

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
Tampa Division

_____		x
BLUEWATER CONSTRUCTION, INC.,	:	
Plaintiff,	:	case no. 8:19-cv-1508
	:	
v.	:	
	:	
CBI ACQUISITIONS, LLC,	:	
d/b/a CANEEL BAY RESORT,	:	
and BAY AREA BUILDING SOLUTIONS, INC.	:	
Defendants.	:	
_____		x

COMPLAINT & DEMAND FOR JURY TRIAL

Plaintiff, BLUEWATER CONSTRUCTION, INC., by and through the undersigned attorney, hereby brings this action against Defendants CBI ACQUISITIONS, LLC, d/b/a CANEEL BAY RESORT, and BAY AREA BUILDING SOLUTIONS, INC.; Plaintiff alleges the following:

PARTIES

1. Plaintiff, BLUEWATER CONSTRUCTION, INC. (“Bluewater”), is a corporation organized and existing under the laws of the United States Virgin Islands (“USVI”) with its principal place of business located in St. Thomas, USVI.

2. Defendant CBI ACQUISITIONS, LLC (“CBI” or “CBI Acquisitions”) is a USVI limited liability company that manages a resort on St. John, USVI commonly known as Caneel Bay. CBI does business as “Caneel Bay Resort”.

3. Upon information and belief CBI has one parent entity – Ataraxia Hospitality, LLC, which is manager-managed by Equis/Caneel, LLC.

4. Upon information and belief Equis/Caneel, LLC has an address of 55 North Water Street, Suite 4, Norwalk, CT 06854.

5. Upon information and belief, for diversity purposes, neither Ataraxia Hospitality, LLC nor its member(s) is a citizen/are citizens of the United States Virgin Islands.

6. BAY AREA BUILDING SOLUTIONS, INC. (“Bay Area”) is a Florida corporation that is in the business of acting as a “Design-Build General Contractor”. Bay Area acted as the General Contractor, agent and construction manager for CBI at all times referenced in this Complaint.

JURISDICTION, VENUE, & DEMAND FOR JURY TRIAL

7. This Court has personal jurisdiction and diversity jurisdiction, pursuant to 28 U.S.C. § 1332 as the Parties are diverse and the amount in controversy is in excess of \$75,000.00.

8. This Court has personal jurisdiction over Bay Area as it is Florida Corporation and it has consented to this Court’s jurisdiction by virtue of the venue provision contained in the contract that forms the basis of this action. See Exhibit 1 at § 15(d).

9. This Court has personal jurisdiction over CBI as it has consented to this Court’s jurisdiction by virtue of the venue provision contained in the contract that forms the basis of this action. See Exhibit 1 at § 15(d).

10. Venue is proper in Hillsborough County, Florida by virtue of venue provision contained in the contract that forms the basis of this action. See Exhibit 1 at § 15(d).

11. A trial by jury is demanded pursuant to Fed. R. Civ. P. 38.

FACTS COMMON TO ALL COUNTS

12. CBI owns and operates the property on St. John, United States Virgin Islands, commonly known as Caneel Bay Resort (the “Property” or “Caneel Bay”).

13. In 2017 CBI engaged the services of Bay Area to act as “Project Manager” for work being done on Caneel Bay, specifically “eighteen hotel rooms (4 Caneel Beach; 14 Cottage Point)”.

14. Bluewater, Bay Area and CBI were all parties to a “Subcontract Agreement” dated July 10, 2017 (the “Agreement” or the “Contract”). See Exhibit 1.
15. The Defendants drafted the Contract.
16. Bay Area was “acting for [CBI] as its authorized representative” for purposes of the Agreement. See Exhibit 1, top of page 1.
17. Bluewater contracted to “furnish and install all materials, labor, equipment, tools, insurance and supervision for complete Demolition, Concrete, Rough & Finish Carpentry, Framing/Drywall, Exterior Trex Decks, Patio Roofs, Door/Shower Glass Installation and Room Accessories Installation scopes...” See Exhibit 1, pages 7-8 - exhibit “B”.
18. The Agreement was signed by Jeremy Henkel on behalf of Bluewater and by John Vrabec on behalf of Bay Area who was also the authorized representative of CBI. See Exhibit 1, page 5.
19. Bay Area is responsible to “pay, or cause to be paid” the amounts due an owing to Bluewater under the Agreement. See Exhibit 1, page 3, § 8.
20. Starting in July 2017 Bluewater performed work pursuant to the Agreement. The work that Bluewater performed was in accordance with the Agreement and the standards of the construction industry in the Virgin Islands and complied with all code regulations and architect specifications.
21. On or about August 23, 2017 Bluewater submitted its first “Subcontractor’s request for payment, partial release of lien” to Bay Area. See Exhibit 2.
22. Bluewater continued to work pursuant to the Agreement.
23. On September 6, 2017 Hurricane Irma hit the U.S. Virgin Islands.
24. On September 20, 2017 Hurricane Maria hit the U.S. Virgin Islands.

25. On or about October 16, 2017 Bluewater submitted its second “Subcontractor’s request for payment, partial release of lien” to Bay Area. See Exhibit 3.
26. By invoice sent by Bluewater to Bay Area it was agreed that the total owed to Bluewater was Two Hundred Seventeen Thousand Four Hundred Sixteen Dollars and 55/100 (\$214,416.55). See Exhibit 4.
27. There was regular communication via email and phone between Bluewater and Bay Area. Bay Area kept claiming that Bluewater would be paid and Bay Area was merely waiting on funding from CBI to make the payments to Bluewater.
28. On January 29, 2018 John Vrabec, on behalf of Bay Area and CBI confirmed that the amounts submitted by Bluewater were actually due and owing. See email attached as Exhibit 5.
29. To date Bay Area and/or CBI have not paid Bluewater the undisputed amounts due and owing to Bluewater.
30. Bay Area and/or CBI have willfully and purposefully withheld the money owed to Bluewater in an attempt to have Bluewater compromise the amounts of money owed to it. Bay Area and/or CBI have done this with an evil motive and must be punished for this willfully illegal act.

COUNT 1 – BREACH OF CONTRACT
(against BAY AREA)

31. Bluewater repeats and realleges paragraph 1-30, *supra*, the foregoing paragraphs as though fully set forth in this paragraph.
32. Bay Area is a party to the Agreement with Bluewater. There is no dispute that the Agreement exists and is valid.
33. Under the terms of the Agreement, Bay Area is responsible for ensuring Bluewater is paid by either paying Bluewater directly or causing Bluewater to be paid. See Exhibit 1, page 3, § 8.

34. Under the terms of the Agreement payment must be made to Bluewater within 30 days of submitted and approved invoices. See Exhibit 1, page 3, § 8.

35. Bluewater has performed under the Agreement by completing work as specified in the Agreement. Bluewater has submitted invoices for the work totaling Two Hundred Seventeen Thousand Four Hundred Sixteen Dollars and 55/100 (\$214,416.55). See Exhibit 4.

36. Bay Area and CBI agree that Bluewater is due the amount submitted by Bluewater.

37. Bay Area refuses to perform and has failed to perform its obligations under the Agreement by paying Bluewater.

38. Bluewater has been damaged in an amount of at least Two Hundred Seventeen Thousand Four Hundred Sixteen Dollars and 55/100 (\$214,416.55), exact amount to be proven at trial.

39. Bluewater is entitled to actual, compensatory damages, pre-judgment interest and punitive damages as well as costs, expenses and attorney's fees.

COUNT 2 – BREACH OF CONTRACT
(against CBI)

40. Bluewater repeats and realleges paragraph 1-30, *supra*, the foregoing paragraphs as though fully set forth in this paragraph.

41. CBI is a party to the Agreement with Bluewater. There is no dispute that the Agreement exists and is valid.

42. Under the terms of the Agreement, CBI is responsible for paying amount due to Bluewater.

43. Under the terms of the Agreement payment must be made to Bluewater within 30 days of submitted and approved invoices. See Exhibit 1, page 3, § 8.

44. Bluewater has performed under the Agreement by completing work as specified in the Agreement. Bluewater has submitted invoices for the work totaling Two Hundred Seventeen Thousand Four Hundred Sixteen Dollars and 55/100 (\$214,416.55). See Exhibit 4.

45. Bay Area and CBI agree that Bluewater is due the amount submitted by Bluewater.

46. CBI refuses to perform and has failed to perform its obligations under the Agreement by paying Bluewater.

47. Bluewater has been damaged in an amount of at least Two Hundred Seventeen Thousand Four Hundred Sixteen Dollars and 55/100 (\$214,416.55), exact amount to be proven at trial.

48. Bluewater is entitled to actual, compensatory damages, pre-judgment interest and punitive damages as well as costs, expenses and attorney's fees.

COUNT 3 – BREACH OF DUTY OF GOOD FAITH & FAIR DEALING
(against all Defendants)

49. Bluewater repeats and realleges paragraph 1-30, *supra*, the foregoing paragraphs as though fully set forth in this paragraph.

50. Under Florida law every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement.

51. As set forth above, the Defendants acted unreasonably in contravention of the Plaintiff's reasonable expectations (including the terms set forth in the Contract) that the Defendants would pay for the work performed on the Property.

52. The actions (or lack thereof) taken on the part of the Defendants were deceitful in that the Defendants have improperly without any basis in fact or law attempted to avoid the financial obligations imposed upon the Defendants once the Plaintiff performed under the terms of the Contract.

53. Further, the actions of the Defendants were deceitful in that the Defendants intentionally gave a false impression that they would abide by the express terms of the Contract (which they failed to abide by).

54. As set forth above, the Defendants deprived the Plaintiff of the benefits for which the Plaintiff had bargained and received in the Contract by refusing to abide by the terms of the Contract based on the Defendants' unjustified failure to pay the Plaintiff for the work performed pursuant to the Agreement, which was done in accordance with the Agreement and the standards of the construction industry in the Virgin Islands (including but not limited to complying with all code regulations and architect specifications).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully demands judgment be entered in favor of Plaintiff and against Defendants, and that Plaintiff be awarded the following:

- a. Compensatory damages;
- b. Incidental damages;
- c. Statutory interest;
- d. Attorney's fees and costs; and
- e. Any other relief deemed appropriate under the circumstances.

Respectfully submitted,

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Dated June 21, 2019