

COMMONWEALTH OF PENNSYLVANIA

HAZLETON AREA SCHOOL DISTRICT	:	BEFORE THE BOARD OF CLAIMS
	:	
VS.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
STATE PUBLIC SCHOOL BUILDING	:	
AUTHORITY, ROBERT A. BOSAK and	:	
ASSOCIATES	:	DOCKET NO. 2098

FINDINGS OF FACT

Based on the Stipulation of Facts as agreed upon by the parties and the exhibits admitted into evidence the following are the Findings of Fact.

1. Plaintiff, Hazleton Area School District (HASD) is a school district of the second class, duly organized and existing under the laws of the Commonwealth of Pennsylvania, with its administrative offices located at 101 South Church Street (now 23rd and McNair Streets), Hazleton, Luzerne County, Pennsylvania.

2. The Defendant, State Public School Building Authority (The Authority) is an Authority affiliated with the Commonwealth of Pennsylvania, but is not a political subdivision, and conducts business throughout the Commonwealth of Pennsylvania, including Luzerne County, and a principal office located at 1035 Mumma Road, Wormleysburg, Camp Hill, Cumberland County, Pennsylvania.

3. At all times relevant to this cause of action, Plaintiff is the owner and/or equitable owner of certain real estate and improvements known as the Hazleton Area High School (HAHS) located at 22nd and McNair Streets, Hazleton Township, Luzerne County, Pennsylvania.

4. On or before April 3, 1990, the School District engaged the Authority to perform certain services on its behalf with regard to the construction of Hazleton Area High School (HAHS).

5. On or about April 3, 1990, the Authority entered into a General Construction Contract Agreement with successful low bidder Lambert and Intreri for the construction of the aforesaid HAHS, as general contractor, in the amount of \$13,253,000.00.

6. On or about April 13, 1990, the actual construction of HAHS was commenced.

7. The School District paid the Authority the sum of \$203,537.50 for construction

management services.

8. The Authority engaged and hired Lekawa and Associates, registered architects, of 3116 Mountain View Drive, Greensburg, PA to perform review of pre-final and final drawings and specifications of the design architect, Robert A. Bosak and relating to SPSBA Project No. 88J-09B-2082, the new Hazleton Area High School Building.

9. The design architect for the project was Robert A. Bosak.

10. All pre-final and final drawings and specifications were submitted to Lekawa and Associates by the Authority.

11. On January 12, 1990, Lekawa and Associates made its "recommended corrections for specifications" by way of a letter and attachments sent to the Authority's Director of Bureau of Construction, Howard Stahl.

12. According to the Plans/Specification Review Agreement between the Authority and Lekawa and Associates, the review included any and all drawings and specifications prepared for the complete and total project, for completeness, coordination of requirements between all drawings and specifications.

13. The construction of HAHS was completed and in January of 1994 the building sustained considerable damages as the result of an accumulation of snow resulting in the collapse of a portion of the roof.

14. Plaintiff seeks damages for the deficient design and faulty construction of the HASD high school based on several integrated agreements between Plaintiff and Defendant, Authority.

15. Copies of the following documents are relevant to these proceedings:

(a) The Loan Agreement between the Authority and the School District dated December 15, 1988.

(b) The Trust Indenture between the Authority and the School District dated December 15, 1988.

(c) The "Professional Agreement" between the Authority, the School District and Robert A. Bosak and Associates dated November 20, 1989.

(d) The Construction Management Agreement between the Authority and the School

District dated November 29, 1988.

(e) The final design drawings.

(f) The Authority's Job Conference Meeting Minutes.

(g) The Authority's Condensed Meeting Minutes.

(h) The Authority's Job Logs and Daily Inspection Reports.

(i) Documents supporting the School District's cost incurred for snow removal and corridor structural support totaling \$83,949.00.

(j) The contract for structural roof repairs (with payment applications) totaling \$2,503,683.00.

(k) The contract and other supporting documentation for the repair of the Carlisle Roofing System and Tile Floors totaling \$328,362.00 (\$254,362.00 for the Carlisle System Repair; \$74,000.00 for tile floor repair).

(l) The contract for the repair of the pool, with change orders and other supporting documentation, totaling \$299,468.00.

(m) Bid Package; General Conditions and Specifications prepared by the Authority.

16. The purpose of the integrated agreements between the parties was to facilitate funds for the construction of HASD through the issuance of School Revenue Bonds by the Authority.

17. The 1987 BOCA Code was specified as applicable to the structural design of the new Hazleton Area High School as set forth in the documents submitted by the Authority to Lekawa and Associates for review.

18. The main duties and responsibilities of the Authority are set forth in the Construction Management Agreement between the parties dated December 15, 1988.

19. Under terms of that agreement (Section I, 1:15) the duty of Defendant, Authority was to inspect work at time of substantial completion for defects and deficiencies in the work without assuming responsibilities of the architect.

20. The roof was defectively designed by Plaintiff's Architect violating the Agreement between the Architect and Plaintiff, dated September 1988, and resulting in the collapse of the roof and damages

herein set forth.

21. Defendant, Authority, however, under the terms of the Construction Management Agreement and the other integrated agreements assumed responsibility for defects and deficiencies in the work performed.

22. The fair, reasonable and necessary cost incurred by the School District to provide emergency structural support in the collapsed snowdrift areas and to remove snow from the roof of Hazleton Area High School until such time as the structural repairs could be implemented was \$83,949.00.

23. The fair, reasonable and necessary cost of repairing the Carlisle Roofing System damaged by the roof snow removal and/or due to defective installation was \$254,362.00.

24. The fair, reasonable and necessary cost to repair various areas of tile flooring within the Hazleton Area High School caused by defective installation was \$74,000.00.

25. The fair, reasonable and necessary cost to redesign and repair the design and construction deficiencies of the pool in the Hazleton Area High School was \$299,464.00.

26. Repair to the Carlisle Roofing System in the sum of \$254,362.00 and tile flooring in the sum of \$74,000.00 was caused by defective installation and not design deficiencies.

CONCLUSIONS OF LAW

1. The claim of the Plaintiff, HASD arises out of the Construction Management Agreement and other integrated contracts between the parties and thus the Board has jurisdiction over such claims.

2. Under the terms of the Construction Management Agreement and other integrated agreements between the parties, Defendant, Authority, was not responsible for design defects in the construction of Hazleton High School.

3. Under the terms of the integrated agreements between the parties Defendant, Authority assumed responsibility for deficiencies in workmanship and installation.

4. The repair of the Carlisle Roofing System and flooring was caused by defective installation and workmanship.

5. All other damages alleged by the Plaintiff are the result of design and structural deficiencies for which Defendant, Authority is not responsible.

6. Plaintiff previously settled its claim against Additional Defendant, Robert A. Bozak and Associates for \$800,000.00.

OPINION

Plaintiff, Hazleton Area School District claims damages arising out of the construction of a high school building as a result of defective design and workmanship. Significant damages to the building occurred in January of 1994 as a result of a portion of the roof collapsing due to a heavy accumulation of snow.

In July of 1994, Plaintiff filed a Complaint with the Court of Common Pleas of Luzerne County seeking damages against the Defendant, the Authority, the architect engineer, consulting engineers, general contractor, and the bonding company as surety for the general contracts. After Defendant, Authority's Preliminary Objections were denied, it petitioned the Commonwealth Court for permission to appeal pursuant to Pa. R.A.P. 1311. After allowing such appeal, the Commonwealth Court found jurisdiction of the matter to be properly before the Board. State Public School Board Authority vs. Hazleton Area School District, 708 A.2d 875 (Pa. Cmwlth 1998). Pursuant to such order, the matter was transferred to the Board on February 6, 1996.

The matter was tried via presentation of documentation and summation on February 16, 2001. The nature, extent and amounts of damages have been stipulated.

A consideration of Plaintiff's claim involves an understanding and interpretation of four (4) interlocking documents which are:

(1) "A PROFESSIONAL AGREEMENT" dated 11/20/89 between the Authority, Architect and Plaintiff.

(2) "CONSTRUCTION MANAGEMENT AGREEMENT" between the Defendant, Authority and Plaintiff dated 11/29/88.

(3) "LOAN AGREEMENT" dated 12/15/88 between the Authority and Hazleton

permitting the Authority was to provide money for the purposes of constructing a new high school.

(4) "TRUST INDENTURE" dated 12/15/88 enabling the Authority would obtain funds for a loan to Plaintiff by the issuance of school revenue bonds.

The project was bid in February of 1990. Construction commenced in April of 1990 and the building was turned over for occupation to Hazleton in time for the 1992/1993 school year.

Plaintiff claims that Defendant, Authority, by virtue of the terms of the agreements herein set forth retained control over all aspects of construction project totaling \$33,242,339.00 and was paid the sum of \$15,000.00 to supervise and control construction. Plaintiff contends that Defendant, Authority, is liable for the damages sustained as they failed to alert Plaintiff on design deficiencies and failed to inspect for work defects and deficiencies which they were obligated to do under terms of the agreements with Defendant, Authority.

Defendant, Authority, contends that the Board does not have jurisdiction to hear this matter as the damages set forth arise out of tortious acts and not out of contract. Defendant further alleges sovereign immunity of the Authority and contends that the Agreements in question only relate to a method to facilitate payments pursuant to the Loan Agreement and Trust Indenture and do not impose liability on the Authority for lack of supervision. Defendant, Authority agrees that the facts establish liability on third parties but not Defendant, Authority.

On January 18, 1994 at about 6:00 p.m., under the weight of snow and ice and insufficient snowdrift areas, HAHS sustained significant damages due to the collapse and deflection of the roof support structures in snowdrift areas of the building. The building was closed to occupancy for a period of time

while temporary repairs were accomplished and the snow was physically removed from the roof by HASD personnel.

As a result of the collapse and deflection of the structure of the roof, it was incumbent upon Plaintiff to undertake continuous snow removal from the roof. This process was done by hand with snow blowers and shovels costing Hazleton \$83,949.00. In the process of snow removal of the Carlisle membrane roofing, the premises was damaged. Further examination after snow removal revealed defective installation. Significant portions of the roof had to be replaced. For this repair, Hazleton incurred costs totaling \$254,362.00.

Other problems have plagued this project from the beginning. From the date of occupancy in the Fall of 1992 through and including the roof collapse and thorough inspection of the building which took place in the Spring of 1994, it was apparent that large areas of tile flooring in the girl's and boy's locker room; girl's and boy's second floor laboratories and natatorium mezzanine were causing problems. Detailed investigation of the cracking and lifting of the tile floor in these areas disclosed construction deficiencies. This required the general contractor to install construction/control joints in the concrete under floor and expansion joints in the tile. Plaintiff repaired these damages at the cost of \$74,000.00.

Corrosion problems with the swimming pool are well documented in the daily job logs prepared by the onsite inspectors. Ultimately, the problem was determined to be an insufficiently designed Zephyr Unit resulting in inadequate ventilation and excessively high humidities. Neither the under design of the Zephyr Unit nor the operational deficiencies were ever addressed during construction. Plaintiff incurred a cost of \$299,468.00 for this repair.

It is Defendant's contention that all of Plaintiff's claims are based on negligence and that the Board has no jurisdiction to hear this matter. The argument is that the action is one sounding in tort and not contract.

We find that any duties assumed by Defendant, Authority arose out of the agreements between the parties and thus the claim arises out of the contracts between all parties. This is clearly an action for damages arising out of these contractual relationships. Furthermore, the Commonwealth Court has already stated in State Public School Building Authority vs. Hazleton Area School District, 671 A.2d 272 (1996) as follows:.

“The School District specifically alleged that the Authority's performance under the Construction Agreement had been careless, reckless and/or negligent. As such, the Authority had breached its contractual and/or other obligations to the School District and the School District had incurred damages as a result.” *Supra.* at P. 273.

See also Siegel v. Struble Bros., 150 Pa. Super. 343, 28 A.2d 352 (1942). Section 4 of the Board of Claims Act gives the Board exclusive jurisdiction to hear and determine all claims against the Commonwealth arising from contracts. Accordingly, the Board has jurisdiction. The further argument that the Authority maintains sovereign immunity to this action is also dismissed. State Public School Building Authority vs. W.M. Anderson Co., 49 Pa. Cmwlth. 420, 40 A.2d, 329 (1980)

The crucial question to be determined in this matter is to define what duties, if any, Defendant, Authority, assumed by virtue of the various agreements between the parties.

Under terms of the agreements, Defendant, Authority, was to be paid the sum of \$203,537.50 for construction management services and an additional \$15,000.00 for the review of and advice concerning the plans and specifications. For this review the Authority hired their own architect and

in fact, did examine plans and specification of the contractual architect, offer advise and supervise the construction process. Both Plaintiff and Defendant, Authority, argue that the roof design was inadequate and the basic responsibility of the contractual architect. The precise issue is whether or not the Defendant, Authority is responsible for design deficiencies pursuant to their contractual obligation to the Plaintiff for insufficient or deficient supervision. A careful examination of the Construction Management Agreement, the Loan Agreement, as well as the other interlocking agreements fail to establish the obligation of the part of Defendant, Authority, to assume responsibility for design defects.

The following section defines the Defendant's, Authority, responsibilities:

Article I. Construction Manager's Services

- 1.1 Meet with architect during development of design plans and provide recommendations on cost factors and requirements of Department of Education, and assist in obtaining requisite Department approvals.
- 1.4 Review proposed contract documents prepared by architect and advise School District on appropriate provisions.
- 1.8 During construction phase, monitor work contractors; providing full-time staff at each site for such purpose.

The Professional Agreement defines obligations of the Authority as follows:

Article II.

B. Preliminary Drawings

- 4. Authority will notify School, with copy to Architect, of its approval or disapproval of the preliminary drawings, outline specifications and cost estimate. Upon obtaining approval of Authority, school will authorize Architect, in writing, with copy to Authority, to prepare the final working drawings and specifications.

D. Pre-final Drawings and Specifications

2. This submission of pre-final drawings and specifications will be reviewed by the Authority and comments and recommendations will be sent to the Architect. In the event the Architect or School does not concur with such recommendations and/or comments, Architect shall arrange for a conference with representatives of the School and Authority in the offices of the Authority for the purpose of arising at a decision on such items as may be questioned; otherwise it will be assumed that the Architect will revise or correct the drawings and/or specifications in conformity with the recommendations of the Authority.

Further, Paragraph 1.15 of the Construction Management Agreement states that the Authority agrees to inspect work at time of substantial completion, for defects and deficiencies in the work, without assuming responsibilities of architect.

After review of the wording of Paragraph 1.15 and the other provisions of the Construction Management Agreement and other integrated agreements, we find no language or interpreted language to hold the Authority responsible for design defects. There is no doubt that other parties were responsible for design defects but not Defendant, Authority.

The Authority was originally statutorily created to secure financing and manage construction as intended by the General Assembly. However, by virtue of the Agreements entered into by Defendant, Authority, it did undertake certain responsibilities and obligations for which it was paid. Supervision and examination of work performed was one of the obligations assumed by the Defendant, Authority.

Clearly, its duties under Paragraph 1.15 of the Construction Management Agreement were to discover defects and deficiencies in the work. This obligation was breached. Both the flooring claim and Carlisle Roofing claim arose out of poor workmanship on the part of the contractor. Defendant, Authority, had a duty of inspection of these items and must be held negligent in the performance of their

duties as set forth in their claims.

The damages sustained by Plaintiff as a result of the breach of workmanship deficiencies have been stipulated as \$254,362.00 for damages to the defectively installed Roofing System; at \$74,000.00 as a result of repair to the tile flooring for a total of \$328,362.00. We find that the costs of Structural redesign and repair to the building as well as the cost of emergency repairs and snow removal as well as redesign of the Pool's Zephyr Unit are all design and structural errors committed by other parties other than Defendant, Authority, for which Defendant, Authority is not responsible.

Judgment is hereby entered in favor of the Plaintiff and against the Defendant, Authority in the amount of \$328,362.00.

ORDER

AND NOW, 28th day of December, 2001, after hearing, it is **ORDERED** and **DECREED** that Judgment be entered in favor of the Plaintiff, Hazleton Area School District and against the Defendant, State Public School Building Authority in the sum of Three Hundred Twenty-Eight Thousand Three Hundred Sixty-Two Dollars (\$328,362.00).

Each party to bear their own costs and attorney's fees.

BOARD OF CLAIMS

David C. Clipper
Chief Administrative Judge

Louis G. O'Brien
Engineer Member

John R. McCarty
Citizen Member

