

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

Shingobee Builders, Inc.,

Case No._____

Plaintiff,

v.

North Segment Alliance,

Defendant.

COMPLAINT

Plaintiff Shingobee Builders, Inc. (“Shingobee”) for its complaint against Defendant North Segment Alliance (“North Segment”) states:

PARTIES

1. Plaintiff Shingobee is a Minnesota corporation registered to conduct business in North Dakota and is a general contractor. Its principal place of business is in Loretto, Minnesota.

2. Shingobee is a citizen of Minnesota.

3. Upon information and belief, Defendant North Segment is a tribal corporation organized to conduct business on behalf of the Three Affiliated Tribes of the Fort Berthold Reservation North Dakota. As such, North Segment is deemed a citizen of North Dakota.

JURISDICTION

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 in that this action involves citizens of different states and the amount in controversy exceeds \$75,000.

5. This Court has personal jurisdiction over the Defendant because the Defendant has a principal place of business in North Dakota.

VENUE

6. Venue is proper in the District of North Dakota pursuant to 28 U.S.C. § 1391 in that a substantial part of the events or omissions giving rise to this action occurred in this judicial district and the Defendant has a principal place of business in this judicial district.

JURY DEMAND

7. Shingobee demands a trial by jury on all issue so triable.

FACTUAL ALLEGATIONS

8. This action arises out of the construction of the Red Hawk Estates Project in New Town, North Dakota (the “Project”). The Project, as originally contracted, involved construction of a 30-unit apartment complex and associated site work.

9. On or about July 31, 2015, Shingobee entered into a Guaranteed Maximum Price (“GMP”) contract (the “Contract”) with North Segment Community Development Corporation in which Shingobee agreed to perform work as construction manager and general contractor for the Project and North Segment agreed to pay Shingobee for its work on the Project.

10. Upon information and belief, North Segment Community Development Corporation is now a dissolved entity.

11. Upon information and belief, North Segment assumed all assets, liabilities, rights, and obligations of North Segment Community Development Corporation upon North Segment Community Development Corporation's dissolution.

12. Following the execution of the contract, on December 4, 2015, Shingobee and North Segment executed a contract amendment that set the GMP and revised the scope of work.

13. On or about February 15, 2016, Shingobee and North Segment executed Amendment No. 2 to the Contract in which 36 apartment units were added to the construction of the Project.

14. Due to a scrivener's error, Amendment No. 2 only accounted for the cost to construct 30 additional units.

15. In addition to Amendment No. 2, the parties executed a number of other amendments that increased the scope of work and GMP.

16. As set forth in the Contract, North Segment agreed to pay Shingobee a construction manager fee of 10% for any increases in the scope of work.

17. North Segment failed to pay Shingobee the full amount due under the 10% construction manager fee provision in the Contract.

COUNT I
(Breach of Contract)

18. Shingobee re-alleges and incorporates by references the preceding allegations as if set forth fully herein.

19. Shingobee and North Segment entered into a contract in which North Segment agreed to, among other things, pay Shingobee a construction manager fee of 10% for any increases in the scope of work.

20. Shingobee submitted requests for payment of the construction manager fee to North Segment, and North Segment refused to pay the construction manager fee.

21. Shingobee complied with all of its contractual obligations under the Contract and satisfied any and all conditions precedent to its right to recover damages from North Segment.

22. North Segment breached its Contract with Shingobee by failing to pay the construction manager fee required by the Contract.

23. As a direct result of North Segment's breach of contract, Shingobee has been damaged in an amount in excess of \$75,000, the exact amount to be proven at trial and is entitled to judgment in its favor.

COUNT II
(Reformation of Contract)

24. Shingobee re-alleges and incorporates by references the preceding allegations as if set forth fully herein.

25. Shingobee and North Segment executed Amendment No. 2 in which Shingobee agreed to construct an additional 36 apartment units and North Segment

agreed to pay Shingobee for the construction of the additional units pursuant to an anticipated schedule of costs.

26. Due to a scrivener's error, the price to construct an additional 36 apartment units quoted in the anticipated schedule of costs only accounted for the construction of 30 additional apartment units.

27. Upon information and belief, North Segment knew or should have known of the error in quoting the construction of the 36 additional apartment units in the anticipated schedule of costs.

28. Shingobee intended to construct an additional 36 apartment units and North Segment intended to pay Shingobee for the construction of the additional 36 apartment units.

29. North Segment will not be prejudiced by the reformation of the Contract to include the price to construct six additional units because Shingobee constructed those units.

30. Shingobee will be prejudiced if the contract is not reformed to include the cost to construct the additional six apartment units because it incurred the costs to do so.

31. Pursuant to N.D.C.C. § 32-04-17, Shingobee is entitled to reformation of Amendment No. 2 and the Contract to include the cost to construct the additional six apartment units.

32. As reformed, the Amendment No. 2 and the Contract require North Segment to pay Shingobee an amount in excess of \$75,000, reasonably calculated to be in excess of \$800,000. As a direct result of North Segment's failure to pay this claim,

Shingobee has been damaged in an amount in excess of \$75,000, the exact amount to be proven at trial, and Shingobee is entitled to judgment in its favor.

**COUNT III
(Quantum Meruit/Unjust Enrichment)**

33. Shingobee re-alleges and incorporates by references the preceding allegations as if set forth fully herein.

34. North Segment has used and benefited from the Project without fully compensating Shingobee.

35. It would be inequitable to allow North Segment to retain that benefit without compensating Shingobee.

36. As a direct result of North Segment's failure to fully compensate Shingobee, Shingobee has been damaged in an amount in excess of \$75,000, the exact amount to be proven at trial, and Shingobee is entitled to judgment in its favor.

PRAYER FOR RELIEF

WHEREFORE, Shingobee Builders, Inc. respectfully prays for judgment against North Segment Alliance as follows:

1. Judgment in favor of Plaintiff Shingobee Builders, Inc. and against Defendant North Segment -Alliance on Count I in an amount in excess of \$75,000;

2. Judgment in favor of Plaintiff Shingobee Builders, Inc. and against Defendant North Segment -Alliance on Count II in an amount in excess of \$75,000, for the reformation of Contract pursuant to N.D.C.C. 32-04-17;

3. Judgment in favor of Plaintiff Shingobee Builders, Inc. and against Defendant North Segment Alliance awarding reasonable attorneys' fees, costs, and disbursements; and

4. Awarding any other relief as this Court deems just and appropriate.

Dated: March 21, 2018

By: /s/ Jeffrey Wieland
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