

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

MARSH CREEK, LLC,

Plaintiff,

vs.

SOLSTENXP, INC.,

Defendant.

Case No. 3AN-19-_____ CI

COMPLAINT

PARTIES

1. Plaintiff Marsh Creek, LLC (“Marsh Creek”) is a limited liability company organized and existing under the laws of the State of Alaska with its principal place of business in Anchorage, Alaska, and is in all ways qualified to bring and maintain this action. Marsh Creek is in good standing with the Division of Corporations.

2. Defendant SolstenXP, Inc. (“SolstenXP”) is a corporation organized and existing under the laws of the State of Alaska with its principal place of business in Anchorage, Alaska. SolstenXP maintains a 49% ownership stake in Marsh Creek.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to AS 22.15.020.

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4. Venue is proper in the Third Judicial District pursuant to Alaska Rule of Civil Procedure 3. Both parties have their principal place of business in Anchorage. The contract giving rise to this action was executed within the Third Judicial District in Anchorage, and Anchorage is the location that best serves the convenience of the parties and anticipated witnesses.

FACTS

5. On or about December 9, 2015, Marsh Creek entered into a contract with the United States Bureau of Land Management (“BLM”) to perform NPRA legacy well remediation services for BLM at various locations on Alaska’s North Slope. The BLM contract (the “Prime Contract”) included a “plug and abandon” operation of a legacy well located at Iko Bay, Alaska (“Iko Bay #1”).

6. On or about December 10, 2015, Marsh Creek hired SolstenXP as a subcontractor to “plug and abandon” Iko Bay #1 under the BLM contract. A true and correct copy of the subcontract is attached hereto as **Exhibit 1** (the “Subcontract”).

7. The Subcontract provided that SolstenXP would perform the work in accordance with a “Scope of Work” and “Subcontractor Proposal” incorporated into the contract.

8. The Subcontract also delineated SolstenXP’s responsibilities, compensation, and timing of services to be performed.

9. Under the terms of the Subcontract, SolstenXP warranted that it would perform the work in a skillful manner and in conformance with industry standards.

10. SolstenXP also agreed that the work it performed would be satisfactory to

Marsh Creek such that its actual work would confirm to the statement of work, and was subject to inspection and acceptance, where applicable, of BLM.

11. The parties further agreed that the Prime Contract would be specifically incorporated into and made a part of the Subcontract such that, with respect to the work, SolstenXP was bound to BLM in the same manner and extent as Marsh Creek was bound under the Prime Contract.

12. Pursuant to Article VII of the Subcontract, SolstenXP also agreed to indemnify Marsh Creek and its client, BLM, for all acts related to SolstenXP's breach of the Subcontract or SolstenXP's negligent acts, errors, or omissions, or willful misconduct of SolstenXP.

13. SolstenXP failed to perform its obligations under the Subcontract.

14. On or about April 21, 2016, BLM issued a Performance Assessment Report (PAR) notifying Marsh Creek of significant deficiencies in SolstenXP's performance on Iko Bay #1. A true and correct copy of BLM's April 21, 2016 PAR is attached hereto as **Exhibit 2**.

15. Among other deficiencies, SolstenXP failed to "kill" Iko Bay #1 (take pressure down to 0 psi) before proceeding with well abandonment procedures; used an incorrect admixture of polymer and kill-weight fluid in its attempt to "kill" the well; totally disregarded approved project procedures, and made affirmative misrepresentations to Marsh Creek and BLM regarding the status of its performance.

16. SolstenXP's performance was so severely deficient that BLM determined "the Iko Bay well will never be considered plugged properly and in

accordance with [BLM's] requirements.”

17. BLM demanded that Marsh Creek terminate SolstenXP as its subcontractor and re-perform the plug and abandon operation on Iko Bay #1 with no increase in the contract price.

18. Marsh Creek's effort to remedy SolstenXP's work was unsuccessful.

19. As a result of SolstenXP's deficient performance, BLM also refused to pay Marsh Creek for work it had already performed on Iko Bay #1.

20. Marsh Creek terminated SolstenXP's subcontract and attempted to re-perform Iko Bay #1.

21. Marsh Creek has not been compensated for its work.

22. As a result of SolstenXP's failure to perform under the terms of the contract, Marsh Creek has incurred losses in excess of \$5 million.

COUNT I – BREACH OF CONTRACT

23. Paragraphs 1 through 22 are incorporated herein by reference.

24. The Subcontract is a binding contract between Marsh Creek and SolstenXP.

25. SolstenXP had a duty to perform in a manner that was faithful to its contractual performance obligations.

26. SolstenXP breached the Subcontract through failing to perform its work related to Iko Bay #1 in the manner it contractually promised to perform.

27. As a result of its contractual breaches, Marsh Creek has been damaged, such that it has incurred losses exceeding \$5 million.

COUNT II – NEGLIGENCE

28. Paragraphs 1 through 27 are incorporated herein by reference.

29. SolstenXP had a duty to perform work related to Iko Bay #1 in a skillful manner and in conformance with industry standards.

30. SolstenXP performed the work negligently.

31. SolstenXP's negligence was a substantial factor in causing Marsh Creek harm.

32. A reasonable person would have foreseen the probability of harm resulting from SolstenXP's negligent performance.

33. As a result of SolstenXP's negligence, Marsh Creek has been harmed.

COUNT III – INTENTIONAL MISREPRESENTATION

34. Paragraphs 1 through 33 are incorporated herein by reference.

35. SolstenXP made affirmative misrepresentations to Marsh Creek and BLM regarding the status of its performance.

36. SolstenXP knew the misrepresentations were false or misleading when it made them.

37. Marsh Creek justifiably relied on SolstenXP's representations related to its work performance.

38. As a result, Marsh Creek suffered a monetary loss.

39. Marsh Creek's reliance on SolstenXP's misrepresentations was a

substantial factor in causing Marsh Creek's loss.

40. Marsh Creek is entitled to an award of damages against SolstenXP for the same.

COUNT IV - INDEMNITY

41. Paragraphs 1 through 40 are incorporated herein by reference.

42. The Subcontract required SolstenXP to perform the services in a proper manner.

43. By agreeing to certain work performance and indemnity obligations in the Subcontract, SolstenXP agreed to indemnify, defend, and hold harmless Marsh Creek related to foreseeable damages resulting from SolstenXP's improper performance, contractual breaches, negligent acts, errors, omissions, or other willful misconduct.

44. SolstenXP has refused to reimburse and indemnify Marsh Creek for its losses, despite Marsh Creek's demand.

45. Accordingly, Marsh Creek sought and seeks, by the filing of this Complaint, indemnity from SolstenXP.

COUNT V-VIOLATION OF ALASKA'S UNFAIR TRADE PRACTICES ACT UNDER AS 45.50.471

46. Paragraphs 1 through 45 are incorporated herein by reference.

47. Under AS 45.50.471, "unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce are declared to be unlawful."

48. SolstenXP acted deceptively and unlawfully by, among other things,

assuring BLM and Marsh Creek that it had performed the work competently and under the terms specified under the contract.

49. In acting unfairly and deceptively as described here and above, SolstenXP committed an unfair business practice as that term is defined in the Unfair Trade Practices and Consumer Protection Act (“UTPA”).

50. Marsh Creek has been damaged by SolstenXP’s deceptive and unfair business practices.

51. Marsh Creek should be awarded treble damages as provided in statute.

PRAYER FOR RELIEF

Incorporating the previously alleged Paragraphs 1-50, Marsh Creek prays for the following relief:

1. A judgment against SolstenXP for damages in excess of \$5 million, the exact amount to be proven at trial, with interest as provided by law.
2. An award of Marsh Creek’s attorney’s fees and costs.
3. For such other relief as this Court deems just and appropriate.

DATED at Anchorage, Alaska this 18th day of April, 2019.

ASHBURN & MASON, P.C.
Attorneys for Marsh Creek, LLC

DATED: 4-18-19

By: [Signature]
Jeffrey W. Robinson
Alaska Bar No. 0805038

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