

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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TOWN OF HUNTINGTON,

Index No. 604725/2019

Plaintiff,

**VERIFIED
COMPLAINT**

- against -

L.K. McLEAN ASSOCIATES, P.C. a/k/a
LOUIS K. McLEAN ASSOCIATES ENGINEERS
& SURVEYORS, P.C. and BELLINGHAM MARINE
a/k/a BELLINGHAM MARINE INDUSTRIES, INC.
a/k/a CONCRETE FLOTATION SYSTEMS, INC.,

Defendants.
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Plaintiff, TOWN OF HUNTINGTON, by its attorney, NICHOLAS R. CIAPPETTA, Town Attorney, by John T. McCarron, Assistant Town Attorney, as and for its Verified Complaint against the defendants alleges the following, upon information and belief:

1. That at all times hereinafter mentioned, plaintiff, TOWN OF HUNTINGTON (hereinafter referred to as the "TOWN"), was and still is a municipal corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal offices located at 100 Main Street, Huntington, County of Suffolk, State of New York.

2. That at all times hereinafter mentioned, defendant, L.K. McLEAN ASSOCIATES, P.C. a/k/a LOUIS K. McLEAN ASSOCIATES ENGINEERS & SURVEYORS, P.C. (hereinafter collectively referred to as "MCLEAN"), was and is a domestic corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal offices at 437 South Country Road, Brookhaven, County of Suffolk, State of New York.

3. At all times hereinafter mentioned, defendant, BELLINGHAM MARINE a/k/a BELLINGHAM MARINE INDUSTRIES, INC. was and is a foreign corporation not registered to do business within the State of New York and a/k/a CONCRETE FLOTATION SYSTEMS, Inc.,

was and is a foreign corporation registered to do business within the State of New York (all defendants hereinafter collectively referred to as "BELLINGHAM").

BACKGROUND

4. At all times hereinafter mentioned the TOWN owned, maintained and operated Woodbine Marina located in Northport, County of Suffolk, State of New York.

5. Woodbine Marina was a marina facility with a series of docks and piers for the in-water storage of boats by TOWN residents during the boating season. The boating season runs annually from April 1 through October 31.

6. The TOWN charges boaters a fee based on the size of their boats.

7. In or about June of 2011 the TOWN issued a Request for Proposal seeking proposals for design and construction inspection services for the reconstruction of Woodbine Marina (the "Project").

8. MCLEAN submitted a proposal for professional design and construction inspection services for the reconstruction of Woodbine Marina (the "Proposal") which was accepted by the TOWN.

9. In or about August of 2011 the TOWN entered into an agreement with MCLEAN to perform design and construction inspection services related to the reconstruction of Woodbine Marina (the "Agreement").

10. The proposal submitted by MCLEAN was attached and incorporated into the Agreement.

11. In the Proposal MCLEAN held itself out to be a firm of licensed engineers competent and experienced and qualified to provide the design services to the TOWN and that it had prior experience in marine projects for municipalities.

12. MCLEAN produced drawings, blueprints, plans and specifications for the Project.

13. MCLEAN prepared engineering drawings depicting a design that was accepted by the TOWN. These drawings were stamped by MCLEAN denoting they were prepared and approved by a licensed engineer.

14. MCLEAN made certain assumptions and calculations relating to the water conditions present at Woodbine Marina and specified a certain dock system based on said calculations.

15. The dock system recommended by MCLEAN based on their calculations was a BELLINGHAM designed and manufactured dock system.

16. BELLINGHAM provided stamped engineering drawings representing that their dock system met the requirements of MCLEAN's plans.

17. BELLINGHAM represented that their dock system would be suitable for use at Woodbine Marina.

18. Based on BELLINGHAM's representations, the TOWN purchased the recommended docks from BELLINGHAM.

19. The redesigned marina was to consist of three (3) docks. Prior to the redesign there were two (2) docks at Woodbine Marina.

20. Based on the documents prepared by MCLEAN a bid to construct the dock system designed and recommended by MCLEAN was put out to bid and a contract was awarded to Terry Contracting to construct the redesigned facility.

21. Terry Contracting began its work on the Project in 2013 and completed its work in 2014.

22. The work of Terry Contracting was overseen by MCLEAN as part of the Agreement.

23. MCLEAN approved the work of Terry Contracting and signed off on the construction portion of the Project.

24. The Woodbine Marina facility was operational and in use for the 2014 boating season.

25. Between the end of the 2014 boating season and the beginning of the 2015 boating season the docks at Woodbine Marina sustained damages.

26. Between the end of the 2015 boating season and the beginning of the 2016 boating season the docks at Woodbine Marina again sustained damages.

27. The TOWN made MCLEAN aware of these damages.

28. The damages were repaired by Terry Contracting and paid for by MCLEAN after the end of the 2015 boating season and before the beginning of the 2016 boating season.

29. MCLEAN also determined that it was necessary to install additional wave protection at Woodbine Marina to mitigate future damage to the docks. This additional wave protection was not included in the original design accepted by the TOWN and constructed by Terry Contracting.

30. In June and July of 2016 MCLEAN designed a wave screen system that it recommended the TOWN install at Woodbine Marina.

31. Between the end of the 2016 boating season and the beginning of the 2017 boating season the newly designed wave screens were installed and paid for by the TOWN.

32. In February of 2017 the docks at Woodbine Marina sustained major damage requiring additional repairs that were paid for by the TOWN.

33. Between the end of the 2017 boating season and the beginning of the 2018 boating season one of the docks sustained catastrophic damage in March of 2018 and was removed from service and was no longer fit for use.

34. The docks continued to sustain damage and after the 2019 boating season it was determined that the docks that remained were no longer suitable for use and have been or are being removed.

35. There will be no marina facilities offered for use at Woodbine Marina beginning in 2020.

**AS AND FOR A FIRST CAUSE OF ACTION
(AGAINST DEFENDANT MCLEAN)**

36. Plaintiff repeats and realleges the foregoing allegations as if set forth at length herein.

37. At all times hereinafter mentioned, MCLEAN held itself out to the general public, including the TOWN herein, as being licensed, competent and experienced in the field of engineering and design in connection with municipal marine projects and public improvements.

38. At all times hereinafter mentioned, MCLEAN held itself out to the general public, including the TOWN herein, as being licensed, competent and experienced in the field of engineering and design in connection with the Project at Woodbine Marina.

39. MCLEAN knew or should have known that the TOWN would rely on its expertise and representations in retaining its services for the Project and the TOWN did in fact rely on said representations, all to its harm and detriment.

40. The TOWN relied on the skills, expertise, recommendations and knowledge of MCLEAN in connection with the Proposal submitted by MCLEAN for the Project as a basis to enter into the Agreement with MCLEAN.

41. MCLEAN knew or should have known that the TOWN was relying on its skills, expertise and knowledge in connection with the Project.

42. The docks sustained damages in numerous places causing the docks to be unstable and unsuitable for their intended purpose, thereby causing the TOWN to suffer property damage, and to expend monies to discover the defects and remedy the unsafe and hazardous conditions.

43. MCLEAN, by its agents, servants and/or employees breached the Agreement with the TOWN by failing to provide engineering, architectural, construction and/or inspection services in conformance with established industry standards; in providing services that were not in accordance with the established custom and practice in the industry and/or local community; in failing to use reasonable care and due diligence; in recklessly, negligently and wantonly failing to give plaintiff, its servants and/or agents due warning of the condition that had been created; in failing to see what was there to see; in hiring inept and inexperienced personnel; in failing to act as reasonable persons under the same or similar circumstances; in creating an unsafe, defective and dangerous condition; in allowing and permitting an unsafe, dangerous and hazardous condition to exist; in failing to discover what was there to see; in misrepresenting the nature and type of their experience in the design of the dock system; in misrepresenting the ability, competency, skills, and commitment of MCLEAN, its agents, servants and/or employees; in creating a dangerous, unsafe and/or defective condition; in departing from established industry standards; in negligently, carelessly, wantonly, and/or purposely exposing plaintiff to liability for injuries to third parties; in negligently recommending the dock system manufactured by BELLINGHAM; in failing to perform and carry-out the duties that MCLEAN undertook; in breaching the contract with plaintiff; in failing to bring the defective design to the attention of the plaintiff prior to the completion of the project; and in failing to act in a responsible and reasonable manner under the circumstances there and then existing, all to the TOWN's detriment.

44. MCLEAN made errors in its calculations as to the environmental, weather and wave conditions present or reasonably expected or predicted to occur in the future at Woodbine Marina and therefore improperly designed the dock system.

45. MCLEAN failed to consult appropriate guidelines to determine wave, weather, sub-strata, environmental or similar factors into account in the design or engineering of the Project.

46. That the occurrences complained of herein were caused solely by the negligent, careless and/or reckless acts and omissions of MCLEAN, its agents, servants, subcontractors and/or employees, without fault on the part of the TOWN contributing thereto.

47. That by reason of the foregoing, the TOWN has suffered and continues to suffer damage to its property and equipment, and has expended monies to discover the defect, abate the dangerous, unsafe and hazardous condition, and bring the marina to serviceable and usable condition, all to its damage in a sum in excess of ONE MILLION (\$1,000,000) DOLLARS.

48. That by virtue of MCLEAN's breach of the Agreement by failing to properly engineer, design and plan the Project, MCLEAN is indebted to the TOWN, jointly and severally, in a sum in excess of ONE MILLION (\$1,000,000) DOLLARS.

**AS AND FOR A SECOND CAUSE OF ACTION
(AGAINST DEFENDANT BELLINGHAM)**

49. Plaintiff repeats and realleges the foregoing allegations as if set forth at length herein.

50. At all times hereinafter mentioned, BELLINGHAM held itself out to the general public, including the TOWN herein, as being licensed, competent and experienced in the field of engineering and design in connection with the Project at Woodbine Marina.

51. BELLINGHAM knew or should have known that the TOWN would rely on its expertise and representations, and those of MCLEAN, in purchasing its dock systems for the Project and the TOWN did in fact rely on said representations, all to its harm and detriment.

52. The TOWN relied on the skills, expertise, recommendations and knowledge of BELLINGHAM and MCLEAN in connection with the purchase of the BELLINGHAM dock system.

53. BELLINGHAM knew or should have known that the TOWN was relying on its skills, expertise and knowledge in connection with the purchase of the dock system.

54. The docks sustained damages in numerous places causing the docks to be unstable and unsuitable for their intended purpose, thereby causing the TOWN to suffer property damage, and to expend monies to discover the defects and remedy the unsafe and hazardous conditions.

55. BELLINGHAM, by its agents, servants and/or employees breached the Agreement with the TOWN by failing to provide engineering, architectural, construction and/or inspection services in conformance with established industry standards; in providing services that were not in accordance with the established custom and practice in the industry and/or local community; in failing to see what was there to see; in hiring inept and inexperienced personnel; in failing to act as reasonable persons under the same or similar circumstances; in creating an unsafe, defective and dangerous condition; in allowing and permitting an unsafe, dangerous and hazardous condition to exist; in failing to discover what was there to see; in misrepresenting the nature and type of their experience in the design of the dock system; in misrepresenting the ability, competency, skills, and commitment of BELLINGHAM, its agents, servants and/or employees; in creating a dangerous, unsafe and/or defective condition; in departing from established industry standards; in negligently, carelessly, wantonly, and/or purposely exposing plaintiff to liability for injuries to third parties; in failing to bring the defective design to the attention of the plaintiff prior

to the completion of the project; and in failing to act in a responsible and reasonable manner under the circumstances there and then existing, all to the TOWN's detriment.

56. BELLINGHAM's representations as to the water, weather and environmental conditions it's dock system could withstand at Woodbine Marina were false and inaccurate and therefore the dock system was improperly designed.

57. BELLINGHAM failed to consult appropriate guidelines to determine wave, weather, sub-strata, environmental or similar factors into account in the design or engineering of the Project.

58. That the occurrences complained of herein were caused solely by the negligent, careless and/or reckless acts and omissions of BELLINGHAM, its agents, servants, subcontractors and/or employees, without fault on the part of plaintiff contributing thereto.

59. That by reason of the foregoing, the TOWN has suffered and continues to suffer damage to its property and equipment, and has expended monies to discover the defect, abate the dangerous, unsafe and hazardous condition, and bring the marina to serviceable and usable condition, all to its damage in a sum in excess of ONE MILLION (\$1,000,000) DOLLARS.

60. That by virtue of BELLINGHAM's actions by failing to properly engineer and design the dock system for the Project, BELLINGHAM is indebted to the TOWN, jointly and severally, in a sum in excess of ONE MILLION (\$1,000,000) DOLLARS.

**AS AND FOR A THIRD CAUSE OF ACTION
(AGAINST ALL DEFENDANTS)**

61. Plaintiff repeats and realleges the foregoing allegations as if set forth at length herein.

62. As a result of the conduct complained of herein, the TOWN has lost the use of the docks and therefore the marina facility at Woodbine Marina.

63. The loss of use of the marina may be indefinite and as a result the TOWN has suffered and will continue to suffer a loss of revenue from boat slip fees.

64. As a result, the TOWN is entitled to a judgment to compensate it for loss of past, present and future boat slip fees.

WHEREFORE, plaintiff, TOWN OF HUNTINGTON, respectfully demands judgment against defendants as follows:

(a) On its First Cause of Action in a sum in excess of ONE MILLION (\$1,000,000) DOLLARS in compensatory damages; and

(b) On its Second Cause of Action in a sum in excess of ONE MILLION (\$1,000,000) DOLLARS in compensatory damages; and

(c) On its Third Cause of Action in a sum to be determined at trial; and

(b) Reasonable legal fees; and

(c) Costs and disbursements of this action; and

(d) Interest at the prevailing rate; and

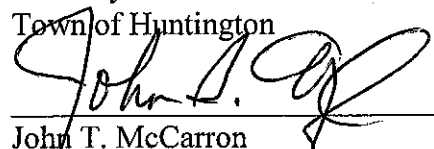
(e) Such other and further relief as to this Court may seem just and proper.

Dated: Huntington, New York
January 15, 2020

Yours, etc.,

NICHOLAS R. CIAPPETTA
Town Attorney
Attorney for Plaintiff
Town of Huntington

By:


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VERIFICATION

The undersigned, an attorney duly admitted to practice law in the Courts of the State of New York, shows:

1. Affirmant is associated with the office of the Huntington Town Attorney, attorney for the defendants, TOWN OF HUNTINGTON.

2. Affirmant has read the foregoing **VERIFIED COMPLAINT** and knows the contents thereof, and the same is true to affirmant's own knowledge except as to the matters therein stated to be alleged upon information and belief and as to those matters affirmant believes them to be true.

3. This verification is made as to the Town of Huntington because said Town is a municipal corporation and affirmant is an officer thereof, to wit: an Assistant Town Attorney.

4. The grounds of affirmant's belief as to all matters not stated upon affirmant's own knowledge are: (a) public records, (b) work product, (c) personal investigation, (d) correspondence and interview with plaintiff(s), their deputies, agents and employees, or (e) that they are matter of law: if this verification is made for a non-corporate party, the material allegations are within affirmant's personal knowledge based on the foregoing.

5. The undersigned affirms that the foregoing statements are true under the penalties of perjury.

Dated: Huntington, New York
January 15, 2020


JOHN T. McCARRON