

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 2017-026997-CA-01(44)

ADF INTERNATIONAL, INC.,

Plaintiff,

vs.

SUFFOLK CONSTRUCTION COMPANY,
INC., et al.,

Defendants.

SUFFOLK CONSTRUCTION COMPANY,
INC.,

Defendant/ Third-Party Plaintiff,

vs.

ALL ABOARD FLORIDA – OPERATIONS, LLC, n/k/a
BRIGHTLINE TRAINS LLC, as successor-in-interest
to ALL ABOARD FLORIDA – STATIONS LLC, and
DTS 2MC OFFICE, LLC,

Third-Party Defendants.

**DEFENDANT/THIRD-PARTY PLAINTIFF SUFFOLK CONSTRUCTION COMPANY,
INC.'S THIRD-PARTY COMPLAINT**

Defendant/Third-Party Plaintiff, SUFFOLK CONSTRUCTION COMPANY, INC.
(hereinafter referred to as “Suffolk”), by and through its undersigned counsel and pursuant to Rule
1.180 of the Florida Rules of Civil Procedure, hereby sues Third-Party Defendants ALL ABOARD
FLORIDA – OPERATIONS, LLC, n/k/a BRIGHTLINE TRAINS LLC, as successor-in-interest
to ALL ABOARD FLORIDA – STATIONS LLC, and DTS 2MC OFFICE, LLC, and states:

THE PARTIES

1. Plaintiff, ADF INTERNATIONAL, INC. (hereinafter referred to as “ADF”), is a Florida corporation with its principal place of business in Coral Springs, Broward County, Florida. ADF is authorized to conduct business in the State of Florida and at all times material hereto transacted business in Miami-Dade County, Florida.

2. Defendant/Third-Party Plaintiff, Suffolk is a Massachusetts corporation with its corporate headquarters located in Boston, Massachusetts At all times material hereto, Suffolk was, and is, a general contractor, duly licensed by the State of Florida. Suffolk served as general contractor for the construction of the Terminal Project and OB1 Project which are the subject of this dispute.

3. Defendant/Third-Party Defendant, ALL ABOARD FLORIDA – OPERATIONS, LLC, n/k/a BRIGHTLINE TRAINS LLC, as successor-in-interest to ALL ABOARD FLORIDA – STATIONS LLC (hereinafter referred to as “AAF”), is a Delaware corporation with its principal place of business in Miami, Miami-Dade County, Florida. AAF is authorized to conduct business in the State of Florida and at all times material hereto transacted business in Miami-Dade County, Florida.

4. Defendant/Third-Party Defendant, DTS 2MC Office, LLC (hereinafter referred to as “DTS”) is a Delaware corporation with its principal place of business in Miami, Miami-Dade County, Florida. DTS is authorized to conduct business in the State of Florida and at all times material hereto transacted business in Miami-Dade County, Florida.

JURISDICTION AND VENUE

5. Venue is proper in Miami-Dade County where the Terminal Project and OB1 Project are located, where all work at issue in this litigation was performed, and where the contracts were breached.

6. This is a Third-Party action seeking damages in excess of \$15,000.00, exclusive of interest, attorney’s fees and costs. The causes of action stated herein arise out of the same operative set of facts as set forth in the *Second Amended Complaint*, over which this Honorable Court has jurisdiction.

GENERAL ALLEGATIONS

7. Pertinent to the instant litigation are two (2) projects being constructed in downtown Miami: (i) the All Aboard Florida – Miami Terminal Project which consists of the main train terminal (“Terminal Project”); and (ii) 2 Miami Central Over Building (“OB1 Project”) which consists of a high-rise office building being constructed above the main train terminal (referred to collectively herein as the “Projects”). Suffolk was the general contractor for the Projects.

8. Third-Party Defendant, AAF, is the owner of the Terminal Project located at 600 Northwest 1st Avenue, Miami, Florida 33030.

9. AAF contracted with Defendant, SKIDMORE, OWINGS & MERRILL LLP (“SOM LLP”), as its Architect and Structural Engineer of Record for the Main Terminal Project and is responsible for the design and administration of the construction of the Terminal Project.

10. Third-Party Defendant, DTS, is the owner of the OB1 Project located at 650 Northwest 1st Avenue, Miami, Florida 33030.

11. DTS contracted with Defendant, SKIDMORE, OWINGS & MERRILL FLORIDA LLC (“SOM FLORIDA”), as its Architect and Structural Engineer of Record for the OB1 Project and is responsible for the design and administration of the construction of the OB1 Project.

12. AAF and DTS each contracted with Suffolk, as general contractor, to construct the Terminal Project and the OB1 Project in accordance with the plans and specifications prepared by SOM LLP and SOM FLORIDA as the Architect and Engineer of Record on the respective Terminal Project and OB1 Project.

13. In turn, Suffolk subcontracted certain steel-related work to ADF for the construction of the Terminal Project and OB1 Project.

14. ADF filed a *Second Amended Complaint* against Suffolk, alleging, inter alia, that Suffolk failed to pay ADF for sums due under the Terminal and OB1 Subcontracts; and failed to update the Terminal and OB1 Subcontracts with bulletins properly adjusting the scope and time of each Subcontract, all of which allegedly impacted ADF’s performance on the Terminal Project and OB1 Project and otherwise allegedly caused damages to ADF. Without admitting to the allegations set forth in ADF’s *Second Amended Complaint*, see e.g., ADF’s *Second Amended Complaint*.

15. Suffolk answered ADF’s *Second Amended Complaint*, denying liability and asserting various affirmative defenses thereto and asserting a Counterclaim against ADF for ADF’s various breaches of the Terminal and OB1 Subcontracts.

16. Suffolk does not admit to ADF’s allegations, but to the extent Suffolk is ultimately held liable and/or is required to make payment of damages asserted against it by ADF relating to the Terminal Project and OB1 Project with respect to non-payment by AAF/DTS and/or

AAF/DTS-caused delay, Suffolk asserts that AAF and DTS are responsible to Suffolk for any such damages, as further alleged below.

17. All conditions precedent and necessary to maintaining this action have occurred, been satisfied, been performed and/or have otherwise been waived by the Third-Party Defendants

COUNT I
BREACH OF CONTRACT AGAINST AAF
(Terminal Project)

18. Suffolk realleges and incorporates the allegations of paragraphs 1 through 17 as if fully set forth herein.

19. This is an action for breach of contract.

20. On or about November 21, 2014, AAF and Suffolk entered into a certain written agreement known as a *Standard Form of Agreement Between Owner and Construction Manager as Constructor Where the Basis of Payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price* (hereafter “AAF/Suffolk Terminal Contract”) for the construction of the Terminal Project. A true and correct copy of the AAF/Suffolk Terminal Contract is incorporated by reference herein and attached hereto as **Exhibit “A”**, except for the plans, specifications, addendum, change orders, etc., which are part of the contract and incorporated by reference herein but which are not attached to this Third-Party Complaint and/or included in **Exhibit “A”** to this Third-Party Complaint.

21. AAF materially breached the AAF/Suffolk Terminal Contract by its actions and inactions, including without limitation, by failing to make timely payments to Suffolk for amounts purportedly due ADF and for which ADF now seeks such amounts against Suffolk; and/or delaying the Terminal Project.

23. As a direct and proximate cause of AAF's material breaches of the AAF/Suffolk Terminal Contract, and failure to make payment to Suffolk of sums due Suffolk, Suffolk has been sued by ADF, and has been damaged by being forced to defend said suit, and will be damaged to the extent of any recovery by ADF against Suffolk to the extent such ADF claims are a result of AAF's breaches of the AAF/Suffolk Terminal Contract.

24. Suffolk has retained undersigned counsel to prosecute this Third-Party Complaint and is obligated to pay a reasonable fee for services rendered. Suffolk is entitled to recover from AAF the attorneys' fees incurred by Suffolk to defend the primary action by ADF, and to prosecute this Third-Party Complaint pursuant to Article 9.2 of the AAF/Suffolk Terminal Contract.

WHEREFORE, Defendant/Third-Party Plaintiff, SUFFOLK CONSTRUCTION COMPANY, INC., demands judgment against Third-Party Defendant, ALL ABOARD FLORIDA – OPERATIONS, LLC, n/k/a BRIGHTLINE TRAINS LLC, as successor-in-interest to ALL ABOARD FLORIDA – STATIONS LLC, for all damages, including, but not limited to, interest, costs of this action and reasonable attorneys' fees, and such other and further relief as this Honorable Court deems just and proper.

COUNT II
BREACH OF CONTRACT AGAINST DTS
(OBI Project)

25. Suffolk realleges and incorporates the allegations of paragraphs 1 through 17 as if fully set forth herein.

26. This is an action for breach of contract.

27. On or about August 31, 2016, DTS and Suffolk entered into a certain written agreement known as a *Standard Form of Agreement Between Owner and Contractor Where the Basis of Payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price* (hereafter

“DTS/Suffolk OB1 Contract”) for the construction of the OB1 Project. A true and correct copy of the DTS/Suffolk OB1 Contract is incorporated by reference herein and attached hereto as **Exhibit “B”**, except for the plans, specifications, addendum, change orders, etc., which are part of the contract and incorporated by reference herein but which are not attached to this Third-Party Complaint and/or included in **Exhibit “B”** to this Third-Party Complaint.

28. DTS materially breached the DTS/Suffolk OB1 Contract by its actions and inactions, including without limitation, by failing to make timely payments to Suffolk for amounts due ADF and for which ADF now seeks such amounts against Suffolk and/or delaying the OB1 Project causing the damages ADF now alleges.

30. As a further direct and proximate cause of DTS’ material breaches of the DTS/Suffolk OB1 Contract, and failure to make payment to Suffolk of sums due Suffolk, Suffolk has been sued by ADF, and has been damaged by being forced to defend said suit, and will be damaged to the extent of any recovery by ADF against Suffolk.

31. Suffolk has retained undersigned counsel to prosecute this Third-Party Complaint and is obligated to pay a reasonable fee for services rendered. Suffolk is entitled to recover from DTS the attorneys’ fees incurred by Suffolk to defend the primary action by ADF, and to prosecute this Third-Party Complaint pursuant to Article 13.2 of the DTS/Suffolk OB1 Contract.

WHEREFORE, Defendant/Third-Party Plaintiff, SUFFOLK CONSTRUCTION COMPANY, INC., demands judgment against Third-Party Defendant, DTS 2MC Office, LLC, for all damages, including, but not limited to, interest, costs of this action and reasonable attorneys’ fees, and such other and further relief as this Honorable Court deems just and proper.

**COUNT III
(Equitable Subrogation Against AAF)**

32. Suffolk realleges and incorporates the allegations of paragraphs 1 through 17 as if fully set forth herein.

33. This is an action for equitable subrogation.

34. The damages that ADF alleges against Suffolk particularly as to the payment of certain PCOs and/or damages for purportedly improper and/or deficient design are the result of such actions or inactions of AAF, and/or persons under the direction and/or control of AAF.

35. If Suffolk is found liable to ADF for ADF's claimed damages, such liability is derivative and/or the direct result of actions, errors or omissions of AAF, and/or persons under the direction and/or control of AAF.

36. If Suffolk is forced to make payment to ADF to protect Suffolk's own interest, such payment would not be voluntary because Suffolk would suffer loss if the obligation is not discharged. To the extent any such payment of Suffolk is for any actions, errors, or omissions of AAF and/or persons under the direction and/or control of AAF, AAF is primarily liable for damages.

37. By virtue of the actions, errors and/or omissions of AAF and/or persons under the direction and/or control of AAF, the obligation to make payment for any damages suffered by ADF as a result thereof should be equitably and properly discharged by AAF.

38. Suffolk is not primarily liable for any damages that ADF can prove it suffered relating to the Terminal Project and which arise out of or relate to any actions, errors, omissions of AAF and/or persons under the direction and/or control of AAF.

39. In the event Suffolk makes payment to ADF for any actions, errors or omissions caused by AAF and/or persons under the direction and/or control of AAF, Suffolk is entitled to recover that amount from AAF in equitable subrogation.

40. Equitable subrogation will not create any injustice on the rights of any third party, including but not limited to AAF.

WHEREFORE, Defendant/Third-Party Plaintiff SUFFOLK CONSTRUCTION COMPANY, INC., demands judgment in its favor and against Third-Party Defendant ALL ABOARD FLORIDA – OPERATIONS, LLC, n/k/a BRIGHTLINE TRAINS LLC, as successor-in-interest to ALL ABOARD FLORIDA – STATIONS LLC, for all damages, including, but not limited to, interest, costs of this action and reasonable attorneys' fees, and such other and further relief as this Honorable Court deems just, equitable and proper.

**COUNT IV
(Equitable Subrogation Against DTS)**

41. Suffolk realleges and incorporates the allegations of paragraphs 1 through 17 as if fully set forth herein.

42. This is an action for equitable subrogation.

43. The damages that ADF alleges against Suffolk particularly as to the payment of certain PCOs and/or damages for purportedly improper and/or deficient design are the result of such actions or inactions of DTS, and/or persons under the direction and/or control of DTS.

44. If Suffolk is found liable to ADF for ADF's claimed damages, such liability is derivative and/or the direct result of actions, errors or omissions of DTS, and/or persons under the direction and/or control of DTS.

45. If Suffolk is forced to make payment to ADF to protect Suffolk's own interest, such payment would not be voluntary because Suffolk would suffer loss if the obligation is not discharged. To the extent any such payment of Suffolk is for any actions, errors, or omissions of DTS and/or persons under the direction and/or control of DTS, DTS is primarily liable for damages.

46. By virtue of the actions, errors and/or omissions of DTS and/or persons under the direction and/or control of DTS, the obligation to make payment for any damages suffered by ADF as a result thereof should be equitably and properly discharged by DTS.

47. Suffolk is not primarily liable for any damages that ADF can prove it suffered relating to the OB1 Project and which arise out of or relate to any actions, errors, omissions of DTS and/or persons under the direction and/or control of DTS.

48. In the event Suffolk makes payment to ADF for any actions, errors or omissions caused by DTS and/or persons under the direction and/or control of DTS, Suffolk is entitled to recover that amount from DTS in equitable subrogation.

49. Equitable subrogation will not create any injustice on the rights of any third party, including but not limited to DTS.

WHEREFORE, Defendant/Third-Party Plaintiff SUFFOLK CONSTRUCTION COMPANY, INC., demands judgment in its favor and against Third-Party Defendant DTS 2MC Office, LLC, for all damages, including, but not limited to, interest, costs of this action and reasonable attorneys' fees, and such other and further relief as this Honorable Court deems just, equitable and proper.

COUNT V
(Common Law Indemnification Against AAF)

50. Suffolk realleges and incorporates the allegations of paragraphs 1 through 17 as if fully set forth herein.

51. This is an action for common law indemnification.

52. Suffolk and AAF had a relationship as construction manager and owner, respectively, relating to the Terminal Project.

53. Acts, errors and omissions alleged by ADF against Suffolk in ADF's Second Amended Complaint and relating to the Terminal Project, if any are proven by ADF and if Suffolk is ultimately held responsible therefor, were the result of negligent acts, errors, omissions or intentional misconduct of AAF and/or persons under AAF's direction and/or control.

54. The damages alleged by ADF against Suffolk in this Action, if proven by ADF, were not caused by negligence and/or a breach of contract on the part of Suffolk and Suffolk is wholly without fault for ADF's alleged damages caused by the negligent acts, errors, omissions or intentional misconduct of AAF and/or persons under AAF's direction and/or control.

55. Any liability of Suffolk for the alleged damages of ADF relating to the payment of certain PCOs relating to the Terminal Project are solely vicarious, constructive or derivative in nature.

56. Suffolk is entitled to common law indemnification from AAF for all damages for which Suffolk may be determined to be liable to ADF and for all amounts incurred by Suffolk in defending ADF's claims in this Action.

WHEREFORE, Defendant/Third-Party Plaintiff SUFFOLK CONSTRUCTION COMPANY, INC., demands judgment in its favor and against Third-Party Defendant ALL

ABOARD FLORIDA – OPERATIONS, LLC, n/k/a BRIGHTLINE TRAINS LLC, as successor-in-interest to ALL ABOARD FLORIDA – STATIONS LLC, for all damages, including, but not limited to, interest, costs of this action and reasonable attorneys’ fees, and such other and further relief as this Honorable Court deems just, equitable and proper.

**COUNT VI
(Common Law Indemnification Against DTS)**

57. Suffolk realleges and incorporates the allegations of paragraphs 1 through 17 as if fully set forth herein.

58. This is an action for common law indemnification.

59. Suffolk and DTS had a relationship as construction manager and owner, respectively, relating to the OB1 Project.

60. Acts, errors and omissions alleged by ADF against Suffolk in ADF’s Second Amended Complaint and relating to the OB1 Project, if any are proven by ADF and if Suffolk is ultimately held responsible therefor, were the result of negligent acts, errors, omissions or intentional misconduct of DTS and/or persons under DTS’ direction and/or control.

61. The damages alleged by ADF against Suffolk in this Action, if proven by ADF, were not caused by negligence and/or a breach of contract on the part of Suffolk and Suffolk is wholly without fault for ADF’s alleged damages caused by the negligent acts, errors, omissions or intentional misconduct of DTS and/or persons under DTS’ direction and/or control.

62. Any liability of Suffolk for the alleged damages of ADF relating to the payment of certain PCOs relating to the Terminal Project are solely vicarious, constructive or derivative in nature.

63. Suffolk is entitled to common law indemnification from DTS for all damages for which Suffolk may be determined to be liable to ADF and for all amounts incurred by Suffolk in defending ADF's claims in this Action.

WHEREFORE, Defendant/Third-Party Plaintiff SUFFOLK CONSTRUCTION COMPANY, INC., demands judgment in its favor and against Third-Party Defendant DTS 2MC Office, LLC, for all damages, including, but not limited to, interest, costs of this action and reasonable attorneys' fees, and such other and further relief as this Honorable Court deems just, equitable and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic service to all counsel on the attached Service List this 27th day of July, 2018.

FERENCIK LIBANOFF BRANDT
BUSTAMANTE & GOLDSTEIN, P.A.
Co-counsel for Suffolk Construction Company, Inc.
150 South Pine Island Road, Suite 400
Fort Lauderdale, Florida 33324
Tel (954) 474-8080
Fax (954) 474-7343

By: /s/ Jordana Goldstein
JORDANA GOLDSTEIN
Florida Bar No.: 21891
jgoldstein@flblawyers.com
tjosephs@flblawyers.com

Service List

<p>Stuart H. Sobel, Esq. B. Michael Clark, Jr., Esq. Jason M. Rodgers-da Cruz, Esq. SIEGFRIED, RIVERA, HYMAN, LERNER, DE LA TORRE, MARS & SOBEL, P.A. 201 Alhambra Circle 11th Floor Coral Gables, Florida 33134-5108 Phone: (305) 442-3334 Fax: (305) 443-3292 Email: ssobel@srhl-law.com Email: mclark@srhl-law.com Email: mness@srhl-law.com Email: jrodders@srhl-law.com Email: sjohnson@srhl-law.com <i>Counsel for ADF International</i></p>	<p>Curtis L. Brown, Esq. Jeremy S. Sharon, Esq. WRIGHT, FULFORD, MOORHEAD & BROWN, P.A. 505 Maitland Avenue Suite 10000 Altamonte Springs, Florida 32701 Phone: (407) 425-0234 Email: cbrown@wfmblaw.com Email: khartin@wfmblaw.com Email: jsharon@wfmblaw.com Email: cbraungart@wfmblaw.com <i>Counsel for Skidmore, Owings & Merrill LLP and Skidmore, Owings & Merrill Florida LLC</i></p>
<p>Juan Diaz, Esq. Monique S. Cardenas, Esq. SUFFOLK CONSTRUCTION COMPANY, INC. 777 S. Flagler Drive, Phillips Point West Tower Suite 1400 West Palm Beach, Florida 33401 Phone: (561) 282-3000 Fax: (561) 273-1805 Email: jdiaz@suffolk.com Email: eservice@suffolk.com Email: mcardenas@suffolk.com <i>Co-Counsel for Suffolk Construction Company, Inc., and Sureties</i></p>	<p>Linda Dickhaus Agnant, Esq. Agnant & Lambdin, LLC 2 South University Drive, Suite 315 Plantation, FL 33324 Phone: 954-368-4164 Email: lagnant@agnantlaw.com Email: ewillman@agnantlaw.com Email: akordzikowski@agnantlaw.com; <i>Co-counsel for Suffolk Construction Company, Inc., and Sureties</i></p>