

Macon County asks – in Answer to a lawsuit filed against Macon County, Professional Engineering Services, Incorporated (PESI) and Ricky White over the debated completion of the Scottsville Road water line project – to be awarded \$1,400,000 for all of its damages against Jenkins, as well as discretionary costs, expenses, and attorney fees.

It also asks, in a separate Cross-Claim, that the court enter judgement against PESI for any damages awarded to Jenkins against Macon County; maintaining that if Jenkins Construction was damaged, it was due to the negligence of PESI. The County denies Jenkins statement that White and PESI acted as agents of the County in matters pertaining to the water line project.

Jenkins Construction, in the eight page Complaint that was filed in the Circuit Court of Macon County, recites a detailed and rather technical description of difficulties encountered while installing approximately 33,425 feet of water line.

In part, Jenkins complaint states that the plans provided for the job were inaccurate, that the megalug specifications as approved by PESI were faulty, that Jenkins was required to do extra work and spend extra money, and that there were a number of bad weather days which slowed down the completion of the project.

In short, the complaint states that Jenkins relies on the theories of intentional misrepresentation, negligent misrepresentation and misrepresentation, in respect to all defendants. With respect to the County, Jenkins relies upon the theory of breach of contract.

There is an implied warranty that the information on the plans is accurate and can be relied on by the prospective bidder, the complaint goes on to say. It alleges that by failing to provide accurate plans, all defendants have breached this implied warranty.

The plans show what they show, states the Answer given by Macon County. The Answer further denies that Jenkins was entitled to any compensation for any alleged extra work, because it is not owed and was not contracted for.

To the extent that Jenkins alleges negligence on the part of Macon County, Macon County alleges that there is comparative fault on Jenkins part that equals or exceeds fifty percent. Also, it is specifically alleged that Co-Defendants [PESI] are an independent contractor.

It was the breach of the contract by Jenkins Construction which led Macon County to withhold paying funds per the contract. The contract specifically allowed Macon County to “retain” liquidated damages from pay estimates, the Answer affirmatively defends.

Liquidated damages, as stated in the contract, were to be paid by Jenkins at a rate of \$500 for each consecutive calendar day that the project was not completed.

The Counter-Complaint filed by the county states that the contract has still not been completed by Jenkins in that the megalugs have not properly been installed, remedial action has not been taken to correct defective work, and the engineer [White] has not approved the work as being substantially complete. Other breaches of performance provisions of the contract will be shown at the hearing of this cause.

Additional inspection costs in the amount of \$33,850 were incurred as a result of Jenkins failure to complete the project on time, the counter-complaint states, and the county has been declared ineligible to receive water rehabilitation grants for 2007 and 2008 in the amount of \$500,000 each. In addition, a total of \$308,000 in liquidated damages have accrued.

As well as discretionary costs, expenses, attorney fees, and the \$1,400,000 in damages, the county asks that Jenkins be required to pay court costs.

While admitting – in a Cross-Claim – that PESI was hired to perform the architect/engineer/inspector functions for the contract between Macon County and Jenkins Construction, the county maintains that it is not guilty of any comparative fault; and that if there is any such fault it should be allocated to Jenkins Construction and PESI. The Cross-Claim further maintains that if Jenkins Construction was damaged it was due to the negligence of PESI, and asks that the court enter judgement for the county against PESI for any damages awarded against the county.

Both the Answer and the Cross-Complaint were filed in the Circuit Court of Macon County on April 17, 2008 by E. Guy Holliman, Attorney for Macon County.