

STATE OF NEW YORK  
ONEIDA COUNTY SUPREME COURT

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GROWEST, INC.

Plaintiffs,

-against-

COMPLAINT

Index No. CA2010-001370

RJI No.:

MICHAEL PEZZOLANELLA, PEZZOLANELLA  
CONSTRUCTION COMPANY, INC., PEZZOLANELLA  
VENTURES, INC., SALVATORE J. VELARDI d/b/a  
ROSCOE'S ROOFING CONSTRUCTION CORP.,  
URBAN GENERAL CONSTRUCTIONS, LLC, MANUEL  
RAPOAO d/b/a MANNY'S SPECIALITY WELDING,  
JOHN MOORE d/b/a COBBLESTONE CONSTRUCTION  
COMPANY, TWO BROTHERS CONTRACTING, INC.  
RODGER W. DOYLE, JR.

Defendants.

FILED  
ONEIDA COUNTY  
CLERIC MA  
2010 SEP 27 PM 4:07

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Plaintiff, Growest, Inc. by its attorneys Corporation Counsel for the City of Utica

As and for a complaint against the Defendants alleges:

1. Plaintiff, Growest, Inc. is and was at all times relevant to this Complaint, a not-for-profit organization duly organized and existing under the laws of the State of New York with its principle offices located at 1125 State Street, Utica, New York 13502. By Assignment and Assumption of Claims dated August 24, 2010, the Plaintiff, Growest, assigned all of its rights title and interest in several claims, including all claims raised in this Complaint, to the City of Utica.

2. At all times relevant to this complaint, the Defendant, Michael Pezzolanella, Pezzolanella Construction, Inc., and Pezzolanella Ventures, Inc. were individuals or

business entities doing business in the State of New York with central offices located at 318 Niagara Street, Utica, New York 13502.

3. That at all times relevant to this complaint, Salvatore J. Velardi, d/b/a Roscoe's Roofing Construction or Roscoe's Roofing Construction Corp., or business entities organized under the laws of the State of New York and doing business in the State of New York with principle offices located at 1159 Kossuth Ave, Utica, NY 13501.

4. That at all times relevant to this complaint, Manuel Raposo d/b/a/ Manny's Specialty Welding, is a business entity organized and existing in the State of New York and doing business in the State of New York with principle offices located in the County of Oneida and State of New York.

5. That at all times relevant to this complaint, the Defendant, John Moore, d/b/a Cobblestone Construction Company was business entity organized and existing in the State of New York and doing business in the State of New York with principle offices located at 2145 Dwyer Avenue, Utica, New York 13501.

6. That at all times relevant to this complaint, the Defendant, Two Brothers Contractors, Inc., was a business entity organized and existing in the State of New York and doing business in the State of New York with principle offices located 185 Mohawk St, Whitesboro, NY 13492.

8. That at all times relevant to this complaint, the Defendant, Rodger W. Doyle, Jr., is an individual engaged in the construction business in the State of New York and doing business in the State of New York with principle offices located 468 Trenton Avenue, Utica, New York 13502.

7. At all times relevant to this complaint, Plaintiff was a sub-recipient of grants, through the City of Utica, from the United States Government, for the purpose of Community Development and Neighborhood Revitalization (hereinafter referred to as "grant" or "grants").

8. Plaintiff entered into one or more contracts with the City of Utica for the implementation of those grants. Pursuant to these contracts, Plaintiff undertook to perform certain duties in the performance and administration and operation of the grant programs.

9. Certain individuals, as officers, directors and employees of Growest were and are fiduciaries to the Plaintiff and owe the duty to conduct the business of Growest. As fiduciaries, the individual officers, directors and employees were and are bound to act toward and deal with Growest, and its members, with the utmost fidelity, loyalty, care and good faith. As part of a concerted plan and scheme, the individual officers, directors and employees conspired with the Defendants herein and others, to divert funds designated for grant purposes to personal use and other improper purposes.

10. The Defendants, either individually or in concert with the Plaintiff's individual officers, directors and employees, or with each other, undertook wrongful actions which caused damage to Growest, wasted Growest assets and deprived Growest of business opportunities.

11. Many of the grant programs involved construction work to rehabilitate housing stock in the City of Utica by performing various repairs and reconstruction activity (herein after referred to as "construction contracts"). Plaintiff's officers,

directors and employees administered the programs and supervised the bidding, award and management of the construction contracts.

12. Defendants, acting either independently or in concert with others and/or with Growest officers, directors and employees, engaged in a pattern of bid rigging whereby artificially low bids were submitted in order to receive the award of the construction contract, only to increase the project cost through the inappropriate use of change orders.

13. The Defendants, either individually or in concert with the Plaintiff's individual officers, directors and employees, or with each other, manipulated change orders, or so called emergency repairs for the purposes of obtaining excessive costs in the contract and allowing two contractors being paid for the same work.

14. The Defendants, either individually or in concert with the Plaintiff's individual officers, directors and employees, or with each other, misappropriated construction materials for Plaintiff's projects or diverted them to improper uses.

15. The Defendants, either individually or in concert with the Plaintiff's individual officers, directors and employees, or with each other, misappropriated materials purchased through Plaintiff's funds but diverted them for personal use.

#### **AS AND FOR A FIRST CAUSE OF ACTION**

16. . Repeats, reiterates, and re-alleges each and every allegation contained above as if more fully set forth herein.

17. The funds allocated for the grants were property of Plaintiff exclusively provided for use through various grant programs. Those funds were to be disbursed only in accordance with the terms of the grant program purposes.

18. The Defendants, either individually or in concert with the Plaintiff's individual officers, directors and employees, or with each other, interfered with Plaintiff's right to the property by, among other things, bid collusion, bid rigging, improper change orders, improper cost overruns, and misappropriation of funds to purchase materials which were not used in furtherance of the grant program.

19. All of the above caused the diversion of those funds and property away from their lawful purpose with the intent to convert these funds to non-program purposes.

20. In so doing, the Defendants converted those funds.

22. As a result of the foregoing Plaintiff has been damaged by an amount to be determined but which exceeds the jurisdictional limit of any lower court.

**AS AND FOR A SECOND CAUSE OF ACTION**

23. Repeats, reiterates, and re-alleges each and every allegation contained above as if more fully set forth herein.

24. In the course of performing work under the grant programs, the Defendants, made numerous statements, representations and certifications, both oral and written that the program funds were being properly expended for proper program purposes in accordance with the applicable rules and regulations.

25. The representations and omissions were false or that Defendants, made these representations in reckless disregard for whether or not the statements were true or false.

26. The Defendants made these representations in order to induce the Plaintiff to continue operation the programs and to pay the Defendants the program funds.

27. Plaintiff justifiably relied on Defendants representations, in deciding to proceed with contracts, or change orders and the like.

28. As a result of the foregoing Plaintiff has been damaged by an amount to be determined but which exceeds the jurisdictional limit of any lower court.

**AS AND FOR A THIRD CAUSE OF ACTION**

29. Repeats, reiterates, and re-alleges each and every allegation contained above as if more fully set forth herein.

30. The Defendants conspired with each other, with officers, directors and employees of the Plaintiff and with persons outside the Corporation to commit the frauds alleged above.

31. As a result of the foregoing Plaintiff has been damaged by an amount to be determined but which exceeds the jurisdictional limit of any lower court.

**AS AND FOR A FOURTH CAUSE OF ACTION**

32. Repeats, reiterates, and re-alleges each and every allegation contained above as if more fully set forth herein.

33. As a result of the foregoing, the Defendants have been unjustly enriched as the expense of the Plaintiff.

34. As a result of the foregoing Plaintiff has been damaged by an amount to be determined but which exceeds the jurisdictional lime of all lower courts.

**AS AND FOR A FIFTH CAUSE OF ACTION**

35. Repeats, reiterates, and re-alleges each and every allegation contained above as if more fully set forth herein.

36. Defendants entered into a series of contracts with Plaintiff to provide construction and other services in connection with program projects.

37. These contracts contained various obligations and duties on the part of both Plaintiff and Defendants.

38. Plaintiff performed all of its obligations on the contract.

39. Defendant failed to perform portions of its obligations under the contract.

40. As a result of the foregoing Plaintiff has been damaged by an amount to be determined but which exceeds the jurisdictional limit of any lower court.

WHEREFORE, Plaintiff demands judgment against the Defendants in an amount to be determined by this Court, but which exceeds the jurisdictional limit of any lower court, including punitive damages together all reasonable costs and expenses of the action, including reasonable attorney's fees, experts and other consultants fees incurred in the prosecution of this action and for such other an further relief as the Court may deem proper.

Dated: September 27, 2010



Linda Sullivan Fatata, Esq.  
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