

NO. DC-15-12634

Freeney Anita

DAVIS CONSTRUCTION, INC. d/b/a	§	IN THE DISTRICT COURT
DCI CONTRACTING, INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	____ JUDICIAL DISTRICT
	§	
the CITY OF DALLAS, TEXAS,	§	
	§	
Defendant.	§	DALLAS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES DAVIS CONSTRUCTION, INC. d/b/a DCI CONTRACTING, INC. ("DCI"), Plaintiff in the above styled cause, and files this, its *Original Petition*, complaining of the CITY OF DALLAS, TEXAS ("DALLAS"), Defendant, and for cause of action thereof would respectfully show the Court as follows:

**I.
RULE 47 STATEMENT**

1.01 DCI brings claims for breach of contract and under the Texas Prompt Payment Act against DALLAS.

1.02 The damages sought by DCI are within the jurisdictional limits of the court as DCI seeks monetary relief of more than \$1,000,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees.

**II.
DISCOVERY CONTROL PLAN**

2.01 Discovery in this cause will be conducted under a "Level 2" Discovery Control Plan as provided for in TEXAS RULE OF CIVIL PROCEDURE 190.

III. PARTIES

3.01 DCI is a Texas corporation with its principal place of business in Decatur, Wise County, Texas.

3.02 DALLAS is a home-rule municipality located in Dallas County, Texas, which may be served with citation in this cause by service upon its Mayor, MIKE RAWLINGS at his principal office located at MARILLA ST #5EN, DALLAS, TX 75201.

IV. VENUE AND JURISDICTION

4.01 This Court has jurisdiction over this action as the amount in controversy is within the Court's jurisdictional limits. Venue is proper in Dallas County, Texas because DCI and DALLAS entered into a written contract for construction of all or part of a Construction Project for DALLAS located in Dallas County, Texas, which contract was performed by DCI in Dallas County, Texas. Accordingly, all or a substantial part of the events or omissions giving rise to DCI's cause of action herein occurred in Dallas County, Texas.

4.02 Jurisdiction is proper because DALLAS has waived sovereign immunity as to DCI's causes of action. When DALLAS contracted with DCI, it waived its immunity from liability, as a contract is just as binding on a municipality as it is upon an individual citizen.

4.03 DALLAS waived its immunity from suit because the Texas Legislature enacted Section 271.152 of the LOCAL GOVERNMENT CODE, waiving immunity from suit for local government entities that enter into contracts. Section 2 of House Bill 2039 which enacted Section 271.152 also provides that Section 271.152 applies to "a claim that arises under a contract executed before the effective date of this Act..." Therefore, Section 271.152 of the LOCAL GOVERNMENT CODE waives DALLAS' immunity from suit, and DCI's breach of contract

claim against DALLAS may proceed as this court has jurisdiction over it.

4.04 Furthermore, DALLAS waived its immunity from suit because the Texas Legislature enacted Section 51.075 of the LOCAL GOVERNMENT CODE and DALLAS has enacted Chapter II, Section 1 of its Home Rule Charter, both providing that DALLAS has consented to suit.

V. BREACH OF CONTRACT

5.01 DCI and DALLAS entered into a contract for the provisions of construction labor, equipment, material, and services on the closed landfill improvements associated with the SIMPKINS REMEDIATION LOCATED AT 5950 ELAM ROAD, 6300 GREAT TRINITY FOREST WAY BOULEVARD, AND 811 PEMBERTON HILL ROAD CONSTRUCTION PROJECT (the "PROJECT"). In consideration of the provision of the labor, equipment, material, DALLAS promised and became bound and liable to pay DCI the agreed upon or usual and customary charges for such services in the total.

5.02 DCI provided the labor, equipment, material, and services requested, and fully perform all portions of its contract work. Despite having instructed DCI to perform the work, being fully aware of the work performed, and being invoiced by DCI, DALLAS has refused to pay DCI for the work it has performed. This resulted in damage to DCI in the amount of ONE MILLION, TWO-HUNDRED, TWO THOUSAND, SIX-HUNDRED, FIFTY-FOUR AND 12/100 DOLLARS (\$1,202,654.12.).

5.03 Despite numerous demands by DCI upon DALLAS for payment, DALLAS has failed and refused to pay the account to DCI's damage in the amount of ONE MILLION, TWO-HUNDRED, TWO THOUSAND, SIX-HUNDRED, FIFTY-FOUR AND 12/100 DOLLARS (\$1,202,654.12.).

5.04 DCI fully, and in all things, performed its part of the agreement described in above in that DCI provided the labor, equipment, material, and services requested, to DALLAS in the time and in the manner as required by the agreement.

5.05 DCI has fully performed, or in the alternative, has substantially performed all conditions precedent entitling it to recovery against DALLAS for an action for breach of contract.

5.06 DALLAS is estopped from denying DCI payment for its extra contract work due any alleged failure by DALLAS to issue a change order because DALLAS waived any procedural notice for changed or extra work required under the contract by manipulating the billing process in an attempt to prevent DCI from being able to bill for the extra work DCI performed at DALLAS' specific direction.

VI. PROMPT PAYMENT ACT

6.01 As a governmental entity pursuant to Section 2253.001(A) and (B) of the TEXAS GOVERNMENT CODE, DALLAS is liable to DCI as a vendor, for attorney's fees and for pre-judgment interest in accordance with the provisions of Chapter 2253 of the TEXAS GOVERNMENT CODE.

VII. ATTORNEYS' FEES

7.01 DALLAS, although bound and obligated to pay DCI the sums of money now due, has failed to tender such sums before the expiration of the thirtieth (30th) day after the claim was presented. Therefore, Plaintiff has found it necessary to employ the services of the undersigned attorneys to assist in the collection of the sums due and has agreed to pay the reasonable fees and expenses incurred in prosecuting this matter.

7.02 Pursuant to § 38.001 of the TEXAS CIVIL PRACTICE & REMEDIES CODE, and/or §271.153 of the TEXAS LOCAL GOVT. CODE, DALLAS is bound and obligated to pay Plaintiff's reasonable attorney's fees and costs incurred in collection of this account, for which Plaintiff now sues.

**VIII.
PRAYER**

8.01 WHEREFORE, PREMISES CONSIDERED, Plaintiff, DCI, requests that Defendant, DALLAS, be cited to appear and answer, and that upon final hearing Plaintiff DCI, have the following:

- (a) Judgment against Defendant DALLAS, for actual damages for breach of contract as pled above and in an amount not to exceed the jurisdictional limits of this Court;
- (b) Interest on the amount of the actual damages paid by DALLAS to DCI in the amount provided for by Chapter 2251 of the TEXAS GOVERNMENT CODE.
- (c) Judgment against Defendant DALLAS, for attorney's fees in an amount not to exceed the jurisdictional limits of this court; and
- (d) Such other and further relief, whether general or special, at law or in equity, to which Plaintiff DCI may be justly entitled.

Respectfully submitted,

HARRISON STECK, P.C.

512 Main Street, Suite 1100
Fort Worth, Texas 76102
Telephone: 817-348-0400
Telecopier: 817-348-0406

BY: 

John J. Drake

Andrew B. Piel

apiel@harrisonsteck.com

06108020

90001830

ATTORNEYS FOR PLAINTIFF