

CAUSE NO. CV 72182

CITY OF HARDIN

VS.

J.F. FONTAINE & ASSOCIATES, INC.,
RAMOS INDUSTRIES, INC., and J & D
CONSTRUCTION

§
§
§
§
§
§

IN THE DISTRICT COURT OF

LIBERTY COUNTY, TEXAS

75th JUDICIAL DISTRICT

CHIEF CLERK'S OFFICE

2007 JAN -5 AM 11:16

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff, the City of Hardin and files this its original petition and for cause of action would show unto the Court the following:

I.

Discovery Control Plan

1. Plaintiff intends that discovery be conducted under Level 3.

II.

Parties

2. Plaintiff, the City of Hardin, is a political subdivision created and authorized under the laws of the State of Texas, having its principal place of business at P.O. Box 324, Hardin, Texas 77561.

3. Defendant, J.F. Fontaine & Associates, Inc., a Texas corporation with its principal place of business in Palestine, Texas, may be served by serving its registered agent for service of process, J.F. Fontaine, at 700 N. Sycamore Street, Palestine, Texas, 75801.

4. Ramos Industries, Inc., a Texas corporation with its principal place of business in Pasadena, Texas, may be served by serving its registered agent for service of process, Rosbel Ramos, 3636 Pasadena Blvd., Pasadena, Texas, 77503.

5. J & D Construction, a Texas limited partnership with its principal place of business in Bronson, Texas, may be served by serving its registered agent for service of process, Jerry A. Hall, Rt. 2 Box 338, Bronson, Texas, 75930.

III.

Jurisdiction and Venue

6. The Court has jurisdiction over this controversy because the damages are within the jurisdictional limits of this Court. Venue of this action is proper in Liberty County because the cause of action accrued, in whole or in part, in Liberty County and this is a cause of action for breach of contract, which contracts were entered into in Liberty County, Texas and to be performed in Liberty County, Texas.

IV.

Conditions Precedent

7. Pursuant to Rule 54 of the Texas Rules of Civil Procedure, all conditions precedent have or will be performed.

V.

Facts

8. On or about August 13, 2001, Plaintiff entered into a contract with Defendant J.F. Fontaine & Associates, Inc. ("Fontaine") in which Fontaine agreed to provide engineering services to Plaintiff for the construction of a sanitary sewage system, in exchange for \$163,100. This contract is incorporated herein for all purposes.

9. The contract provided, inter alia, that Fontaine would interpret the intent of the drawings and specifications to protect Plaintiff from defects and deficiencies in construction on the part of the contractors, and that Fontaine would provide general engineering review of the work of the contractors as construction progresses to ascertain that the contractor was conforming with the design concept.

10. After the contract bidding process was undertaken, the work was awarded to J & D Construction ("J & D") on or about November 2, 2003. J & D was to construct the wastewater collection system for a total contract price of \$3,395,469.03. This contract is incorporated herein for all purposes.

11. In addition, Plaintiff entered into contracts with Ramos Industries, Inc. ("Ramos") for the construction of individual house service connections and lift stations for the sanitary sewage system. The total contract price for the two contracts between Plaintiff and Ramos was more than \$1,400,000.00.

12. Plaintiff entered into a contract with the City of Liberty to use their wastewater treatment plant. Plaintiff negotiated a certain allowable total volume of wastewater it could send to the City of Liberty, and agreed to pay a surcharge for amounts exceeding the negotiated volume.

13. The sanitary sewage system designed and constructed by Defendants has not been satisfactorily completed. Specifically, rainwater is entering the system and increasing the wastewater volume beyond the permissible amount under the agreement between Plaintiff and the City of Liberty. Plaintiff has requested Defendants cure this problem, but the problem remains.

VI.**Breach of Contract**

14. All Defendants had valid, enforceable contracts with Plaintiff. Each Defendant had a duty to perform according to the terms of their respective contract and thus provide Plaintiff with a usable sanitary sewage system. Defendants have breached their duty to Plaintiff by failing to design and construct a sanitary sewage system that prevents rainwater from entering into the wastewater system.

15. Defendants' failures to design and construct a usable sewer system that operates in the manner intended are all material breaches of contract on the part of Defendants. These material breaches by Defendants caused Plaintiff damages.

16. Plaintiff was damaged by Defendants' material breaches of contract. Said damages include, but are not limited to, all amounts paid to Defendants for the unsatisfactory work, the reasonable and necessary costs that Plaintiff will incur to complete the sanitary sewer system, and consequential damages sustained by Plaintiff was a result of surcharges incurred in its wastewater treatment contract with the City of Liberty. The damages are continuing to this day.

VII.**Attorneys' Fees**

17. Plaintiff seeks all reasonable and necessary attorney's fees in this case which include, but are not limited to, the following:

- a. Preparation and trial of this lawsuit;
- b. Post-trial and pre-appeal legal services;
- c. Costs of court; and

d. Appellate services, if necessary.

VIII.

Interest

18. Plaintiff seeks recovery of pre-judgment interests on its claims and post-judgment interest on any judgment it receives to the maximum extent permitted by law.

IX.

Jury Demand

19. Plaintiff demands a trial by jury on all causes of action alleged.

PRAYER

WHEREFORE, premises considered, Plaintiff requests the Defendants be cited to appear and answer herein, and upon a final hearing Plaintiff be awarded its damages in a sum in excess of the minimum jurisdictional limits of this Court plus pre-judgment interest, attorney's fees, costs of court and interest on the judgment and such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

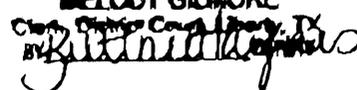
MEHAFFYWEBER
Attorneys for Plaintiff,
Gregory Simmons

BY: 

Roger S. McCabe
State Bar No. 13335500
J. Matthew Marchak
State Bar No. 24037025
Post Office Box 16
Beaumont, Texas 77704
Telephone: 409/835-5011
Telecopier: 409/835-5729

FILED
at 4:30 o'clock P M

NOV 03 2006

MELODY GILMORE


To: Mr. Hosemann

From: Bowen Cain

Hardin Water Supply

Sewage in Homes

Jimmy and Angela Kodzwilp

sewer fumes coming up from shower drain

Jeff Green

raw sewage coming up from drain in bath tub

Brookes

sewer backing up in his home on two different occasions

John and Suzy Odum

Dale Spear

sewer backing up in his home on three different occasions

Corrine Campbell

Mike Sherman

Ziegler

called HW/SC because two (2) toilets were backing up in her home

Juanita Koen

had to shut down because the school could not flush toilets

Hardin High School

*H. Gerald Hosemann
Attorney at Law*

1939 Trinity Street
Liberty, TX 7757
Telephone: (936) 336-4160
Facsimile: (936) 336-9447
E-mail address:
hghlaw@yahoo.com

Admitted in Texas and Mississippi

January 5, 2007

TCEQ
PO Box 13087 MC-105
Austin, TX 78711-3087

ATTN: Paul Munguia, Esq

RE: TCEQ Do. 2006-0595-UCR

VIA: Facsimile

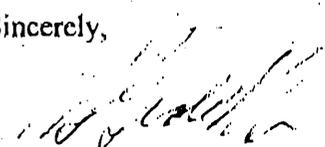
Dear Mr. Munguia,

Pursuant to our telephone conversation of today, please accept the enclosed documents totaling six pages to be considered at the Commission's Public Meeting of the above referenced cause.

Thank you for allowing me to forward the above VIA Facsimile.

If you have any questions concerning the above please do not hesitate to advise.

Sincerely,


H. GERALD HOSEMANN

HGH/sd
Enclosure
cc: Hon. Bruce Mintz

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2007 JAN -5 AM 11:16
CHIEF CLERKS OFFICE