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Copy of Original Filed
In Gila County Superior Court

JAN 15 2015

ANITA ESCOBEDO, Clerk

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8 **SUPERIOR COURT OF ARIZONA**

9 **COUNTY OF GILA**

10 **CARSON CONSTRUCTION COMPANY,**
INC., an Arizona corporation,

11 Plaintiff,

12 v.

13 **GILA COUNTY,** a political subdivision of
14 the State of Arizona,

15 Defendant.

No. *CV201500004*

COMPLAINT

16
17 For its Complaint against defendant Gila County (the "County"), plaintiff Carson
18 Construction Company, Inc. ("Carson") alleges as follows:

19 **GENERAL ALLEGATIONS**

- 20 1. Carson is an Arizona corporation in good standing, with its principal place of
21 business in Wickenburg, Arizona.
- 22 2. Carson is a general contractor duly licensed by the Arizona Registrar of
23 Contractors, License Number 115769, and was so licensed at all times pertinent to the
24 allegations in this Complaint.
- 25 3. The County is a political subdivision of the State of Arizona, organized under
26 the laws of the State of Arizona.

1 4. The events giving rise to this Complaint all occurred in Gila County, Arizona,
2 and jurisdiction is proper in this Court.

3 5. Carson entered into a contract with the County to perform a reconstruction
4 project on Pine Creek Canyon Road (the "Project"). A copy of the Request for Invitation for
5 Bids and Contract is attached hereto as Exhibit "1" and incorporated herein by this reference.

6 6. Carson commenced work on the Project on or about May 9, 2012.

7 7. Immediately upon commencement of the Project, Carson encountered delays
8 due to undisclosed underground utilities.

9 8. Carson started providing notice of these delays and its additional costs to the
10 County no later than July 21, 2012.

11 9. On or about August 28, 2012, Carson provided additional information to the
12 County regarding ongoing delays, and requested an extension of time.

13 10. The County did not provide a substantive response to Carson's requests.

14 11. While awaiting the County's response, Carson's damages increased and its
15 request for an extension of Contract Time increased from nine (9) to thirty-seven (37) days.

16 12. Again, the County did not provide a substantive response.

17 13. Nevertheless, Carson continued its work on the Project.

18 14. After the Project was completed, Carson provided a detailed explanation to the
19 County, in which it notified the County that the damages Carson had incurred due to these
20 undisclosed utilities/differing site conditions were \$155,019.38.

21 15. Continuously between January 2013, and August 2014, Carson and the County
22 continued to engage in negotiations regarding Carson's claim.

23 16. On or about August 13, 2014, the County notified Carson that Carson's time
24 records were not consistent with those kept by the County, and requested more information.
25 Exhibit "2" attached hereto and incorporated herein by this reference.

26 17. In the August 13, 2014 letter, the County specifically noted that:

1 We would like to resolve this issue at the business level, as opposed
2 to the legal level, as we did during the project. . . . We would like to
continue to work with you to resolve this claim.

3 *Id.*

4 18. Carson requested the records to which the County referred in the August 13,
5 2014 letter, but the County did not provide them.

6 19. After the County refused to provide records it claimed “differed from” those
7 provided by Carson, Carson put the County on notice that it could not continue to negotiate
8 and that, if a resolution of the claim was not reached by August 29, 2014, Carson would
9 formally pursue its claim. Exhibit “3” attached hereto and incorporated herein by this
10 reference.

11 20. Under the express terms of the contract, Carson was required to “make every
12 effort to resolve” disputed issues with the County prior to making a formal claim. Exhibit
13 “1”, at p. GP 14, Section 30-09.

14 21. Carson determined that it had made every effort to resolve the issue when the
15 County refused to provide the information in August 2014, and that it was no longer
16 precluded from pursuing this claim.

17 22. On or about October 3, 2014, Carson served upon the County a Notice of
18 Claim pursuant to A.R.S. § 12-821.01 (the “Notice of Claim”). A copy of the Notice of
19 Claim is attached hereto as Exhibit “4” and is hereby incorporated herein by this reference.
20 More than sixty (60) days have elapsed since Carson served the Notice of Claim, and
21 pursuant to A.R.S. § 12-821.01(E), Carson’s claim has been deemed denied by the County.

22 **COUNT ONE**
23 **(Breach of Contract)**

24 23. Carson incorporates the allegations in Paragraphs 1 through 22 of this
25 Complaint as though fully set forth herein.

1 34. At all times prior to August 2014, Carson negotiated with the County in good
2 faith.

3 35. At no time prior to August 2014 did the County advise Carson that its claim
4 had been denied or that its claim was time-barred.

5 36. Indeed, at all times, the County encouraged Carson to continue negotiating the
6 claim and expressly stated it wanted to avoid litigation.

7 37. Carson relied on the County's continued interest in resolving the claim without
8 litigation or submitting the formal claim contemplated by A.R.S. § 12-821.01 and that
9 reliance was reasonable.

10 38. It was only after Carson served the Notice of Claim in October 2014 that the
11 County raised the issue of the timeliness of the notice.

12 39. Pursuant to A.R.S. § 12-1831 *et seq.*, this Court has the power to "declare
13 rights, status, and other legal relations" of the parties to this action.

14 40. A justiciable dispute has arisen between Carson and the County as to whether
15 the County is equitably estopped from asserting the affirmative defense that the Notice of
16 Claim was untimely.

17 41. An actual existing and bona fide controversy exists as to the rights and legal
18 relations of the parties that can only be determined by a declaratory judgment.

19 42. Carson is entitled to an award of attorneys' fees pursuant to A.R.S. § 12-341.01
20 or otherwise.

21 **WHEREFORE**, Carson requests judgment against the County as follows:

22 A. Declaring that the County is equitably estopped from raising the affirmative
23 defense that the Notice of Claim was untimely;

24 B. For damages in an amount to be proven at trial;

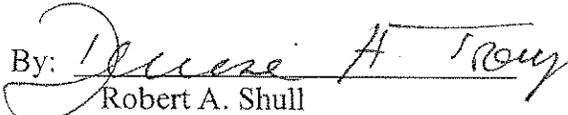
25 C. For interest thereon at the rate of twelve percent (12%) per annum, pursuant to
26 A.R.S. § 34-221;

1 D. For its attorneys' fees and costs, pursuant to A.R.S. §§ 12-341.01 and 12-341,
2 respectively; and

3 E. For such other relief as this Court deems just and proper.

4 DATED this 14th day of January, 2015.

5 **DICKINSON WRIGHT PLLC**

6
7 By: 

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