

Hearing Date: January 21, 2025

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT
PC-2024-04526

STATE OF RHODE ISLAND,)
)
Plaintiff,)
)
v.)
)
AECOM TECHNICAL SERVICES, INC.,)
AETNA BRIDGE COMPANY,)
ARIES SUPPORT SERVICES, INC.)
BARLETTA HEAVY DIVISION, INC.)
BARLETTA/AETNA I-195 WASHINGTON)
BRIDGE NORTH PHASE 2 JV,)
COLLINS ENGINEERS, INC.,)
COMMONWEALTH ENGINEERS &)
CONSULTANTS, INC.,)
JACOBS ENGINEERING GROUP, INC.)
MICHAEL BAKER INTERNATIONAL, INC.)
PRIME AE GROUP, INC.)
STEERE ENGINEERING, INC.,)
TRANSYSTEMS CORPORATION, and)
VANASSE HANGEN BRUSTLIN, INC.,)
)
Defendants.)

DEFENDANT STEERE ENGINEERING, INC.’S
MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION FOR JUDGMENT ON THE PLEADINGS

Defendant Steere Engineering, Inc. (“Steere”) submits this memorandum of law in support of its motion for judgment on the pleadings. For the reasons set forth herein, as well as those stated in the motions and supporting memoranda of other defendants who have motions to dismiss pending before this Court (which Steere repeats and incorporates herein by reference), the claims against Steere should be dismissed in their entirety.

FACTS

This action arises from the closure of the Interstate I-195 West portion of the Washington Bridge in December 2023 when the State of Rhode Island (the “State”) discovered that tie-down rods had failed at piers 6 and 7 of the bridge. Compl. ¶ 92. Prior thereto, on January 29, 2014, the State and Defendant AECOM Technical Services, Inc. (“AECOM”) entered into a contract for the design and rehabilitation of the Washington Bridge. In March 2014, Steere was engaged by AECOM as a subconsultant to perform engineering services on the Washington bridge. Comp. ¶ 60. Under the subcontract with AECOM, Steere’s scope of services was limited to spans 15-18, which do not include piers 6 and 7. A true copy of Steere’s 2014 Subcontract with AECOM is attached to the motion as **Exhibit 1**.¹ Defendant Cardi Corporation was awarded the construction contract, but that project was cancelled because of “unacceptable levels of traffic, congestion, and delays....” Compl. ¶ 67.

In 2019, the State engaged AECOM again to address needed repairs to the bridge. Compl. ¶¶ 67, 76. AECOM again retained Steere and others to perform engineering services, incorporating into the 2019 subcontract the same limitation on the scope of Steere’s services from the previous subcontract, i.e., spans 15-18². A true copy of Steere’s 2019 subcontract is attached hereto as **Exhibit 2**.

Even accepting all the factual allegations in the complaint as true, nothing but pure speculation can tie any failure of any part of the bridge’s piers 6 and 7 to services performed by Steere. No facts have been pled which plausibly suggest that Steere’s breach of any duty owed

¹ If the “complaint’s factual allegations are expressly linked to—and admittedly dependent upon—a document (the authenticity of which is not challenged), that document effectively merges into the pleadings and the trial court can review it in deciding a motion to dismiss under Rule 12(b)(6).” Pontarelli v. Rhode Island Dep’t of Elementary & Secondary Educ., 176 A.3d 472, 478 (R.I. 2018) (quoting Beddall v. State Street Bank & Trust Co., 137 F.3d 12, 16, 17 (1st. Cir. 1998)).

² The 2014 subcontract used the term Pier 14 to Abutment 2 to describe the same area of the bridge far removed from Piers 6 and 7.

under its contract with AECOM causing the damages for which the State seeks recovery in this case. Indeed, the only mention of Steere is found in paragraph 60, which merely alleges that Steere was AECOM's subconsultant "who AECOM represented possessed the experience, knowledge, and character to qualify them for the particular duties they perform." Compl. ¶ 60.

For the reasons set forth herein, as well as the reasons set forth in the motions to dismiss and supporting memoranda of AECOM, Barletta Heavy Division Inc., Barletta/Aetna I-195 Washington Bridge North Phase 2 JV, Jacobs Engineering Group and Airies Support Services, Inc., which Steere expressly incorporates by reference, the State fails to state a claim against Steere on which relief can be granted and the claims against Steere should be dismissed with prejudice.

STANDARD

"A judgment on the pleadings under Rule 12(c) provides a trial court with the means of disposing of a case early in the litigation process when the material facts are not in dispute after the pleadings have been closed and only questions of law remain to be decided." Premier Home Restoration, LLC v. Fed. Nat'l Mortg. Ass'n, 245 A.3d 745, 748 (R.I. 2021). The test for granting a motion for judgment on the pleadings is the same as that utilized for a Rule 12(b)(6) motion to dismiss. Nugent v. State Public Defender's Office, 184 A.3d 703, 706 (R.I. 2018). Thus, a judgment on the pleadings may be granted only when it is established that the State would not be entitled to relief from Steere under facts that could be proven in support of the State's claim. Id. at 706-707.

The federal courts under the cognate Federal Rule 12 have refined the standard for a plaintiff to avoid dismissal of a complaint. To avoid dismissal, a complaint's "factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the complaint's allegations are true." Bell Atlantic Co. v. Twombly, 550 U.S. 544, 545 (2007).

Courts evaluating a motion to dismiss should not accept as true “legal conclusions” or “threadbare recitals of the elements of a cause of action, supported by mere conclusory statements....” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). “While detailed factual allegations are not required, ‘a formulaic recitation of the elements of a cause of action’ is not sufficient.” DeLucca v. Nat’l Educ. Ass’n of Rhode Island, 102 F. Supp. 3d 408, 411 (D.R.I. 2015) (quoting Iqbal, 556 U.S. at 678).

Applying these standards, the complaint against Steere should be dismissed.

ARGUMENT

I. Steere’s Scope of Services Did Not Cover Piers 6 and 7 and Therefore Liability Cannot Exist

Steere cannot be liable for failing to perform services it had no duty to perform. Rhode Island law is settled on that point. In Corrado v. Pizza Hut of America, 683 A2d 367 (R.I. 1996), the court held that summary judgment was properly awarded in favor of the designer of a ramp causing the plaintiff’s injuries when the designer offered un rebutted evidence that the ramp was not built according to the plans the designer submitted and the designer had no role in the actual construction of the ramp. Id. at 367-68. Similarly, in In re Reinforced Earth, Co., 925 F. Supp. 906, 911 (D.P.R. 1996), the court held the engineer’s duty of care was confined to the specific tasks outlined in its contract and held it the engineer could not be liable for the quality of services performed by other professionals who were contracted to perform the tasks which had a closer causal connection to the plaintiff’s harm. In re Reinforced Earth, Co., 925 F. Supp. 906, 911 (D.P.R. 1996) (citing Tokio Marine & Fire Ins. Co., 958 F.2d 1169, 1171 (1st Cir.1992); Malave-Felix v. Volvo Car Corp., 946 F.2d 967 (1st Cir.1991); Richards v. United States, 369 U.S. 1, 15 (1962); cf. Bromaghim v. Furney, 808 A.2d 615, 617 (R.I. 2002) (refusing to hold liable a contractor for a latent condition it did not know of or have a reason to know of).

The same legal principle applies here. Steere's services were limited to parts of the bridge nowhere mentioned in the complaint. The complaint leaves to pure speculation how any conduct of Steere related to spans 15-18 create a basis for recovery for the failures of Piers 6 and 7. Accordingly, the complaint against Steere should be dismissed.

II. The State's Negligence Claim is Barred Independently by the Economic Loss Doctrine

The State's alleged damages, as plead in the Complaint, are purely economic. The State claims as damages the "physical damage to [the bridge] and for the economic damages it has and will in the future suffer." Compl. ¶ 106. As explained in detail in the co-defendants' memoranda, these damages are barred by the economic loss doctrine because the State has failed to claim it has suffered any personal injury or damage to property. Hexagon Holdings, Inc. v. Carlisle Syntec, Inc., 199 A.3d 1034, 1042 (R.I. 2019). "When parties have contracted to protect against potential economic liability, as is the case in the construction industry, contract principles override [...] tort principles [...] and, thus, purely economic damages are not recoverable." Franklin Grove Corporation v. Drexel, 936 A2.d 1272, 1275 (R.I. 2007). Here, even the most generous reading of the State's Complaint does not plausibly suggest any personal injury or damage to property that would defeat the economic loss doctrine's bar to recovery for "physical damage to [the bridge] and for the economic damages it has and will in the future suffer." Compl. ¶ 106.

Further, the State cannot avoid the bar of the economic loss doctrine due to its lack of privity with Steere. Common sense establishes that Steere's liability for purely economic losses cannot exceed the damages owed by AECOM who engaged Steere to perform certain services AECOM owed the State. Indeed, in Hexagon Holdings, Inc., 199 A.3d at 1034, the Court held the economic loss doctrine barred the owner from bringing a negligence claim not only against the general contractor with which the owner was in privity, but also the subcontractor, with whom the

owner had no privity. See also Superl Sequoia Ltd. v. The C.W. Carlson Co., 535 F. Supp. 2d 931 (W.D. Wis. 2008) (holding the economic loss doctrine barred a homeowner from bringing tort claims against subcontractors with whom the homeowner had no contractual relationship; doing so would “undermine the distinction between contract law and tort law that the economic loss doctrine seeks to preserve”).

III. The State’s Alleged Damages Are Betterments and Not Recoverable

The State is seeking to recover against Steere the cost of a new bridge, something the State would not have had had Steere magically conveyed to the State all of the problems the State claims went undiscovered prior to 2024. Nothing Steere did or allegedly failed to do denied the State a bridge. Instead, the Complaint seeks to hold Steere responsible for a new bridge that, if recovered by the State, would put the State in a better position than it would have been in had Steere acted differently. In other words, the State is seeking a “betterment” that is not recoverable as a matter of law. See St. Joseph Hosp. v. Corbetta Const. Co., 21 Ill. App. 3d 925, 936, 316 N.E.2d 51, 59 (1974) (holding that “the injured party is limited to the loss actually suffered ... and is not to be put in a better position by a recovery of damages for the breach than he would have been in had there been performance”). Cf. Conley v. Scott Products, Inc., 401 Mass. 645, 647 (1988) (holding the appropriate measure of damages in a property damage action is the cost or estimated cost of repairs, **less any ‘betterment of real property that enhances its capital value ... and is designed to make the property more useful or valuable** as distinguished from ordinary repairs.’) (emphasis added).

Here, the damages sought by the State are purely betterments because the State seeks to recover the value of a new bridge. Nowhere has the State alleged what “damage” it sustained as a result of learning in 2024 that piers 6 and 7 were so compromised that the entire bridge had to be

replaced. Indeed, the complaint fairly read leads to the conclusion that the State attained several years of service out of the bridge more than it would have had it known the true condition of piers 6 and 7 earlier. The Complaint as drafted seeks nothing but a windfall and requests the State be put in a better position than it would have been in had the bridge conditions been disclosed earlier.

IV. Counts XIX and XX of the State’s Complaint Should be Dismissed On the Independent Basis that the Claims Are Not Justiciable

Steere repeats and incorporates by reference the arguments set forth in the co-defendants’ memoranda concerning Counts XIX and XX of the State’s Complaint.

It is well settled in Rhode Island that “a necessary predicate to a court’s exercise of its jurisdiction is an actual justiciable controversy.” State v. Gaylor, 971 A.2d 611, 613 (R.I. 2009). “As a general rule, a claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.” Id. at 614 (internal quotations omitted).

Here, the State’s requests for declaratory relief are wholly contingent on hypothetical uncertainties that may or may not occur at some time in the future. The State asks this Court to adjudicate an unripe future cause of action from an unknown third-party and hold Steere liable on an unknown factual or legal basis. Further, it is not only uncertain what basis the State may or may not seek to hold Steere liable, it is entirely unknown whether any third-party will ever file suit. Accordingly, the State’s requests for declaratory relief are not ripe and judgment must enter for Steere on Counts XIX and XX.

CONCLUSION

For all the reasons stated herein, judgment on the pleadings for all Counts against Steere should enter in Steere's favor.

Respectfully submitted,

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Dated: November 22, 2024

CERTIFICATE OF SERVICE

I, Warren D. Hutchison, hereby certify that on this day, November 22, 2024, a true copy of the foregoing has been filed and served on all parties of record through the Rhode Island electronic filing system. The document electronically filed and/or served is available for viewing and/or download from the Rhode Island Judiciary's Electronic Filing System.

/s/ Warren D Hutchison
Warren D. Hutchison