

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

VORTEX COMMERCIAL FLOORING,)	
INC., an Illinois corporation,)	
)	
Plaintiff,)	
)	Case No.
v.)	
)	
MERRILLVILLE MULTI-SCHOOL)	
BUILDING CORPORATION, an Indiana)	
corporation and MERRILLVILLE)	
COMMUNITY SCHOOL CORPORATION, an)	
Indiana Corporation,)	
)	
Defendants.)	

COMPLAINT

Vortex Commercial Flooring, Inc. (“Vortex”), for its Complaint against defendants Merrillville Multi-School Building Corporation (“MMBC”) and Merrillville Community School Corporation (“MCSC”) (collectively “Merrillville”), alleges as follows:

The Parties

1. Vortex is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business located in the State of Illinois. Vortex is in the business of, *inter alia*, providing installation of commercial flooring products and related services.

2. MMBC is a corporation organized and existing under the laws of the State of an Indiana, with its principal place of business located in the State of Indiana.

3. MCSC is a school corporation organized and existing under the laws of the State of an Indiana, with its principal place of business located in the State of Indiana.

Jurisdiction and Venue

4. This Court has jurisdiction of this action pursuant to 28 U.S.C. §1332(a)(1), because the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States.

5. Venue in this judicial district is proper under 28 U.S.C. §1391(a) because MMBC and MCSC reside in this judicial district and a substantial part of the events giving rise to Vortex's claims, occurred in this judicial district.

Background Allegations

The Prior Contract

6. Vortex and Merrillville previously entered into a Standard Form of Agreement Between Owner and Contractor, AIA Document A101-2017 (the "Prior Contract") for the demolition, preparation, and installation of floor tile, including Fritztile terrazzo tile, specified by Merrillville as part of a renovation project at the Merrillville Intermediate School, located in Merrillville, Indiana. The final contract sum for such work, after adjustment, was \$266,146.50.

7. Following Vortex's completion of the work, Merrillville complained that the Fritztile terrazzo tile in the cafeteria was not performing properly, including, among other things, that the tile was lifting on the edges. Merrillville demanded that Vortex replace the tile pursuant to Vortex's warranty under the Prior Contract. However, the damage to the floor was caused by Merrillville.

8. Section 3.5 of the A201-2007 General Conditions to the Prior Contract states, in pertinent part:

The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. *The Contractor's warranty excludes remedy for damage or defect*

caused by abuse, alterations to the Work not executed by the Contractor, *improper or insufficient maintenance, improper operation*, or normal wear and tear and normal usage.

(emphasis supplied.)

9. Vortex disputed Merrillville's warranty claim and its contention that the failing tile was attributable to Vortex. Rather, Vortex contends that the failure was due to other causes, including, *inter alia*, Merrillville's improper maintenance of the tile, which, if true, would not be covered by Vortex's warranty under the Prior Contract. Vortex confirmed this dispute and its contention in a letter to Merrillville dated July 11, 2018, which was sent via electronic and U.S. mail to Merrillville's designated Owner's Representative and Owner's Agent. (A copy of the July 11, 2018 letter is attached as Exhibit A.)

10. Notwithstanding that dispute, and in view of the impending commencement of the upcoming school year, Vortex offered in its July 11, 2018 letter to proceed with removing the Fritztile terrazzo tile and installing an alternative vinyl tile from a different manufacturer that Merrillville had specified, while reserving Vortex's rights in the event that it was confirmed the Fritztile terrazzo tile was not failing due to Vortex's conduct and that Merrillville's warranty claim was indeed improper.

11. The agreement to install the New Tile (defined below) was separate and apart from the Prior Contract, for which Vortex was independently entitled to be paid in full for the original installation of the Fritztile terrazzo tile that was specified by Merrillville.

Vortex Installs the New Tile

12. Vortex thereafter removed the Fritztile terrazzo tile in the school's cafeteria and installed American Biltrite vinyl tile manufactured by Spartan Surfaces (the "New Tile"), pursuant to Merrillville's demand and instructions. The New Tile is a completely separate

product from a different manufacturer than the Fritztile terrazzo tile that was originally specified by Merrillville and installed by Vortex under the Prior Contract. The New Tile is a solid vinyl micro-ground tile that is factory-sanded on all four edges to form perfect squares, thus making the installation appear seamless, according to the manufacturer's promotional literature. Those tight joints lessen the likelihood of water penetrating during insufficient maintenance procedures (e.g., slop mopping and flooding the floor). Vortex completed the installation of the New Tile in early September 2018, just prior to the beginning of the school year.

13. Merrillville fully accepted and has retained the benefits of the installation of the New Tile.

14. At no time prior to Vortex's commencement of the removal of the Fritztile terrazzo tile and installation of the New Tile did Merrillville respond to or dispute Vortex's reservation of rights contained in its July 11, 2018 letter.

15. After completing the replacement work, Vortex concluded its investigation into the cause of the failed Fritztile terrazzo tile.

16. Vortex confirmed that the cause of the failure of the Fritztile terrazzo tile is not attributable to Vortex. Rather, the cause is attributable to Merrillville, particularly its improper maintenance of the flooring material in a manner inconsistent with the manufacturer's specifications and instructions.

17. Specifically, contrary to Fritztile's specifications and instructions, Merrillville routinely flooded and/or soaked, and/or "slop-mopped" the Fritztile terrazzo tile, including after it had stripped the sealant from the tile during routine maintenance.

18. Merrillville's warranty claim under the Prior Contract was improper because Vortex's warranty contained in the Prior Contract expressly excluded liability for damage or

defects or product failures attributable to improper or insufficient maintenance and treatment of the installed tile. Accordingly, Vortex's installation of the New Tile was neither required by nor performed pursuant to the Prior Contract.

19. Following the installation of the New Tile, Vortex closed out its claim for outstanding sums due under the Prior Contract for the original installation of the Fritztile terrazzo tile.

20. Pursuant to the Indiana Claims Against Public Schools Act, IC 34-13-3.5, Vortex provided notice to MMBC and MCSC of this claim on or about September 18, 2020.

COUNT I

(Breach of Contract)

21. Vortex repeats and re-alleges and incorporates by reference each and every allegation contained in paragraphs 1 through 20 of this Complaint as if fully set forth herein.

22. On or about July 11, 2018, Vortex offered to remove the Fritztile terrazzo tile and install the New Tile under a reservation of rights that Vortex would be compensated for such work in the event that Merrillville's warranty claim under the Prior Contract was improper.

23. Merrillville's warranty claim under the Prior Contract was improper and had no impact upon and did not otherwise affect the parties' separate agreement for the installation of the New Tile.

24. Merrillville accepted Vortex's offer contained in the July 11, 2018 letter by granting access to the school and permitting Vortex to begin the removal of the Fritztile terrazzo tile and installation of the New Tile without having rejected or disputed Vortex's offer.

25. Vortex fully performed the removal of the Fritztile terrazzo tile and installation of the New Tile.

26. Merrillville accepted Vortex's removal of the Fritztile terrazzo tile and installation of the New Tile.

27. Accordingly, the parties entered into a contract for the removal of the Fritztile terrazzo tile and installation of the New Tile in accordance with the terms of the July 11, 2018 letter (the "Contract").

28. The Contract is a valid and enforceable contract.

29. Vortex performed all of its obligations under the Contract.

30. Vortex is entitled to recover reasonable compensation for its services, including, *inter alia*, labor, material, and other expenses, including consultant's fees, relating to the prior repairs to and inspections of the Fritztile terrazzo tile and the removal of the Fritztile terrazzo tile and installation of the New Tile.

31. The reasonable value of Vortex's services, including, *inter alia*, labor, material, and other expenses, including consultant's fees, relating to the prior repairs to and inspections of the Fritztile terrazzo tile and the removal of the Fritztile terrazzo tile and installation of the New Tile is at least \$132,415.56.

32. Vortex advised Merrillville of its conclusion that the cause of the failure of the Fritztile terrazzo tile is not attributable to Vortex, but rather is attributable to Merrillville, particularly Merrillville's improper maintenance of the flooring material in a manner inconsistent with the manufacturer's specifications and instructions. Vortex, pursuant to the parties' Contract, has demanded payment therefor.

33. Despite demand, however, Merrillville has not paid Vortex the sums properly due Vortex.

34. Merrillville's failure and refusal to pay the sums properly due under the Contract has damaged Vortex.

WHEREFORE, Vortex Commercial Flooring, Inc. respectfully requests that this Court enter judgment in its favor and against Merrillville Multi-School Building Corporation and Merrillville Community School Corporation in an amount to be proven at trial, plus costs of suit, and such further relief as this Court deems appropriate and just.

COUNT II
(Alternative Claim for Quantum Meruit)

35. Vortex repeats and re-alleges and incorporates by reference each and every allegation contained in paragraphs 1 through 20 of this Complaint as if fully set forth herein.

36. Count II is pled in the alternative in the event that it is determined that the Contract that is the subject of Count I either did not exist or is otherwise unenforceable.

37. Vortex provided valuable property restoration services, including, without limitation the removal of Fritztile terrazzo tile in the school's cafeteria and the installation of the New Tile, pursuant to Merrillville's demand and instructions.

38. Vortex provided such services at the request of Merrillville.

39. Merrillville accepted such services from Vortex but has not compensated Vortex for the fair value of the services provided.

40. Vortex reasonably expected compensation for the fair value of the services provided.

41. Vortex is entitled to recover reasonable compensation for its services, including, *inter alia*, labor, material, and other expenses, including consultant's fees, relating to the prior repairs to and inspections of the Fritztile terrazzo tile and the removal of the Fritztile terrazzo tile and installation of the New Tile, in the amount of at least \$132,415.56.

42. By reason of the foregoing, Vortex has been damaged by the amount that remains unpaid of the fair value of the services provided.

WHEREFORE, Vortex Commercial Flooring, Inc. respectfully requests that this Court enter judgment in its favor and against Merrillville Multi-School Building Corporation and Merrillville Community School Corporation in an amount to be proven at trial, plus costs of suit, and such further relief as this Court deems appropriate and just.

COUNT III
(Alternative Claim for Unjust Enrichment)

43. Vortex repeats and re-alleges and incorporates by reference each and every allegation contained in paragraphs 1 through 20 of this Complaint as if fully set forth herein.

44. Count III is pled in the alternative in the event that it is determined that the Contract that is the subject of Count I either did not exist or is otherwise unenforceable.

45. Vortex provided valuable property restoration services, including, without limitation the removal of Fritztile terrazzo tile in the school's cafeteria and the installation of the New Tile, pursuant to Merrillville's demand and instructions.

46. Merrillville accepted and has benefited from Vortex's performance of such services but has not adequately and fully compensated Vortex therefor.

47. Vortex is entitled to recover reasonable compensation for its services, including, *inter alia*, labor, material, and other expenses, including consultant's fees, relating to the prior repairs to and inspections of the Fritztile terrazzo tile and the removal of the Fritztile terrazzo tile and installation of the New Tile, in the amount of at least \$132,415.56.

48. By reason of the foregoing, Merrillville has been unjustly enriched and Vortex has been damaged, for the uncompensated portion of the value of the services provided.

WHEREFORE, Vortex Commercial Flooring, Inc. respectfully requests that this Court enter judgment in its favor and against Merrillville Multi-School Building Corporation and Merrillville Community School Corporation in an amount to be proven at trial, plus costs of suit, and such further relief as this Court deems appropriate and just.

Dated: December 30, 2020

Respectfully submitted,

VORTEX COMMERCIAL FLOORING, INC.

By s/ Louis S. Chronowski
One of Its Attorneys

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