

## SUMMONS

Attorney(s) Law Office of Stuart P. Schlem, Esq.

Office Address 42 East Main Street-Suite 303

Town, State, Zip Code Freehold, NJ 07728

Telephone Number 732-851-6560

Attorney(s) for Plaintiff EACM Corp.

EACM Corp.

Plaintiff(s)

vs.

Brick Township Board of Education and

Netta Architects, LLC

Defendant(s)

## Superior Court of New Jersey

Monmouth County

Law Division

Docket No: 1600-20

## CIVIL ACTION SUMMONS

From The State of New Jersey To The Defendant(s) Named Above:

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (A directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at [http://www.njcourts.gov/forms/10153\\_deptyclerklawref.pdf](http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf).) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$175.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at [http://www.njcourts.gov/forms/10153\\_deptyclerklawref.pdf](http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf).

  
Clerk of the Superior Court

DATED: 05/22/2020

Name of Defendant to Be Served: Brick Township Board of Education

Address of Defendant to Be Served: 101 Hendrickson Avenue, Brick, NJ 08724

STUART P. SCHLEM, ESQ. (019271983)  
42 East Main Street-Suite 303  
Freehold, New Jersey 07728  
(732) 851-6560 fax (732) 490-7999  
[spschlem@schlemlaw.com](mailto:spschlem@schlemlaw.com)  
Attorney for Plaintiff

-----X  
EACM CORP.

Plaintiff,

v.

BRICK TOWNSHIP BOARD OF  
EDUCATION and NETTA  
ARCHITECTS, LLC

Defendants

-----X

SUPERIOR COURT OF NEW JERSEY  
MONMOUTH COUNTY:  
LAW DIVISION

DOCKET NO.:

Civil Action

**COMPLAINT**

Plaintiff EACM Corp., by its attorney, Stuart P. Schlem, Esq., complaining of the defendants herein, alleges upon information and belief as follows:

First: At all times herein mentioned, the plaintiff EACM Corp. ("EACM") was and still is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, maintaining offices at 1070 Ocean Avenue, Sea Bright, New Jersey.

Second: EACM provides general contracting and trade work from maintenance repairs to large scale renovations, specializing in providing HVACR renovations to the many school facilities located within the State of New Jersey.

Third: The defendant Brick Township Board of Education (hereinafter "BOE") was and still is a municipal authority duly organized and existing under and by virtue of the laws of the State of New Jersey, maintaining offices at 101 Hendrickson Avenue, Brick, New Jersey 08724.

Fourth: The defendant Netta Architects, LLC (hereinafter "Netta") was and still is a firm of architects duly licensed by the State of New Jersey and authorized to provide architectural services within this jurisdiction, maintaining offices at 1084 Route 22 West, Mountainside, New Jersey 07092.

Fifth: On or about May 2, 2019, the defendant BOE, as owner of various properties within the Brick Township school district, awarded a contract to the plaintiff to replace the HVAC systems at two BOE facilities: Brick Township High School ("BTHS") and Veterans Memorial Elementary School ("VMES").

Sixth: On May 30, 2019, the plaintiff submitted to the defendant BOE, through its agent, defendant Netta, plans and specifications for the Remote Terminal Units ("RTU") to be installed at the BTHS and VMES, which plans and specifications were drafted by Trane Technologies, the manufacturer of the aforementioned RTU's.

Seventh: On or about May 31, 2019, the defendant Netta, acting on behalf of the defendant BOE, issued to the plaintiff a Notice to Proceed with the two HVAC projects.

Eighth: On June 12, 2019, the defendant Netta delivered to the plaintiff signed and sealed plans for the installation of the two HVAC systems at BTHS and VMES.

Ninth: The defendant BOE thereafter entered into a formal contract, dated June 18, 2019 (hereinafter the "Contract") with the plaintiff for the installation of the two HVAC systems at BTHS and VMES.

Tenth: Pursuant to the terms of the Contract, plaintiff was precluded from placing its order for the subject RTU's with Trane Technologies until such time as the defendant Netta approved the plans and specifications presented to it by plaintiff.

Eleventh: The defendant Netta failed to approve the Trane Technologies' plans and specifications for the subject RTU's until June 19, 2019, causing a delay in plaintiff's ability to place its order for the subject RTU's with Trane Technologies, and a corresponding delay in shipment of same until the second week of August, 2019.

Twelfth: The substantial completion date for the projects, as set forth in the contract and subject to adjustments, was August 6, 2019.

Thirteenth: Pursuant to the terms of the Contract, the defendant BOE agreed to pay to the plaintiff the sum of \$632,500.00 for the installation of the HVAC systems at the two facilities.

Fourteenth: The Contract incorporates by reference the plans and specifications prepared by defendant Netta for the installation of the two HVAC systems.

Fifteenth: Upon the execution of the Contract, plaintiff EACM did file for permits for each of the subject projects with the Brick Township Building Department.

Sixteenth: Included within the permit package were the plans and specifications prepared by the defendant Netta for each of the two projects.

Seventeenth: On July 2, 2019, Mr. Richard Orlando, a Brick Township Subcode Official, issued two Subcode Official Reviews, one for each of the subject projects.

Eighteenth: In his Subcode Official Reviews, Mr. Orlando denied the issuance of permits, citing a need to address fire alarm duct detection disconnect and reconnect with respect to the fire alarm, as well as the failure to address the installation of carbon monoxide alarms required by DCA Bulletin 2017-1.

Nineteenth: On July 22, 2019, Mr. Daniel F. Newman, Jr., also a Brick Township Subcode Official, issued two Subcode Official Reviews, one for each of the subject projects.

Twentieth: In each of his Subcode Official Reviews, Mr. Newman noted that each plan used Code IFCG 2009 for gas piping in contravention of IGFC 2015, which had been adopted by the State of New Jersey in September of 2015.

Twenty-First: Mr. Newman's Subcode Official Reviews for the Brick Township High School further noted that "When the load on a gas system is changed the gas pipe sizing must be reevaluated based on the new load. Table 402.4(1) shows the maximum CFH on 6" pipe with a 300 foot run from the point of delivery to the most remote outlet is 8150. 10890 CFH is proposed. The plan indicates that the total linear feet is 300. If that is the total footage and not the longest run please indicate pipe lengths of the

sections of pipe. If 300 ft. is the longest run then the pipe is not capable of providing the required volume of gas."

Twenty-Second: Mr. Newman's Subcode Official Reviews for the Veterans Memorial Elementary School further noted that "When the load on a gas system is changed the gas pipe sizing must be reevaluated based on the new load. Table 402.4(1) shows the maximum CFH on 4" pipe with a 400 foot run from the point of delivery to the most remote outlet is 2380. 5200 CFH is proposed. The plan indicates that the total linear feet is 400. If that is the total footage and not the longest run please indicate pipe lengths of the sections of pipe. If 400 ft. is the longest run then the pipe is not capable of providing the required volume of gas."

Twenty-Third: By reason of the failure of the defendant Netta to draft plans that utilized current code requirements and provide for adequate fire alarm duct detection systems and carbon monoxide alarms, the permit applications were rejected.

Twenty-Fourth: The defendant Netta did thereafter undertake modifications to the plans for each of the subject schools, during which period approximately six weeks elapsed for each project.

Twenty-Fifth: On July 25, 2019, the plaintiff did make application to the defendant Netta for an extension of the substantial completion date to September 30, 2019, which request was based upon the delays caused by the failure of defendant Netta to submit proper plans and specifications for the HVAC projects at both schools.

Twenty-Sixth: The request for an extension of the substantial completion date to September 30, 2019 also noted that the electrician cannot begin installing conduit and wiring, that the plumbing could also not be installed until the new roof was installed.

Twenty-Seventh: Because of the delays caused by the defendant Netta's failure to approve the Trane Technologies plans, the shipment of the rooftop HVAC units for the Brick Township High School project was delayed until approximately August 9, 2019, three days after the Substantial Completion date set forth in the Contract.

Twenty-Eighth: On August 15, 2019, nine days after the Substantial Completion date set forth in the Contract, a construction permit was issued for the HVAC project at the Brick Township High School and on August 21, 2019, fifteen days after the Substantial Completion date set forth in the Contract, a similar construction permit was issued for the Veterans Memorial Elementary School HVAC project.

Twenty-Ninth: In addition to the HVAC projects, the defendant BOE had also authorized replacement of portions of the BTHS roof.

Thirtieth: When the roofing contractor removed the existing ductwork portions of the Brick Township High School roof, it was determined that the ductwork required replacement.

Thirty-First: On August 8, 2019, the defendant BOE did approve change orders to various projects, including a change order to the Contract for the replacement of ductwork at the BTHS at an additional cost of \$40,294.16.

Thirty-Second: The aforesaid change order was not received by plaintiff until August 16, 2019, ten days after the Substantial Completion date set forth in the Contract.

Thirty-Third: The plaintiff EACM did thereafter install the HVAC systems at the Brick Township High School and the Veterans Memorial Elementary School in accordance with the terms and conditions of the Contract as amended.

Thirty-Fourth: The Remote Terminal Unit was installed by plaintiff at the Veterans Memorial Elementary School, was started up on August 29, 2019, and was fully functional by the start of the school year.

Thirty-Fifth: By reason of the need to replace the ductwork at the BTHS, the two Remote Terminal Units were installed by plaintiff and started up on September 19, 2019.

Thirty-Sixth: On or about August 8, 2019, the defendant BOE did approve an extension of the Substantial Completion date for both projects to August 30, 2019.

Thirty-Seventh: By reason of the delays to the project caused by the negligent design of the plans and specifications by the defendant Netta, and the failure of the defendant Netta to timely review and approve the plans and specifications provided by Trane Technologies, the plaintiff did not accept the extension of the Substantial Completion date for both projects to August 30, 2019.

Thirty-Eighth: At a construction meeting conducted on November 1, 2019, the defendant Netta recognized that the installation of new gas lines to the remote terminal units and the new gas line tie-in connections into the existing main gas lines were not



completed until October 3, 2019, and the Substantial Completion date for both projects should be amended to October 3, 2019.

Thirty-Ninth: Notwithstanding the recommendations of its own architect, defendant Netta herein, the defendant BOE is attempting to impose liquidated damages upon the plaintiff for failure to timely complete the HVAC projects at the Brick Township High School and the Veterans Memorial Elementary School.

Fortieth: There is now due and owing from the defendant BOE to the plaintiff EACM the sum of \$52,486.00.

#### **COUNT ONE**

Forty-First: Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs of the Complaint marked "First" through "Fortieth" with the same full force and effect as though fully set forth at length herein.

Forty-Second: By reason of the breach of contract on the part of the defendant BOE, plaintiff has sustained damages.

Forty-Third: Plaintiff is entitled to compensatory damages as a result of defendant BOE's breach.

WHEREFORE, plaintiff EACM, LLC demands judgment on Count One against the defendant Brick Township Board of Education, for compensatory damages, reasonable attorney's fees, interest, and costs of suit.

#### **COUNT TWO**

Forty-Fourth: Plaintiff repeats, reiterates and realleges each and every allegation contained

in paragraphs of the Complaint marked “First” through “Forty-Third” with the same full force and effect as though fully set forth at length herein.

Forty-Fifth: The defendant Netta owed a duty to both the plaintiff and the defendant BOE to provide permittable plans and specifications for the installation of the HVAC units at the BTHS and the VMES and to promptly review and approve the plans and specifications of the RTU’s as designed by Trane Technologies.

Forty-Sixth: The defendant Netta knew or should have known that any defect in the plans and specifications would result in a delay in the issuance of construction permits for the BTHS and VMES HVAC projects.

Forty-Seventh: The defendant Netta knew that any delay in the issuance of construction permits would result in an inability on the part of the plaintiff to complete the BTHS and VMES HVAC projects within the time frame afforded for substantial completion within the terms and conditions of the Contract.

Forty-Eighth: The defendant Netta had a duty to the plaintiff to promptly review and approve the Trane Technologies plans and specifications, and further, knew or should have known that any delay in approving the plans and specifications of the RTU’s as designed by Trane Technologies would result in a delay in the ordering, shipment, and installation of the aforesaid equipment.

Forty-Ninth: The defendant Netta was negligent in failing to provide plans and specifications that were based upon current code requirements and included necessary provisions for alarms.

Fiftieth: The defendant Netta was negligent in failing to promptly review and approve

the plans and specifications of the RTU's as designed by Trane Technologies.

Fifty-First: By reason of such negligence on the part of the defendant Netta, the defendant BOE has attempted to impose liquidated damages against the plaintiff.

Fifty-Second: In the event it is determined that defendant BOE shall have the right to impose liquidated damages against the plaintiff, such liquidated damages will be imposed by reason of the negligent conduct of the defendant Netta herein.

WHEREFORE, plaintiff EACM, LLC demands judgment on Count Two against the defendant Netta Architects, LLC for compensatory damages, reasonable attorney's fees, interest and costs of suit.

### **COUNT THREE**

Fifty-Third: Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs of the Complaint marked "First" through "Fifty-Second" with the same full force and effect as though fully set forth at length herein.

Fifty-Fourth: At all times herein mentioned, the defendant Netta was acting as architect and representative on behalf of the defendant BOE.

Fifty-Fifth: Any negligence on the part of the defendant Netta would be imputed to the defendant BOE.

Fifty-Sixth: Therefore, the defendant BOE owed a duty to the plaintiff to provide plans and specifications for the installation of the HVAC units at the BTHS and the VMES.

Fifty-Seventh: Therefore, the defendant BOE owed a duty to the plaintiff to cause its architect to promptly review and approve the plans and specifications of the RTU's as designed by

Trane Technologies.

Fifty-Eighth: The defendant BOE knew or should have known that any defect in the plans and specifications provided by its architect and representative, defendant Netta, would result in a delay in the issuance of construction permits for the BTHS and VMES HVAC projects.

Fifty-Ninth: The defendant BOE knew or should have known that any delay in the issuance of construction permits would result in an inability on the part of the plaintiff to complete the BTHS and VMES HVAC projects within the time frame afforded for Substantial Completion within the terms and conditions of the Contract.

Sixtieth: The defendant BOE knew or should have known that any delay on the part of its architect, defendant Netta, in approving the plans and specifications of the RTU's as designed by Trane Technologies would result in a delay in the ordering, shipment, and installation of the aforesaid equipment.

Sixty-First: The defendant BOE was negligent in failing to cause its architect to provide plans and specifications that were based upon current code requirements and included necessary provisions for alarms.

Sixty-Second: The defendant BOE was negligent in failing to cause its architect to promptly review and approve the plans and specifications of the RTU's as designed by Trane Technologies would result in a delay in the ordering, shipment, and installation of the aforesaid equipment.

Sixty-Third: By reason of such negligence on the part of the defendant BOE, the plaintiff is potentially liable for liquidated damages.

WHEREFORE, plaintiff EACM, LLC demands judgment on Count Three against the defendant Brick Township Board of Education for compensatory damages, reasonable attorney's

fees, interest and costs of suit.

#### **COUNT FOUR**

Sixty-Fourth: Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs of the Complaint marked “First” through “Sixty-Third” with the same full force and effect as though fully set forth at length herein.

Sixty-Fifth: Every contract entered into under the laws of the State of New Jersey contains an implied covenant of good faith and fair dealing.

Sixty-Sixth: The defendant BOE did breach the implied covenant of good faith and fair dealing by the conduct as set forth herein.

Sixty-Seventh: By reason of such breach of the implied covenant of good faith and fair dealing, plaintiff EACM is entitled to compensatory damages, punitive damages, and reasonable attorney’s fees.

WHEREFORE, plaintiff EACM, LLC demands judgment on Count Four against the defendant Brick Township Board of Education by way of compensatory damages, punitive damages, reasonable attorney’s fees, interest, and costs of suit.

#### **COUNT FIVE**

Sixty-Eighth: Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs of the Complaint marked “First” through “Sixty-Seventh” with the same full force and effect as though fully set forth at length herein.

Sixty-Ninth: By reason of the conduct on the part of the defendants BOE and Netta, the defendant BOE has been unjustly enriched.

Seventieth: Defendant BOE is liable to the plaintiff EACM under principles of unjust enrichment.

WHEREFORE, plaintiff EACM, LLC demands judgment on Count Five against the defendant Brick Township Board of Education for compensatory damages, punitive damages, reasonable attorney's fees, interest, and costs of suit.

### **COUNT SIX**

Seventy-First: Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs of the Complaint marked "First" through "Seventieth" with the same full force and effect as though fully set forth at length herein.

Seventy-Second: The actions of the defendant BOE, Inc. constitute unlawful and intentional conversation of plaintiff's funds.

WHEREFORE, plaintiff EACM, LLC demands judgment on Count Six against the defendant Brick Township Board of Education for compensatory damages, punitive damages, reasonable attorney's fees, interest, and costs of suit.

### **DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial on all issues in this litigation.

### **DESIGNATION OF TRIAL COUNSEL**

Plaintiff hereby designates Stuart P. Schlem, Esq. as trial counsel in the above matter.

**CERTIFICATION OF NO OTHER ACTIONS**

Pursuant to Rule 4:5-1, it is hereby stated that the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding to the best of our knowledge or belief. Also, to the best of our knowledge and belief, no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this pleading, we know of no other parties that should be joined in the above action. In addition, we recognize the continuing obligation of each party to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

Dated: May 21, 2020

*Stuart P. Schlem*  
STUART P. SCHLEM, ESQ.  
Attorney for Plaintiff

## 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:** STUART P SCHLEM

**Firm Name:** STUART P. SCHLEM

**Address:** 42 EAST MAIN ST STE 303  
FREEHOLD NJ 07728

**Phone:** 7328516560

**Name of Party:** PLAINTIFF : EACM Corp.

**Name of Defendant's Primary Insurance Company**  
(if known): Unknown

**Case Type:** CONTRACT/COMMERCIAL TRANSACTION

**Document Type:** NJ eCourts Case Initiation Confirmation

**Jury Demand:** YES - 6 JURORS

**Is this a professional malpractice case?** YES

**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?** YES

**If yes, is that relationship:** Business

**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)*

05/21/2020  
Dated

/s/ STUART P SCHLEM  
Signed