

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

EAST CAMPUS REALTY, LLC,)	CASE NO. CI 16-_____
)	
Plaintiff,)	
)	COMPLAINT
v.)	
)	
THE WEITZ COMPANY, LLC)	
)	
Defendant.)	

COMES NOW, Plaintiff, East Campus Realty, LLC, and for its Complaint against Defendant, The Weitz Company, LLC, alleges as follows:

1. Plaintiff is a Nebraska limited liability company with its principal place of business in Douglas County, Nebraska.
2. Defendant is an Iowa limited liability company residing and doing business in Douglas County, Nebraska.
3. Plaintiff entered into a Guaranteed Maximum Price Construction Agreement (the "Contract") with Defendant for performance of the work set forth in the Contract upon real property in Douglas County, Nebraska owned by Plaintiff (herein the "Project"). The Contract is voluminous and therefore is not attached to this Complaint.
4. Defendant substantially completed the Project in or about 2010.
5. Plaintiff paid Defendant in full and in accordance with the Contract.
6. The Contract provides:

Contractor guarantees and warrants to Owner that (a) the Work, whether performed by Contractor's own personnel or by any Subcontractors shall be first class in quality, free from all defects, and in conformance with the Contract Documents, and that the Contractor shall perform its duties and obligations under this Agreement in compliance with the Performance Standard, and (b) all materials, appliances, mechanical devices, equipment and supplies incorporated into the Work shall be new and of such quality to meet or exceed the Specifications and requirements of the Contract Documents. If requested by Owner at any time and from time to time, Contractor will furnish satisfactory evidence to Owner as to the kind and quality of materials, appliances, mechanical devices, equipment and supplies. All Work not conforming to the requirements of this Section 15.1 (including, without limitation, Substitutions or deviations not properly approved and authorized by Owner in writing), shall be considered defective.

7. Defects in Project construction have recently been discovered.

Specifically, the defects include:

- a. building envelope deficiencies, including incorrectly applied caulking, incorrectly installed windows, and incorrectly installed roof membranes and flashing; and
- b. the premature deterioration and/or failure of cast iron and steel pipes, fittings, support, brackets, clamps, and other metallic components at Ramp C; Ramp C being one discrete portion of the Project.

8. The foregoing defects were not discovered and could not have been reasonably discovered within the four-year period following substantial completion of the Project. This action is being timely commenced within two years from the date of discovery of facts, which upon reasonable investigation, led to the discovery of the defects set forth herein, and in accordance with Neb. Rev. Stat. § 25-223.

9. This action is also timely commenced in accordance with the Statute of Limitations terms of the Contract, which are set forth in paragraph 22.8 of the Contract as follows:

No applicable statute of limitations shall be deemed to have commenced with respect to any portion of the Work which is not in accordance with the requirements of the Contract Documents, which would not be visible or apparent upon conducting a reasonable investigation, and which is not discovered by Owner until after the date which, but for this Section 22.8. would be the date of commencement of the applicable statute of limitations; in such event, the applicable statute of limitations instead shall be deemed to have commenced on the date of such discovery by Owner.

First Claim for Relief
(Breach of Contract)

10. Plaintiff incorporates the allegations in paragraphs 1 through 9 as if fully set forth herein.

11. Defendant's failure to construct the Project in a good and workmanlike manner, free from defect, constitutes a breach of the Contract.

12. As a direct and proximate result of Defendant's breach of the Contract, Plaintiff has been damaged, and will continue to suffer damage, in an amount to be proven at trial. Such damage includes, but is not limited to, the cost of repairing the defects set forth herein. The full cost of such repairs is not yet fully known with specificity.

WHEREFORE, Plaintiff prays for judgment against Defendant in an amount to be proven at trial and for costs of this action.

Second Claim for Relief
(Breach of Warranty)

13. Plaintiff incorporates the allegations in paragraphs 1 through 12 as if fully set forth herein.

14. Defendant expressly warranted and guaranteed that:

[A]ll the Work, whether performed by Contractor's own personnel or by any Subcontractors shall be first class in quality, free from all defects, and in conformance with the Contract Documents, and that the Contractor shall perform its duties and obligations under this Agreement in compliance with the Performance Standard, and (b) all materials, appliances, mechanical devices, equipment and supplies incorporated into the Work shall be new and of such quality to meet or exceed the Specifications and requirements of the Contract Documents.

15. Defendant breached the foregoing express warranty by failing to construct the Project in accordance therewith.

16. As a direct and proximate result of Defendant's breach of the warranty, Plaintiff has been damaged, and will continue to suffer damage, in an amount to be proven at trial. Such damage includes, but is not limited to, the cost of repairing the defects set forth herein. The full cost of such repairs is not yet fully known with specificity.

WHEREFORE, Plaintiff prays for judgment against Defendant in an amount to be proven at trial and for costs of this action.

EAST CAMPUS REALTY, LLC, Plaintiff

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