

IN THE CIRCUIT COURT OF CASS COUNTY, MISSOURI

JUSTIN JOE HUERTA)

and)

ANDREW COUNTY PUBLIC BENEFIT,)
CORPORATION, *ex rel.*)

JUSTIN JOE HUERTA, *Relator*,)

Plaintiffs,)

v.)

PAXTON CONTRACTING, LLC;)

Serve:)

Marlene Mendez)

1817 SW 31 Street)

Lincoln, NE 68522)

Case No. _____

Division _____

EXTERIOR WALL SPECIALISTS, INC.;

Serve:)

Lisa Richman)

17700 S. State Route 291)

Pleasant Hill, MO 64080)

KC PLASTERING, INC.;

Serve:)

Lisa Richman)

17700 S. State Route 291)

Pleasant Hill, MO 64080)

E.L. CRAWFORD CONSTRUCTION, INC.;

Serve:)

E.L. Crawford)

1502 Frederick Ave.)

St. Joseph, MO 64501)

and)
)
FIDELITY AND DEPOSIT COMPANY)
OF MARYLAND,)
)
Serve:)
Registered Agent)
CSC-Lawyers Incorporating Serv. Co.)
221 Bolivar St.)
Jefferson City, MO 65101)
)
<i>Defendants.</i>)

PETITION

Plaintiff Justin Joe Huerta, for himself and as Relator on behalf of Plaintiff Andrew County Public Benefit Corporation, states the following on personal knowledge as to his own acts and on information and belief following reasonable investigation as to all other matters.

INTRODUCTION

1. This case is about an honest worker, a broken promise, and a contractor's greed.
2. Justin Joe Huerta was employed as a laborer on the Andrew County Sheriff's Office and Jail project in Savannah, Missouri.
3. Defendant Paxton Contracting, LLC, had recruited Mr. Huerta to travel from his home in Dallas, Texas, to work on the project. He had been lured to Missouri with the promise of good wages and fair treatment.
4. Missouri law requires that contractors pay prevailing wages on public construction projects.

5. Paxton Contracting was ready and willing to profit at taxpayers' expense on the project. It failed to pass along the benefits to the workers.

6. Paxton Contracting shorted Mr. Huerta and refused his request to be paid a just and legal wage.

7. Mr. Huerta now brings this case to enforce Missouri's prevailing wage laws and hold Paxton Contracting accountable for its promise to him and to Missouri taxpayers.

PARTIES

8. Plaintiff and Relator Justin Joe Huerta worked as a construction laborer on the Andrew County Sheriff's Office and Jail project. He resides in Dallas, Texas, and is a citizen of Texas.

9. Plaintiff Andrew County Public Benefit Corporation is a public body within the meaning of the Missouri prevailing wage laws.

10. Defendant Paxton Contracting, LLC, was a second-tier subcontractor on the project and employed Mr. Huerta. It is a Nebraska limited liability company with a principal place of business at 1817 SW 31 Street, Lincoln, Nebraska 68522. While Plaintiffs are unaware of the residence of the company's member(s), Plaintiffs believe that Paxton Contracting is a citizen of Nebraska. Paxton Contracting is not registered with the Missouri Secretary of State, and does not maintain a registered agent in Missouri.

11. Defendant Exterior Wall Specialists, Inc., was a first-tier subcontractor on the project, and subcontracted work to Paxton Contracting. Exterior Wall Specialists is a

Missouri corporation with a principal place of business at 17700 S. State Route 291, Pleasant Hill, Missouri 64080. It is a citizen of Missouri.

12. Defendant KC Plastering, Inc., is a Missouri corporation with a principal place of business at 17700 S. State Route 291, Pleasant Hill, Missouri 64080. It is a citizen of Missouri, and operates as an alter-ego of Exterior Wall Specialists. Allegations made against Exterior Wall Specialists in this Petition apply equally to KC Plastering.

13. Defendant E.L. Crawford Construction, Inc., was the prime contractor on the project and subcontracted work to Exterior Wall Specialists. It is a Missouri corporation with a principal place of business at 1502 Frederick Ave., St. Joseph, Missouri 64501. E.L. Crawford Construction is a citizen of Missouri.

14. Defendant Fidelity and Deposit Company of Maryland provided payment and performance bonding for the jail project, as required by RSMo § 107.170. This bonding guarantees the payment of workers' wages. The company has its principal place of business at 510 N. Charles St., Baltimore, Maryland 21201. Plaintiffs believe that Fidelity and Deposit Company is a citizen of Maryland.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction under Mo. Const. art. V, § 14, and RSMo § 478.070.

16. This Court has personal jurisdiction under RSMo § 506.500.1(2)-(3) because all Defendants either are domiciled in this state or transacted business within this state and made contracts within this state which give rise to the cause of action asserted here.

17. Venue is proper under RSMo 508.010.2(3). No count in this case alleges a tort. Exterior Wall Specialists and KC Plastering are residents of Cass County, Missouri. Both Paxton Contracting and Fidelity and Deposit Company are non-residents of this state. E.L. Crawford Construction resides in Buchanan County, Missouri.

FACTS

18. All Defendants worked under a public contract for construction of the Andrew County Sheriff's Office and Jail in Savannah, Missouri. E.L. Crawford was the prime contractor, and subcontracted work to Exterior Wall Specialists. In turn, Exterior Wall Specialists subcontracted work to Paxton Contracting.

19. Fidelity and Deposit Company of Maryland provided payment and performance bonding for the project under bond number PRF08649730, which was executed on September 7, 2011. Plaintiffs have perfected their claim on the bonds by sending notice by certified mail as set forth in the bonds' terms.

20. Justin Huerta resides in Dallas, Texas. The son of a single mother, he has pulled himself up by his own bootstraps, traveling periodically to take up construction work. As of this Petition's filing, Mr. Huerta has taken on another several-month construction job in Florida. He is the proud father of a young daughter, and needs to work at fair wages in order to support his daughter and himself.

21. While in Texas, Mr. Huerta was contacted about potential construction work in Missouri. He traveled to Missouri in order to work for Paxton Contracting on the project during the early part of 2012.

22. Mr. Huerta worked a total of approximately 180 hours on the project. He was paid \$4,006.95. This comes to an hourly wage of about \$22.26.

23. At the time of the project, the prevailing wage for a construction laborer in Andrew County was \$34.46 per hour (including fringe benefits).

24. Mr. Huerta's proper total wage is approximately \$6,202.95.

25. Having been paid only \$4,006.95, he has been underpaid by approximately \$2,195.85.

26. Mr. Huerta finished his work on the project in May 2012. He demanded payment of his full and just wages, but was refused.

27. The Missouri Department of Labor and Industrial Relations was provided with certified payrolls that ostensibly show the proper prevailing wage. However, these payrolls underreport the number of hours Mr. Huerta worked.

28. Mr. Huerta's work fit the definition of a building construction laborer under 8 C.S.R. § 30-3.060(8)(K). He provided routine labor for the construction of the Andrew County Sheriff's Office and Jail.

COUNT I

VIOLATION OF THE MISSOURI PREVAILING WAGE ACT, RSMo §§ 290.210 through 290.340 (against all Defendants)

29. Mr. Huerta incorporates each and every foregoing and succeeding paragraph of this Petition as if fully set forth here.

30. RSMo § 290.300 confers a private right of action for enforcement of the prevailing wage laws.

31. At all times relevant to this Petition, Mr. Huerta was a workman employed by or on behalf of any public body engaged in the construction of public works, exclusive of maintenance work. He was a general laborer, working for a subcontractor under a contract let by Andrew County Public Benefit Corporation, for the construction, and not the maintenance, of a sheriff's office and jail constructed for public use or benefit or paid for wholly or in part out of public funds.

32. Mr. Huerta worked approximately 180 hours as a building construction laborer, at approximately \$22.26 per hour.

33. Under Missouri Annual Wage Order No.18, the prevailing wage for a general laborer in Andrew County at the time of Mr. Huerta's work was \$23.36 per hour in basic pay, and \$11.10 per hour in fringe benefits. This totals to \$34.46 per hour. Wages are slightly higher for semiskilled laborers.

34. By failing to pay the prevailing wage or its equivalent in cash, Paxton Contracting violated Missouri's prevailing wage laws.

35. As the prime contractor and as the first-tier subcontractor in privity with Paxton Contracting, Defendants E.L. Crawford Construction and Exterior Wall Specialists are jointly and severally liable for payment of prevailing wages.

36. As the surety on the project, Fidelity and Deposit Company of Maryland is also jointly and severally liable under RSMo § 107.170 for any non-payment of wages.

37. Mr. Huerta respectfully prays that this Court adjudge Defendants jointly and severally liable for violation of the Missouri prevailing wage laws, and grant all relief allowed under the law, as set forth in the Prayer in this Petition.

PRAYER FOR RELIEF

Mr. Huerta respectfully prays that this Court grant him the following relief:

1. Double the unpaid prevailing wages as provided by Missouri statutes and regulations;
2. Pre-judgment and post-judgment interest at the maximum rate permitted by law;
3. The costs of this action;
4. Reasonable attorney's fees; and
5. Any other and further legal and/or equitable relief that this Court deems just and proper.

Dated: June 21, 2012

Respectfully submitted,

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