff contemplated that defendant's plans and specifications would be accurate and adequate, that there would be no extensive redesigns of the work, that defendant would promptly determine any necessary changes in the plans and specifications, that defendant's representations concerning the schedule and the work of other trades were substantially accurate and adequate, that defendant would provide plaintiff timely access to necessary areas of the site for the plaintiff's work, that defendant would efficiently and effectively coordinate, supervise, schedule and progress the work with the various trades on the project, that defendant would not interfere with the performance, procedures and sequencing

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