



Jodie Clark McDougal
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June 11, 2019

Via Email and US Mail

Doug Wells
Owner
Wells + Associates, PC
520 42nd Street
Des Moines, Iowa 50312
Email: dwells@wells-plus.com

Jamie Cucci
Attorney for Sebern Structural Service, PLLC
Karbal | Cohen | Economou | Silk | Dunne | LLC
150 S. Wacker Drive, Suite 1700
Chicago, IL 60606
Email: jcucci@karballaw.com

RE: Plumwood Terrace Condominium Project

Mr. Wells and Ms. Cucci:

As you know, I was recently retained by Plumwood Terrace Condominium Association's ("Association") Board of Directors as the Association's new general counsel. Among other things, I am advising the Board in relation to the Building D rebuild construction project ("Project"). I look forward to speaking with each of you this week. Because of the urgency of the situation, I am herein providing you with certain information, in advance of our call, as to Plumwood's position and intended course of action.

Formal Notice of Breach. As you know, Wells + Associates, PC ("Wells"), as the prime architect on the Project, has both contractual duties to the Association, under its contract ("Prime Contract") with the Association and State Farm, entitled AIA Document B201-2007, *Standard Form of Architect's Services: Design and Construction Contract Administration*, as well as professional duties to the Association as a licensed design professional, in relation to all architectural and engineering services provided under that Prime Contract by Wells and its retained subconsultants, including its retained structural engineering subconsultant, Sebern Structural Service, PLLC ("Sebern"). As a licensed engineer, Sebern, likewise, has professional duties owed to the Association. Please consider this correspondence to be formal confirmation and notice from the Association that both Wells and Sebern have breached their respective contractual and/or professional duties to the Association, including through their failure to timely perform the required work on the Project and failure to properly perform the work within the professional standard of care and contractual requirements. In addition, please consider this correspondence to be the Association's formal demand that Wells and Sebern proceed in the manner described below within seven (7) days from the date of this letter.

Demanded Action RE: Structural Design Defect. The focus of this letter is on the recently discovered structural design defect by Wells and Sebern on the Project, which was discovered by general contractor, Rochon Corporation of Iowa ("Rochon") in late April, 2019. Enclosed is another copy of Rochon's April 29, 2019 letter to the Association detailing the structural defect in the design of the first-floor steel joist. This letter details the negligently performed and incorrect load calculations by Wells' subconsultant, Sebern, thereby resulting in the installed steel joists being undersized, in violation of applicable building codes, and otherwise rendering the building unsafe. This design defect is undisputed, per Ms. Sebern's own admission as I understand it.

As you know, Rochon is estimating the cost for its additional work necessary to remediate the design defect ("Structural Remediation Work") in the several hundreds of thousands of dollars. Specifically, Rochon has

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DAVIS BROWN KOEHN SHORS & ROBERTS P.C.

provided you with a detailed breakdown of its proposed estimated cost of the Structural Remediation Work totaling up to \$456,902.00, with the exact final cost depending upon certain unknown site conditions, and possible corresponding additional work, that will only be known after the Structural Remediation Work begins. It has now been over six weeks days since Rochon's discovery of the design defect, and two weeks since Rochon has provided you with that detailed estimated cost of the Structural Remediation Work, and the Project is still at a standstill. This is unacceptable. Indeed, the Association's understanding, as communicated to me, was that Sebern and/or its insurer was going to make things right by agreeing to pay, upfront or otherwise in a lump sum, the costs of the additional Structural Remediation Work. That has not happened yet, and the Association fears that the Project will continue to be a standstill due to inaction by both Wells and Sebern.

Rochon has now submitted to the Association a formal Change Order, which is enclosed herein. (See enclosed Change Order No. 4.) This Change Order sets forth (a) the amount for Rochon to perform the *known* Structural Remediation Work, as well as (b) an estimate as to the amounts for the currently *unknown, but possible* additional work that may be needed as part of the Structural Remediation Work. Per Rochon's submitted Change Order, the amount for Rochon's known Structural Remediation Work totals \$317,252.80, and, with the inclusion of the additional estimated/budgeted amounts for the possible, but yet unknown, additional work, the estimated total amount for all Structural Remediation Work is \$456,902.00. Rochon is ready, willing, and able to start the Structural Remediation Work once it receives any feedback from Wells and Sebern, and approval from Wells and the Association, regarding Rochon's scope of, and amount for, the Structural Remediation Work as set forth in the submitted Change Order. However, the Association has not received any substantive feedback from Wells (or Sebern) regarding the Structural Remediation Work.

At this point, the Association demands that within seven (7) days, or by Tuesday, June 18, 2019, Wells and Sebern engage in whatever communications and investigations are necessary for Wells and Sebern to (a) come to an agreement with Rochon on the scope of the Structural Remediation Work; (b) approve Rochon's proposed change order amount for the Structural Remediation Work; and (c) sign a direct payment, rework, or like agreement under which Wells and/or Sebern will agree to *directly pay* Rochon for the final and total amount for Rochon's performed Structural Remediation Work. If this does not occur, the Association will be forced to consider terminating its Contract with Wells and/or withholding future payments from Wells, and will, further, be forced to file suit against Wells and Sebern for its damages. With such a clear instance of a design defect, the Association hopes that Wells and Sebern will make things right with the Association and its members, and hopes that all parties can work together to promptly resolve the problem and get the Project back on track.

Alternatively, if the aforementioned demanded resolution cannot be accomplished due to Sebern's inaction and/or refusal, then the Association demands that Wells, as the prime architect for the Project, engage in whatever communications and investigations are necessary for Wells (and a licensed subconsultant engineer) to formally approve of, and otherwise provide feedback regarding, the scope of Rochon's Structural Remediation Work, Rochon's proposed change order amount for such work, and Rochon's proposed extension of the Contract Time relating to such work, as set forth in Rochon's submitted Change Order No. 4, with Wells, Rochon, and the Association signing off on the appropriate Change Order by Tuesday, June 18, 2019. (See Article 7 of AIA Document A201-2007, *General Conditions of the Contract for Construction*.) To be clear, in such event, the Association will still be forced to file suit against Wells and Sebern, and will still consider withholding all future payments from Wells, but regardless Wells has a duty to review proposed change orders, and provide feedback to the Association on change order work, and, further, an architect-approved and signed Change Order will help

ensure that Rochon will proceed with ordering the needed materials for and otherwise start the Structural Remediation Work.¹

Finally, if either Wells or Sebern has any objection to Rochon's proposed scope of, or amount for, the Structural Remediation Work as set forth in the submitted Change Order No. 4, or otherwise disagrees with Rochon's opinions as to the design defect, then you should immediately inform me of such objection/disagreement, as well as the basis for such objection/disagreement. Otherwise, the Association will assume you have no objection/disagreement, and if the aforementioned demand is not met, the Association will be moving ahead with having Rochon perform the Structural Remediation Work and thereafter filing suit against Wells and Sebern for all additional costs incurred by the Association for Rochon to perform the Structural Remediation Work.

Please also be advised that the demanded action will *not* result in, or include, the Association waiving any rights against any party for any damages stemming from any past, present, or future delay or defect in the work by Wells and Sebern and any resulting damages incurred by the Association and its owners. Instead, the parties would simply be entering into a direct payment or rework agreement, or mutually executing a Change Order, regarding the scope of, and responsibility for the payment of costs associated with, Rochon's Structural Remediation Work.

Request for Information and Documents Directed to Wells. As part of getting up to speed in the matter, I have requested various documents from Marshall Little at State Farm, and I am herein requesting that Wells also voluntarily produce certain documents. The Association requests that Wells provide the following information and documentation by no later than Tuesday, June 25, 2019:

- (1) All payment applications/invoices Wells has submitted (to State Farm or the Association) on the Project.
- (2) A ledger or like document showing all payments that Wells has received on this Project.
- (3) All emails and other documents relating to the structural design defect described herein (excluding any privileged attorney-client emails).
- (4) Any drafts of contracts exchanged between Wells and either the Association or State Farm prior to the Prime Contract being executed.
- (5) All emails between Wells and State Farm from January, 2018 to the present (excluding any privileged attorney-client emails).
- (6) Wells' Certificate of Insurance for, and any Additional Insured Endorsement naming the Association as an additional insured under, your professional liability and commercial general liability policy.

Doug, please also advise as to if you have submitted a claim with your professional and/or commercial general liability insurer regarding this Project.

Thank you for your attention to this matter, and I look forward to promptly and amicably resolving the current structural design defect issue if possible.

¹Please also be advised that the Association will strenuously resist any attempt by Wells to recover payment for any alleged Additional Services associated, in whole or part, with any delay or defect in the work of Wells and its subconsultants on the Project, including the structural design defect noted herein.

Sincerely,
DAVIS, BROWN, KOEHN, SHORS & ROBERTS, P.C.

A handwritten signature in black ink, appearing to read "Jodie McDougal". The signature is fluid and cursive, with the first name "Jodie" and last name "McDougal" clearly distinguishable.

Jodie McDougal

CC via email: Rochon Corporation

Enclosures:

April 29, 2019 letter from Rochon Corporation
Rochon Corporation's submitted Change Order



Plumwood Terrace Condo Inc.
4837 86th Street
Urbandale, Iowa 50322
ATTN: John Ruppe

4/29/19

Project-Plumwood Terrace Fire Rebuild, 4837 86th Street, Urbandale Iowa

Dear John,

Rochon Corporation has been informed that there is a structural defect with the design of the first-floor steel joist. The Structural Engineer (Sebern Structural Services, PLLC) hired by Wells+ Associates did not calculate the correct design load and undersized the steel joist in the garage framing system. The topping slab poured on the first floor has deflected 1 to 1.5 inches and which is beyond the allowable tolerances for the joist and floor slab. The design defect creates two major issues, one there is a structural problem that makes the building unsafe and two is that because of the issues we cannot add more weight to the structure, which in turn means that we must not move forward with any additional work on the interior of the building.

The engineer is working on a fix for the problem and we hope to have something in our hands this week. In order for the project to get back on schedule we will need to receive the design, price the additional structural work, get approval for payment, be paid by the insurance company, and then complete the work. Obviously, this is a major issue, and is/will cause delays to the project completion. Please let this letter serve as notice of delay and claim for additional costs. At this time, we do not have enough info to know how long the delay will be or the cost ramifications. Once structural modifications are received, payment terms are worked out, and scope is approved we will be able to provide a more concrete schedule.

Respectively

Randy Snider
Project Manager



CHANGE ORDER

SUBSTITUTE
AIA DOCUMENT G701-1987

OWNER
ARCHITECT
CONTRACTOR
FIELD

X
X
X

PROJECT:
Plumwood Terrace Fire Rebuild
4837 86th Street
Urbandale Iowa 50322

CHANGE ORDER NUMBER: 4

DATE: June 3, 2019

TO CONTRACTOR:
Rochon Corporation of Iowa
3401 106th Circle
Urbandale, IA 50322

ARCHITECT'S PROJECT NO:

CONTRACT DATE: September 14, 2018

CONTRACT FOR:

The Contract is changed as follows: Structural Steel Modifications, Includes **bid** amounts only.
Budgeted items will be included in a change order and approved after the scope of work is determined.

General Conditions, Supervision, Insurance, Inspections, Temporary Facilities, Heat and Temperature Control, Clean Up, Dumpsters, Temporary Fence, SWPPP Inspections	\$	111,695.00
Steel Beams and Connection Plates	\$	38,247.00
Shore Floor Deck and set new steel beams	\$	88,000.00
Framing check	\$	8,280.00
Drop Ceiling Framing 3" for plumbing clearance	\$	15,000.00
Extra Fire Sprinkler Work	\$	3,700.00
Extra Plumbing Piping	\$	10,950.00
Contractors Fee at 15%	\$	41,380.80

Not valid until signed by the Owner, Architect and Contractor.

The original (Contract Sum) was.....	\$	4,334,483.00
Net change by previously authorized Change Orders.....	\$	238,657.00
The (Contract Sum) prior to this Change Order was.....	\$	4,573,140.00
The (Contract Sum) will be increased by this Change Order in the amount of.....	\$	317,252.80
The new (Contract Sum) including this Change Order will be.....	\$	4,890,392.80

The Contract Time will be increased by 149 Days
The date of Substantial Completion as of the date of this Change Order is May 10th, 2020

NOTE: This summary does not reflect changes in the Contract Sum, Contract Time or Guaranteed Maximum which have been authorized by Construction Change Directive(s).

Well + Associate, PC

ARCHITECT

520 42nd Street

ADDRESS

Des Moines, IA 50312

BY

DATE

Rochon Corporation of Iowa

CONTRACTOR

3401 106th Circle

ADDRESS

Urbandale, IA 50322

BY

DATE

Plumwood Terrace Condo, INC

OWNER

4837 86th Street

ADDRESS

Urbandale, Iowa 50322

BY

DATE

STRUCTURAL MODIFICATIONS COST
May 28th , 2019

The following cost breakdown is an estimated cost for the corrective work to reinforce the floor deck at the Plumwood Terrace Fire Rebuild project. Attached are copies of our subcontractor's scope of work and price for your review along with Rochon cost for General Conditions and FEE.

This cost estimate specifically outlines the work we have determined is needed to complete the structural repairs. This proposal includes the scope of work outlined by this proposal and the subcontractor's scope of work. Additional work may be needed as we do the work to lift the floor deck to the correct elevation. **Extra work will be determined at that time and submitted as an extra to the contract and would need to be approved in a Change Order.**

CO #4

General Conditions			\$111,695.00
1. Supervision			
2. Insurance, GL and Builders Risk			
3. Special Inspections			
4. Temporary Facilities			
5. Winter Heat, Temperature Control			
6. Job Site Clean Up			
7. Dumpster			
8. Temporary Fence Rental			
9. SWPPP Inspections			
• New Steel Beams per Structural Engineer design			\$ 38,247.00
• Shore floor deck and set new steel beams			\$ 88,000.00
• Complete framing check to verify that the framing is accurate and level			\$ 8,280.00
• Frame drywall Ceiling, extra to hang the 7/8" channel in lieu of attaching it to the underside of the steel joist.			\$ 15,000.00
•			
• Fire Sprinkler work			\$ 3,700.00
• Plumbing work			\$ 10,950.00
• Contractors FEE at 15%			<u>\$ 41,380.80</u>
	SUB TOTAL		\$317,252.80
• Repair Garage Slab damaged by shoring floor deck. Actual cost to be determined in the field.	BUDGET		\$ 5,000.00
• Repair floor deck due to delamination of deck	BUDGET		\$ 90,000.00
• Repair framing as needed.	BUDGET		\$ 12,000.00
• Material needed to correct framing issues	BUDGET		\$ 9,500.00
• Additional Fire Stopping work	BUDGET		\$ 5,000.00
• Contractors Fee at 15%	BUDGET		<u>\$ 18,149.20</u>
	SUB TOTAL		\$139,649.20
	TOTAL		\$456,902.00

Repair Garage Slab.	This budget is to remove and replace the garage slab if it is damaged during the process to raise the first-floor deck.
Repair floor deck.	This budget is to perform additional work if the floor deck separates from the existing floor joists and if the concrete topping slab is damaged during the process to raise the floor deck.
Repair Framing	This budget is for labor to repair any framing of the building determined during the framing check of the structure after the deck is raised to the correct elevation.
Framing Material.	This budget is to purchase additional framing materials needed to correct framing of the building found during the framing check.
Firestopping.	This budget is to provide firestopping work at the floor deck that maybe required by the City of Urbandale.