

CITATION

*Terre*

CITY OF ST. GABRIEL

Versus

LA CONTRACTING ENTERPRISE, LLC, ET AL



Case: 077270  
Division: C  
18<sup>th</sup> Judicial District Court  
Parish of Iberville  
State of Louisiana

*Pauper*

The State of Louisiana and said Court to  
STATE OF LOUISIANA, THROUGH THE DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT  
THROUGH ITS SECRETARY, THE HONORABLE SHAWN D. WILSON, PH.D.  
1201 CAPITAL ACCESS ROAD, ROOM 3020  
BATON ROUGE, LOUISIANA 70802

You are hereby summoned either to comply with the demand contained in the ORIGINAL, AMENDING & SUPPLEMENTAL PETITION FOR DAMAGES of the said PLAINTIFF- CITY OF ST. GABRIEL a copy of which accompanies the citation, or deliver your answer to the said petition in the office of the Clerk of said Court, held at the Court House at Plaquemine, in said Parish, within 15 days after the service hereof, under penalty of default.

WITNESS THE HONORABLE ALVIN BATISTE, JR., JUDGE OF SAID COURT, this 29TH day of JANUARY, 2018.

*Trishell M. Jones*  
Deputy Clerk of Court

Service Information

Received on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ served the above named party as follows:

**Personal Service** on the party herein named \_\_\_\_\_.

**Domiciliary Service** on the party herein named by leaving the same at his/her domicile in the parish in the hands of \_\_\_\_\_, a person apparently over the age of seventeen years, living and residing in said domicile and whose name and other facts connected with this service, I learned by interrogating the said person, said party herein being absent from his/her residence at the time of said service.

Returned:  
Parish of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Service \$ \_\_\_\_\_  
Mileage \$ \_\_\_\_\_  
Total \$ \_\_\_\_\_

By: \_\_\_\_\_  
Deputy Sheriff

RECEIVED  
2018 FEB - 1 PM 12:20  
OFFICE OF GENERAL COUNSEL  
DOTD

18TH JUDICIAL DISTRICT COURT

PARISH OF IBERVILLE

STATE OF LOUISIANA

SUIT: 77,270

DIVISION "C"

CITY OF ST. GABRIEL

VERSUS

LA CONTRACTING ENTERPRISE, L.L.C., INTERNATIONAL FIDELITY INSURANCE COMPANY AND BITCO GENERAL INSURANCE CORPORATION

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2018 JAN 19 10:46

DY CLERK, JUDICIAL  
IBERVILLE, LOUISIANA

FILED: \_\_\_\_\_  
DY. CLERK

**CITY OF ST. GABRIEL'S FIRST AMENDING PETITION**

The amending petition of the City of St. Gabriel (hereinafter "St. Gabriel"), Plaintiff in the above entitled and numbered cause, respectfully represents that the plaintiff desires to amend its original petition filed herein on September 26, 2017, in the following respects:

I.

As set forth in Paragraph 8 of St. Gabriel's Original Petition, on November 18, 2016, the State of Louisiana, through the Department of Transportation and Development (hereinafter "DOTD"), delivered to St. Gabriel a Notice of Delinquent Debt, demanding \$48,860.52 from St. Gabriel. Upon information provided by DOTD to St. Gabriel, the demand on St. Gabriel is based on DOTD's claim that defendant, La Contracting Enterprise, L.L.C. (hereinafter "La Contracting"), breached its obligations under the plans, specifications and contract documents for DOTD State Project Nos. 257-01-0017 and 744-24-0011. The breach of the plans, specifications and contract documents for DOTD State Project Nos. 257-01-0017 and 744-24-0011 are set forth in Paragraph 9 of St. Gabriel's Original Petition.

II.

La Contracting has filed an Exception alleging the failure to join a necessary and indispensable party. Specifically, La Contracting asserts that the failure of St. Gabriel to join DOTD impedes and impairs La Contracting from obtaining complete relief and further prohibits La. Contracting from asserting any and all defenses to DOTD's claim against St. Gabriel. Without admitting or denying La. Contracting's exception for failure to join a necessary and indispensable party, St. Gabriel moves to amend Paragraph 2, as follows:

"1.

Made defendants herein are:

1. LA CONTRACTING ENTERPRISE, L.L.C. (hereinafter "LA Contracting"), a Louisiana limited liability company authorized to do and doing business in the State of Louisiana, whose agent and address for service of process is Charles F. Seeman, Jr., Deutsch Kerrigan & Stiles, LLP, 755 Magazine Street, New Orleans, Louisiana 70130;
2. International Fidelity Insurance Company (hereinafter "IFIC"), an insurance company authorized to do and doing business in the State of Louisiana, whose agent and address for service of process is Louisiana Secretary of State, 8585 Archives Avenue, Baton Rouge, Louisiana 70809;
3. State of Louisiana, through the Department of Transportation and Development (Hereinafter "DOTD"), a governmental entity, who, pursuant to La. R. S. 13:5107, may be served through its Secretary, Shawn D. Wilson, Ph.D. and the Louisiana Attorney General, the Honorable Jeff Landry."

III.

St. Gabriel further moves to amend its Original Petition by adding the following additional paragraphs following Paragraph 14, to be numbered paragraph 15 and 16 as follows:

"15.

St. Gabriel directs that DOTD asserts any and claims, actions, remedies and causes it has or may have against St. Gabriel in support of and to impose DOTD's claim for \$48,869.16 on St. Gabriel, as identified in its Notice of Delinquent Debt delivered to St. Gabriel on November 18, 2016.

16.

St. Gabriel further directs that DOTD asserts any and all claims, actions, remedies and causes that defendant, La. Contracting, breached its obligations and duties set forth in the Contract Documents for State Project Nos. 257-01-0017 and 744-24-0011."

IV.

St. Gabriel avers no Answer has been filed in these proceedings. St. Gabriel further avers that the amending petition does not impede or retard the prosecution or defense of this matter. St. Gabriel further avers that the amending petition addresses the issues, concerns, and matters rose in La Contracting's exception of indispensable or necessary party. St. Gabriel prays for leave of Court ordering the filing of its Amending Petition.

V.

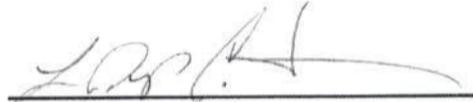
[2]

St. Gabriel is a political subdivision of the State of Louisiana and as such is exempt from paying advanced court cost pursuant to LSA R.S. 13:4521.

WHEREFORE, Plaintiff, reiterating the prayer of its original petition as though set forth at length herein, prays that its original petition be amended in the above particulars and that, after due proceedings had, there be judgment herein in favor of the Plaintiff, City of St. Gabriel and against the Defendant, La Contracting Enterprise, L.L.C. and International Fidelity Insurance Company, in solido, as originally prayed for and as amended herein.

WHEREFORE, in the alternative, Plaintiff, reiterating the prayer of its original petition as though set forth at length herein, further prays that its original petition be amended in the above particulars and that, after due proceedings had, there be judgment herein in favor of the Plaintiff, City of St. Gabriel and against the Defendant, State of Louisiana, through the Department of Transportation and Development, declaring that the Plaintiff is not obligated to the State of Louisiana, through the Department of Transportation and Development as amended herein.

RESPECTFULLY SUBMITTED BY:



L. Phillip Canova, Jr., #3851

Louis W. Delahaye, #17940

of

CANOVA AND DELAHAYE

A Professional Law Corporation

Attorneys and Counsellors at Law

58156 Court Street

Plaquemine, Louisiana 70764-2708

(225) 687-8340

ATTORNEYS FOR THE PLAINTIFF, CITY OF  
ST. GABRIEL

FILED

2018 JAN 29 P 2:06

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CLERK-EX OFFICIAL  
IBERVILLE, LOUISIANA

18TH JUDICIAL DISTRICT COURT

PARISH OF IBERVILLE

STATE OF LOUISIANA

SUIT: 77,270

DIVISION C

CITY OF ST. GABRIEL

VERSUS

LA CONTRACTING ENTERPRISE, L.L.C., INTERNATIONAL FIDELITY INSURANCE COMPANY AND BITCO GENERAL INSURANCE CORPORATION

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DY. CLERK

**ORDER**

Considering the allegations and assertions set forth in plaintiff's, City of St. Gabriel, amending and supplemental petition;

IT IS ORDERED that the foregoing supplemental and amending petition be filed as prayed for.

Plaquemine, Louisiana, this 25<sup>th</sup> day of January, 2018.

s/Alvin Batiste, Jr.  
Judge - Div. C

\_\_\_\_\_  
JUDGE, EIGHTEENTH JUDICIAL DISTRICT COURT

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*Trishell N. James*

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IBERVILLE, LOUISIANA

TRUE COPY  
1/29/2018  
*Trishell N. James*

Deputy Clerk, Ex Officio, Parish of Iberville, Louisiana

PLEASE SERVE DEFENDANTS THE ORIGINAL, AMENDING AND SUPPLEMENTAL PETITION:

**LA CONTRACTING ENTERPRISES, L.L.C. AND INTERNATIONAL FIDELITY  
INSURANCE COMPANY  
THROUGH THEIR COUNSEL OF RECORD  
BRIAN S. SCHAPS  
DEUTSCH KERRIGAN, L.L.P.  
755 MAGAZINE STREET  
NEW ORLEANS, LOUISIANA 70130**

**STATE OF LOUISIANA, THROUGH THE DEPARTMENT OF TRANSPORTATION  
AND DEVELOPMENT  
THROUGH ITS SECRETARY  
THE HONORABLE SHAWN D. WILSON, PH.D  
1201 CAPITAL ACCESS ROAD, ROOM 3020  
BATON ROUGE, LOUISIANA 70802**

**STATE OF LOUISIANA, THROUGH THE DEPARTMENT OF TRANSPORTATION  
AND DEVELOPMENT  
THROUGH ITS ATTORNEY GENERAL  
THE HONORABLE JEFF LANDRY  
1885 N. 3<sup>RD</sup> STREET  
BATON ROUGE, LOUISIANA 70802**

18TH JUDICIAL DISTRICT COURT

PARISH OF IBERVILLE

STATE OF LOUISIANA

SUIT:

DIVISION " "

DOCKET

CITY OF ST. GABRIEL

77,270 C

VERSUS

LA CONTRACTING ENTERPRISE, L.L.C., INTERNATIONAL FIDELITY INSURANCE COMPANY AND BITCO GENERAL INSURANCE CORPORATION

FILED: \_\_\_\_\_

\_\_\_\_\_  
DY. CLERK

PETITION

The Petition of the City of St. Gabriel (hereinafter "St. Gabriel"), a political subdivision, State of Louisiana, domiciled in Iberville Parish, Louisiana, herein represented through undersigned counsel, respectfully represents;

1.

Made defendants herein are:

1. LA CONTRACTING ENTERPRISE, L.L.C. (hereinafter "LA Contracting"), a Louisiana limited liability company authorized to do and doing business in the State of Louisiana, whose agent and address for service of process is Charles F. Seeman, Jr., Deutsch Kerrigan & Stiles, LLP, 755 Magazine Street, New Orleans, Louisiana 70130;
2. International Fidelity Insurance Company (hereinafter "IFIC"), an insurance company authorized to do and doing business in the State of Louisiana, whose agent and address for service of process is Louisiana Secretary of State, 8585 Archives Avenue, Baton Rouge, Louisiana 70809;
3. BITCO General Insurance Corporation (hereinafter "BITCO"), an insurance company authorized to do and doing business in the State of Louisiana, whose agent and address for service of process is Louisiana Secretary of State, 8585 Archives Avenue, Baton Rouge, Louisiana 70809.

2.

In response to the State of Louisiana, through the Department of Transportation and Development's (hereinafter "DOTD") Advertisement for Bids for the construction of the St. Gabriel Sidewalks, Phase IIA (State Project Nos. 257-01-0017 and 744-24-0011), LA Contracting proposed to construct the St. Gabriel Sidewalks in accordance with the Contract Documents and Specifications prepared by DOTD. LA Contracting's Construction Bid of

\$832,823.62 was the low bid for the State Projects identified herein.

3.

St. Gabriel and defendant, LA Contracting, entered into a Contract for Town of Saint Gabriel Federal Aid Project State Project Nos. 257-01-0017 and 744-24-0011 St. Gabriel Sidewalks Phase IIA Route La. 75 Iberville Parish (hereinafter "Contract"), executed by LA Contracting on November 29, 2010 and by St. Gabriel on December 8, 2010. St. Gabriel executed the Contract in the Parish of Iberville. The Contract incorporated Code of Federal Regulations, Title 49, Part 26 (49 CFR Part 26) as amended and the Louisiana Department of Transportation and Development's (DOTD) Disadvantaged Business Enterprise (DBE) Program.

4.

Pursuant to the contract, LA Contracting was required to provide Disadvantaged Business Enterprise (DBE) work under the Contract. LA Contracting executed Form CB-6AAA, on November 8, 2010, in LA Contracting Bid proposal, certifying that Gilbert Construction, LLC would perform the DBE work under the Contract. The amount of work to be performed by Gilbert Construction, LLC under the Contract was priced at \$100,664.30. Gilbert Construction, LLC was approved by DOTD as a DBE. Upon information and belief, Gilbert Construction, LLC was unable to perform work under the Contract.

5.

Pursuant to the requirements of the Contract, LA Contracting and defendant, IFIC, as its surety furnished St. Gabriel with bonds guaranteeing performance of the work and compliance with the Contract by LA Contracting.

6.

In accordance with the Contract and Bond, IFIC is liable as guarantor, separately and in solido with LA Contracting, for fulfillment of its obligation to St. Gabriel.

7.

St. Gabriel accepted the work under the Contract as substantially complete on or about June 21, 2013 and Notice of Final Acceptance was issued.

8.

On November 18, 2016, DOTD delivered to St. Gabriel a Notice of Delinquent Debt, demanding \$48,860.52 from St. Gabriel pursuant to alleged violations of the Contract by LA

Contracting.

9.

Pursuant to information provided by DOTD to St. Gabriel, St. Gabriel alleges that LA Contracting failed to do the following as provided in the Contract:

- i. LA Contracting failed to receive approval from DOTD for subcontract work performed on the Contract;
- ii. LA Contracting failed to inform DOTD of the substitution of a DBE that was committed to do work on the CS-6AAA;
- iii. LA Contracting failed to get approval from DOTD for a substitute DBE to complete the work already committed to another DBE;
- iv. LA Contracting failed to provide notice to DOTD that the listed DBE on the submitted and approved CS-6AAA was unable or unwilling to perform work committed to the approved DBE on the CS-6AAA;
- v. LA Contracting failed to provide a good faith effort to meet the DBE goal as provided in the Contract;
- vi. LA Contracting failed to provide CP-1A's to DOTD detailing all DBE payments.

10.

On July 8, 2015, LA Contracting provided DOTD with Form CP-2A, which certified that DBE subcontractor, Julien Enterprises, provided work under the Contract in the amount of \$51,069.47, \$48,869.16 short of the DBE goal as required under the Contract and the amount DOTD demanded from St. Gabriel (less \$8.64 left on the Contract in DOTD Accounting).

11.

Defendant, LA Contracting is liable for the breach of the Contract provisions regarding DBE participation for the work, as identified in Paragraph 9, and LA Contracting's failure to comply with these provision of the Contract is a material breach of the Contract.

12.

IFIC, as surety of LA Contracting, is liable in solido with LA Contracting for the amount demanded by DOTD from St. Gabriel as a consequence of the breach of Contract as identified in Paragraph 9, because IFIC guaranteed the performance of the work and compliance with all

provisions of the Contract.

13.

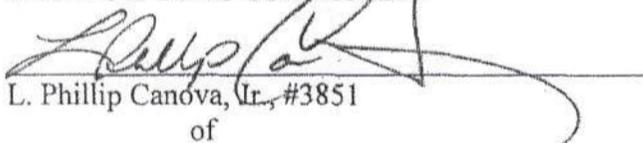
St. Gabriel alleges that the defendant, BITCO, had issued a policy of Commercial General Liability insurance on LA Contracting, Policy No. CLP3274412, which provides insurance coverage for the fault of defendant, LA Contracting, in the compliance, administration and work under the Contract by LA Contracting. This policy was in full force and effect at the time of this motor vehicle accident.

14.

St. Gabriel is a political subdivision of the State of Louisiana and as such is exempt from paying advanced court cost pursuant to LSA R.S. 13:4521.

WHEREFORE, the City of St. Gabriel prays for judgment in its favor and against LA Contracting, L.L.C., International Fidelity Insurance Company and BITCO General Insurance Corporation, in solido, for the full amount demanded by DOTD, as alleged in Paragraph 8 due to the failure to comply with the Contract regarding DBE requirements, with legal interest thereon from the date of judicial demand until paid and all costs of this proceeding, and such other relief as the law or equity permits.

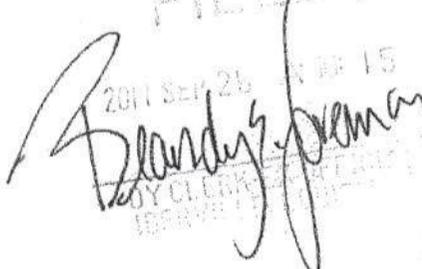
RESPECTFULLY SUBMITTED:

  
L. Phillip Canova, Jr., #3851

of  
CANOVA AND DELAHAYE  
A Limited Liability Corporation  
Attorneys and Counsellors at Law  
58156 Court Street  
Plaquemine, Louisiana 70764-2708  
(225) 687-8340

ATTORNEYS FOR CITY OF ST. GABRIEL

A TRUE COPY  
DATE 1/29/2018  
  
Deputy Clerk, Ex-Officio, Recorder, Iberville Parish, Louisiana

FILED  
2017 SEP 26 15  
[4]   
CLERK OF COURSE

PLEASE SERVE DEFENDANTS:

LA CONTRACTING ENTERPRISES, L.L.C.  
THROUGH ITS AGENT FOR SERVICE OF PROCESS  
CHARLES F. SEEMAN, JR.  
DEUTSCH KERRIGAN & STILES LLP  
755 MAGAZINE STREET  
NEW ORLEANS, LOUISIANA 70130

INTERNATIONAL FIDELITY INSURANCE COMPANY  
THROUGH ITS AGENT FOR SERVICE OF PROCESS  
LOUISIANA SECRETARY OF STATE  
8585 ARCHIVES AVENUE  
BATON ROUGE, LOUISIANA 70809

BITCO GENERAL INSURANCE CORPORATION  
THROUGH ITS AGENT FOR SERVICE OF PROCESS  
LOUISIANA SECRETARY OF STATE  
8585 ARCHIVES AVENUE  
BATON ROUGE, LOUISIANA 70809

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