

MONTENEGRO, THOMPSON, MONTENEGRO & GENZ

531 Burnt Tavern Road

Brick, NJ 08724

(732) 295-4500

Attorneys for the Brick Township Board of Education

Ryan M. Amberger, Esq. (ID# 113632015)

EACM CORP.,

Plaintiff,

v.

**BRICK TOWNSHIP BOARD OF
EDUCATION and NETTA ARCHITECTS,
LLC,**

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MONMOUTH COUNTY

DOCKET NO: **MON-L-1600-20**

CIVIL ACTION

**ANSWER OF DEFENDANT
BRICK TOWNSHIP
BOARD OF EDUCATION**

Defendant, the Brick Township Board of Education (hereinafter the "Board"), by way of
Answer to the Plaintiff's Complaint, hereby states as follows:

1. The Board admits the allegations set forth in Paragraph 1 of the Complaint.
2. The Board lacks sufficient knowledge to either admit or deny the allegations set forth in Paragraph 2 of the Complaint and leaves Plaintiff to its proofs.
3. The Board admits the allegations set forth in Paragraph 3 of the Complaint.
4. The Board admits the allegations set forth in Paragraph 4 of the Complaint.
5. The Board admits the allegations set forth in Paragraph 5 of the Complaint.
6. The Board admits the allegations set forth in Paragraph 6 of the Complaint.
7. The Board admits the allegations set forth in Paragraph 7 of the Complaint.
8. The Board admits the allegations set forth in Paragraph 8 of the Complaint.
9. The Board admits the allegations set forth in Paragraph 9 of the Complaint.

10. The Board admits the allegations set forth in Paragraph 10 of the Complaint.

11. The Board lacks sufficient knowledge to either admit or deny the allegations set forth in Paragraph 11 of the Complaint and leaves Plaintiff to its proofs. By way of further response, Plaintiff was awarded the subject contract on May 2, 2019. The contract called for a substantial completion date of August 19, 2020 and Plaintiff was issued a Notice to Proceed on May 3, 2020. Plaintiff did not achieve substantial completion until October 3, 2019. Plaintiff's failure to timely complete the projects was in fact the result of Plaintiff's own delay, including, but not limited to, the following: (1) delay in commencement and mobilization; (2) failure to timely submit shop drawings; (3) failure to timely order materials and equipment; (4) failure to efficiently sequence and effectuate the work on the project. Furthermore, it has been discovered that a representative of EACM even admitted at the initial meeting that EACM was aware at the time of bid submission that it would be unable to meet the August 6, 2019. Commencement of discovery in this litigation will confirm the full extent of Plaintiff's untimely acts and omissions.

12. The Board admits the allegations set forth in Paragraph 12 of the Complaint.

13. The Board admits the allegations set forth in Paragraph 13 of the Complaint.

14. The Board admits the allegations set forth in Paragraph 14 of the Complaint.

15. The Board lacks sufficient knowledge to either admit or deny the allegations set forth in Paragraph 15 of the Complaint and leaves Plaintiff to its proofs.

16. The Board lacks sufficient knowledge to either admit or deny the allegations set forth in Paragraph 16 of the Complaint and leaves Plaintiff to its proofs.

17. The Board lacks sufficient knowledge to either admit or deny the allegations set forth in Paragraph 17 of the Complaint and leaves Plaintiff to its proofs.

18. The Board lacks sufficient knowledge to either admit or deny the allegations set forth in Paragraph 18 of the Complaint and leaves Plaintiff to its proofs.

19. The Board lacks sufficient knowledge to either admit or deny the allegations set forth in Paragraph 19 of the Complaint and leaves Plaintiff to its proofs.

20. The Board lacks sufficient knowledge to either admit or deny the allegations set forth in Paragraph 20 of the Complaint and leaves Plaintiff to its proofs.

21. The Board lacks sufficient knowledge to either admit or deny the allegations set forth in Paragraph 21 of the Complaint and leaves Plaintiff to its proofs.

22. The Board lacks sufficient knowledge to either admit or deny the allegations set forth in Paragraph 22 of the Complaint and leaves Plaintiff to its proofs.

23. The Board lacks sufficient knowledge to either admit or deny the allegations set forth in Paragraph 23 of the Complaint and leaves Plaintiff to its proofs.

24. The Board lacks sufficient knowledge to either admit or deny the allegations set forth in Paragraph 24 of the Complaint and leaves Plaintiff to its proofs.

25. The Board lacks sufficient knowledge to either admit or deny the allegations set forth in Paragraph 25 of the Complaint and leaves Plaintiff to its proofs.

26. The Board lacks sufficient knowledge to either admit or deny the allegations set forth in Paragraph 26 of the Complaint and leaves Plaintiff to its proofs.

27. The Board denies the allegations set forth in Paragraph 27 of the Complaint.

28. The Board lacks sufficient knowledge to either admit or deny the allegations set forth in Paragraph 28 of the Complaint and leaves Plaintiff to its proofs.

29. The Board admits the allegations set forth in Paragraph 29 of the Complaint.

30. The Board lacks sufficient knowledge to either admit or deny the allegations set forth in Paragraph 30 of the Complaint and leaves Plaintiff to its proofs.

31. The Board admits the allegations set forth in Paragraph 31 of the Complaint.

32. The Board lacks sufficient knowledge to either admit or deny the allegations set forth in Paragraph 32 of the Complaint and leaves Plaintiff to its proofs.

33. The Board lacks sufficient knowledge to either admit or deny the allegations set forth in Paragraph 33 of the Complaint and leaves Plaintiff to its proofs.

34. The Board lacks sufficient knowledge to either admit or deny the allegations set forth in Paragraph 34 of the Complaint and leaves Plaintiff to its proofs.

35. The Board lacks sufficient knowledge to either admit or deny the allegations set forth in Paragraph 35 of the Complaint and leaves Plaintiff to its proofs.

36. The Board admits the allegations set forth in Paragraph 36 of the Complaint.

37. The Board denies the allegations set forth in Paragraph 37 of the Complaint. By way of further response, the failure to timely complete the projects were the result of Plaintiff's own delays.

38. The Board lacks sufficient knowledge to either admit or deny the allegations set forth in Paragraph 38 of the Complaint and leaves Plaintiff to its proofs.

39. The Board admits only that it has imposed liquidated damages on Plaintiff due to its own failure to timely complete the HVAC projects at Brick Township High School and the Veterans Memorial Elementary School.

40. The Board admits the allegations set forth in Paragraph 40 of the Complaint.

COUNT ONE

41. The Board repeats their answers to the foregoing paragraphs above and incorporates them herein by reference as if more fully set forth at length.

42. The Board denies the allegations set forth in Paragraph 42 of the Complaint.

43. The Board denies the allegations set forth in Paragraph 43 of the Complaint.

WHEREFORE, the Board demands judgment dismissing the Plaintiff's Complaint together with costs of suit, attorney's fees, interest and such other amounts as the Court may deem equitable and just.

COUNT TWO

44. The Board repeats their answers to the foregoing paragraphs above and incorporates them herein by reference as if more fully set forth at length.

45. This paragraph sets forth a legal conclusion which cannot be admitted or denied.

46. The allegations set forth in paragraph 46 are directed towards Netta Architects, LLC and, therefore, no response is required.

47. The allegations set forth in paragraph 47 are directed towards Netta Architects, LLC and, therefore, no response is required.

48. The allegations set forth in paragraph 48 are directed towards Netta Architects, LLC and, therefore, no response is required.

49. The allegations set forth in paragraph 49 are directed towards Netta Architects, LLC and, therefore, no response is required.

50. The allegations set forth in paragraph 50 are directed towards Netta Architects, LLC and, therefore, no response is required.

51. The Board denies the allegations set forth in Paragraph 51 of the Complaint. By way of further response, Board has imposed liquidated damages on Plaintiff solely due to its own failure to timely complete the HVAC projects at Brick Township High School and the Veterans Memorial Elementary School.

52. The Board denies the allegations set forth in Paragraph 52 of the Complaint.

WHEREFORE, the Board demands judgment dismissing the Plaintiff's Complaint together with costs of suit, attorney's fees, interest and such other amounts as the Court may deem equitable and just.

COUNT THREE

53. The Board repeats their answers to the foregoing paragraphs above and incorporates them herein by reference as if more fully set forth at length.

54. The Board admits the allegations set forth in Paragraph 54 of the Complaint.

55. The Board denies the allegations set forth in Paragraph 55 of the Complaint.

56. The Board denies the allegations set forth in Paragraph 56 of the Complaint.

57. The Board denies the allegations set forth in Paragraph 57 of the Complaint.

58. The Board denies the allegations set forth in Paragraph 58 of the Complaint.

59. The Board denies the allegations set forth in Paragraph 59 of the Complaint.

60. The Board denies the allegations set forth in Paragraph 60 of the Complaint.

61. The Board denies the allegations set forth in Paragraph 61 of the Complaint.

62. The Board denies the allegations set forth in Paragraph 62 of the Complaint.

63. The Board denies the allegations set forth in Paragraph 63 of the Complaint.

WHEREFORE, the Board demands judgment dismissing the Plaintiff's Complaint together with costs of suit, attorney's fees, interest and such other amounts as the Court may deem equitable and just.

COUNT FOUR

64. The Board repeats their answers to the foregoing paragraphs above and incorporates them herein by reference as if more fully set forth at length.

65. This paragraph sets forth a legal conclusion which cannot be admitted or denied.

66. The Board denies the allegations set forth in Paragraph 66 of the Complaint.

67. The Board denies the allegations set forth in Paragraph 67 of the Complaint.

WHEREFORE, the Board demands judgment dismissing the Plaintiff's Complaint together with costs of suit, attorney's fees, interest and such other amounts as the Court may deem equitable and just.

COUNT FIVE

68. The Board repeats their answers to the foregoing paragraphs above and incorporates them herein by reference as if more fully set forth at length.

69. The Board denies the allegations set forth in Paragraph 69 of the Complaint.

70. The Board denies the allegations set forth in Paragraph 70 of the Complaint.

WHEREFORE, the Board demands judgment dismissing the Plaintiff's Complaint together with costs of suit, attorney's fees, interest and such other amounts as the Court may deem equitable and just.

COUNT SIX

71. The Board repeats their answers to the foregoing paragraphs above and incorporates them herein by reference as if more fully set forth at length.

72. The Board denies the allegations set forth in Paragraph 72 of the Complaint.

WHEREFORE, the Board demands judgment dismissing the Plaintiff's Complaint together with costs of suit, attorney's fees, interest and such other amounts as the Court may deem equitable and just.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

Plaintiff's claims are barred for failure to state a claim upon which relief may be granted.

SECOND SEPARATE DEFENSE

Plaintiff's claims are barred by reason of the applicable statute of limitations.

THIRD SEPARATE DEFENSE

Plaintiff's claims are barred by principles of equity, including, but not limited to, the doctrines of waiver, laches, estoppel and unclean hands.

FOURTH SEPARATE DEFENSE

Plaintiff's claims are barred by the entire controversy doctrine.

FIFTH SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrines of collateral estoppel and res judicata.

SIXTH SEPARATE DEFENSE

The Board has not acted in an arbitrary, capricious, or unreasonable manner.

SEVENTH SEPARATE DEFENSE

Recovery is barred or limited by the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq.

EIGHTH SEPARATE DEFENSE

The Board has not breached any duty of care or obligation owed to the Plaintiff imposed by either statute or common law.

NINTH SEPARATE DEFENSE

Plaintiff's claims are frivolous and without any reasonable basis in law or fact, cannot be supported by a good faith argument for extension, modification or reversal of existing law, are lacking in evidentiary support and are in violation of Court Rule 1:4-8(a).

TENTH SEPARATE DEFENSE

Plaintiff has failed to exhaust administrative remedies.

ELEVENTH SEPARATE DEFENSE

Plaintiff has failed to mitigate damages.

TWELTH SEPARATE DEFENSE

There was a good faith basis for all actions and decisions taken with respect to the Plaintiff.

THIRTEENTH SEPARATE DEFENSE

Plaintiff is not entitled to recover counsel fees since there is no statutory or other basis to deviate from the "American Rule."

FOURTEENTH SEPARATE DEFENSE

Plaintiff is not entitled to an award of attorney's fees as to any of the claims set forth in the Complaint, as the Plaintiff will not be the prevailing party as to these claims.

FIFTEENTH SEPARATE DEFENSE

Plaintiff's damages, if any, were caused by the actions of others and not by the actions of the Board.

SIXTEENTH SEPARATE DEFENSE

The Plaintiff's cause of action, if any, should be addressed at a different forum.

SEVENTEENTH SEPARATE DEFENSE

The Board reserves the right to raise additional defenses as continuing investigation and discovery may reveal.

EIGHTEENTH SEPARATE DEFENSE

The Board hereby reserves the right to amend this Answer based upon further discovery.

**MONTENEGRO, THOMPSON,
MONTENEGRO & GENZ**
Attorneys for the Brick Township
Board of Education

By: s/ Ben A. Montenegro
BEN A. MONTENEGRO, ESQ.

Dated: August 3, 2020

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, notice is hereby given that **BEN A. MONTENEGRO, ESQ.** is hereby designated as trial counsel in the above-captioned matter.

CERTIFICATION PURSUANT TO RULE 4:5-1

In accordance with Rule 4:5-1, I hereby certify that to the best of my knowledge, there are no civil actions or arbitration proceedings involving this matter and no other parties need to be joined at this time.

**MONTENEGRO, THOMPSON,
MONTENEGRO & GENZ**

Attorneys for the Brick Township
Board of Education

By: s/ Ben A. Montenegro
BEN A. MONTENEGRO, ESQ.

Dated: August 3, 2020

CERTIFICATION OF FILING AND SERVICE

In accordance with Rule 4:6-1, the undersigned hereby certifies that the foregoing
Answer was timely filed with the Clerk of the Superior Court of New Jersey, Law Division,
Ocean County and served upon all parties via eCourts.

**MONTENEGRO, THOMPSON,
MONTENEGRO & GENZ**

Attorneys for the Brick Township
Board of Education

By: s/ Ben A. Montenegro
BEN A. MONTENEGRO, ESQ.

Dated: August 3, 2020

Civil Case Information Statement

Case Details: MONMOUTH | Civil Part Docket# L-001600-20

Case Caption: EACM CORP. VS BRICK BOARD OF
EDUCATION

Case Initiation Date: 05/21/2020

Attorney Name: RYAN MICHAEL AMBERGER

Firm Name: MONTENEGRO THOMPSON MONTENEGRO
& GENZ

Address: 531 BURNT TAVERN RD
BRICK NJ 08724

Phone: 7322954500

Name of Party: DEFENDANT : BRICK BOARD OF
EDUCATION

Name of Defendant's Primary Insurance Company
(if known): None

Case Type: CONTRACT/COMMERCIAL TRANSACTION

Document Type: Answer

Jury Demand: YES - 6 JURORS

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

**Do you anticipate adding any parties (arising out of same
transaction or occurrence)?** NO

Are sexual abuse claims alleged by: EACM CORP.? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

**Use this space to alert the court to any special case characteristics that may warrant individual
management or accelerated disposition:**

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO Title 59? NO Consumer Fraud? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

08/03/2020
Dated

/s/ RYAN MICHAEL AMBERGER
Signed

