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Construction Cos. Sued For \$1M Over Materials For NJ Project

By **Joshua Alston**

Law360, New York (April 4, 2014) -- Tishman Construction Corp. and A.G. Construction Corp. were sued last week in New Jersey state court by a subcontractor claiming the company tricked it into funding \$1.2 million in materials and construction expenses for a \$1 billion mixed-use development with no intention to remunerate.

Riverfront Management and Consulting LLC filed its suit against Tishman and A.G. on March 27 in the Superior Court of New Jersey, leveling counts including breach of contract and fraud stemming from a contract gone south after Riverfront was hired as a subcontractor on Hudson Lights, a \$1 billion mixed-use development currently underway in Fort Lee, N.J.

According to the complaint, Tishman and A.G., Hudson Lights' construction manager and contractor, joined forces in September 2013 when Tishman contracted with A.G. to provide the project's concrete services and materials.

Riverfront joined the project in November 2013, according to the complaint, when A.G. subcontracted with Riverfront to act as a funding source and conduit vendor and procure concrete, rebar and other materials for A.G., which was too financially strapped to supply the project's needs.

Under their agreement, A.G. agreed to pay Riverfront a monthly fee of \$50,000, plus a third of the proceeds from A.G.'s contract with Tishman and administrative fees, the complaint said. When A.G. was banned from the construction site in December 2013 for failing to secure the requisite insurance coverage, Riverfront paid A.G. an advance of roughly \$393,000 to obtain the coverage, the document said.

Riverfront said it also covered the cost of all concrete, structural steel, pumping services and associated materials on the project, some funded directly, the rest through fraudulent transactions in which A.G. purchased materials from Riverfront's subcontractors without its knowledge or consent, according to the complaint. Additionally, Riverfront said it floated A.G. for more than two months of payroll when the contractor was unable to pay its employees.

The Colt's Neck, N.J., firm said it would never have entered into the agreement had it known A.G. had dismal credit and was teetering on insolvency, circumstances that would have been revealed had Tishman conducted due diligence as it claimed to have done, the complaint said.

Riverfront's attorney, Joshua S. Bauchner of Ansell Grimm & Aaron PC, told Law360 on Wednesday that Tishman and A.G. never intended to make good on their contract with his client, and intentionally defrauded Riverfront.

"They never acted in good faith," said Bauchner. "Tishman failed to perform due diligence on A.G., and two months later they came to my client with hat in hand for help with materials and payroll because A.G. lacked the wherewithal and credibility to do so. Subcontractors wouldn't deal with A.G. because they didn't think they would be paid."

Bauchner said Riverfront has been trying to recoup the \$1.2 million owed to it and its subcontractors for months to no avail, placing Riverfront's viability at risk.

"If Riverfront can't get paid, and can't pay its subcontractors, because of Tishman and A.G.'s misconduct, it literally becomes an existential issue," Bauchner said. "In the construction business, especially in New Jersey, reputation is everything, and because of Tishman and A.G.'s bad-faith dealing, Riverfront's reputation is at stake."

Tishman did not immediately respond to a request for comment on Wednesday.

The Hudson Lights project, currently under construction, will boast a million square feet of retail, hotel, residential and office space, according to developer materials, including 200,000 square feet of restaurants and retail.

Riverfront is represented by Joshua S. Bauchner of Ansell Grimm & Aaron PC.

Representation information for Tishman and A.G. Construction was not immediately available on Wednesday.

The case is Riverfront Management and Consulting LLC v. Tishman Construction Corp. of New Jersey and A.G. Construction Corp., case number L-002914-14, in the Superior Court of New Jersey, Bergen County.