

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION**

PALMOLIVE TOWER CONDOMINIUMS, LLC, )  
an Illinois limited liability company, )

Plaintiff, )

vs. )

BOOTH HANSEN, LTD., an Illinois limited )  
partnership, )

Defendant. )

No. 2009L003517  
CALENDAR/ROOM 5  
TIME 00:00  
Breach of Contract

**COMPLAINT AT LAW**

Plaintiff, Palmolive Tower Condominiums, LLC (hereinafter "Palmolive" or "Owner"),  
by and through its attorneys, Stein, Ray & Harris LLP, and for its Complaint against Defendant  
Booth Hansen, Ltd. (hereinafter "Booth" or "Architect") states as follows:

**The Parties**

1. Palmolive is an Illinois limited liability company with offices in Chicago, Illinois.
2. Booth is an Illinois limited partnership having its principal place of business at 333 South Des Plaines Street, Chicago, Illinois. At all relevant times, Booth conducted business in Cook County, Illinois.

**Jurisdiction and Venue**

3. Jurisdiction is proper, pursuant to 735 ICLS 5/2-209(1) because the claims asserted herein arise from the transaction of business in Illinois.
4. Venue is proper in Cook County, Illinois, pursuant to 735 ILCS 5/2-101(a)(2) because a substantial part of the events and transactions giving rise to the claims asserted herein occurred in Cook County, Illinois.

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CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILL.

### General Allegations

5. Palmolive and Booth (collectively referred to herein as the "Parties") entered into a written agreement on or about January 15, 2001 ("Contract"), wherein Booth agreed to provide architectural services ("Services") to Palmolive in connection with the renovation and build-out of 96 condominium units at the Palmolive Building, located at 919 North Michigan Avenue, Chicago, Illinois (the "Project"). A true and correct copy of the Contract is attached hereto as Exhibit A.

6. Pursuant to Article 1.2.3.2 of the Contract, Booth agreed that its services would "be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project." (See Exhibit A, Article 1.2.3.2).

7. Also, pursuant to Article 1.2.3.8 of the Contract, Booth agreed that its services would be "rendered with the professional standard of care which prevails among reputable architects engaged in the design of projects similar to the Project in type and scope located in the greater Chicago metropolitan area. (See Exhibit A, Addendum, Article 1.2.3.8).

8. Further, pursuant to Article 2.6.1.5 of the Contract, Booth agreed that it would "respond to all reasonable requests for information (commonly known as RFI's) by preparing supplementary Drawings and Specifications . . . within ten (10) days after its receipt of the RFI." (See Exhibit A, Addendum, Article 2.6.1.5).

9. Also, pursuant to Article 2.6.4.1 of the Contract, Booth agreed that it would "review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, . . . with such reasonable promptness as to cause no delay in the Work . . ." (See Exhibit A, Addendum, Article 2.6.4.1).

10. On or about November 15, 2004, Palmolive entered into a contract with Pepper Construction Company ("Pepper") whereby Pepper agreed to provide general contracting services for interior build-out of the 96 condominium units based upon the design documents prepared by Booth (the "Pepper Agreement").

11. Pursuant to the Pepper Agreement, Pepper agreed to complete the Project by February 7, 2006.

12. On or about September 22, 2005, Palmolive, Booth and Pepper executed Change Order No. 6 to the Pepper Agreement which extended the Project completion date to July 31, 2006 and included a revised drawing distribution schedule that specified the issuance date and sequence for the release of the remaining "Phase" design documents on the Project. Further, Palmolive agreed to pay Pepper in excess of \$1.2 million for additional general conditions costs as a result of the extended project schedule.

13. Pepper failed to complete the Project by July 31, 2006 and on March 19, 2007 notified Palmolive that it was terminating work on the Project.

#### **Pepper's Demand for Arbitration**

14. On or about March 21, 2007, Pepper filed a Demand for Arbitration with the American Arbitration Association as Case No. 51 110Y 00425 07 seeking damages against Palmolive in excess of \$24,000,000 (the "Arbitration"). Pepper subsequently filed an Amended Demand for Arbitration on or about September 17, 2007. A copy of Pepper's Amended Demand for Arbitration is attached hereto as Exhibit B.

15. In the Arbitration, Pepper alleges that its work and the work of certain of its subcontractors was delayed and disrupted on the Project due to, *inter alia*, the acts and omissions of Booth, including, but not limited to:

- a. late and out-of-sequence issuance of design documents;
- b. issuance of incomplete and inaccurate design documents;
- c. failure to timely and properly review shop drawings;
- d. failure to timely and properly respond to requests for information; and
- e. failure to include appropriate dimensions and other necessary information on design documents.

16. Specifically, Pepper further alleges that Booth's late release of drawings and its failure to issue drawings in accordance with the Change Order No. 6 drawing distribution schedule, forced Pepper and its subcontractors to perform work out of sequence, which resulted in multiple remobilizations in the condominium units and the floors of the building and caused substantial inefficiencies in Pepper's and its subcontractors' performance of their work.

17. Further, Pepper alleges that Booth's incomplete and erroneous design documents resulted in over 1,200 Bulletins and Architects Supplemental Instructions, as well as over 1,600 Requests for Information, all of which delayed and disrupted Pepper's and its subcontractors' performance of work on the Project.

18. Moreover, Pepper alleges that Booth's incomplete and erroneous design documents and lack of dimension information failed to consider design finishes and existing building limitations which, in order to carry out the design intent, resulted in significant modification to the base building construction and/or rework of already completed work.

19. Pepper also claims that Booth failed to timely review shop drawings and other submittals and failed to timely respond to Requests for Information. Pepper alleges that these failures delayed and disrupted the work on the Project.

20. As a result of Booth's alleged errors and omissions, Pepper alleges that it and its subcontractors were unable to complete the Project by the original completion date of February 2, 2006, which necessitated the issuance of the Change Order No. 6 schedule extension and were unable to complete the Project by the revised completion date of July 31, 2006.

21. Finally, Pepper alleges that as a result of Booth's failures, Pepper and its subcontractors incurred delay and disruption damages.

22. Palmolive has denied the allegations asserted by Pepper in the Arbitration.

**COUNT I**  
**Breach of Contract Against Booth**

23. Palmolive incorporates by reference the factual allegations in paragraphs 1 through 22 as if such allegations were stated verbatim herein.

24. To the extent that Palmolive is found liable to Pepper in the Arbitration as a result of the acts or omissions described in Paragraph 15, Booth shall have breached its contract, resulting in damages to Palmolive, including Palmolive's defense costs in the Arbitration.

25. Palmolive has performed, or is excused from performing, all of its contractual obligations and any and all conditions precedent to asserting these claims against Booth with this Court.

WHEREFORE, for the foregoing reasons, Palmolive Tower Condominiums, LLC prays that, if Palmolive is found liable to Pepper Construction Company in the Arbitration, liability which is expressly denied, that Palmolive be entitled to Judgment against Booth Hansen, Ltd. for any sum it is required to pay Pepper Construction Company and for its defense costs and expenses, and such other and further relief as this Court deems just and proper, including costs and reasonable attorneys' fees.

**COUNT II**  
**Indemnification**

26. Palmolive incorporates by reference the factual allegations in paragraphs 1 through 22 as if such allegations were stated verbatim herein.

27. Pursuant to Article 1.3.7.12 of its Contract with Palmolive, Booth agreed to the following:


**Indemnification.** The Architect shall indemnify and hold harmless the Owner and its officers, directors, members and employees, Owner's Designated Representatives and the Owner's Lender (collectively, the "Indemnitees"), but not the Contractor or others performing the Work, from and against all claims, actions, damages, losses, liabilities, liens, judgments and expenses, including reasonable attorneys' fees, expert witness fees and other related expenses, to the extent cause by (i) the negligent acts or omissions of the Architect or its agents, representatives, employees, consultants and contractors (collectively, the "Indemnitors"), (ii) the violation of, or failure to comply with, the professional standard of care hereunder regarding any applicable laws, codes or ordinances by any Indemnitor or (iii) the default of the Architect hereunder, except to the extent caused by the Indemnitees or others for whom the Architect is not responsible hereunder. (*See Contract, Addendum, paragraph 1.3.7.12*).

28. To the extent that Palmolive is found liable to Pepper in the Arbitration, Booth must indemnify Palmolive for any and all liability incurred due to the failures of Booth and is, therefore, liable to Palmolive for any and all damages awarded Pepper against Palmolive due to Booth's failures, as well as all other losses and expenses, including costs and attorneys' fees incurred by Palmolive.

WHEREFORE, for the foregoing reasons, Palmolive Tower Condominiums, LLC prays that if Palmolive is found liable to Pepper Construction Company in the Arbitration, liability which is expressly denied, that Palmolive be entitled to Judgment against Booth Hansen, Ltd. for any sum it is required to pay Pepper Construction Company and for its defense costs and

expenses, and such other and further relief as this Court deems just and proper, including costs and reasonable attorneys' fees.

PALMOLIVE TOWER CONDOMINIUMS, LLC

By:   
One of its Attorneys

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