

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FILED: FEBRUARY 4, 2009

THE UNIVERSITY OF CHICAGO)
MEDICAL CENTER, f/ka UNIVERSITY)
OF CHICAGO HOSPITALS, an Illinois)
corporation,)

Plaintiff,)

v.)

HLM DESIGN OF NORTHAMERICA,)
INC., an Iowa corporation,)

Defendant.)

09CV730

JUDGE NORGLE

MAGISTRATE JUDGE MASON

AO

No.

Hon.

COMPLAINT

Plaintiff, the University of Chicago Medical Center, formerly known as the University of Chicago Hospitals (“Plaintiff” or “UCMC”), by its attorneys, Stein, Ray & Harris LLP, for its Complaint against HLM Design of Northamerica, Inc. (“Defendant” or “HLM”), states as follows:

PARTIES

1. The University of Chicago Medical Center, formerly the University of Chicago Hospitals, is an Illinois not-for-profit corporation with its principal place of business in Chicago, Illinois.

2. HLM Design of Northamerica, Inc. is an Iowa corporation with its former principal place of business in Iowa City, Iowa.

JURISDICTION AND VENUE

3. This matter arises out of a contract entered into between UCMC and HLM (the “Contract”) on or about September 16, 1999 for design services relating to the

construction of the University of Chicago Comer Children's Hospital (the "Project") located in Chicago, Illinois. A true and correct copy of the Contract is attached hereto as Exhibit A.

4. Jurisdiction is proper pursuant to 28 U.S.C. § 1332(a), in that Plaintiff and Defendant are citizens of different states, and the matter in controversy exceeds \$75,000, as is further explained below.

5. Venue is proper pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events and omissions giving rise to the claim occurred within the Northern District of Illinois. The Project that is the subject of the Contract at issue in this case is located in the Northern District of Illinois.

FACTUAL BACKGROUND

6. HLM contracted with UCMC to provide design and construction administration services for the Project. HLM's responsibilities included acting as lead architect, and providing architectural, structural, civil, mechanical and electrical services.

7. In Section 2.7 of the Contract, HLM agreed that the minimum standards for design and construction of the Project would be governed by the City of Chicago Building Code and "[a]ny and all applicable laws, rules, regulations, ordinances, codes and/or orders, judgments or decrees of Federal, State, Department, City or local government, court or tribunal and any other governmental entity having jurisdiction over the design of the Project and in effect as of the date of submission of Construction Documents to the Owner for approval."

8. Pursuant to Section 11.4 of the Contract, HLM was responsible for, and shall pay all costs that result from its negligent acts, errors, omissions or misconduct,

including, but not limited to “errors in the contract documents, lack of document coordination, missing or ambiguous information, failure to identify observable field conditions, or verify existing condition surveys.”

9. HLM agreed to act with reasonable promptness in responding to the Construction Manager’s submittals, and to provide supplemental drawings, revisions, and clarifications as required.

10. In Section 2.6.2 of the Contract, HLM agreed to “furnish a competent and adequate staff, as necessary for the proper administration, coordination, and supervision” of HLM’s services.

11. HLM also specifically agreed to meet with the Construction Manager in order to evaluate design alternatives, and provide the Construction Manager with implications of such alternatives, in order to save UCMC money on the Project.

12. HLM began work on the Project in September of 1999, and remained the lead architect on the Project until April of 2004. The services HLM provided throughout this time did not meet the requirements of the Contract.

13. The design drawings provided by HLM were incomplete, failed to include important elements, failed to incorporate value engineering opportunities that would have saved UCMC money, and were inconsistent with applicable codes and regulations. In particular:

- a. A peer review of the Project recommended by the City and performed by Thornton Tomasetti Engineers revealed numerous errors and deficiencies relating to the structural steel included in HLM’s design;

- b. The City of Chicago required numerous changes to the fire alarm system after its installation due to errors in HLM's design;
- c. The Illinois Department of Public Health cited UCMC for failure to comply with applicable codes, including the NFPA Life Safety Code, and required a variety of changes, including the replacement of doors, the addition of stairs, and the modification of electrical devices and signs;
- d. HLM failed to include certain value engineering opportunities in its design, and failed to inform UCMC of other money-saving opportunities.

14. In order to correct these deficiencies, work on the Project was performed out of sequence, and required substantial additional costs. These additional costs included removing work that had already been completed in order to access certain areas, and then redoing that work at a greater cost.

15. HLM failed to provide adequate staff throughout the Project. Numerous key employees left HLM's employ, or were transferred to other projects, and were not replaced by sufficient or competent staff. The remaining architects did not have the experience required to adequately manage the Project, handle design responsibilities, and respond to Requests for Information. A significant backlog of Requests for Information, submittals, and Architect's Supplemental Instructions resulted. HLM also advised UCMC that it would not complete contractually required construction administration services.

16. UCMC contracted with US Equities, a consulting firm, to perform many of the construction administration tasks that HLM was either unable or unwilling to complete. UCMC also contracted with PMA Consultants to perform change order review.

17. In March of 2004, UCMC was forced to terminate HLM for cause. UCMC contracted with Proteus to provide replacement architect services. At the outset, Proteus had to handle the backlog of Architect's Supplemental Instructions and Requests For Information that HLM left incomplete as a result of its inadequate staffing and loss of key personnel.

18. In the fall of 2004, HLM filed for Chapter 11 bankruptcy. HLM never informed UCMC, either before or after the filing, of its bankruptcy proceeding. UCMC discovered this information on its own well after the filing.

19. On or about January 18, 2005, UCMC sent a letter to HLM informing HLM of UCMC's claims. UCMC did not receive a response to this letter or otherwise hear from HLM until January of 2008.

20. Any lawsuits against HLM were stayed during the pendency of the bankruptcy proceeding. On December 5, 2008, UCMC filed a motion with the Bankruptcy Court in North Carolina to lift the stay and allow this lawsuit to be filed nominally against HLM in order to recover under its insurance policy. That motion was granted on January 30, 2009. A true and correct copy of the Bankruptcy Court's order lifting the stay is attached hereto as Exhibit B.

COUNT I – BREACH OF CONTRACT

21. UCMC restates and re-alleges paragraphs 1 through 19 as though fully set forth herein.

22. UCMC has performed, or is excused from performing, all of its obligations under the Contract.

23. HLM failed to perform its services in accordance with the applicable standard of care, including, without limitation, failing to comply with applicable laws, codes, and regulations, failing to complete its services in a timely manner, failing to complete its contractual obligations during the Project, and otherwise failing to perform its services in accordance with the Contract.

24. As a direct and proximate result of one or more of the aforesaid breaches, UCMC has sustained damages in excess of \$2,000,000 including, without limitation, (1) costs to correct errors and omissions in HLM's design; (2) costs to bring the Project into compliance with applicable laws, codes and regulations; (3) lost opportunities for value engineering; and (4) costs to complete unfinished architectural services.

WHEREFORE, the University of Chicago Medical Center demands judgment in its favor and against HLM Design of Northamerica, Inc. in an amount in excess of \$2,000,000, the costs of this action, interest on the foregoing at the highest rate allowed by law, and such other and further relief as the Court deems just and equitable.

Dated: January, 2009

The University of Chicago Medical Center

By: /s/ Jeffrey H. Winick
One of Its Attorneys

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