

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

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ANVIL MECHANICAL, INC.,

Index No. 654448/2020

Plaintiff,

**ANSWER AND
COUNTERCLAIM**

-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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Defendants 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, (collectively, “Defendants”), by their attorneys, Duane Morris LLP, as and for their Answer to the complaint of Anvil Mechanical, Inc., (“Anvil” or “Plaintiff”), allege as follows:

1. Defendants deny sufficient knowledge and information to form a belief as to the truth of the allegations contained in paragraph “1” of the Complaint.
2. Defendants admit the truth of the allegations set forth in paragraph “2” of the Complaint.
3. Defendants admit the truth of the allegations set forth in paragraph “3” of the Complaint.

4. Defendants admit the truth of the allegations set forth in paragraph “4” of the Complaint.

5. Defendants admit the truth of the allegations set forth in paragraph “5” of the Complaint.

6. Defendants admit the truth of the allegations set forth in paragraph “6” of the Complaint.

7. Defendants admit the truth of the allegations set forth in paragraph “7” of the Complaint.

8. Defendants admit the truth of the allegations set forth in paragraph “8” of the Complaint.

FACTUAL BACKGROUND

9. Defendants incorporate by reference their responses contained in the foregoing paragraphs as if fully set forth herein.

10. Defendants admit the truth of the allegations set forth in paragraph “9” of the Complaint.

11. Defendants admit the truth of the allegations set forth in paragraph “10” of the Complaint.

12. Defendants admit the allegations set forth in paragraph “11” of the Complaint.

13. Defendants deny sufficient knowledge and information to form a belief as to the truth of the allegations contained in paragraph “12” of the Complaint.

14. Defendants deny the truth of the allegations contained in paragraph “13” of the Complaint, except admit that Anvil and GCT entered into a written subcontract (the

“Subcontract”), and respectfully refer this honorable Court to the Subcontract for its meaning, interpretation and effect.

15. Defendants deny the truth of the allegations contained in paragraph “14” of the Complaint and respectfully refer this honorable Court to the Subcontract referenced therein for its meaning, interpretation and effect.

16. Defendants deny the truth of the allegations contained in paragraph “15” of the Complaint.

17. Defendants deny the truth of the allegations contained in paragraph “16” of the Complaint.

18. Defendants deny the truth of the allegations contained in paragraph “17” of the Complaint.

19. Defendants deny the truth of the allegations contained in paragraph “18” of the Complaint.

20. Defendants deny the truth of the allegations contained in paragraph “19” of the Complaint, except admit that Anvil was terminated for default in accordance with the Subcontract, and respectfully refer this honorable Court to the Subcontract for its meaning, interpretation and effect.

21. Defendants deny the truth of the allegations contained in paragraph “20” of the Complaint.

22. Defendants deny the truth of the allegations contained in paragraph “21” of the Complaint and respectfully refer this honorable Court to the Subcontract referenced therein for its meaning, interpretation and effect.

23. Defendants deny the truth of the allegations contained in paragraph “22” of the Complaint.

24. Defendants deny the truth of the allegations contained in paragraph “23” of the Complaint.

25. Defendants deny the truth of the allegations contained in paragraph “24” of the Complaint and respectfully refer this honorable Court to the Prime Contract referenced therein for its meaning, interpretation and effect, and further respectfully refer all questions of law to this honorable Court for determination.

26. Defendants deny the truth of the allegations contained in paragraph “25” of the Complaint.

27. Defendants deny the truth of the allegations contained in paragraph “26” of the Complaint.

28. Defendants deny the truth of the allegations contained in paragraph “27” of the Complaint.

29. Defendants deny the truth of the allegations contained in paragraph “28” of the Complaint.

30. Defendants deny the truth of the allegations contained in paragraph “29” of the Complaint.

31. Defendants deny the truth of the allegations contained in paragraph “30” of the Complaint.

32. Defendants deny the truth of the allegations contained in paragraph “31” of the Complaint, except admit that GCT terminated Anvil’s Subcontract.

33. Defendants deny the truth of the allegations contained in paragraph “32” of the Complaint.

34. Defendants deny the truth of the allegations contained in paragraph “33” of the Complaint and respectfully refer this honorable Court to the Subcontract referenced therein for its meaning, interpretation and effect, and further respectfully refer all questions of law to this honorable Court for determination.

35. Defendants deny the truth of the allegations contained in paragraph “34” of the Complaint.

36. Defendants deny the truth of the allegations contained in paragraph “35” of the Complaint.

37. Defendants deny the truth of the allegations contained in paragraph “36” of the Complaint, except admit that GCT fully funded Anvil’s payroll on a weekly basis and paid all associated union benefits for a period of time.

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

38. Defendants incorporate by reference their responses contained in the foregoing paragraphs as if fully set forth herein.

39. Defendants deny the truth of the allegations contained in paragraph “38” of the Complaint and respectfully refer this honorable Court to the Subcontract referenced therein for its meaning, interpretation and effect.

40. Defendants deny the truth of the allegations contained in paragraph “39” of the Complaint and respectfully refer this honorable Court to the Subcontract referenced therein for its meaning, interpretation and effect.

41. Defendants deny the truth of the allegations contained in paragraph “40” of the Complaint.

42. Defendants deny the truth of the allegations contained in paragraph “41” of the Complaint and respectfully refer this honorable Court to the Subcontract referenced therein for its meaning, interpretation and effect.

43. Defendants deny the truth of the allegations contained in paragraph “42” of the Complaint.

44. Defendants deny the truth of the allegations contained in paragraph “43” of the Complaint.

45. Defendants deny the truth of the allegations contained in paragraph “44” of the Complaint.

46. Defendants deny the truth of the allegations contained in paragraph “45” of the Complaint.

47. Defendants deny the truth of the allegations contained in paragraph “46” of the Complaint.

48. Defendants deny the truth of the allegations contained in paragraph “47” of the Complaint.

49. Defendants deny the truth of the allegations contained in paragraph “48” of the Complaint.

50. Defendants deny the truth of the allegations contained in paragraph “49” of the Complaint.

51. Defendants deny the truth of the allegations contained in paragraph “50” of the Complaint.

52. Defendants deny the truth of the allegations contained in paragraph “51” of the Complaint.

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

53. Defendants incorporate by reference their responses contained in the foregoing paragraphs as if fully set forth herein.

54. Defendants deny the truth of the allegations contained in paragraph “53” of the Complaint and respectfully refer all questions of law to this honorable Court for determination.

55. Defendants deny the truth of the allegations contained in paragraph “54” of the Complaint and respectfully refer all questions of law to this honorable Court for determination.

56. Defendants deny the truth of the allegations contained in paragraph “55” of the Complaint.

57. Defendants deny the truth of the allegations contained in paragraph “56” of the Complaint.

58. Defendants deny the truth of the allegations contained in paragraph “57” of the Complaint.

59. Defendants deny the truth of the allegations contained in paragraph “58” of the Complaint.

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

60. Defendants incorporate by reference their responses contained in the foregoing paragraphs as if fully set forth herein.

61. Defendants deny the truth of the allegations contained in paragraph “60” of the Complaint, except admit that Anvil supplied labor, materials and services to the Project.

62. Defendants deny the truth of the allegations contained in paragraph “61” of the Complaint.

63. Defendants deny the truth of the allegations contained in paragraph “62” of the Complaint.

64. Defendants deny the truth of the allegations contained in paragraph “63” of the Complaint.

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

65. Defendants incorporate by reference their responses contained in the foregoing paragraphs as if fully set forth herein.

66. Defendants deny the truth of the allegations contained in paragraph “65” of the Complaint.

67. Defendants deny the truth of the allegations contained in paragraph “66” of the Complaint.

68. Defendants deny the truth of the allegations contained in paragraph “67” of the Complaint.

69. Defendants deny the truth of the allegations contained in paragraph “68” of the Complaint.

**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**

70. Defendants incorporate by reference their responses contained in the foregoing paragraphs as if fully set forth herein.

71. Defendants deny the truth of the allegations contained in paragraph “70” of the Complaint.

72. Defendants deny the truth of the allegations contained in paragraph “71” of the Complaint.

73. Defendants deny the truth of the allegations contained in paragraph “72” of the Complaint.

74. Defendants deny the truth of the allegations contained in paragraph “73” of the Complaint.

75. Defendants deny the truth of the allegations contained in paragraph “74” of the Complaint.

76. Defendants deny the truth of the allegations contained in paragraph “75” of the Complaint.

77. Defendants deny the truth of the allegations contained in paragraph “76” of the Complaint.

**AS AND FOR A FIRST
AFFIRMATIVE DEFENSE**

The Complaint, either in whole or in part, fails to state a cause of action upon which relief can be granted.

**AS AND FOR A SECOND
AFFIRMATIVE DEFENSE**

Anvil’s claims are barred, in whole or in part, by the doctrine of waiver, consent, estoppel, laches, unjust enrichment, ratification and/or unclean hands.

**AS AND FOR A THIRD
AFFIRMATIVE DEFENSE**

Anvil’s claims are barred, either in whole or in part, for failure to satisfy a condition precedent to commencement of this action.

**AS AND FOR A FOURTH
AFFIRMATIVE DEFENSE**

Anvil's claims are barred, in whole or in part, due to the failure of Plaintiff to mitigate its damages.

**AS AND FOR A FIFTH
AFFIRMATIVE DEFENSE**

If Anvil sustained any damages as alleged in the Complaint, such damages are attributable, in whole or in part, to culpable conduct on the part of Anvil, its agents and/or employees.

**AS AND FOR A SIXTH
AFFIRMATIVE DEFENSE**

If Anvil sustained any damages as alleged in the Complaint, such damages are attributable, in whole or in part, to negligence on the part of Anvil.

**AS AND FOR A SEVENTH
AFFIRMATIVE DEFENSE**

The claims asserted in the Complaint are barred, in whole or in part, by Anvil's failure to exhaust its remedies under the Subcontract.

**AS AND FOR A EIGHTH
AFFIRMATIVE DEFENSE**

The claims asserted in the Complaint are barred, in whole or in part, by Anvil's material breach of the terms of the Subcontract.

**AS AND FOR A NINTH
AFFIRMATIVE DEFENSE**

The claims asserted in the Complaint are barred, in whole or in part, by the terms of the Subcontract.

**AS AND FOR A TENTH
AFFIRMATIVE DEFENSE**

Anvil has incurred no damages as a result of any actions, inactions, or conduct by any of the Defendants.

**AS AND FOR AN ELEVENTH
AFFIRMATIVE DEFENSE**

The claims asserted in the Complaint are barred, in whole or in part, by Section 3 of the Subcontract, which provides that:

“In the event that a termination for default is determined to be unjustified, the termination shall be considered a termination for convenience as provided [herein].”

COUNTERCLAIM

78. Defendants incorporate by reference their responses contained in the foregoing paragraphs as if fully set forth herein.

79. GCT fully complied with all of its obligations under the Subcontract, except to the extent that it was prevented or excused from doing so by the actions and omissions of Anvil.

80. Anvil materially breached the Subcontract by, among other things, failing to perform and complete its work in a timely, proper and workmanlike manner.

81. During the course of the Project, Anvil defaulted on its obligations under the Subcontract by, inter alia,: (i) repeatedly failing to achieve the completion dates set forth in the Project schedules; (ii) failing to properly man the job; (iii) failing to pay its subcontractors, suppliers, and unions; and (iv) failing to provide adequate supervision in order to perform its work in a timely and efficient manner.

82. On January 8, 2020, as a result of Anvil’s material breaches and defaults under the Subcontract, GCT sent Anvil a notice informing Anvil that it was in breach of its obligations under the Subcontract and demanded that Anvil immediately cure such defaults in accordance with the terms and conditions of the Subcontract.

83. On April 1, 2020, GCT sent Anvil a letter regarding Anvil's decision to remove its personnel from the Project on March 17, 2020, subsequent refusal to resume operations, and its obligations under the Subcontract to do so.

84. On April 16, 2020, because of Anvil's material breaches and defaults under the Subcontract, GCT sent Anvil a notice of termination for default in accordance with the terms of the Subcontract.

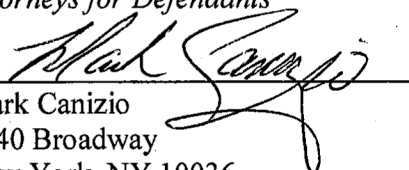
85. As an impact of Anvil's termination, GCT was forced to expend substantial sums of money to engage a replacement contractor to complete work that Anvil failed to perform and accelerate such work due to Anvil's lack of performance on the Project.

86. As a result of the foregoing, GCT has incurred damages in an amount to be determined by the Court but not less than \$12,000,000.00, together with interest, costs, expense and attorneys' fees.

WHEREFORE, Defendants request judgment: (i) dismissing Plaintiff Anvil Mechanical, Inc.'s complaint with prejudice; (ii) in favor of Defendant GCT Constructors JV and against Plaintiff Anvil Mechanical, Inc.; and (iii) granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
January 28, 2021

DUANE MORRIS LLP
Attorneys for Defendants

By 
Mark Canizio
1540 Broadway
New York, NY 10036
Tel. (212) 692-1000

VERIFICATION

STATE OF NEW ^{Jersey} YORK)
Hudson ss.:
COUNTY OF NEW YORK)

Antonio Nival being duly sworn, deposes and says:

That deponent is the Senior Vice President of Defendant GCT Constructors JV; that deponent has read the foregoing Answer with Counterclaim and knows the contents thereof; and that the same is true to your deponent's knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, deponent believes them to be true.

The sources of deponent's information and the grounds of deponent's belief as to all matters not herein stated upon deponent's knowledge are as follows: deponent's books and records.

This Verification is made by deponent on behalf of GCT Constructors JV and Defendants 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 because GCT Constructors JV and Defendants 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 are united in interest with respect to the claims and defenses asserted in this action.

Sworn to before me this
9th day of January 2021
Dorothy Elk
Notary Public

[Signature]

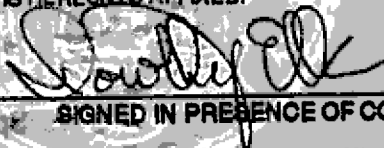
DORORTHY ELK
NOTARY PUBLIC, STATE OF NEW JERSEY
Commission No. 2090342
My Commission Expires June 26, 2021

COMM. NO:
2090342
FROM:
JUNE 26, 2016
EXPIRES:
JUNE 26, 2021
DOROTHY ELK

State Of New Jersey
Notary Public Commission

REPOSING SPECIAL TRUST AND CONFIDENCE IN YOUR INTEGRITY,
PRUDENCE AND ABILITY I HAVE BY THE AUTHORITY INVESTED IN ME BY
LAW COMMISSIONED YOU A NOTARY PUBLIC OF

PASSAIC COUNTY IN THE STATE OF NEW JERSEY TO EXECUTE AND
PERFORM ACCORDING TO LAW THE SAID OFFICE OF NOTARY PUBLIC OF SAID
STATE TO HAVE AND TO HOLD THE SAME WITH THE POWERS AND RIGHTS FOR A
PERIOD OF FIVE YEARS FROM DATE HEREOF, IN TESTIMONY WHEREOF THE
GREAT SEAL OF THE STATE IS HEREUNTO AFFIXED.



SIGNED IN PRESENCE OF COUNTY CLERK

In Witness Whereof, I have hereunto set my hand and affixed the Official seal


Ford M. Scudder
Acting State Treasurer

OFFICIAL OATH TAKEN AND SUBSCRIBED
BEFORE ME THIS 26th DAY OF April

KRISTIN M. CORRADO

COUNTY
CLERK

Special Deputy

