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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUFFOLK SUPERIOR COURT

WAYNE & COMPANY, INC.,

CIVIL ACTION NO.

Plaintiff

v.

COMPLAINT

CITY OF BOSTON, MASSACHUSETTS,

Defendant

INTRODUCTION

Plaintiff WAYNE & COMPANY, INC., (hereinafter "Wayne" or the "Plaintiff") brings this action against Defendant CITY OF BOSTON, MASSACHUSETTS (hereinafter "City" or the "Defendant") arising out of, among other things, the Defendant's refusal to re-issue a check for the benefit of Plaintiff for services previously rendered by the Plaintiff to the Defendant in the amount of \$150,000.00.

PARTIES

1. Plaintiff is a Massachusetts domestic corporation doing business in Massachusetts, with a principal place of business of 40 Sharp Street, Hingham, MA 02043.
2. Defendant is a Massachusetts municipal entity, with a mailing address of One City Hall Square, Suite 500, Boston, MA 02201.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to Mass. Gen. Laws c. 260.

4. Venue is proper in this Court pursuant to Mass. Gen. Laws c. 223, 51.

COUNT 1
(Breach of Contract)

5. The Plaintiff realleges, reavers, and reasserts the allegations in Paragraphs 1 through 4 of this Complaint as if fully set forth herein.

6. Prior to 1998, Plaintiff had been on the approved list of contractors to the Defendant.

7. In 1998, Plaintiff performed emergency services at the direction of the Defendant for the benefit of the Defendant (the "Job").

8. Plaintiff fully completed its duties relative to the Job, never was criticized as to the quality of its work, and by Check No. 01212997, issued by the Defendant, dated September 11, 1998, in the amount of One Hundred Fifty Thousand Dollars (the "Check"), the Plaintiff was compensated for services rendered as to the Job.

9. Plaintiff received the Check but it was somehow inadvertently misplaced and never presented for payment until earlier this year.

10. Despite multiple demands of the Defendant as well as its accountant to re-issue the Check, the Defendant refused to re-issue a substitute for the Check.

11. The Defendant's failure to pay/re-issue the Check constitutes a breach of its duty to pay Plaintiff for the Job.

12. As a result of the Defendant's breach of the Job, the Plaintiff has been and continues to be harmed and damaged through no fault of the Plaintiff.

13. Further, the Check did not escheat to the Unclaimed Funds Department of the Commonwealth's Treasury Office, which would have avoided the filing of the instant matter in the first place.

WHEREFORE, the Plaintiff respectfully requests that this Court enter judgment against the Defendant in an amount sufficient to confer jurisdiction upon this Court on this Complaint plus award Plaintiff its reasonable costs and expenses, including, but not limited to, reasonable attorneys' fees, plus any further relief that this Court deems just and proper.

COUNT II
(Book Account)

14. The Plaintiff realleges, reavers, and reasserts the allegations in Paragraphs I through 13 of this Complaint as if fully set forth herein.

15. The indebtedness for the Job (the "Indebtedness") is posted to the ledger of the Plaintiffs accounts (the "Ledger") and has been reflected on the Ledger of the Plaintiff since the Job was completed.

16. The Indebtedness reflected on the Ledger remains outstanding.

WHEREFORE, the Plaintiff respectfully requests that this Court enter judgment against the Defendant, on account, in an amount sufficient to confer jurisdiction upon this Court on this Complaint plus award Plaintiff its reasonable costs and expenses,

including, but not limited to, reasonable attorneys' plus any further relief that this Court deems just and proper.

COUNT III
(Equity-Unjust Enrichment)

17. The Plaintiff realleges, reavers, and reasserts the allegations in Paragraphs 1 through 16 as if fully set forth herein.

18. By virtue of the completion of the Job without any failures/deficiencies by the Plaintiff, Defendant was provided the opportunity to use the Job to and for its own benefit and for the direct/indirect benefit of the Defendant.

19. The failure to pay the Indebtedness notwithstanding full performance of the Job by Plaintiff resulted in an unjust enrichment for the benefit of Defendant at the expense of the Plaintiff.

20. The unjust enrichment attributable for the benefit of Defendant by not tendering the Plaintiff the Indebtedness remains continuing and on-going.

WHEREFORE, the Plaintiff respectfully requests that this Court enter judgment against the Defendant in an amount sufficient to confer jurisdiction upon this Court on this Complaint plus award Plaintiff, upon equitable grounds, its reasonable costs and expenses, including, but not limited to, reasonable attorneys' fees, and any further relief that this Court deems just and proper.

Respectfully submitted,
PLAINTIFF
By its attorneys,

/s /William J. Delaney

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Dated: December 29, 2023

JURY DEMAND

PLAINTIFF REQUESTS A JURY TRIAL ON ALL COUNTS AND ISSUES RAISED HEREIN.

Respectfully submitted,
PLAINTIFF
By its attorneys,

/s /William J. Delaney

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