

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

L’EGLISE PROPERTIES, LLC

VERSUS

**CRANE BUILDERS OF NEW ORLEANS,
LLC, CRESTIA & STAUB, INC. D/B/A
CRESTIA STAUB PIERCE,
RENE DUPAQUIER, SHAWN LORIO
AND CHAPMAN (BEAU) JOHNSON**

CIVIL ACTION NO.: _____

SECTION: _____

JUDGE _____

MAG. JUDGE _____

JURY TRIAL REQUESTED

COMPLAINT

Plaintiff, L’Eglise Properties, LLC (hereinafter, “L’Eglise” or “Plaintiff”), files this Complaint, alleging:

I. Parties

1.

Plaintiff is a single-member, limited liability company, whose member resides in and is a citizen of the State of Massachusetts.

2.

Defendants are:

- a) Crane Builders of New Orleans, LLC (“Crane Builders”), a limited liability company whose members, upon belief, are all domiciled in the State of Louisiana.
- b) Chrestia & Staub, Inc., d/b/a Chrestia Staub Pierce (“CSP”), a limited liability company whose members, upon belief, are all domiciled in the State of Louisiana;
- c) Members/owners of Crane Builders, who upon belief are residents of Orleans Parish, including:

- a. René Dupaquier
- b. Shawn Lorio
- c. Chapman (Beau) Johnson

II. Jurisdiction and Venue

3.

Subject matter jurisdiction arises from diversity of the citizenship of the parties. The amount in controversy exceeds \$75,000. The domicile of Plaintiff (Massachusetts) differs from the domicile of each of the Defendants (Louisiana).

4.

Venue is proper in this Court under 28 U.S.C. § 1391(b)(1); all Defendants are residents of Orleans Parish, the district in which the Court is located.

5.

Venue is also proper under 28 U.S.C. § 1391(b)(2); a substantial part of the events or omissions giving rise to the claims occurred in Orleans Parish, and the property is located there.

III. Factual Allegations

A. Summary

6.

The managing member of Plaintiff, John Malkovich, is in the entertainment industry and an infrequent visitor to New Orleans. Defendants' tortious conduct and breaches of contract, as detailed below, were premised on Mr. Malkovich's inability to be present in New Orleans frequently enough to observe Defendants' work, coupled with his misplaced trust and reliance on Defendants' supposed good faith. Defendants invoiced inflated rates and phantom hours to Plaintiff for their "work."

B. The Property

7.

In January 2016, Plaintiff purchased certain immovable property that included *inter alia*, a large, historic structure, with the street address of 2517 Jackson Avenue in New Orleans, Louisiana (“the Property”).

8.

Defendants knew Plaintiff desired to renovate the historic structure for use as a personal residence and entertaining space, as well as a place for guests to stay.

9.

Mr. Malkovich has been involved in several other builds and restorations wherein he retained an architect to draw plans for and oversee the construction of the work. All of those projects have been successful—i.e., constructed properly, on time and within the estimated reasonable costs. Such was his plan for Plaintiff and the Property here.

C. Relationship with and Acts by CSP

10.

Beau Johnson of Crane Builders introduced Plaintiff to CSP.

11.

On February 1, 2016, CSP provided a proposal for architectural services which outlined hourly rates in an amount not to exceed \$35,000.00.

12.

CSP quickly issued conceptual plans, but Plaintiff showed a different vision for the use of space. Specifically, Plaintiff identified how to use the historic structure as a residence and entertaining space (the “Renovation Work”), and proposed an additional guest house, pool, garage, and breezeway/walkway for guests (the “New Construction”).

13.

CSP then issued a permit set of plans for the Renovation Work.

14.

CSP issued structural and architectural plans for the New Construction in November and December 2018.

15.

CSP submitted monthly, summary invoices from February 2016 until at least April 2019.

16.

Despite the \$35,000 not-to-exceed amount in CSP's proposal, CSP billed and was paid in excess of \$250,000 for work CSP allegedly performed relating to the Property. After the initial proposal, there was no document with terms and conditions between Plaintiff and CSP.

17.

CSP's invoices lack sufficient detail to justify the cost of services it allegedly provided.

18.

CSP has been grossly overpaid for its work as a result of its systematic overbilling.

19.

CSP charged hours allegedly for architectural services, but the number of hours exceed the amount reasonably required to perform these services.

20.

Additionally, CSP designed elements for the New Construction that were not requested by Plaintiff, which increased the amounts of CSP's bills (and increased Crane Builders' invoices).

21.

The agreement between CSP and Plaintiff included CSP's oversight of construction at the Property, to ensure the construction was on schedule, was performed according to plans and in a

good and workmanlike manner, and was performed for reasonable costs. CSP charged for this contract administration and supervision.

22.

However, upon information and belief, CSP not only failed to properly administer and supervise its own employees, but also failed to properly supervise and administer the construction activities of Crane Builders and its subcontractors and failed to advise Plaintiff of serious issues with the construction progress, quality, and overbilling.

23.

Further, CSP informed Plaintiff that Crane Builders' invoices were reasonable and legitimate, despite the uncontested fact that Crane Builders has never been able to document or substantiate the costs it paid or expended for the Renovation Work or the New Construction.

D. Relationship with and Acts by Crane Builders

24.

In approximately January 2016, Plaintiff and Crane Builders, through Beau Johnson, reached a verbal agreement, whereby Crane Builders would provide materials and construction services, to be performed in good faith and in a workmanlike manner, including construction of the Renovation Work and New Construction. In exchange, Plaintiff understood it would pay Crane Builders for its documented costs plus a reasonable fee for Crane Builder's overhead and profit.

25.

The agreement reached between Plaintiff and Crane Builders is commonly called a "cost-plus" agreement in the construction industry. This particular agreement is referred to herein as the "Crane Builders Agreement."

26.

The Crane Builders Agreement utilized the cost-plus agreement format to allow flexibility for the work-in-progress nature of the historic restoration at the Property.

27.

Cost-plus agreements entitle a contractor to reimbursement of only certain costs, plus a reasonable, fixed-percentage markup on those costs. Specifically, the contractor may be reimbursed for, and apply the fixed markup to, the costs for its documented, onsite labor and materials incorporated into the work. However, the contractor may not seek reimbursement for, or apply the markup to, indirect costs (e.g. office rent and higher management salaries), because those costs are customarily accounted for in the overhead/markup percentage.

28.

Further, a contractor working under a cost-plus agreement must keep detailed records of its expenses to justify the amounts charged. Invoices on cost-plus jobs should detail all costs attributable to that job, because the owner has a right to see exactly what the contractor's expenses are, to ensure the owner is not being overbilled.

29.

Here, Plaintiff understood Crane Builders would carefully track its expenses and would not apply a markup to passthrough costs from subcontractors.

1. Allegations of Overbilling, Unprovable Expenses Billed to the Plaintiff, and Fraud

30.

When Plaintiff first met representatives of Crane Builders on site, particularly Beau Johnson, Crane Builders estimated it would cost approximately 1.5 million dollars to restore the Property and construct a guest house, with work completing in approximately six months.

31.

To date, Crane Builders invoiced and has been paid approximately 5.3 million dollars, including charges for work that was not performed or completed, charges for materials not used on the job site, inappropriate charges added as “overhead” and for work performed in an unreasonably inefficient manner.

32.

Crane Builders never paid any costs or expenses submitted by its vendors, suppliers, or subcontractors relating to the Property, except only after payment for such alleged costs was received from Plaintiff; i.e. Crane Builders never “fronted” any money for this job.

33.

After its first two invoices in January and February 2016, Crane Builders did not provide its costs to Plaintiff, nor did it identify which costs were being marked-up, nor identify the amount of markup percentage Crane Builders was applying.

34.

Upon information and belief, Crane Builders marked up expenses that should not have been marked up, including passthrough costs to subcontractors, and marked them up by greater percentages than reasonable or customary.

35.

For example, Crane Builders marked up the alleged costs of the foundation subcontractor (Arbry Bros.) by at least twenty percent (a markup amounting to approximately \$100,000), even though Crane Builders’ efforts relating to said foundation contractor were *de minimis* at best. Further, no backup for the costs of the foundation subcontractor has been provided, including the foundation subcontractor’s invoices and proof of payment on same, despite Plaintiff’s requests.

36.

Upon information and belief, certain items of work were invoiced multiple times by Crane Builders, resulting in duplicate payments paid to Crane Builders by Plaintiff for the same items and scope of work.

37.

The members of Crane Builders were aware Crane Builders' overbilling was occurring, and they profited—to Plaintiff's detriment—from their overbilling.

38.

Beau Johnson was Crane Builders' original manager of Renovation Work and New Construction at the Property.

39.

Mr. Johnson knew overbilling was occurring. Upon belief, Mr. Johnson was responsible for intentional overbilling.

40.

Plaintiff became concerned when Crane Builders' invoices began frequently exceeding \$200,000 per month—unusually high for a project of this nature and size. When Plaintiff asked CSP about the apparent overbillings, CSP responded that said invoices were reasonable and legitimate.

41.

Crane Builders was submitting invoices that were not legitimate because the amounts charged were not reasonably proportional to the work that was visibly being performed on site, nor did Crane Builders submit documentation evidencing its actual costs as back-up that could possibly support the inflated invoices.

42.

However, beginning in early 2018, Beau Johnson was rarely on site.

43.

In late 2018 or early 2019, Beau Johnson informed Plaintiff he ceased working as Crane Builders' manager at the Property and admitted he had not been on site often due to several personal reasons.

44.

Recently, Plaintiff has received numerous reports that Crane Builders' "laborers", who upon belief were hired from a supplier of temporary labor, were being billed to Plaintiff without doing any actual work and not performing work efficiently, and Crane Builders marked up these labor costs in invoices submitted to Plaintiff.

45.

By 2019, the New Construction and Renovation Work were far from complete, but Crane Builders had already been paid far in excess of the verbal estimates provided in 2016 and 2017.

46.

Crane Builders' monthly invoices contained no detail or proof of Crane Builders' costs and expenses. Rather, its invoices were one-page summary sheets of alleged costs.

47.

In February 2019, in order to obtain a building permit for the New Construction, representatives of Crane Builders forged the signature of John Malkovich (without his knowledge or consent) on a contract allegedly entered between Crane Builders and Plaintiff. This contract is hereinafter referred to as the "Forged Contract."

48.

The Forged Contract was signed by Beau Johnson on behalf of Crane Builders, and Mr. Johnson has also admitted to having forged Mr. Malkovich's signature.

49.

Only when Crane Builders later stated its cost for the New Construction would greatly exceed the amount Crane Builders had provided in the schedule of values attached to the Forged Contract, did Crane Builders admit to forging Mr. Malkovich's signature. Crane Builders then claimed the schedule of values in the Forged Contract was not enforceable because the contract was forged.

50.

By March 2019, Plaintiff expected the construction to conclude in May 2019 based on previous statements of Crane Builders. However, Crane Builders informed Plaintiff that work would take through October 2019, at earliest.

51.

Further, in May 2019, despite Crane Builders having been paid approximately 5.3-million dollars for its work allegedly completed by that date (not including certain materials paid directly by Plaintiff) Crane Builders suggested it would cost approximately an additional 3-million dollars to complete its work.

52.

Accordingly, in May 2019, Plaintiff requested CSP and Crane Builders stop all work at the Property other than certain close-in work to secure the site and to prevent excessive water intrusion.

53.

Nevertheless, Crane Builders continued performing additional (non-close-in) work at the Property into August and September 2019.

54.

Crane Builders falsely alleged Mr. Malkovich had approved Crane Builders performing this additional work in August and September 2019.

55.

Despite not receiving approval to perform work in August and September 2019 (after having already been asked to stop working on the Property in May 2019), Crane Builders still submitted invoices to Plaintiff's agent for work performed during that time.

56.

In 2019, Plaintiff requested an audit of Crane Builders' job costs.

57.

To date, Crane Builders has not substantiated its expenses and costs for the Renovation Work or the New Construction. Rather, Crane Builders provided only summary sheets for the items allegedly included in its invoices. Additionally, instead of providing invoices submitted to Crane Builders by its subcontractors, Crane Builders provided "subcontractor draw sheets" created by Crane Builders. Thus, Crane Builders has not provided any proof of amounts Crane Builders has paid to its subcontractors, nor even invoices drafted by the subcontractors allegedly showing those expenses, but only summary sheets generated by Crane Builders.

58.

Upon belief, Crane Builders has not performed work at the Property since November 2019.

59.

Despite its work not being completed, Crane Builders requested a Certification of Completion from Plaintiff, which request was denied.

60.

Crane Builders invoiced amounts totaling approximately 5.3 million dollars to Plaintiff, which amounts grossly exceed the reasonable costs of Crane Builders' work.

2. Defective and Incomplete Work by Crane Builders' Masonry Subcontractor

61.

A significant part of the Restoration Work included repairs to structural, masonry exterior walls.

62.

Crane Builders was aware of the quality Plaintiff expected for the masonry work.

63.

Crane Builders was responsible for all aspects of the masonry work, including the construction and any structural design issues that might arise.

64.

Crane Builders employed a subcontractor to perform the masonry repairs.

65.

The masonry subcontractor's work was not performed in a good and workmanlike manner, and further, it left the work unfinished. Plaintiff recently learned members of this same masonry subcontractor have changed corporate entities 3 times over the last 10 years.

66.

Particularly problematic with the masonry was the exterior repair work, which deficiencies include but are not limited to bricks and mortar that did not match the original structure, using improper mortar for moisture-control purposes, using low-quality materials for bracing and securing the masonry and the main structure and thereby potentially compromising the structural

integrity of the walls, failing to use salvaged bricks as required by the architectural drawings, and failing to complete mortar repairs and brick replacements.

67.

Several items of Crane Builders' work, including the window framing and masonry repair work, caused collapse of portions of various masonry walls, the repairs of which Crane Builders improperly charged to the Owner (plus markups).

E. Costs after CSP and Crane Builders Stopped Working at the Site

68.

Were it not for their breaches of contract, tortious conduct, and breaches of duty of good faith, Crane Builders and CSP should have timely completed their respective work at the Property. Said work should have been performed below the amounts for which Defendants have been paid.

69.

However, a new architect and contractor have been hired to complete the work.

70.

That work is underway. Completion costs, the totals of which are not yet certain, will exceed the jurisdictional amount of the Court by multiples.

IV. Causes of Action Outlined

A. Liability of CSP

71.

CSP breached its contract and duty of good faith with Plaintiff by overbilling and seeking payment for more than its reasonable costs and the amount agreed to between the parties, including for architect services not required for the New Construction or Renovation Work.

72.

CSP was negligent in its supervision of Crane Builders, especially regarding the cost allegedly expended by Crane Builders, job inefficiencies with the Crane Builders' subcontractors and laborers, and Crane Builder's substandard work for the New Construction and the Renovation Work, including shoddy masonry work.

73.

CSP also breached duties owed to Plaintiff by failing to provide adequate designs and architectural services, including contract administration, regarding the masonry work.

74.

CSP breached duties owed to Plaintiff to advise it of the dilatory status of the work by Crane Builders, the masonry being performed in a non-workmanlike manner, and the general overbilling, inefficiencies, and delays occurring on the job.

75.

CSP intentionally billed for services and designs that were not required and inflated the hours on its invoices for any services that were provided, thereby misrepresenting the truth to Plaintiff to cause it to pay CSP more than CSP should have been paid.

B. Liability of Crane Builders and its Individual Members

76.

Crane Builders and its Individual Members (René Dupaquier, Shawn Lorio, Chapman (Beau) Johnson), individually and collectively, substantially breached a number of its obligations to Plaintiff including, without limitation, in the following respects:

- a) Charging for costs and amounts that were not reimbursable, including for work not performed by Crane Builders and its subcontractors, materials not used at the Property, and work performed in an inefficient manner;
- b) Failure to perform a substantial amount of the New Construction, including but not limited to failing to complete the guest house and not commencing construction on the garage;
- c) Failure to properly perform a substantial amount of the Renovation Work, including but not limited to failing to install doors, windows, elevators, flooring, appliances, and finishes, as well as exterior masonry repairs;
- d) Failure to hire adequate subcontractors to properly perform the work, particularly the mason subcontractor;
- e) Failure to provide adequate management to direct, schedule, and estimate the work, as well as to properly invoice and collect costs for the work;
- f) Failure to properly supervise the work and ensure it was performed in a good and workmanlike performance manner, particularly that of the masonry subcontractor;
- g) Failure to properly supervise the work, including ensuring that temporary laborers hired by Crane Builders were efficiently performing work on the job for which they were being charged to Plaintiff;
- h) Failure to timely execute the work;

- i) Failure to work in a workmanlike manner, with the professional skill and care ordinarily required of contractors and subcontractors under the same or similar circumstances; and
- j) Causing damage to Plaintiff, by, including, but not limited to, failing to follow generally accepted construction practices and negligently constructing the New Construction and the Renovation Work, failing to properly oversee and undertake the construction work and accounting for the cost of same, causing and/or contributing to delays on the Renovation Work and New Construction, and failing to adhere to standards for a reasonably prudent contractor in the New Orleans area.

77.

Louisiana law (particularly Articles 2317 and 2320 of the Louisiana Civil Code) make a person responsible not only for their own acts, but also those for whom they are answerable, including employers for their employees and hired workers like subcontractors. Crane Builders is responsible to Plaintiff for acts and omissions of its subcontractors and laborers, including, but not limited to, its masonry subcontractor on this job, and any damages they caused to Plaintiff.

78.

Crane Builders breached its duty of good faith in performing its construction obligations with Plaintiff by billing for costs that were not paid or performed by Crane Builders or its subcontractors, by overbilling Plaintiff for work allegedly performed by Crane Builders or Crane Builders' subcontractors, and by failing to maintain documentation to justify Crane Builders' request for payments and the costs allegedly expended by Crane Builders for which it sought reimbursement from Plaintiff.

79.

The Individual members of Crane Builders are also personally liable under Louisiana Revised Statutes, Section 12:1320, to Plaintiff under theories of fraud or intentional misrepresentation, including, but not limited to, by forging Mr. Malkovich's name on a contract, by performing work that was not necessary or requested by Plaintiff, by misrepresenting the cost of Crane Builders including the costs for subcontractors, and by intentionally overcharging Plaintiff, all to the benefit of the members and to the detriment of Plaintiff.

C. Damages

80.

Plaintiff has suffered damages, including, but not limited to:

- a) The excessive amounts CSP billed to Plaintiff beyond the not-to-exceed limit of the CSP proposal and beyond the reasonable value of CSP's work;
- b) The excessive amounts Crane Builders billed to Plaintiff beyond the reasonable value of Crane Builders' work;
- c) The amounts required to correct work performed by Crane Builders that was deficient or otherwise not performed in a good and workmanlike manner;
- d) The amounts required for the new architect and contractor to complete the work that CSP and Crane Builders should have performed and completed for Plaintiff;
- e) Additional interest being incurred by Plaintiff on financing for the project due to delays in the work caused by CSP and Crane Builders;
- f) An increase in the cost of the work caused by the acts and omissions of CSP and Crane Builders;
- g) Attorney fees that have been incurred by Plaintiff; and
- h) Any other damages discovered during the discovery phase of this litigation.

81.

Plaintiff is entitled to trial by jury on all issues presented and requests a trial by jury.

WHEREFORE, after due proceedings are had, Plaintiff, L'Eglise Properties, LLC, requests a Judgment be issued:

- 1) Finding Defendants, Chrestia & Staub, Inc., d/b/a as Chrestia Staub Pierce, Crane Builders of New Orleans, LLC, and its Individual Members (René Dupaquier, Shawn Lorio, and Chapman (Beau) Johnson) are liable to Plaintiff, L'Eglise Properties, LLC, for the damages that Defendants caused to Plaintiff as alleged herein;
- 2) Ordering Crane Builders of New Orleans, LLC, produce all records it possesses (including its internal accounting software reports) concerning all costs and expenses for which it has been charged and/or for which it has paid, relating to any and all work Crane Builders performed relating to the Property;
- 3) Ordering Defendants to pay L'Eglise Properties, LLC, for all costs, expert fees, and attorney fees available by law or contract;
- 4) For trial by jury of all issues; and
- 5) For all other just and equitable relief to which Plaintiff may be entitled.

Respectfully submitted:

RIESS LEMIEUX, LLC

By: /s/ Michael R. C. Riess

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