

S U M M O N S

STATE OF ALABAMA )  
BALDWIN COUNTY )  
IN THE CIRCUIT COURT  
FOR THE TWENTY-EIGHTH JUDICIAL  
CIRCUIT OF ALABAMA

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Ben M. Radcliff  
Contractors, Inc., a corporation, to appear within thirty  
days from the service of this writ, in the Circuit Court, to  
be held for said County at the place of holding the same, then  
and there to answer the Complaint of Ball-Co Contractors, Inc.,  
a corporation.

WITNESS MY HAND, this 25 day of March  
1971.

*Ernie S. Blackmon*

\* \* \* \* \*

C O M P L A I N T

\* \* \* \* \*

BALL-CO CONTRACTORS, INC., )  
a corporation, )  
Plaintiff, )  
v. ) CASE NO. 9767  
BEN M. RADCLIFF CONTRACTORS, )  
INC., a corporation, )  
Defendant. )

COUNT ONE

Plaintiff claims from the defendant, Ben M. Radcliff  
Contractors, Inc., a corporation, Sixty-Five Thousand and no/100ths

Dollars (\$65,000.00), damages for the breach of a subcontract agreement entered into by plaintiff and defendant on, to-wit the 11th day of March, 1970, by which defendant agreed to pay plaintiff for work, services, and materials, as more fully appears from the attached copy of such contract, which is identified as Exhibit "A" hereto and incorporated herein by reference as though set forth verbatim; plaintiff avers that pursuant to such contract, and at defendant's request, plaintiff performed certain "extras"; and plaintiff avers that defendant has breached the said contract with plaintiff in that defendant has failed to pay plaintiff a balance due of, to-wit, \$51,069.16 which includes the amount due plaintiff on the base contract, the amount due plaintiff for retainage on the base contract, and the amount due for "extras" performed by plaintiff (at defendant's request), and extended overhead, which sum with the interest thereon is overdue and unpaid despite plaintiff's repeated demands for such payments and plaintiff's full performance of its said contract with defendant, hence this suit.

COUNT TWO

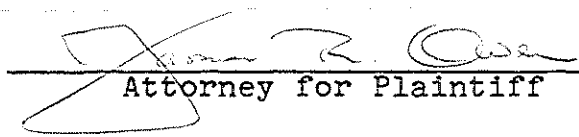
The plaintiff claims of the defendant, Ben M. Radcliff Contractors, Inc., Sixty-Five Thousand and No/100ths Dollars (\$65,000.00) damages for the breach of an agreement entered into by it on, to-wit, the 11th day of March, 1970, in substance as follows:

Defendant agreed in writing to pay plaintiff for work, services, and materials as more fully appears from Exhibit "A" attached hereto and incorporated herein by reference as though set forth verbatim; and plaintiff avers that defendant has breached its contract with plaintiff in that

defendant has failed and refused to pay plaintiff sums due on the base contract including sums due for retainage, extras (performed at defendants' request) and extended overhead; and plaintiff avers that notwithstanding its compliance with all conditions of such contract and its demands for performance of defendant, the defendant has breached its contract as aforesaid.

COUNT THREE

Plaintiff claims of defendant Sixty-Five Thousand and No/100ths Dollars (\$65,000.00) due from it for work and labor done for the defendant by the plaintiff from, to-wit, March, 1970 until, to-wit, July, 1970, at defendants request which sum with the interest thereon is still unpaid.

  
Attorney for Plaintiff

James Owen, Esquire  
Bay Minette, Alabama

BRADLEY, ARANT, ROSE & WHITE  
1500 Brown-Marx Building  
Birmingham, Alabama 35203

**FILED**

MAR 25 1971

Plaintiff's Address:

Ball-Co Contractors, Inc.  
P. O. Box 788  
Bay Minette, Alabama 36507

EUNICE B. BLACKMON CIRCUIT  
CLERK

Serve the Defendant:

Ben M. Radcliff Contractors, Inc.  
P. O. Box 8277  
Spring Hill Station  
Mobile, Alabama 36608

# UNIFORM SUBCONTRACT

ADOPTED BY

ALABAMA BRANCH ASSOCIATED GENERAL CONTRACTORS

This agreement made this

of 1704 Beltline Hwy., Mobile, Ala. 36602 hereinafter called the Contractor.

WITNESSETH:

For the consideration hereinafter named, the Subcontractor and Contractor agree and bind themselves as follows:

- Section 1. The Subcontractor agrees to furnish all labor, materials (including scaffolding and hoisting facilities unless specifically excluded herein) and fully perform and in every respect complete the
- |  |              |
|--|--------------|
| 1.) Piping & Utilities                       | \$ 58,542.00 |
| 2.) Total Equipment unloading, setting, etc. | 25,520.00    |
| 3.) Revisions per Jacob ltr. dtd. 2-21-70    | 11,121.00    |

All in accordance with plans and specifications entitled SPEC KRM 469-3 dtd. 2-2-70 and Young ltr. dtd. 2-20-70.

for the (project) Kaiser Aluminum & Chemical Corporation

Located at Bay Minette, Alabama

for (owner) Kaiser Aluminum

according to the plans and specifications prepared by Jacob Engineering, Inc., Pittsburgh, Pa.

hereinafter called the Architect or Engineer.

Section 2. The Contractor agrees that he will pay to the Subcontractor, in accordance with the provisions of Section 4 hereof and subject to any increase or decrease resulting from changes that may be agreed upon, the sum of (\$ 95,483.00) Ninety-Five Thousand Four Hundred Eighty-Three and 00/100 Dollars.

Section 3. The Subcontractor agrees to begin work as soon as he is notified by the Contractor that the ground is clear or the structure (or structures) far enough advanced to allow the beginning of that portion included herein, and will carry forward and complete his work as rapidly as the Contractor may judge that the progress of the structure (or structures) will permit. (Insert liquidated damages here if any) Completion dates per phases as required by specifications.

Section 4. The Contractor agrees to pay the Subcontractor for periodic estimates submitted, upon receipt of payment from the Owners for the Contractor's periodic estimate in which the Subcontractor's periodic estimate is incorporated. Should the Subcontractor's portion of the Contractor's estimate be reduced for any reason, payment to the Subcontractor will be reduced accordingly. Final payment to Subcontractor to be made upon receipt of final payment from Owners.

Section 5. Subcontractor agrees to furnish, if and when requested by the Contractor, affidavits that all bills for materials and labor have been paid, such affidavit to be supported by receipted bills, if required by the Contractor. Prior to final payment to the Subcontractor, a release of liens and all claims is to be furnished to the Contractor together with any affidavits which may be required. The Contractor reserves the right to pay any outstanding past due obligations of the Subcontractor arising on this job by checks made payable jointly to the Subcontractor and its vendor or subcontractor. Any such payments shall apply as a payment on this Subcontract.

Section 6. If the Subcontractor should be adjudged a bankrupt, or if he should make a general assignment for the benefit of his creditor, or if a receiver should be appointed on account of his insolvency, or if the Subcontractor should fail to carry forward and complete his work as provided in this Subcontract as rapidly as the Contractor may judge that the progress of the structure or structures will permit, or if he should become insolvent or should fail to make prompt payment for material or labor used on the job, or should fail to comply with instructions of the architect or with applicable portions of laws, or if he should otherwise be guilty of a breach of the contract, then the Contractor may without prejudice to any other right or remedy terminate the employment of the Subcontractor after giving him 7 days written notice of his intention to do so and may thereupon take control of the work covered by this subcontract and may take possession of all materials and instruments thereon and complete the work by releasing the subcontractor or otherwise as the contractor may think best, in which case the subcontractor shall not be entitled to receive any further payments until the work is completed. If the unpaid balance under this subcontract shall exceed the expense of finishing the work including compensation for additional managerial and administrative services and all other expenses made necessary by the termination of the contract, the excess shall be paid to the subcontractor. If such expense is greater than such unpaid balance, the subcontractor shall pay the difference to the Contractor.

Section 7. Subcontractor assume exclusive liability for all contributions, taxes, or payments required to be made because of employees of the Subcontractor by the Federal and State Unemployment Compensation Acts, Social Security Acts or any amendments thereto, and by all other or future Acts, State or Federal, requiring the payment of similar contributions or taxes, and for all sales tax and use tax.

Section 8. The Subcontractor will maintain such insurance as will protect him and the Contractor from claims under the Unemployment Compensation Acts and any other claims from property damage and claims for bodily injury, including death, which may arise from operations under this Contract, whether such operations be by himself or any of his subcontractors or agents directly or indirectly employed by either of them. Limits of coverage to be as follows:

Workmen's Compensation	Statutory Limits
Public Liability including Contractual Coverage	Limits 300,000.00
Property Damage including Contractual Coverage	Limits 300,000.00
Automobile (including trucks) Liability	Limits 300,000.00
Automobile (including trucks) Property Damage	Limits 300,000.00

**Indemnity Agreement:** The Subcontractor covenants to indemnify and save harmless and exonerate the Contractor and the Owner of and from all liability, claims and demands for bodily injury and property damage arising out of the work undertaken by the Subcontractor, its employees, agents or its subcontractors, and arising out of any other operation no matter by whom performed for and on behalf of the Subcontractor, whether or not due in whole or in part to conditions, acts or omissions done or permitted by the Contractor or Owner.

**Certificates of Insurance:** The Subcontractor will submit to the Contractor five (5) copies of certificates of insurance certifying that the insurance policies carried by him were in force before the work started and certifying that these policies will not be cancelled during the period of construction other than by an endorsement added to the policies and certificates reading substantially as follows:

"The policy herein referred to is not cancellable or subject to a reduction of coverage by the Insurer in less than 10 days after the person or firm to whom this certificate is addressed has received written notice, as evidenced by return receipt of registered or certified letter."

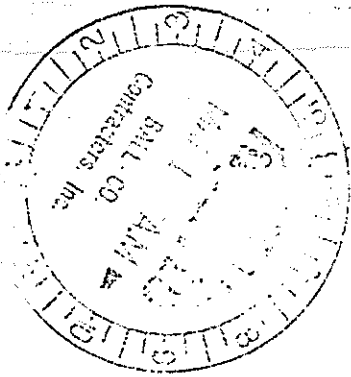
Section 9. In case of conflict between the provisions of the Contract between the Owner and the Contractor and the provisions of this subcontract, the provisions of this subcontract shall prevail in any matter between the Contractor and Subcontractor.

Section 10. The Subcontractor shall not employ any workman whose employment on the building or project is objected to by the Contractor.

Section 11. Claims for extras will only be allowed where written authorization has been given prior to execution of the work. When such authority is given without a proposal the full claim must be submitted promptly upon completion of the extra work.

Prior authority for temporary services must be given by the General Superintendent and claims for such services must be submitted in detail and approved weekly.

Section 12. It is fully understood that the Subcontractor will be responsible for keeping his part of the job clean and in an orderly fashion subject to the approval of the Contractor and Architect. Should it become necessary for the Contractor to incur any expenses performing cleanup work for the Subcontractor, such expense will become subject to deduction from Subcontractor's contract price.



IN WITNESS WHEREOF the parties hereto have executed this agreement the day and year first above written.

BEN M. RADCLIFF CONTRACTOR, INC.

(Contractor)

Witness

By L. M. Kramer Title

BALL-CO CONTRACTORS, INC.

(Subcontractor)

Gerry Gauchstone  
Witness

By Joseph A. Wallis  
V.P.  
Title

Note: Job superintendents have been advised that subcontractors are not to begin work until such time as certificates of insurance have been furnished and a copy of this subcontract has been executed by the Subcontractor and returned to the Contractor.

MAR 25 1971

TAYLOR WILKINS  
SHERIFF

Received 26 Day of Mar 1971  
and on 29 Day of Mar 1971  
I served a Copy of the within Writ  
on Ben M. Radcliff Contractors Inc  
by service on Mr. Holly, Superintendent

RAY D. BRIDGES, Sheriff

By                      D. S.

97678625  
H. H. Co Contractors  
H. H. Co

no. 294  
Ben M. Radcliff  
Contractors Inc  
1704 Baskin

FILED

MAR 25 1971

REC'D. SHERIFF DEPT.  
MOBILE COUNTY, ALA.  
MAR 26 9 56 AM '71

EUNICE B. BLACKMON  
CLERK

J. R. Weaver