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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

DUQUESNE LIGHT COMPANY,

CIVIL DIVISION

Plaintiff,

No. GD - 13-016304

v.

COMPLAINT IN CIVIL ACTION

FRANJO CONSTRUCTION CORPORATION,

Defendant.

Filed on Behalf of Plaintiff,

DUQUESNE LIGHT COMPANY

Counsel of Record for this Party:

Jonathan S. McAnney, Esquire
PA I.D. No. 50041

Kenneth G. Scholtz, Esquire
PA I.D. No. 87467

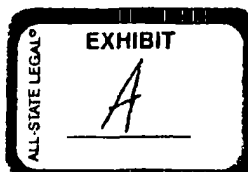
TUCKER ARENSBERG, P.C.
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FILED

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ALLEGHENY COUNTY, PA

JURY TRIAL DEMANDED



LIT-557420-1 014657-159396

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

DUQUESNE LIGHT COMPANY,)	CIVIL DIVISION
)	
Plaintiff,)	No. GD - 13-016304
)	
v.)	
)	
FRANJO CONSTRUCTION CORPORATION,)	
)	
Defendant.)	

COMPLAINT IN CIVIL ACTION

Plaintiff, Duquesne Light Company, through its attorneys, Tucker Arensberg, P.C., files this Complaint in Civil Action, and in support thereof, states as follows:

I. THE PARTIES

1. The Plaintiff, Duquesne Light Company ("Duquesne Light") is a Pennsylvania Corporation with its principle place of business at 411 Seventh Avenue, Pittsburgh, Pennsylvania 15219, and is engaged in the business of providing electrical and other related services.

2. The Defendant, Franjo Construction Corporation, ("Franjo") is a limited liability company with offices located at 335 E. 7th Ave, Homestead, PA 15120.

II. SHORT SUMMARY OF THE BACKGROUND OF THIS CLAIM

3. On August 30, 2012, Franjo was engaged in construction activities in and around the intersection of North Whitfield Street and Broad Street in the East Liberty section of the City of Pittsburgh, Allegheny County, Pennsylvania ("hereinafter referred to as "the site" or "the project"). This construction work included the use of heavy machinery and/or excavation equipment for purposes of excavation at the site.

4. As a general contractor at the site, Franjo was responsible for selection of a qualified and diligent excavation contractor on the project, and was responsible for monitoring the work, and ensuring that the excavation contractor did not cause damage to underground utility facilities.

5. Upon information and belief, Franjo selected A.W. McNabb ("McNabb") to perform excavation activities at the site. McNabb is an excavation contractor with offices located at 1260 Silver Lane, McKees Rocks, Allegheny County, Pennsylvania 15136.

6. Duquesne Light, via separate action pending at docket no. No. GD 13-013292 in the Court of Common Pleas of Allegheny County, has named McNabb, as a Defendant, along with the following:

•2414 Morgan Development, LLC f/k/a 2414 Morgan LLC; a limited liability company with offices located at 215 N. Highland Avenue, Pittsburgh, Allegheny County, Pennsylvania 15206 and 3905 Perry Street, Brentwood, Maryland 20722. 2414 Morgan Development, LLC was issued a demolition permit to engage in excavation and demolition activities at the site. As such, 2414 Morgan Development, LLC was the permit holder and was required to comply with all safety requirements imposed on it as the demolition permit holder on the site.

•Governor's Hotel Company, L.P.; a limited liability company in Pennsylvania with offices located at 3905 Perry Street, Brentwood, Maryland 20722. Governor's Hotel Company was the registered and legal owner/developer of the site and the real estate located at 126 N. Whitfield Street, Pittsburgh, Pennsylvania 15206 and had a duty to supervise the activities of the contractors on site.

•Parkinson Construction Company, Inc.; a corporation organized and existing in Pennsylvania with its offices located at 5937 Broad Street, Pittsburgh, Allegheny County, Pennsylvania 15206. Parkinson Construction Company was the general contractor in charge of the project and retained the services of McNabb to perform the excavation activities at the site. As such, Parkinson Construction Company had an obligation to select a qualified and diligent excavation contractor on the project and was responsible for monitoring the work and ensuring that the excavation contractor did not cause damage to underground utility facilities.

7. As set forth in the separate Complaint filed against McNabb and other Defendants, upon information and belief, the Defendant McNabb was engaged in the excavation activities at the site. At all times material and relevant hereto, employees or agents of McNabb were operating the excavation equipment at the site at the time that the Duquesne Light Company electrical facilities were damaged.

8. In order to repair the damaged electrical conduits, cables and wires, Duquesne Light Company was required to undertake an extensive repair project commencing immediately upon notice of the damage to its facilities.

III. THE INVOLVEMENT OF DEFENDANT

9. Defendant, Franjo was the general contractor in charge of the project and retained the services of McNabb to perform the excavation activities at the site. As such, Franjo had an obligation to select a qualified and diligent excavation contractor on the project, and was responsible for monitoring the work and ensuring that the excavation contractor did not cause damage to underground utility facilities.

IV. ADDITIONAL FACTS

10. Prior to commencing work at the site, an employee of McNabb placed three, separate One Call requests through the Pennsylvania One Call System; these three, separate One Call requests were each placed on June 13, 2012.

11. McNabb's three, separate One Call requests each indicated a planned "demolition of buildings," with a scheduled commencement date of June 18, 2012, and a specified "duration" of one month. Each of the three, separate One Call requests also specified a planned excavation depth of 4 feet. The three, separate One Call requests are identified, by the Pennsylvania One Call system, by Serial Numbers: 20121652402, 20121652385, and 20121652423.

12. In accordance with the requirements of the PA One Call Act, 73 P.S. §176, et seq., after receiving notification of the McNabb's One Call requests, Duquesne Light personnel responded to said requests by traveling to the site on June 18, 2012, and identifying the location of Duquesne Light underground facilities by placing paint markings at the site.

13. After placing the line location paint markings at the site, Duquesne Light personnel notified the One Call system that their underground facilities were indentified and marked in response to the multiple requests.

14. On or about August 30, 2012, well beyond the allowable time period as set forth in the PA One Call Act, agents and/or employees of McNabb were performing excavation work at the site, under the supervision of the Defendant Franjo, when agents and/or employees of McNabb, while using mechanical and powered excavation devices, struck and caused extensive damage to underground electrical cables and conduits at the site. These electrical cables and conduits were owned and maintained by Duquesne Light.

15. The destroyed and/or damaged equipment that was owned and maintained by Duquesne Light was located at the site, in an underground easement, approximately fifteen feet below street level.

COUNT I - NEGLIGENCE

DUQUESNE LIGHT COMPANY v. FRANJO CONSTRUCTION CORPORATION

16. Paragraphs 1 through 15 of the Complaint are incorporated herein by reference.

17. Upon information and belief, on or before August 30, 2012, Franjo was engaged as the general contractor or construction management firm by Governor's Hotel Company, L.P., or by persons acting on its behalf, in connection with a planned hotel construction project to be located at or near the following properties:

- 126 N. Whitfield Street, Pittsburgh, PA 15206
- 125-127 N. Highland Avenue, Pittsburgh, PA 15206

• 123 N. Highland Avenue, Pittsburgh, PA 15208

18. Upon information and belief, Franjo retained the services of McNabb to perform certain excavation and/or demolition activities in connection with the project.

19. As the general contractor or construction management firm on the project, Franjo was required to manage and supervise the activities of the demolition and/or excavation contractor on the project.

20. The damage to Duquesne Light Company's facilities, and all damages consequent thereto, were caused solely by, and were the direct and proximate result of, the negligence and carelessness of Franjo in the following respects:

- (a) Failing to use caution in supervising the excavation work in an area known to contain underground utilities;
- (b) Failing to prevent others from destroying and/or damaging Duquesne Light underground facilities;
- (c) Failing to follow or require others to use the degree of care and caution required under the circumstances, including but not limited to the use of hand digging;
- (d) Failing to require others to comply with the Pennsylvania One Call Act, 76 P.S. § 176 et seq.; specifically failing to avoid contact with underground utilities in an area where such utilities were identified or otherwise marked in accordance with the One Call Act;
- (e) Failing to require others to comply with the Pennsylvania One Call Act, 76 P.S. § 176 et seq.; specifically by failing to require that demolition and excavation work within the allotted duration of one month, as set forth on multiple One Call requests;
- (f) Failing to require others to comply with the Pennsylvania One Call Act, 76 P.S. § 176 et seq.; specifically by failing to adhere to the planned excavation depth of 4 feet, as specified on multiple One Call requests;
- (g) Failing to comply with the Pennsylvania One Call Act, 76 P.S. § 176 et seq.; specifically by failing to make subsequent One Call notification

requests, after the underground utility line markings were no longer visible, and the allotted duration of the project was exceeded; and

- (h) Failing to require others to comply with the Pennsylvania One Call Act, 76 P.S. § 176 et seq.; specifically by failing to make subsequent One Call notification requests, after the underground utility line markings were no longer visible, and the allotted duration of the project was exceeded.

21. As a direct and proximate result of Franjo's negligence, Duquesne Light was required to expend \$331,788.38 for material, labor, engineering costs, motor vehicle costs, equipment costs, third party contractor costs, and other related costs, to repair the Duquesne Light facilities. Such repair work was performed in a reasonable and workmanlike manner.

WHEREFORE, the Plaintiff Duquesne Light requests that judgment be entered against Franjo Construction Corporation in the amount of \$331,788.38 together with the interest, fees and costs of filing this Civil Action.

COUNT II - TRESPASS

DUQUESNE LIGHT COMPANY v. FRANJO CONSTRUCTION

22. Paragraphs 1 through 21 of the Complaint in Civil Action are incorporated herein by reference.

23. On August 30, 2012, while in the course and scope of their employment, agents and/or employees of Franjo caused a permanent change to the condition of Duquesne Light electrical wires or cables by destroying or otherwise damaging the electrical wires or cables at the site, or by failing to prevent such permanent change from occurring. The destroyed and/or damaged equipment was owned and maintained by Duquesne Light.

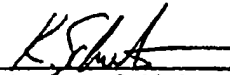
24. The failure of Franjo to prevent the incident, and resulting damage or permanent change to Duquesne Light's facilities, constitutes a trespass.

25. The damage and permanent change to Duquesne Light facilities required repair or replacement of the damaged Duquesne Light facilities.

WHEREFORE, the Plaintiff Duquesne Light requests that judgment be entered against Franjo Construction Corporation in the amount of \$331,788.38 together with the interest, fees and costs of filing this Civil Action.

Respectfully submitted,

TUCKER ARENSBERG, P.C.

By: 
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Pittsburgh, PA 15222
(412) 586-1212
www.tuckerlaw.com

Attorneys for Plaintiff,
DUQUESNE LIGHT COMPANY

VERIFICATION

I, the undersigned, state that I am an authorized agent and employee of Duquesne Light Company, with knowledge of the events that give rise to the current action; for purposes of filing the above Complaint In Civil Action, I depose and say that the facts in the foregoing Complaint In Civil Action are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S.A. § 4904, relating to unsworn falsifications to authorities.

3/28/14

date

Samuel J. Brown

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been served via U.S. mail, first class, postage prepaid, this 2nd day of April, 2014, upon the following:

Franjo Construction Corporation
335 E. 7th Avenue
Homestead, PA 15120



Jonathan S. McAnney, Esquire
Kenneth G. Scholtz, Esquire