

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	CASE NO. 2018-CP-10-3825
)	
K-CON, INC.,)	
)	
Plaintiff,)	
)	
vs.)	<u>OHIO IMAGING ASSOCIATES, INC.'S</u>
)	<u>MOTION FOR PARTIAL SUMMARY</u>
)	<u>JUDGEMENT</u>
)	
)	
KING STREET ENTERPRISES, LLC)	
and OHIO IMAGING ASSOCIATES INC.)	
)	
)	
Defendants.)	
)	

PLEASE TAKE NOTICE that the Defendant, Ohio Imaging Associates, Inc.'s (hereinafter, "Tenant OIA") moves the Court at the Charleston County Court of Common Pleas, for an order granting Tenant OIA Partial Summary Judgment pursuant to Rule 56 as there is no genuine issue as to any material fact and that the Tenant OIA is entitled to partial summary judgment as a matter of law. The granting of the motion will narrow and focus disputed issues, as well as expedite and shorten the trial of this matter. The motion is made on the following grounds:

- 1) Plaintiff filed an action for alleged non-payment for labor and materials provided to Tenant OIA and is claiming monies owed based upon numerous claimed change orders. The change orders were never accepted or signed by OIA.
- 2) The pertinent contract provision regarding change orders is reprinted below in full:

D. CHANGE ORDER

.1 The Contractor may request of the Owner or the Owner may request of the Contractor, without invalidating this Agreement or any of the Contract Documents, changes in the Work within the general scope of the Contract Documents consisting of additions, deletions or other revisions to the applicable Contract Document(s) or the estimated cost of the work, with compensation being adjusted accordingly. All such changes in the Work shall be authorized by applicable written Change Order, and executed by both Owner and Contractor, prior to the actual change occurring.

.2 Unless otherwise expressly stated in the Change Order, Contractor waives and releases any and all rights to claim additional time or money for Work to be performed under the Change Order. The Change Order constitutes compensation in full to the Contractor for all costs and markups directly or indirectly attributable to the changes ordered and for all delays and impacts related to it.

- 3) As stated above, the change orders were to be executed prior to the actual change occurring. Plaintiff drafted seven (7) change orders, however Tenant OIA only signed and accepted one of the seven change orders.
- 4) Pursuant to the contract language between the parties, Tenant OIA seeks an order of partial summary judgment releasing Tenant OIA from any claims for monies or delays associated with the six (6) unsigned change orders.

WHEREFORE, the Plaintiff prays this Honorable Court inquire into the matters set forth herein and grant Tenant OIA partial summary judgment to Tenant OIA.

Respectfully submitted,

Brent Souther Halversen, LLC

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December 10, 2019.