

Jan 2, 1934

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CITY, COUNTY & STATE OF NEW YORK : SS:

WILLIAM MOOSMAN, having first been duly sworn by Sabelle Strauss, a Notary Public named in the stipulation herein, testifies as follows:

BY MR. HERMAN:

Q. Mr. Moosman, you are the Secretary of Tuller & Moosman, Inc.? A. Yes sir.

Q. And Tuller & Moosman, Inc. is a domestic corporation? A. Yes sir.

Q. Were you such Secretary in the year 1932 and in the year 1933? A. Yes sir.

Q. Isidor Tuller is the President of Tuller & Moosman, Inc.? A. Yes sir.

Q. And was such President in 1932 and 1933? A. Yes, sir.

Q. Were you both such officers in 1931? A. Yes, sir.

Q. Did your Company enter into a contract with the defendant, John Kennedy & Company, Inc. with respect to painting work to be done at the Queens General Hospital? A. Yes sir.

Q. Was that contract in writing? A. Yes, sir.

Q. Have you got that contract here? A. Yes.

Q. Your Attorney hands me a paper bearing date the - day of May, 1931 and I show it to you and ask you whether this is the contract between Tuller & Moosman, Inc. and John Kennedy & Company, Inc. with respect to the work to be done by you at the Queens General Hospital. A. Yes sir.

By Mr. Herman - I offer this contract in evidence as Plaintiff's Exhibit 1.

Q. Outside of this Plaintiff's Exhibit 1, have

you any other contract in writing with John Kennedy & Company, Inc. with respect to any work on Queens General Hospital?

A. No sir.

Q. Have you any oral contract with John Kennedy & Company Inc. with respect to any other work than shown in Plaintiff's Exhibit 1 on this job? A. No.

Q. Did you fully complete the work called for by plaintiff's Exhibit 1. A. Fully completed subject to final inspection.

Q. Has there been a final inspection? A. No.

Q. When did you fully complete the contract.

A. Completed subject to retainer, I have finished it some time in March or April.

Q. Have you got the date when you did the last item of work on this job? A. Some time in June.

Q. Have you it in some of your memoranda or data?

A. I can get it.

Q. How much money did you receive from John Kennedy & Company, Inc. on account of the work called for by Plaintiff's Exhibit 1? A. I don't recall offhand. I would also have to give it to you from the records.

Q. Do you keep books to show how much you received and the dates of the receipts of these moneys? A. I do.

Q. Until you refresh your recollection as to the exact amount you received, how much do you now say you received on account of plaintiff's Exhibit 1. A. \$43,000.

Q. Are the specifications in writing? A. Yes.

Q. Have you got the copy of the specifications?

A. I haven't any with me, but I can produce it.

Q. Have you one in your office? A. I believe

we have it in the office.

Q. At the time when you entered into Plaintiff's Exhibit 1, did you get a copy of the specifications? A. We did.

Q. And you kept that copy in your office? A. I believe so.

Q. And you will make an effort to find it? A. I will.

Q. And produce it at the next hearing if you find it? A. Yes, if I find it.

Q. Have you also received copies of plans at the time you signed Exhibit 1. A. Plans for all buildings.

Q. By all buildings you mean all buildings comprising Queens General Hospital? A. Yes.

Q. Those plans you still have? A. Yes.

Q. Do you mind producing those at the next hearing? A. Yes.

Q. Are you claiming from John Kennedy & Company, Inc. for any work that you did which you claim is not called for by Plaintiff's Exhibit 1 and the plans and specifications? A. Yes.

Q. I understand you to say that you wrote letters of protest to John Kennedy & Company, Inc. when a request was made upon you to do work which you considered was not within plaintiff's Exhibit 1, and the plans and specifications? A. Right.

Q. Have you copies of those letters? A. I have.

Q. Do you mind producing copies of those letters at the next hearing? A. On the advice of my Attorney I will.

Q. After you made these written protests you

did do the work asked of you to be done, which you considered outside of the contract, Plaintiff's Exhibit 1, and the plans and specifications? A. I did.

Q. Do any of your books show the items of work done by you and the fair and reasonable price therefore.

A. We have nothing tallied in money.

Q. Those consist of material and labor? A. Mostly labor.

Q. And have you any entries in your books to show how many men and how many days labor you devoted to those extras? A. I assume we do, but I am not sure.

Q. When you said a moment ago that you had not tallied them, you mean by that you have not counted up the total? A. Right.

Q. But your books contain the items from which you can make the tallies? A. The books should show the time that it took.

Q. Would your books also show the men that were engaged in those extras. A. No.

Q. The books would simply show the number of men engaged on these extras and dates? A. I assume that it would show the number of men, and possibly not. Possibly it would only show the amounts of moneys expended every day or every week.

Q. Do I understand you to say that you have what is called a daily sheet? A. Yes.

Q. And this daily sheet is printed? A. Yes.

Q. Do these sheets show the name of every man on the job each day? A. Yes.

Q. Does the man write his own name on that sheet every day? A. He does.

Q. Who prepares the sheet? A. The daily sheet is a printed form and the name of each man daily is put there by the man himself. This sheet is at the shanty in the building or in one of the rooms, and as each man appears for work during that day he signs his name.

Q. Does he at the end of the day sign the number of hours he works. A. No.

Q. Who ascertains the number of hours? A. I keep the record of the time.

Q. This sheet was daily taken from the building down to the office. A. That is right.

Q. This daily sheet is kept by you for one week. A. Yes.

Q. At the end of the week a weekly sheet is made out of the daily sheet? A. Yes.

Q. Who makes the weekly sheet? A. The office.

Q. What does the weekly sheet contain? A. The weekly sheet is also printed and the weekly sheet contains the names of the men and the number of days put in by each man at each job.

Q. Each weekly sheet contains the name of one man and the number of days that he worked upon a particular job during that week and the number of hours each day. A. Yes.

Q. These weekly sheets, are they signed by the men? A. Sometimes they are and sometimes they are not. But when they are not signed on the weekly sheet, then we have a separate receipt taken from the men every time he is paid.

Q. When you do extra work have you any entries anywhere showing what men are engaged in extra work and how long? A. Yes.

Q. What entries or what records do you keep, or did you keep, to show the extra work that was done by you on

the Queens General Hospital. A. I give in the amount of labor it took to perform the certain items.

Q. Where do you get the certain items and where do you get the amount of labor? A. I made a special notation.

Q. You mean at the time the work was done you made a special notation? A. Yes.

Q. By the special notation you mean what men were engaged in doing extra work? A. Not what men. So many men were working on this item.

Q. And is that the only record you have to show what men did this extra work? That is the only record to show how long it took? A. That is the only record I have.

Q. Do your daily sheets or weekly sheets indicate on them whether the men working the job during that day or during that week were working on extra work? A. No, the daily sheet did not indicate anything, nor the weekly sheet.

Q. Would there be any book in your possession indicating what charge is to be made on the Queens General Hospital for extra work? A. There would.

Q. Do you now say that there is such a book. A. There should be some records in our office indicating the time it took to perform this extra work. That is my basis of the claim.

Q. Will you look through your records and see if you can find such book and produce it at the next hearing? A. I will try to find it.

Q. Have you any idea at the present time how much your claim against John Kennedy & Company, Inc. is for these extras? A. No.

Q. Whatever the amount of the claim is will appear from these data and records that you speak of? A. It

will appear from the footage, the value, and I don't believe it will appear from the time whatsoever, because time is not considered in Court on extras.

Q. Your claim then from the City, is for the fair and reasonable value? A. That is going to be our claim. If they are asking for time we will have to produce it.

Q. At any rate, you are prepared to testify with respect to these extras, both as to the fair and reasonable value of the extra work you did, and as to the time that it took, is that right? A. I am prepared to testify as to any indications that I can show from the records, or from recollections or whatever it was.

Q. Do your records, as you remember it, indicate how many men and during what period of time they were employed by you in the doing of these extra items? A. I believe it will show. There must be some record.

Q. Do you pay these men in accordance with some specified daily wage? A. Yes.

Q. Was this a union job? A. Yes.

Q. Did you pay to these men the union scale of wages prevailing during the time of this contract, plaintiff's Exhibit 1. A. Yes, sir.

Q. In addition to the claim for extra labor for this extra work, are you also claiming against John Kennedy & Company for extra material in connection with this extra work? A. Yes.

Q. Have you any entries in any of your books to show what extra materials you purchased for this extra work? A. I don't know. They may be cash purchases. There was certain chemicals that we had to use - flake white, and Japan colors.

Q. At any rate, whatever extra materials you used, you bought for cash or there are bills to show. Do you mind having the items of cash that you expended and the bills to show the value of the materials used for this work? A. I do not promise it. I will take it up with our accountant to see if it can be worked out. My intentions were to add material to labor, as anyone would. And that is how I detailed my material cost in addition to these extra labors, but whether I will be able to pick it out I do not know.

Q. You say that the item of materials bears a relation to the total as blank to blank. A. It all depends on the work.

Q. On this particular job? A. I have got to study that first.

Q. Do you mind at the next hearing producing the invoices that were sent to you by the plaintiff in this action between September 6th, 1932 and January 31st, 1933. A. Yes, my attorney can produce them.

The further examination of this witness is adjourned to the 9th day of January, 1934, at the office of plaintiff's attorneys, 122 East 42nd Street, Manhattan, New York City, at three o'clock.