

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

OHIO CONCRETE CONSTRUCTION : CASE NO. 08 CVH 09 13867
ASSOCIATION, et al., :
 :
Plaintiffs, :
 :
v. :
 :
OHIO DEPARTMENT OF :
TRANSPORTATION, et al., :
 :
Defendants. :

DEFENDANT JOHN R. JURGENSEN COMPANY'S
ANSWER TO COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Defendant John R. Jurgensen Company (“Jurgensen”), for its Answer to the Complaint of Plaintiffs Ohio Concrete Construction Association (“OCCA”) and Harper Construction (“Harper”), admits, denies and avers as follows:

1. Jurgensen denies the allegations contained in paragraph 1 of Complaint as stated.
2. Responding to paragraph 2 of the Complaint, Jurgensen admits that OCCA is a trade association which does business with concrete construction contractors in Ohio, but Jurgensen denies the remaining allegation in paragraph 2 of the Complaint as stated.
3. Jurgensen admits the allegations contained in paragraph 3 of the Complaint.
4. Jurgensen admits the allegations contained in paragraph 4 of the Complaint.
5. Jurgensen admits the allegations contained in paragraph 5 of the Complaint.
6. Jurgensen denies the allegations contained in paragraph 6 of the Complaint.

7. Jurgensen denies the allegations contained in paragraph 7 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.

8. Jurgensen denies the allegations contained in paragraph 8 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.

9. Jurgensen denies the allegations contained in paragraph 9 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.

10. Jurgensen denies the allegations contained in paragraph 10 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.

11. Jurgensen denies the allegations contained in paragraph 11 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.

12. Jurgensen denies the allegations contained in paragraph 12 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.

13. Jurgensen denies the allegations contained in paragraph 13 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.

14. Jurgensen denies the allegations contained in paragraph 14 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.

15. Jurgensen denies the allegations contained in paragraph 15 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.

16. Jurgensen denies the allegations contained in paragraph 16 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.

17. Jurgensen denies the allegations contained in paragraph 17 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.

18. Jurgensen denies the allegations contained in paragraph 18 of the Complaint for

want of knowledge or information sufficient to form a belief as to their truth.

19. Jurgensen denies the allegations contained in paragraph 19 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.

20. Jurgensen denies the allegations contained in paragraph 20 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.

21. Jurgensen denies the allegations contained in paragraph 21 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.

22. Jurgensen denies the allegations contained in paragraph 22 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.

23. Jurgensen denies the allegations contained in paragraph 23 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.

24. Jurgensen denies the allegations contained in paragraph 24 of the Complaint.

25. Jurgensen denies the allegations contained in paragraph 25 of the Complaint.

26. Responding to paragraph 26 of the Complaint, Jurgensen admits that Section 401.20 is attached as Exhibit C to the Complaint, and that Section 401.20 is part of ODOT's construction and material specification, but Jurgensen denies the remaining allegations as stated.

27. Jurgensen denies the allegations contained in paragraph 27 of the Complaint as stated.

28. Jurgensen denies the allegations contained in paragraph 28 of the Complaint as stated.

29. Jurgensen denies the allegations contained in paragraph 29 of the Complaint as stated.

30. Jurgensen denies the allegations contained in paragraph 30 of the Complaint as

stated.

31. Jurgensen denies the allegations contained in paragraph 31 of the Complaint as stated.

32. Jurgensen denies the allegations contained in paragraph 32 of the Complaint as stated.

33. Jurgensen denies the allegations contained in paragraph 33 of the Complaint as stated.

34. Jurgensen denies the allegations contained in paragraph 34 of the Complaint as stated.

35. Jurgensen denies the allegations contained in paragraph 35 of the Complaint as stated.

36. Jurgensen denies the allegations contained in paragraph 36 of the Complaint as stated.

37. Jurgensen denies the allegations contained in paragraph 37 of the Complaint as stated.

38. Jurgensen denies the allegations contained in paragraph 38 of the Complaint as stated.

39. Jurgensen denies the allegations contained in paragraph 39 of the Complaint.

40. Jurgensen denies the allegations contained in paragraph 40 of the Complaint.

41. Jurgensen admits the allegations contained in paragraph 41 of the Complaint.

42. Jurgensen admits the allegations contained in paragraph 42 of the Complaint relating to the date of bid, but Jurgensen denies the remainder of the allegations in paragraph 42 for want of knowledge or information sufficient to form a belief as to their truth.

43. Jurgensen denies the allegations contained in paragraph 43 of the Complaint.
44. Jurgensen denies the allegations contained in paragraph 44 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.
45. Jurgensen denies the allegations contained in paragraph 45 of the Complaint.
46. Jurgensen denies the allegations contained in paragraph 46 of the Complaint.
47. Jurgensen denies the allegations contained in paragraph 47 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.
48. Jurgensen denies the allegations contained in paragraph 48 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.
49. Jurgensen denies the allegations contained in paragraph 49 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.
50. Jurgensen denies the allegations contained in paragraph 50 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.
51. Jurgensen denies the allegations contained in paragraph 51 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.
52. Jurgensen denies the allegations contained in paragraph 52 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.
53. Jurgensen denies the allegations contained in paragraph 53 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.
54. Jurgensen denies the allegations contained in paragraph 54 of the Complaint.
55. Jurgensen denies the allegations contained in paragraph 55 of the Complaint.
56. Jurgensen denies the allegations contained in paragraph 56 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.

57. Jurgensen denies the allegations contained in paragraph 57 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.

58. Jurgensen denies the allegations contained in paragraph 58 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.

59. Jurgensen denies the allegations contained in paragraph 59 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.

60. Jurgensen denies the allegations contained in paragraph 60 of the Complaint for want of knowledge or information sufficient to form a belief as to their truth.

61. Jurgensen denies the allegations contained in paragraph 61 of the Complaint.

62. Jurgensen denies the allegations contained in paragraph 62 of the Complaint.

**FIRST DEFENSE
ANSWER TO COUNT ONE**

63. Responding to paragraph 63 of the Complaint, Jurgensen incorporates by reference the preceding paragraphs of this Answer as though fully rewritten herein, and Jurgensen further incorporates by reference its Motion to Dismiss filed October 2, 2008, and its Brief in Opposition to Plaintiff's Motion for a Temporary Restraining Order filed September 30, 2008.

64. Jurgensen admits the allegations contained in paragraph 64 of the Complaint.

65. Jurgensen denies the allegations contained in paragraph 65 of the Complaint as stated.

66. Jurgensen denies the allegations contained in paragraph 66 of the Complaint..

67. Jurgensen denies the allegations contained in paragraph 67 of the Complaint.

68. Jurgensen denies the allegations contained in paragraph 68 of the Complaint.

69. Jurgensen denies the allegations contained in paragraph 69 of the Complaint.

**SECOND DEFENSE
ANSWER TO COUNT TWO**

70. Responding to paragraph 70 of the Complaint, Jurgensen incorporates by reference the preceding paragraphs of this Answer as though fully rewritten herein, and Jurgensen further incorporates by reference its Motion to Dismiss filed October 2, 2008, and its Brief in Opposition to Plaintiff's Motion for a Temporary Restraining Order filed September 30, 2008.

71. Jurgensen denies the allegations contained in paragraph 71 of the Complaint.

72. Jurgensen denies the allegations contained in paragraph 72 of the Complaint.

73. Jurgensen denies the allegations contained in paragraph 73 of the Complaint.

74. Jurgensen denies the allegations contained in paragraph 74 of the Complaint.

75. Jurgensen denies the allegations contained in paragraph 75 of the Complaint.

**THIRD DEFENSE
ANSWER TO COUNT THREE**

76. Responding to paragraph 76 of the Complaint, Jurgensen incorporates by reference the preceding paragraphs of this Answer as though fully rewritten herein, and Jurgensen further incorporates by reference its Motion to Dismiss filed October 2, 2008, and its Brief in Opposition to Plaintiff's Motion for a Temporary Restraining Order filed September 30, 2008.

77. Jurgensen denies the allegations contained in paragraph 77 of the Complaint.

78. Jurgensen denies the allegations contained in paragraph 78 of the Complaint.

79. Jurgensen denies the allegations contained in paragraph 79 of the Complaint.

80. Jurgensen denies the allegations contained in paragraph 80 of the Complaint.

81. Jurgensen denies the allegations contained in paragraph 81 of the Complaint.

82. Jurgensen denies the allegations contained in paragraph 82 of the Complaint.

FOURTH DEFENSE

83. The Complaint fails to state a claim upon which relief can be granted.

FIFTH DEFENSE

84. The Court lacks jurisdiction over Plaintiffs' claims.

SIXTH DEFENSE

85. Plaintiffs, and each of them, lack standing to pursue the claims and causes of action in the Complaint.

SEVENTH DEFENSE

86. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs failed to exhaust their administrative and/or procedural remedies.

EIGHTH DEFENSE

87. Plaintiffs' claims are barred, in whole or in part, because there is no irreparable harm.

NINTH DEFENSE

88. Plaintiffs' claims are barred, in whole or in part, because the relief Plaintiffs seek will unnecessarily burden and damage the public and the interests of Defendants.

TENTH DEFENSE

89. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs cannot demonstrate by clear and convincing evidence their entitlement to the relief they request, including the fact that Plaintiffs' cannot establish their entitlement under Civil Rule 65 to injunctive relief of any type.

ELEVENTH DEFENSE

90. Plaintiffs' claims are barred, in whole or in part, to the extent that the OCCA's member actually received the award of the contract and to the extent that Harper was permitted to and did in fact submit bids for the work.

TWELFTH DEFENSE

91. Plaintiffs' claims are barred, in whole or in part, on the basis the Plaintiffs cannot demonstrate an abusive discretion by the Department of Transportation or its representative.

THIRTEENTH DEFENSE

92. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs are requesting the Court to substitute its judgment for the judgment of other public officials, which judgment is pursuant to be legal and proper under applicable law.

FOURTEENTH DEFENSE

93. Plaintiffs' claims are barred, in whole or in part, by the doctrine of waiver.

FIFTEENTH DEFENSE

94. Plaintiffs' claims are barred, in whole or in part, by the doctrine of latches.

SIXTEENTH DEFENSE

95. Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands.

SEVENTEENTH DEFENSE

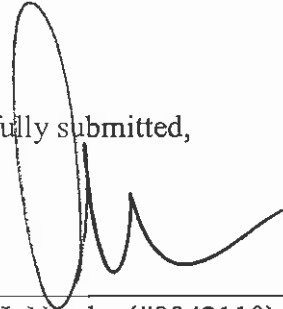
96. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs have failed to satisfy conditions precedent to the prosecution of the claims, including, without limitation, their failure to properly invoke remedies in accordance with ODOT's bid solicitation and pre-bid procedures.

EIGHTEENTH DEFENSE

97. Plaintiffs' claims are barred, in whole or in part, because equity aids the vigilant and not those that slumber on their rights.

WHEREFORE, having fully answered, Defendant John R. Jurgensen Company prays that the Complaint against it be dismissed, with prejudice, and that Defendant recover from Plaintiffs the costs and expenses that it has incurred in defending the Complaint, including reasonable attorneys' fees.

Respectfully submitted,



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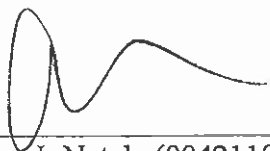
CERTIFICATE OF SERVICE

A copy of the aforementioned was served via regular U.S. mail, postage prepaid, to the following on this 3rd day of October, 2008.

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