

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO.

24-00382 D

RISE TOGETHER, LLC,

Plaintiff,

v.

CPC ERICSSON STREET, LLC,

Defendant.

SUFFOLK SUPERIOR COURT
CIVIL ACTION NO. 24-00382
FILED
2024 FEB -9 AM 10:48
JOHN E. MCCRSSELL
ACTING CLERK

VERIFIED COMPLAINT AND JURY DEMAND

i. Introduction

1. This is an action brought by Plaintiff Rise Together, LLC ("Plaintiff" or "RISE Together") against Defendant CPC Ericsson Street, LLC ("Defendant" or "CPC Ericsson"), the owner of 20R Ericsson Street, Dorchester MA 02122 ("Neponset Wharf"), to recover all costs incurred and any sums that must be paid to Steven Winter Associates, Inc. ("SWA") for SWA's work in connection with the development of Neponset Wharf.

2. CPC Ericsson's Neponset Wharf project is a new mixed-use waterfront development in the Port Norfolk neighborhood of Dorchester, MA. Focusing on climate resiliency and energy efficiencies, the Neponset Wharf project is expected to provide 120 new residential units, new office space, and a new boathouse and marina. The project is supported with over 2 acres of new publicly accessible open space and 77 surface parking spaces.

3. On behalf of CPC Ericsson, RISE Together, a Massachusetts-based real estate development and investment company, entered into a contract with SWA, a Connecticut-based architectural firm, whereby SWA was to assist with passive house incentive ("PHI")

feasibility, design, and certification support for the Neponset Wharf project for the benefit of the owner of the project (CPC Ericsson) in return for a fee that CPC Ericsson always understood would have to be paid by CPC Ericsson.

4. SWA has filed suit against RISE Together seeking the payment of an alleged \$123,291.25 balance due for SWA's work on the project for CPC Ericsson's benefit—work that CPC Ericsson is unequivocally responsible to pay for. *See Steven Winter Associates, Inc. v. RISE Together, LLC*, No. 2384CV01168 (Mass. Super. Ct. Suffolk County). Attached as **Exhibit 1** is a true and accurate copy of the Complaint and Civil Action Cover Sheet from that action.

5. CPC Ericsson is the entity to which credit was extended by Mountain One Bank when SWA's work was done, demonstrating that CPC Ericsson is the entity which was expected to pay and which in fact expected or should have expected to pay for SWA's services.

6. To date, CPC Ericsson has refused to pay RISE Together and/or SWA for the balance that SWA alleges is due and owing. Thus, CPC Ericsson knowingly accepted the benefits of SWA's services through SWA's contract with RISE Together without paying either SWA or RISE Together for those services.

7. On information and belief, CPC Ericsson is in the process of securing a new construction loan through Metro Credit Union ("Metro CU") for the Neponset Wharf project to be secured by a mortgage on the property, which RISE Together understands will close any day now. CPC Ericsson intends to use the construction loan to cover *some* project costs, including *some* outstanding invoices for pre-development work, but *not including the monies owed to RISE Together for the work performed by SWA*. In other words, CPC Ericsson

intends to obtain a large construction loan secured by a mortgage on the property—which will then be senior to RISE Together’s interest in the Neponset Wharf project if it is not recorded before that mortgage—to effectively extinguish RISE Together’s ability to obtain security for the payment it is owed for SWA’s work done on behalf of CPC Ericsson. CPC Ericsson apparently intends to retain the benefit of RISE Together’s contract with SWA, and SWA’s performance, free of any liability to pay for it at the expense of RISE Together.

8. As a result of the imminent closing of the construction loan and conveyance of a mortgage securing that loan, there is a clear danger that if CPC Ericsson is notified in advance of RISE Together’s request for a real estate attachment on the property, CPC Ericsson will accelerate the closing and convey the mortgage to Metro CU to prejudice RISE Together’s ability to secure and recover the money it is owed for the work it did on behalf of CPC Ericsson by contracting with SWA to provide services for the project. *See* Mass. R. Civ. P. 4.1(f).

9. Accordingly, RISE Together brings claims for unjust enrichment/quantum meruit, promissory estoppel, and violation of G. L. c. 93A, together with an emergency *ex parte* motion for attachment of real estate owned by CPC Ericsson as prejudgment security.

ii. Parties

10. RISE Together is a domestic limited liability company with a principal place of business at 529 Main Street, Suite P200, Boston, MA 02129.

11. CPC Ericsson is a domestic limited liability company with a principal place of business at 218 Willard Street, Suite 302, Quincy, MA 02169. CPC Ericsson is managed by Ryan P. Sillery (“Mr. Sillery”). CPC Ericsson is an affiliate of City Point Capital, LLC (“City Point Capital”), which is also managed by Mr. Sillery.

iii. Jurisdiction and Venue

12. This Court has subject matter jurisdiction pursuant to G. L. c. 212, § 4 and G. L. c. 93A, § 11.

13. This Court has personal jurisdiction over CPC Ericsson pursuant to G. L. c. 233A, §§ 2 and 3.

14. Venue is proper in Suffolk County pursuant to G. L. c. 214, § 5 and G. L. c. 223, § 1.

iv. Facts

15. RISE Together is a Massachusetts-based real estate development and investment company founded by Herby Duverné and James Grossmann, along with Brian Anderson of RISE Construction Management (“RISE CM”). RISE CM is responsible for all construction management activities whereas RISE Together focuses on development management activities.

16. On June 22, 2021, RISE Together emailed CPC Ericsson a copy of SWA’s proposals for the development of CPC Ericsson-owned Neponset Wharf—i.e., the new mixed-use waterfront development in the Port Norfolk neighborhood of Dorchester, MA described above. Attached as **Exhibit 2** is a true and accurate copy of an email dated June 22, 2021 from Quinlan Locke (“Mr. Locke”), a project director at RISE CM, to Kelly S. McManama (“Ms. McManama”) with a copy of the proposals from SWA for the proposed work in connection with the development of Neponset Wharf. Upon information and belief, Ms. McManama is the Director of Operations at City Point Capital, which, as stated above, is an affiliate of CPC Ericsson, and she was acting on behalf of CPC Ericsson in her

communications with Mr. Locke, i.e., an authorized representative of RISE Together, regarding CPC Ericsson's Neponset Wharf project.

17. Shortly thereafter, on July 1, 2021, CPC Ericsson acknowledged receipt of SWA's proposals and stated that "these contracts . . . look good to us" and "it's great we have some things teed up and ready to go," but indicated that they believed it was "premature" to execute the contract until the project was approved by the City of Boston ("City") "unless we need to perform work to obtain the city's approval." Attached as **Exhibit 3** is a true and accurate copy of Ms. McManama's reply to Mr. Locke's June 22, 2021 email wherein she acknowledged receiving and reviewing SWA's proposals with Mr. Sillery, i.e., the manager of City Point Capital and CPC Ericsson, but wanted to hold off on signing unless it was necessary for project approval.

18. In support of the City's resiliency and carbon emissions reduction goals, including Carbon Neutral Boston 2050, Boston Zoning Code Article 37, Green Buildings ("Article 37") established the Interagency Green Building Committee (IGBC) to advise the Boston Planning and Development Agency (BPDA) and the Inspectional Services Department (ISD) on project compliance with the City's green building and climate resiliency policies and requirements. Compliance reviews occur at three project phases: Initial Filing, Design/Building Permit Filing, and Construction/Certificate of Occupancy Filing. The BPDA and ISD rely on the IGBC's review and advice for the approval of projects and the issuance of building permits and certificates of occupancy. Attached as **Exhibit 4** is a true and accurate copy of Article 37 Green Building and Climate Resiliency Guidelines as published on the BPDA website.

19. In or around June, July, August or September, 2021, RISE Together informed CPC Ericsson that SWA's services were required to prepare Article 37 project filings and to obtain City approvals. Attached as **Exhibit 5** is a true and accurate copy of the Article 37 submission prepared by SWA, on behalf of CPC Ericsson, for BPDA. Upon information and belief, CPC Ericsson authorized RISE Together to engage the services of SWA to use the aforementioned Article 37 submission that was required to obtain approval for CPC Ericsson's Neponset Wharf project.

20. Accordingly, on or about September 30, 2021, RISE Together, on behalf of CPC Ericsson, entered into a contract with SWA, a Connecticut-based architectural firm, to provide energy and sustainability services for CPC Ericsson's benefit in connection with CPC Ericsson's development of Neponset Wharf. *See Exhibit 1*, sub-exhibits A-E (exhibiting a true and accurate copy of the SWA contracts endorsed by Mr. Locke as an authorized representative of RISE Together, on behalf of CPC Ericsson, for services to be performed by SWA for CPC Ericsson's benefit in connection with CPC Ericsson's Neponset Wharf project). CPC Ericsson recognized from the outset that it would ultimately be responsible for paying for the work performed by CPC Ericsson.

21. Attached as **Exhibit 6** is a true and accurate copy of an email chain wherein Jeremy Henry ("Mr. Henry"), a Senior Vice President at Rise Together, states that on November 22, 2021, RISE Together sent CPC Ericsson a revised enabling budget that proposed to adjust reallocations to accommodate ongoing soft costs (including SWA's work) and demolition/abatement in connection with the Neponset Wharf project. This was driven by various conversations between Mr. Henry and Mr. Sillery in their representative capacities for RISE Together and CPC Ericsson, respectively, regarding the need to keep the project

moving forward without increasing the original \$2,000,000 enabling budget, which CPC Ericsson secured through Mountain One Bank to cover pre-development costs for the Neponset Wharf project, including work performed by SWA. *See Exhibit 6* at 1.

22. On December 8, 2021, RISE Together and CPC Ericsson agreed to prepare a requisition to support the revised enabling budget and an American Institute of Architects (AIA) Application for Payment. *See id.* at 1-2.

23. On December 14, 2021, RISE Together sent CPC Ericsson a draft requisition with the revised enabling budget incorporated into the AIA Application for Payment. This was the third requisition prepared in connection with the Neponset Wharf project, which included, among other things, outstanding SWA invoices for services rendered to and for the benefit of CPC Ericsson. *See id.* at 2.

24. On December 17, 2021, CPC Ericsson approved the third requisition prepared by RISE Together and submitted a copy of the approved requisition along with the AIA Application for Payment to Mountain One Bank for payment. *See id.* at 2.

25. Shortly after approving the third requisition, on December 20, 2021, CPC Ericsson complained that the amount due to SWA exceeded the budget. CPC Ericsson did not claim that CPC Ericsson was not obligated to pay SWA for its work, nor did CPC Ericsson claim that RISE Together was obligated to pay SWA for the work that it did for CPC Ericsson's benefit. *See id.* at 2-3. In other words, CPC Ericsson knowingly accepted the services of SWA, through the contract entered into by RISE Together, with full knowledge that SWA expected to be paid by CPC Ericsson.

26. RISE Together reasonably expected CPC Ericsson to pay SWA because CPC Ericsson is the registered owner of Neponset Wharf; Mountain One Bank extended credit to

CPC Ericsson to cover its costs for the pre-development phase of the Neponset Wharf project; and CPC Ericsson not only was aware that SWA's services were required to obtain the City's approval for the project, but also approved RISE Together's engagement with SWA to perform those services for CPC Ericsson's benefit.

27. CPC Ericsson expected, or reasonably should have expected, to pay for SWA's work—either directly to SWA or through RISE Together—but CPC Ericsson has refused to do so, with no apparent excuse other than it does not want to pay SWA for the work that it did for CPC Ericsson. CPC Ericsson therefore accepted the benefits of RISE Together's contract with SWA, and SWA's labor, while refusing to pay for these services.

28. On or about January 13, 2022, CPC Ericsson's Neponset Wharf project was approved by the City, based on and as a result of services provided by RISE Together and SWA. Attached as **Exhibit 7** is a true and accurate copy of a public post/announcement on Facebook confirming that CPC Ericsson's Neponset Wharf project was approved by the BPDA Board on or about January 13, 2022.

29. On or about May 19, 2023, SWA filed a lawsuit against RISE Together for non-payment of invoices issued by SWA for the Article 37 work performed in connection with the Neponset Wharf project. SWA claims that it is owed \$123,291.25, plus interests, costs, and legal fees. See *Steven Winter Associates, Inc. v. RISE Together, LLC*, No. 2384CV01168 (Mass. Super. Ct. Suffolk County). See **Exhibit 1** (exhibiting a true and accurate copy of the Complaint and Civil Action Cover Sheet from that action).

30. To date, CPC Ericsson has failed to pay for the services provided by SWA through its contract with RISE Together. There is no justification for CPC Ericsson's failure to pay SWA directly or RISE Together to pass on to SWA.

31. RISE Together understands that CPC Ericsson is in the process of securing a new construction loan through Metro CU for the Neponset Wharf project to be secured by a mortgage on the property, which RISE Together understands will close any day now. The construction loan will be used to cover project costs, including outstanding invoices for pre-development work but excluding the monies owed to SWA. RISE Together understands that CPC Ericsson intends to use the construction loan to cover *some* project costs, including *some* outstanding invoices for pre-development work, but *not including the monies owed to RISE Together for the work performed by SWA*. In other words, CPC Ericsson intends to obtain a large construction loan secured by a mortgage on the property—which will then be senior to any interest of RISE Together that is not recorded before that mortgage—to effectively extinguish RISE Together’s ability to obtain security for the payment it is owed for SWA’s work done on behalf of CPC Ericsson. CPC Ericsson apparently intends to retain the benefit of RISE Together’s contract with SWA, and SWA’s performance, free of any liability to pay for it at the expense of RISE Together.

32. As a result of the imminent closing of the construction loan and conveyance of a mortgage securing that loan, there is a clear danger that if CPC Ericsson is notified in advance of RISE Together’s request for a real estate attachment on the property, CPC Ericsson will accelerate the closing and convey the mortgage to Metro CU to prejudice RISE Together’s ability to secure and recover the money it is owed for the work it did on behalf of CPC Ericsson by contracting with SWA to provide services for the project. *See* Mass. R. Civ. P. 4.1(f).

33. RISE Together is not aware of any liability insurance possessed by CPC Ericsson sufficient to cover RISE Together's anticipated recoverable damages, including treble damages and attorney's fees recoverable under c. 93A.

v. Causes of Action

**COUNT I
(Unjust Enrichment/Quantum Meruit)**

34. RISE Together restates and incorporates each of the foregoing allegations as if fully alleged herein.

35. As a result of CPC Ericsson's unlawful conduct as alleged herein, CPC Ericsson has been unjustly enriched to the detriment of RISE Together.

36. CPC Ericsson has taken and received the benefit of, among other things, RISE Together's development management knowledge, skills and abilities, as well as the value of SWA's energy and sustainability services that RISE Together contracted for on behalf of and for the benefit of CPC Ericsson.

37. Without justification, CPC Ericsson has refused to pay RISE Together or SWA for the value of their services provided in connection with the Neponset Wharf project.

38. If no contract is found to be enforceable between RISE Together and CPC Ericsson, RISE Together is without an adequate remedy at law to recover for CPC Ericsson's unjust enrichment.

39. RISE Together contracted on behalf of and for the benefit of CPC Ericsson with SWA to provide valuable services and substantial benefit to CPC Ericsson. CPC Ericsson has thus been enriched without providing adequate compensation to RISE Together for contracting with SWA on behalf of and for the benefit of CPC Ericsson.

40. RISE Together and SWA devoted substantial efforts and resources to advance the pre-development phase of the Neponset Wharf project with the reasonable expectation that they would be compensated by CPC Ericsson for those services. CPC Ericsson accepted RISE Together's and SWA's services with the understanding that CPC Ericsson would compensate RISE Together for contracting with SWA on behalf of and for the benefit of CPC Ericsson.

41. Therefore, CPC Ericsson is liable to RISE Together and should be required to disgorge its unjust gains, in an amount to be determined at trial, but which totals at least \$123,291.25, plus interests, costs, and legal fees.

COUNT II
(Promissory Estoppel)

42. RISE Together restates and incorporates each of the foregoing allegations as if fully alleged herein.

43. Upon learning that Article 37 imposed certain filing requirements to obtain the City's approval, CPC Ericsson authorized RISE Together to engage SWA's services for Article 37 submission and promised to pay for services rendered out of the budgeted funds received from Mountain One Bank for the pre-development phase of the Neponset Wharf project.

44. RISE Together reasonably relied on CPC Ericsson's promise to its detriment by entering into a contract with SWA and subjecting itself to liability for the unpaid balance due under the contract now that CPC Ericsson has unjustifiably refused to pay.

45. The injustice done to RISE Together can be avoided only by enforcement of CPC Ericsson's promise to pay for the SWA's services.

46. The amount due and owing by CPC Ericsson is approximately \$123,291.25, plus interests, costs, and legal fees.

COUNT III
(Violation of G. L. c. 93A, §§ 2 and 11)

47. Plaintiff restates and incorporates each of the foregoing allegations as if fully alleged herein.

48. There is no good faith dispute about whether CPC Ericsson owes RISE Together money for services rendered by SWA pursuant to the contract RISE Together signed with SWA on behalf of and for the benefit of CPC Ericsson for services rendered in connection with CPC Ericsson's Neponset Wharf project.

49. CPC Ericsson and RISE Together were engaged in trade or commerce, based on RISE Together's efforts on CPC Ericsson's behalf to solicit bids from professional service companies, including SWA, to advance the pre-development phase of CPC Ericsson's Neponset Wharf project.

50. CPC Ericsson has committed an unfair and deceptive act or practice within the meaning of G. L. c. 93A, §§ 2 and 11, by knowingly and intentionally inducing RISE Together to enter a contract with SWA on behalf of and for the benefit of CPC Ericsson while CPC Ericsson had no intention to pay RISE Together or SWA for SWA's work performed for CPC Ericsson's benefit.

51. CPC Ericsson received bank financing and budgeted for the work performed by SWA pursuant to the contract with RISE Together entered into on behalf of and for the benefit of CPC Ericsson. Upon information and belief, CPC Ericsson is withholding payment to pressure RISE Together (and indirectly SWA) to compromise their claims for

payment, enhance CPC Ericsson's bargaining power; and/or force RISE Together (and indirectly SWA) to accept a discounted settlement of their claims for payment.

52. CPC Ericsson's unfair and deceptive conduct was knowing and willful and occurred primarily and substantially within the Commonwealth of Massachusetts.

53. As a result of CPC Ericsson's violation of G. L. c. 93A, §§ 2 and 11, RISE Together has suffered, and continues to suffer, significant damages plus attorney's fees and costs. Therefore, RISE Together is entitled to recover its damages in an amount to be determined at trial (but which totals at least \$123,291.25), doubled or trebled, plus its attorney's fees and costs.

vi. Prayer for Relief

WHEREFORE, Plaintiff requests that this Court grant the following relief:

- a. Issue an *ex parte* writ of attachment on the real property located at Neponset Wharf, 20R Ericsson Street, Dorchester MA 02122, in the amount of \$150,000 (including damages, costs, and fees) as prejudgment security;
- b. Enter judgement in favor of RISE Together and award damages (including multiple damages) in an amount to be determined at trial on all counts in this Complaint;
- c. Award RISE Together its attorney's fees and costs pursuant to G. L. c. 93A, §§ 2 and 11 and as otherwise permitted by law; and
- d. Grant such other and further relief as this Court deems equitable and just.

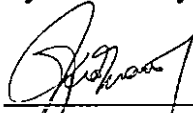
vii. Jury Demand

Plaintiff demands a jury on all counts and issues so triable.

Respectfully submitted,

RISE TOGETHER, LLC,

By its Attorneys,



Joseph M. Cacace (BBO No. 672298)
Widmaier M. Charles (BBO No. 705208)
Todd & Weld LLP
One Federal Street, 27th Floor
Boston, MA 02110
Telephone: 617-720-2626
jcacace@toddweld.com
wcharles@toddweld.com

Dated: February 9, 2024

VERIFICATION

I, Herby Duverné, hereby verify that the foregoing recitation of facts, other than the allegations made on information and belief, are true based on my personal knowledge and on documents that I have reviewed for purposes of preparing the foregoing Verified Complaint and Jury Demand.

Signed under the penalties of perjury this 9th day of February, 2024.



Herby Duverne