

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

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ANVIL MECHANICAL, INC.,

Plaintiff,

Index No.:

VERIFIED COMPLAINT

-against -

GCT CONSTRUCTORS JV, SCHIAVONE
CONSTRUCTION CO., LLC, FIDELITY & DEPOSIT
COMPANY OF MARYLAND, ZURICH AMERICAN
INSURANCE COMPANY, LIBERTY MUTUAL
INSURANCE COMPANY, THE CONTINENTAL
INSURANCE COMPANY, XL SPECIALTY INSURANCE
COMPANY and NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA,

Defendants.
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Plaintiff, Anvil Mechanical, Inc. ("Anvil"), by its attorneys, Welby, Brady & Greenblatt, LLP, as and for its verified complaint, states as follows:

1. Plaintiff, Anvil, is and at all relevant times was a domestic corporation with its office and principal place of business located at 535 South Columbus Avenue, Mount Vernon, Westchester County, New York.

2. Upon information and belief, defendant, GCT Constructors JV ("GCT"), is and at all relevant times was a joint venture composed of Schiavone Construction Co., LLC ("Schiavone") and one or more other entities, organized and existing pursuant to the laws of the State of New York, with its principal place of business located at 150 Meadowlands Parkway, 3rd Floor, Secaucus, New Jersey 07094.

3. Upon information and belief, defendant, Fidelity & Deposit Company of Maryland ("F&D"), is and at all relevant times was a foreign corporation duly authorized to

do business in the State of New York, having its principal place of business in Schaumburg, Illinois

4. Upon information and belief, defendant, Zurich American Insurance Company (“Zurich”), is and at all relevant times was a foreign corporation duly authorized to do business in the State of New York, having its principal place of business in Schaumburg, Illinois.

5. Upon information and belief, defendant, Liberty Mutual Insurance Company (“Liberty”), is and at all relevant times was a foreign corporation duly authorized to do business in the State of New York, having its principal place of business in Seattle, Washington.

6. Upon information and belief, defendant, The Continental Insurance Company (“Continental”), is and at all relevant times was a foreign corporation duly authorized to do business in the State of New York, having its principal place of business in Chicago, Illinois.

7. Upon information and belief, defendant, XL Specialty Insurance Company (“XL Specialty”), is and at all relevant times was a foreign corporation duly authorized to do business in the State of New York, having its principal place of business in Stamford, Connecticut.

8. Upon information and belief, defendant, National Union Fire Insurance Company of Pittsburgh, PA (“National Union”), is and at all relevant times was a foreign corporation duly authorized to do business in the State of New York, having its principal place of business in Pittsburgh, Pennsylvania.

FACTUAL BACKGROUND

9. Upon information and belief, in or about July, 2015, GCT entered into a contract with Metropolitan Transportation Authority Capital Construction (“MTACC” or “Owner”) for the construction of GCT Concourse and Facilities Fit-Out for the East Side Access Project, Contract No. CM014B (the “Project” or the “Prime Contract”).

10. Upon information and belief, in or about November, 2018, F&D, Zurich, Liberty, Continental, XL Specialty and National Union as sureties (hereinafter referred to collectively as the “Sureties”), and GCT as Contractor, executed and issued a payment bond, (hereinafter the “Payment Bond”) wherein and whereby the Sureties and GCT undertook to promptly pay all lawful claims by those persons furnishing labor, material, services and equipment to the Project. Plaintiff respectfully refers this court to said Payment Bond for a complete statement of its terms and conditions.

11. GCT’s contract with the Owner on the Project required it to solicit the participation of minority subcontractors (“MBEs”) to perform subcontract work on the Project.

12. Anvil is and was at all relevant times certified as a Minority Business Enterprise and Disadvantaged Business Enterprise (hereinafter “MBE/DBE”) by the State of New York and United States, respectively.

13. In or about July, 2015, Anvil and GCT entered into a written subcontract agreement whereby Anvil agreed to perform a portion of the Project’s HVAC work, for the lump sum price of \$6,250,000.00 (hereinafter the “Subcontract”).

14. The work to be performed by Anvil under the Subcontract included the fabrication and installation of HVAC piping and installation only of HVAC Equipment that

was furnished by GCT, to the extent that such work was under the jurisdiction of the Steam Fitter's Union Local #638. Plaintiff respectfully refers this court to the Subcontract for a complete statement of Anvil's scope of work.

15. After entering into the Subcontract and pursuant to its agreed upon terms, Anvil entered into the performance of said Subcontract and duly performed all of the terms and conditions of said Subcontract, except as defendant, GCT, prevented, interfered with and/or waived Anvil's performance thereof.

16. On or about March 17, 2020 the Project was shut down due to the COVID-19 Pandemic.

17. On or about April 3, 2020 Anvil requested in writing that GCT provide direction for progressing the Subcontract work in compliance with all applicable rules and regulations, including any temporary or emergency orders issued by applicable government and regulatory agencies (the "COVID-19 Safety Protocols").

18. GCT has failed and refused to pay for the agreed upon price and/or fair and reasonable value of the subcontract work performed by Anvil on the Project.

19. Instead of paying Anvil what it was owed under the Subcontract, GCT wrongfully and improperly terminated the Subcontract for default, on April 16, 2020.

20. GCT failed to notify MTACC's MBE Compliance Office, before terminating the Subcontract.

21. Based on the Subcontract and GCT's breaches of same, GCT owes Anvil the approximate sum of \$1,250,000.00.

22. Upon information and belief, GCT forwarded Anvil's request for direction with respect to the COVID-19 Safety Protocols to the Owner on or about April 6, 2020.

23. Neither GCT nor the Owner addressed Anvil's claim that its Subcontract work (i.e. steamfitter's work) could not be performed safely without workers violating the required six foot social distance requirement.

24. The COVID-19 pandemic is a force majeure event under the Prime Contract.

25. From April 3 through April 15, 2020 Anvil worked on developing a plan to protect its workers while progressing the Subcontract work.

26. On April 15, 2020 after receiving demands from GCT to resume its work, Anvil sent steamfitters to the Project to perform Subcontract work.

27. However, Anvil's steamfitters were denied access to the Project on April 15, 2020 by GCT.

28. The next morning, April 16, 2020, Anvil again sent steamfitters to the Project, and those workers were once again denied access to the Project by GCT.

29. That same day Anvil was informed that its workers' ID badges were being shut off and that Anvil was being locked out of the Project.

30. That same day Anvil was also informed that GCT had cut the locks on Anvil's shanties and tool boxes, and was taking Anvil's tools and equipment for its own use.

31. Later that same day, GCT issued written notice to Anvil that it was terminating the Subcontract due to Anvil's purported breaches of contract.

32. Anvil immediately objected to GCT's termination of the Subcontract, and requested that it be allowed to return to work.

33. By letter to GCT dated April 21, 2020, Anvil stated that there were no grounds to support GCT's decision to terminate the Subcontract and that GCT had failed to

give Anvil the required five (5) business days written opportunity to cure under the Subcontract.

34. In fact, although GCT was demanding that Anvil comply with MTACC's change order to the Prime Contract known as "MOD 210" which made significant changes to the Prime Contract, including an extension of contract time of 677 days of which 528 days were deemed to be compensable, GCT failed and/or refused to issue a commensurate change order to Anvil.

35. Upon information and belief, MOD 210 although agreed to by GCT and MTACC was only adopted by one subcontractor, Five Star Electric, who was given the opportunity to negotiate directly with MTACC.

36. Rather than issue a similar MOD 210 change order to the Subcontract, GCT agreed to fund Anvil and did in fact fully fund Anvil's payroll on a weekly basis and pay all associated union benefits, from in or about September, 2019 through March, 2020 when the Project was shut down due to COVID-19 concerns.

AS AND FOR ANVIL'S FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT AGAINST GCT AND SCHIAVONE CONSTRUCTION, LLC

37. Plaintiff repeats the allegations contained in paragraphs "1" through "36" above with the same force and effect as if set forth at length herein.

38. GCT repudiated the Subcontract by failing and refusing to grant Anvil with access to the Project on April 15 and 16, 2020.

39. GCT breached a fundamental obligation of the Subcontract by failing and refusing to grant Anvil with access to the Project on April 15 and 16, 2020.

40. GCT acted in bad faith by refusing to issue a change order to Anvil, for the changes made to the Prime Contract by MOD 210, that affected Anvil's Subcontract Work.

41. GCT breached the Subcontract by imposing contract milestones on Anvil that were not part of the Subcontract.

42. GCT breached the Subcontract by wrongfully terminating the Subcontract without giving Anvil an opportunity to cure.

43. On or about April 16, 2020, after locking out Anvil from the Project, GCT gave notice to Anvil that it was in default with respect to certain of its obligations under the Subcontract.

44. In such notice, GCT gave Anvil no opportunity to cure the alleged deficiencies as required by Article 3 of the Subcontract.

45. GCT breached the Subcontract by failing to comply with any of the termination procedures contained in the Subcontract, and/or Prime Contract including giving notification to MTACC's MBE Compliance Office, that are intended to give an MBE subcontractor, like Anvil, time to cure or correct the alleged deficiencies.

46. On April 15, 2020, one business day before GCT's purported notice of termination for default: GCT denied Anvil with access to the Project.

47. On April 16, 2020 GCT refused to allow Anvil on the Project site to pick up its tools and equipment and demobilize the Project.

48. On that same date, GCT's Andrew Ricci informed Anvil that GCT was cutting the locks on Anvil's shanties and tool boxes, and was taking Anvil's tools and equipment for GCT's own use.

49. GCT has breached its covenant of good faith by wrongfully and improperly terminating the Subcontract.

50. Schiavone and its joint venture partners are jointly and severally liable for the damages caused by the acts, omissions, breaches of contract and bad faith conduct of GCT.

51. By reason of GCT's multiple breaches of the Subcontract, Anvil has suffered damages in the approximate sum of \$1.25 million, the exact amount to be determined at trial.

**AS AND FOR ANVIL'S SECOND CAUSE OF ACTION AGAINST
GCT AND SCHIAVONE FOR VIOLATION OF THE COVENANT OF
GOOD FAITH AND FAIR DEALING**

52. Plaintiff repeats the allegations of Paragraphs "1" through "51" above with the same force and effect as if set forth at length herein.

53. Every contract in the State of New York contains an implied covenant of good faith and fair dealing imposed on the contracting parties.

54. As such, an agreement to be performed in New York is subject to the implied covenant of good faith and fair dealing.

55. Anvil entered into the Subcontract with GCT, based upon the express and implied representation that GCT would make timely payments to Anvil for the Subcontract work it performed and completed on the Project.

56. The MTACC's issuance of MOD 210 to the Prime Contract completely changed the rights and obligations of MTACC and GCT and resulted in a multi-million dollar wind fall to GCT, and a 677 day time extension.

57. By reason of the changes made by MOD 210, Anvil was entitled to additional compensation and a similar time extension to the Subcontract.

58. By reason of the foregoing, Anvil has been damaged in a sum to be determined at trial, but not less than \$1,250,000.00, together with interest, costs, expenses and attorneys' fees.

**AS AND FOR ANVIL'S THIRD CAUSE OF ACTION AGAINST GCT
AND SCHIAVONE FOR UNJUST ENRICHMENT**

59. Plaintiff repeats the allegations of Paragraphs "1" through "58" above with the same force and effect as if set forth at length herein.

60. Anvil supplied labor, materials and services to the Project, for the benefit of GCT and Schiavone, fully expecting to be compensated for same.

61. GCT has accepted and utilized such labor, materials and services, and yet has failed to pay Anvil for same.

62. GCT's retention of the benefit of the labor, materials and services provided by Anvil, without compensating Anvil for such labor, materials and service, would be unjust.

63. As a result of the labor, materials and equipment furnished by Anvil to build and construct the improvements to the Project, GCT and Schiavone have benefitted and been unjustly enriched in a sum to be determined at trial, but not less than \$1,250,000.00, plus interest, costs, expenses and attorneys' fees.

**AS AND FOR ANVIL'S FOURTH CAUSE OF ACTION AGAINST GCT,
SCHIAVONE AND THE SURETIES ON THE PAYMENT BOND**

64. Plaintiff repeats the allegations of Paragraphs "1" through "63" above with the same force and effect as if set forth at length herein.

65. In accordance with the terms of the Payment Bond, defendants, GCT, Schiavone and the Sureties, jointly and severally agreed with MTACC that every claimant,

such as the plaintiff herein, who had not been paid promptly after the performance of its work, may sue on the Payment Bond for the total amount due.

66. Anvil, as a direct subcontractor of GCT on the Project: is an intended beneficiary of the Payment Bond; is a claimant possessing a just claim; and is entitled to have its claim set forth herein satisfied from such undertaking.

67. All terms and conditions of the Payment Bond have been satisfied.

68. By reason of the foregoing there is now due and owing to the plaintiff the sum of \$1,250,000.00 from the Sureties, and GCT and Schiavone, as Contractor, jointly and severally under the Payment Bond, plus interest.

AS AND FOR ANVIL'S FIFTH CAUSE OF ACTION IN TORT AGAINST GCT AND SCHIAVONE FOR CONVERSION OF ANVIL'S TOOLS AND EQUIPMENT AND DAMAGES AND/OR LOSS OF ANVIL'S PROPERTY

69. Plaintiff repeats the allegations contained in paragraphs "1" through "67" above with the same force and effect as if set forth at length herein.

70. After wrongfully and improperly terminating the Subcontract, GCT and Schiavone unlawfully appropriated the property of Anvil by cutting the locks on Anvil's shanties and tool boxes which were located on the Project site and taking Anvil's tools and equipment.

71. Upon GCT's termination of the Subcontract, Anvil was denied access to the Project in order to remove its property.

72. Upon information and belief, GCT and Schiavone have taken and used Anvil's aforementioned tools and equipment in connection with performing work on the Project.

73. Upon information and belief the converted tools and equipment were damaged by mis-use and/or reduced in value due to GCT's failure to maintain same, causing Anvil to incur damages.

74. A list of the tools and equipment wrongfully taken by GCT and the estimated fair and reasonable value of such items is annexed hereto as Exhibit "A".

75. GCT's and Schiavone's misappropriation of Anvil's tools and equipment have caused Anvil to incur damages in a sum to be determined at trial, but currently believed to be no less than \$512,343.10.

76. By reason of the foregoing, Anvil also requests the imposition of punitive damages against GCT and Schiavone.

WHEREFORE, Plaintiff, Anvil Mechanical, Inc. demands judgment as follows:

(a) On the First Cause of Action judgment against GCT and Schiavone in a sum to be determined at trial, but not less than \$1,250,000.00, together with interest, costs, expenses and attorney's fees;

(b) On the Second Cause of Action, judgment against GCT and Schiavone in a sum to be determined at trial, but not less than \$1,250,000.00, together with interest, costs, expenses, and attorney's fees;

(c) On the Third Cause of Action, judgment against GCT and Schiavone in a sum to be determined at trial but not less than \$1,250,000.00, together with interest, costs, expense and attorneys' fees;

(d) On the Fourth Cause of Action, judgment against GCT, Schiavone, F&D, Zurich, Liberty, Continental, National Union and XL Specialty, jointly and severally, on the

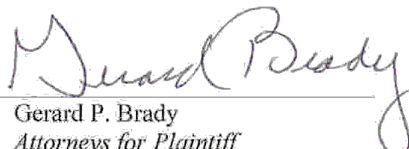
Payment Bond, in a sum to be determined at trial but currently believed to be not less than \$1,250,000.00, together with interest, costs, expenses and attorneys' fees; and

(e) On the Fifth Cause of Action, judgment against GCT and Schiavone in a sum to be determined at trial, but currently believed to be not less than \$512,343.10, together with punitive damages, interest, costs, expenses and attorney's fees; and

(f) Awarding such other and further relief as this Court deems just and proper.

Dated: White Plains, New York
September 15, 2020

WELBY, BRADY & GREENBLATT LLP

By: 
Gerard P. Brady
Attorneys for Plaintiff
Anvil Mechanical, Inc.
11 Martine Avenue, 15th Floor
White Plains, New York 10606
Tel. (914) 428-2100

CORPORATE VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

Daniel Leito, being duly sworn, deposes and says:

Deponent is the President of Anvil Mechanical, Inc., the Plaintiff in the within action, which is a corporation created under and by virtue of the laws of the State of New York;

Deponent has read the foregoing Verified Complaint and knows the contents thereof; that the same is true of deponent's own knowledge, except as to the matters therein alleged upon information and belief, and as to those matters deponent believes them to be true.

The grounds of deponent's belief as to all matters not stated upon deponent's own knowledge are as follows: the books, records, and conversations with representatives of Anvil Mechanical, Inc. who are personally familiar with the matter.



Daniel Leito

Sworn to before me this
15th day of September, 2020


NOTARY PUBLIC

