

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY)	C.A. NO. 2022-CP-26-_____
)	
Flatiron Constructors, Inc.,)	
)	COMPLAINT
Plaintiff,)	
)	
v.)	
)	
Horry County, a political subdivision of the)	
State of South Carolina, and South Carolina)	
Department of Transportation, an agency of)	
the State of South Carolina,)	
)	
Defendants.)	
)	

COMES NOW the Plaintiff, Flatiron Constructors, Inc. (“Flatiron”), and respectfully alleges and states to this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Flatiron is a corporation organized under the laws of Delaware, is authorized to do business in the State of South Carolina, and is engaged in the business of construction in the State of South Carolina.
2. The State of South Carolina is a sovereign state.
3. Defendant Horry County, State of South Carolina (“Horry County”) is a government entity, operated as a political subdivision of the State of South Carolina, with its principal place of business in Horry County.
4. Defendant South Carolina Department of Transportation (“SCDOT”) is an agency of the State of South Carolina.
5. Horry County and SCDOT are collectively and individually referred to as the “State” herein, unless otherwise indicated.

6. This dispute involves the construction of the extension of South Carolina Highway 31 from South Carolina Highway 544 to South Carolina Highway 707, such construction being located in the County of Horry, South Carolina.

7. This Court has jurisdiction over the parties and the subject matter of this action, and venue is proper because the underlying Project was performed in, and the facts underlying the dispute occurred in, the County of Horry, South Carolina.

FACTUAL BACKGROUND

8. On or about June 20, 2007, Horry County, SCDOT, and the South Carolina Transportation Infrastructure Bank – a body corporate and politic and an instrumentality of the State of South Carolina – entered into an Intragovernmental Agreement (the “IGA”) to finance the “Horry County Carolina Bays Parkway Extension/SC Highway 707 Project” in Horry County.

9. Per Article 5.1 of the IGA, SCDOT was appointed to administer the construction contract for Horry County. SCDOT’s duties included, but were not limited to, overseeing all planning, design, engineering, right of way acquisition, contract administration, inspection, review and approval of payments, and any related or necessary activities or functions of the Project.

10. Per Article 7 of the IGA, “[t]he SCDOT shall be responsible for all claims arising from its own wrongful acts arising from any services it performs on behalf of the County....”

11. On or about June 19, 2007, in advance of the IGA, Horry County passed Resolution No. R-110-07, which stated that “the SCDOT will assume the primary responsibility for various aspects of the roadway project....”

12. On or about December 6, 2013, Flatiron entered into a contract with the State (the “Construction Contract”), to construct an extension to South Carolina Highway 31 from South Carolina Highway 544 to South Carolina Highway 707, project file numbers 26.036775A;

26.036775A.1; 26.036775A.2; 26.036775A.3; 26.036775A.4; and 26.036775A.5 (hereinafter the “Project”).

13. Representatives from Horry County, SCDOT, and Flatiron signed the Construction Contract.

14. The Construction Contract incorporated the SCDOT Standard Specifications for Highway Construction, 2007 edition (“the Specifications”).

15. The Project consisted of a four-mile extension to the Carolina Bays Parkway portion of South Carolina State Highway 31 (“SC-31”), including a main bridge over the Intracoastal Waterway (“ICWW”), six minor bridges, and associated road work.

16. On or about February 3, 2014, the State issued a Notice to Proceed (“NTP”) with construction on the Project. Per the Construction Contract, Flatiron was originally required to achieve substantial completion within 1220 calendar days of the NTP.

17. Per the express and implied terms of the Construction Contract, including but not limited to, the Special Provisions governing Partnering, the State had a duty to partner with Flatiron in the best interest of the Project, to fulfill the State’s obligations diligently, and to avoid hindering or impeding Flatiron’s performance of its work.

18. The State engaged TranSystems Corporation (“TSC”) to provide certain construction engineering and inspection services for the Project, including quality acceptance testing in accordance with the Specifications and requirements set forth in SCDOT’s Construction Manual, 2004 edition.

19. The State did not comply with the terms of the Construction Contract throughout the course of the Project and caused Flatiron to incur significant damages.

20. The State, directly and/or through TSC, hindered Flatiron's ability to complete the Project by, among other actions and/or inactions, not adhering to Specification-imposed and industry standard deadlines, instituting unreasonable inspection protocols, directing unreasonable and extra-contractual changes to Flatiron's means and methods, and providing inadequate Project personnel to administer and oversee the Project.

21. Further, the State's hindrances of and impediments to Flatiron's performance of work on the Project include, but are not limited to, the following:

- a. At the beginning of the Project in 2014, not complying with its obligation to review and return timely Flatiron's Drilled Shaft Installation Plan submittals in conformity with the Specification-imposed deadlines;
- b. Extending Flatiron's performance of the Columns of the main bridge through its excessive oversight, maladministration, and overzealous inspection of the Bents, specifically related to approving the drilled shafts upon which the columns are built;
- c. Extending Flatiron's performance of the North Side Caps through its maladministration, excessive oversight, and overzealous inspection, including its extended review of critical submittals;
- d. Requiring Flatiron to perform additional work beyond the scope of the Construction Contract without appropriate Change Orders;
- e. Unreasonably delaying the review and approval of the critical Girder Erection Plans;
- f. Unreasonably rejecting industry standard and/or Specification-compliant work;
- g. Not complying with its obligation to partner with Flatiron for the efficient inspection and approval of work;

- h. Requiring unreasonable and unnecessary resubmittals;
- i. Not fulfilling obligations to inspect properly and provide sufficient Quality Control and Quality Assurance on the Project; and
- j. Not removing TSC personnel who repeatedly impeded Flatiron's progress on the Project.

22. Further, on or about March 30, 2017, the State, in conjunction with TSC, notified Flatiron that certain metal bearing plates for the bridge bents which had previously been inspected and accepted by the State and TSC were not approved for installation due to superficial flash rust on the bearing plate surfaces.

23. On March 30, 2017, the same day, Flatiron submitted an industry standard repair procedure to the State and TSC for review.

24. The bearing plates affected a steel erection schedule activity that was scheduled to start on April 3, 2017.

25. The State rejected Flatiron's proposed repair procedure on April 5, 2017, and subsequently did not timely approve additional proposed repair procedures thereby delaying the Project.

26. After implementing the only repair procedure the State would approve, Flatiron had to grind an area of the same bearing plate required for installation. The State's repair procedure for this area was the repair procedure initially proposed by Flatiron before the issue became a delay to the Project.

27. The Project plans contained certain details showing installation of anchor bolts in the bearing plates for the concrete caps for the bridge bents. The plan details did not take into account the allowable fabrication tolerances of the anchor bolts and bearing plates, which caused

the anchor bolts to not fit into the bearing plate resulting in the improper positioning of the anchor bolts during the concrete pour.

28. Flatiron submitted industry standard means and methods for installation of the anchor bolts to the State for approval, but the State rejected Flatiron's proposed means and methods.

29. During the concrete pour, some anchor bolts became slightly misaligned, and Flatiron undertook industry standard practices to correct the anchor bolt alignment.

30. The State directed Flatiron to stop work on the corrective action and required Flatiron to submit numerous repair procedures for approval.

31. The State ultimately approved a repair procedure which only utilized a methodology that was radically different than the standard procedure for such items and came at great expense to Flatiron and caused delay to the Project.

32. The State's actions and/or inactions complicated and prolonged Flatiron's work, and delayed the Project thereby subjecting Flatiron to increased costs and delay damages.

33. Flatiron achieved substantial completion of the Construction Contract on November 7, 2019.

34. Despite disregarding and/or not complying with its own responsibilities which resulted in Project delays, the State improperly assessed liquidated damages against Flatiron under the Construction Contract, asserting that Flatiron had failed to meet Project completion deadlines.

35. The State improperly issued unwarranted rework directives and unreasonable instructions to complete work beyond the scope of the Construction Contract, often without issuing appropriate change orders.

36. The State delayed the Project beyond the Contract mandated completion date but did not establish a new completion date and continued to assess liquidated damages against Flatiron.

37. In addition to wrongfully assessing liquidated damages for delays for which Flatiron was not responsible, the State maladministered the Construction Contract by improperly applying a liquidated damages daily rate in excess of the amount permitted by the Construction Contract.

38. Due to the State's actions and/or inactions, as well as other impacts beyond Flatiron's control including, but not limited to, floods arising from the October 2015 tropical storm system and subsequent high-water levels that continued into the spring of 2016, Flatiron did not achieve substantial completion of the Project until November 7, 2019.

39. The State has refused unreasonably to grant Flatiron's requests for extensions of time and to issue payment to Flatiron for extra work performed and delay damages to which Flatiron is entitled.

40. All conditions precedent to the filing of this Complaint and the causes of action set forth herein have been either satisfied or waived.

**FOR A FIRST CAUSE OF ACTION AGAINST HORRY COUNTY and SCDOT
(Breach of Contract)**

41. Each and every allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

42. The State entered into an enforceable written contract with Flatiron for construction of the Project.

43. The Construction Contract between the State and Flatiron contained numerous express and implied obligations borne by the State including, but not limited to: a duty of good

faith and fair dealing; to properly administer the contract; to fulfill the State's obligations diligently; and to avoid hindering or impeding Flatiron's performance on the Project.

44. The Construction Contract also bound the State to comply with the incorporated Specifications and provisions that established various Project deadlines, standards, and parameters affecting Flatiron's performance and progress of work on the Project.

45. The State breached the terms of the Construction Contract by, among other things, not timely fulfilling its obligations thereunder, maladministering the Construction Contract, and substantially impeding Flatiron's performance on the Project.

46. As a direct result of the State's breaches, Flatiron has incurred direct costs, time related costs, and other related damages in excess of \$36 million.

47. In addition, due to its myriad breaches of the Construction Contract and associated delays, as well as its direction to Flatiron to perform work beyond the scope of the Construction Contract after the Project's substantial completion date, Flatiron is entitled to the release of liquidated damages improperly withheld by the State in the amount of approximately \$5,990,000.00.

48. Flatiron has performed all its obligations under the Construction Contract and has completed all Project-related work.

49. Flatiron has satisfied all conditions precedent to the filing of this cause of action.

**FOR A SECOND CAUSE OF ACTION AGAINST HORRY COUNTY and SCDOT
(Breach of Implied Warranty)**

50. Paragraphs 1 – 40 set forth above are incorporated herein by reference as if fully repeated verbatim.

51. The State furnished Flatiron with plans and specifications guiding the construction of the Project.

52. By virtue of supplying the construction plans and specifications to Flatiron, the State impliedly warranted that the plans and specifications would be sufficient and suitable to complete construction of the Project.

53. The State breached its implied warranty by furnishing plans that were unsuitable and defective in various ways.

54. The defective plans and specifications caused Flatiron to encounter substantial issues and delays in completing construction of the Project.

55. As a direct result of the State's breaches, Flatiron has incurred direct costs, time related costs, and other related damages in excess of \$42 million.

**IN THE ALTERNATIVE, FOR A THIRD CAUSE OF ACTION AGAINST SCDOT
(Tortious Interference with Contract – South Carolina Tort Claims Act)**

56. Paragraphs 1 – 40 set forth above are incorporated herein by reference as if fully repeated verbatim.

57. The Construction Contract between Horry County and Flatiron contained numerous express and implied obligations borne by Horry County including, but not limited to, a duty of good faith and fair dealing by Horry County to properly perform its obligations, to fulfill Horry County's obligations diligently, and to avoid hindering or impeding Flatiron's performance.

58. The Construction Contract also bound Horry County to comply with the incorporated Specifications and provisions that established various Project deadlines, standards, and parameters affecting Flatiron's performance and progress of work on the Project.

59. SCDOT knew of the Construction Contract between Horry County and Flatiron, as SCDOT was tasked with administering the Construction Contract.

60. SCDOT, by and through its maladministration of the Construction Contract, intentionally, substantially, and tortiously impeded, interfered with, and/or hindered Flatiron's

Construction Contract with Horry County by, among other actions or inaction, interfering with the progress and performance of work, causing delays to the Project completion deadlines, and subjecting Flatiron to additional work without payment.

61. SCDOT lacked justification for its improper actions that caused Flatiron to incur additional costs and expenses for which it has not been compensated thereby causing Flatiron to suffer significant damages including, but not limited to the imposition of substantial liquidated damages.

62. As a direct and proximate result of SCDOT's actions, Flatiron has suffered significant damages in excess of \$42 million.

63. Jurisdiction for this tort claim against SCDOT, an agent of the State operated by employees of the State, is authorized under the South Carolina Tort Claims Act, S.C. CODE § 15-78-40.

**IN THE ALTERNATIVE, FOR A FOURTH CAUSE OF ACTION AGAINST SCDOT
(Professional Negligence – South Carolina Tort Claims Act)**

64. Paragraphs 1 - 40 set forth above are incorporated herein by reference as if fully repeated verbatim.

65. SCDOT as an entity tasked with performing various engineering duties and administering complex construction projects, including the Project at issue in this dispute, owed a duty to Flatiron to conform with the generally recognized standards of care as they relate to the engineering and administration of largescale construction projects.

66. SCDOT breached its duty to Flatiron by substantially impeding Flatiron's performance on the Project as explained by representative examples in the above paragraphs of this Complaint.

67. As a direct and proximate result of SCDOT's violations of its duty of care, Flatiron has suffered significant damages in excess of \$42 million.

68. Jurisdiction for this tort claim against SCDOT, an agent of the State operated by employees of the State, is authorized under the South Carolina Tort Claims Act, S.C. CODE § 15-78-40.

**IN THE ALTERNATIVE, FOR A FIFTH CAUSE OF ACTION
AGAINST HORRY COUNTY
(Unjust Enrichment)**

69. Paragraphs 1 – 40 set forth above are incorporated herein by reference as if fully repeated verbatim.

70. Flatiron conveyed a benefit upon Horry County by performing work and providing materials and equipment on the Project.

71. Horry County realized the benefits of Flatiron's work on the Project as the Project is now complete and of full utility to the residents of Horry County.

72. Horry County will retain the benefits conveyed by virtue of Flatiron's completion of the Construction Contract and the Project such that it would be unjust for Horry County to retain the benefit for Flatiron's services without justly compensating Flatiron for the value Flatiron provided.

73. Flatiron has provided materials, equipment and services to Horry County thereby conveying value in excess of \$42 million to Horry County without payment such that Horry County has been unjustly enriched at Flatiron's expense.

WHEREFORE, Flatiron seeks the following:

- (1) With regard to the First Count above against Horry County, Flatiron seeks judgment and damages in excess of \$42 million, plus interest, costs, attorneys' fees and such other relief as the Court deems just and proper;

- (2) With regard to the First Count above against SCDOT, Flatiron seeks judgment and damages in excess of \$42 million, plus interest, costs, attorneys' fees and such other relief as the Court deems just and proper;
- (3) With regard to the Second Count above against Horry County, Flatiron seeks judgment and damages in excess of \$42 million, plus interest, costs, attorney's fees and such other relief as the Court deems just and proper;
- (4) With regard to the Second Count above against SCDOT, Flatiron seeks judgment and damages in excess of \$42 million, plus interest, costs, attorney's fees and such other relief as the Court deems just and proper;
- (5) With regard to the Third Count above against SCDOT, Flatiron in the alternative seeks judgment and damages in excess of \$42 million, plus interest, costs, attorneys' fees and such other relief as the Court deems just and proper;
- (6) With regard to the Fourth Count above against SCDOT, Flatiron in the alternative seeks judgment and damages in excess of \$42 million, plus interest, costs, attorneys' fees and such other relief as the Court deems just and proper;
- (7) With regard to the Fifth Count above against Horry County, Flatiron in the alternative seeks judgment and payment of \$42 million, plus interest, costs, attorneys' fees and such other relief as the Court deems just and proper.

Respectfully submitted,

s/Mason A. Goldsmith, Jr.

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Greenville, South Carolina