

STATE OF INDIANA) HAMILTON COUNTY COURT
) SS:
COUNTY OF HAMILTON) CAUSE NO.:

DCG INDIANA, INC. d/b/a DILLON)
CONSTRUCTION GROUP a/k/a DILLON)
CONSTRUCTION a/k/a DCG)
CONSTRUCTION.)

Plaintiff,)

vs.) JURY DEMANDED

CARDINAL XLIII, LLC;)
MOTORSPORT REAL ESTATE)
VENTURES, LLC d/b/a ANDRETTI)
MOTORSPORTS; STUDIO M)
ARCHITECTURE AND PLANNING, LLC;)
GRADEX, INC; and GLENMARK)
CONSTRUCTION COMPANY,)
INC.;)

Defendants.)

COMPLAINT FOR BREACH OF CONTRACT,
FRAUDULENT TRANSFER, COPYRIGHT INFRINGEMENT, AND
LIEN FORECLOSURE

Plaintiff, DCG Indiana, Inc. d/b/a Dillon Construction Group a/k/a Dillon Construction a/k/a DCG Construction (“DCG”), by counsel, for its Complaint against Defendants, Cardinal XLIII, LLC (“Cardinal”); Motorsport Real Estate Ventures, LLC (“Motorsport”); Studio M Architecture and Planning, LLC (“Studio M”); Gradex, Inc. (“Gradex”); and Glenmark Construction Co. Inc. (“Glenmark”), alleges as follows:

I. Parties and Venue

1. This matter arises from the design and construction of a racing facility for Andretti Global in Fishers, IN.

2. DCG is an Indiana corporation with its principal place of business located at 6828 Hillsdale Court, Indianapolis, IN 46250

3. Cardinal is a Delaware limited liability company with its principal place of business located c/o Bradford Allen Realty Services, LLC, 300 S. Wacker Drive, 35th Floor, Chicago, IL 60606.

4. Motorsport is a Delaware limited liability company with its principal place of business located c/o Bradford Allen Realty Services, LLC, 300 S. Wacker Drive, 35th Floor, Chicago, IL 60606.

5. Studio M is an Indiana limited liability company with its principal place of business located at 2 West Main Street, Carmel, IN 46032.

6. Gradex is an Indiana corporation with its principal place of business located at 10220 N. Illinois Street, Carmel, IN 46290.

7. Glenmark is an Indiana corporation with its principal place of business located at 951 Western Drive, Indianapolis, IN 46241.

8. Pursuant to Indiana Trial Rule 75(A)(2), Hamilton County is a county of preferred venue because this Complaint includes a claim to foreclose mechanic's liens on property located in Hamilton County.

II. Factual Allegations DCG and Andretti Autosports

9. For over 20 years, DCG and its founder Dale Dillon ("Dillon") have engaged in myriad design and construction projects, including the design and construction of IndyCar motorsports facilities and street courses.

10. DCG designed and built the Green Racing IndyCar Race Facility at 7615 Zionsville Rd, Indianapolis, IN 46268, which was purchased by Andretti Autosports (“Andretti”) and then expanded twice by DCG.

11. Subsequently, DCG worked with Andretti on multiple IndyCar projects, including the conceptual design and budgeting for new race facilities in Speedway, IN, and Charlotte, NC; Andretti’s purchase and reinstatement of the Toronto Grand Prix; all aspects of the St. Pete Grand Prix; the design and logistics for the Grand Prix of Turks and Caicos; and studies for races in Boston, New York City, and Ft. Lauderdale.

The Andretti Global Headquarters

12. In early 2022, Andretti approached DCG to discuss the development, design, and construction of a new headquarters in Indiana (the “Project”).

13. Completion and occupancy of the Project had to occur no later than the Fall of 2024 so that Andretti could prepare for the 2025 IndyCar racing season.

14. In addition, Andretti had started discussions with the Fédération Internationale de l’Automobile (“FIA”) regarding the possible approval of Andretti as an F1 expansion team, which would require Andretti to satisfy stringent FIA facility requirements.

15. At the request of Andretti, DCG then undertook—beginning in January 2022, prior to the execution of a contract, and thus at its own risk—extensive efforts to identify possible sites for the facility; explored financial incentives from various municipalities; coordinated critical meetings between Andretti and those municipalities; investigated land, utility and road requirements; discussed Andretti’s Project criteria in detail; created construction budgets; developed site and building conceptual plans and

renderings; facilitated the purchase of property from the Indianapolis Airport Authority in Fishers, IN; adapted the conceptual design to comply with Federal Aviation Administration construction requirements; identified designers and trade subcontractors to complete the design and construction of the facility; and met with state and local authorities to obtain necessary permits.

16. DCG retained Studio M to prepare and iterate architectural and structural concept plans for the Project.

17. DCG retained DEEM, LLC (“DEEM”) to prepare and iterate mechanical-electrical-and plumbing (“MEP”) concept plans for the Project.

18. In addition, DCG explored the possibility of utilizing development companies to assemble a group of investors to finance the Project, but Andretti ultimately assembled its own investment group.

19. In July 2022, Andretti informed DCG that it had retained Bradford Allen Realty Services, LLC (“Bradford Allen”), which had created a single-purpose entity named Cardinal XLIII, LLC (“Cardinal”) to act as the Project Owner and to represent the investors’ interests.

20. At their initial meeting, DCG explained to Cardinal the work that DCG had already performed, its current and ongoing activities, and the planned upcoming work activities, requirements, and deadlines.

21. Acknowledging the immovable late-2024 deadline for Andretti’s occupancy of the Project, Cardinal instructed DCG to “keep going as fast as it could.”

22. DCG continued to work with subcontractors, potential subcontractors, engineers, testing agencies, architects, City of Fishers officials, Hamilton County officials, Andretti, and numerous other entities to keep the Project on schedule.

23. DCG advised Andretti and Cardinal on proposed site use and improvements, selection of materials, and building systems and equipment; and DCG provided Andretti and Cardinal with recommendations on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including alternative designs, preliminary budgets, life-cycle data, and possible cost reductions.

24. During a Project Design Meeting on July 28, 2022, DCG, Andretti, and Cardinal selected Fishers, IN, as the location for the Project, discussed Andretti's Project criteria, discussed the bid package for MEP systems, and reviewed the location and design of the building, the exterior material for the building, building entry points, and energy conservation measures.

25. During a Project Design Meeting on August 4, 2022, DCG, Andretti, and Cardinal discussed Andretti's Project criteria, the Project site and building concept plans and the MEP bid; and DCG provided Cardinal a draft contract for the Project.

26. During a Project Design Meeting on August 11, 2022, DCG, Andretti, and Cardinal discussed Andretti's Project criteria and continued to discuss the Project site, building concept plans, and the MEP bid.

27. During a Project Design Meeting on August 18, 2022, DCG provided an updated Project schedule and payment schedule in addition to continuing discussions on the Project criteria, site, and building.

28. During a Project Design Meeting on August 25, 2022, DCG, Andretti, and Cardinal discussed Andretti's Project criteria and discussed and approved the commencement of site work on the Project.

29. During a Project Design Meeting on September 1, 2022, DCG, Andretti, and Cardinal discussed Andretti's Project criteria, the Project's sanitary and sewer requirements, an updated building concept plan to be provided by Studio M, and Fishers's request to construct a portion of the Nickel Plate Trail on the Project site.

30. During a Project Design Meeting on September 9, 2022, DCG, Andretti, and Cardinal discussed Andretti's Project criteria, the updated concept plans provided by Studio M, building equipment requirements, and the MEP bid package.

31. On September 10, 2022, DCG submitted its first Application for Payment.

32. During a Project Design Meeting on September 22, 2022, DCG, Andretti, and Cardinal discussed Andretti's Project criteria, site grading plans, a conceptual building equipment list, and soliciting bids for site and MEP work in early October.

33. During a Project Design Meeting on October 6, 2022, DCG, Andretti, and Cardinal discussed Andretti's Project criteria, grading and drainage plans, a conceptual equipment list, and soliciting bids for site work.

34. During a Project Design Meeting on October 19, 2022, DCG, Andretti, and Cardinal discussed Andretti's Project criteria, the commencement of site work, soliciting bids for concrete work, and the retention of Alt & Witzig Engineering, Inc. to provide materials testing and inspection.

35. During a Project Design Meeting on October 26, 2022, which neither Andretti nor Cardinal attended but were provided meeting minutes, DCG discussed the commencement of site work and bidding of the concrete and steel work.

36. During a Project Design Meeting on November 3, 2022, DCG, Andretti, and Cardinal discussed Andretti's Project criteria and continued to discuss site work and the bidding of concrete and steel work.

37. During a Project Design Meeting on November 10, 2022, DCG, Andretti, and Cardinal continued to discuss Andretti's Project criteria, execution of a subcontract for site work and commencement of site work, concrete and steel work bidding, and soliciting elevator bids.

38. During a Project Design Meeting on November 21, 2022, which neither Andretti nor Cardinal attended but were provided meeting minutes, DCG prepared bid tabulations and reported the status of elevator bids, other site bids, concrete bids, MEP bids, fire protection bids, wall panel bids, glazing bids, and steel bids.

39. During a Project Design Meeting on December 1, 2022, DCG, Andretti, and Cardinal continued to discuss Andretti's Project criteria, status of the various bid packages, the most recent building floor plans from Studio M, and the groundbreaking ceremony.

40. During a Project Design Meeting on December 8, 2022, DCG, Andretti, and Cardinal discussed Andretti's Project criteria and bids for elevator and roofing.

41. During a Project Design Meeting on December 15, 2022, DCG, Andretti, and Cardinal discussed Andretti's Project criteria, the commencement of concrete

foundation and slab-on-grade work, design of the building shell, and bids for roofing work.

The Design-Build Contract

42. At the August 5, 2022, Project Design Meeting, DCG provided to Cardinal a draft contract for the Project.

43. DCG and Cardinal engaged in extensive contract negotiations and exchanged multiple contract forms and revisions that were drafted and reviewed by counsel for both parties.

44. Effective November 4, 2022, Cardinal and DCG executed an AIA A141-2014 Standard Form of Agreement between Owner and Design-Builder (the “Design-Build Contract”) pursuant to which Cardinal agreed that DCG was to continue to design and build the Project.

45. A true and accurate copy of the Design-Build Contract is included herewith as Exhibit A.

46. Unlike a design-bid-build project delivery method, under which a project owner first retains a design professional who develops a relatively complete design for a project that is only then released for bidding, under a design-build project delivery method a single design-builder is responsible for both the design and construction of a project and can thus “fast track” a project and begin construction before the design is complete.

47. The Design-Build Contract is a “cost-plus” contract under which DCG was to receive payment for actual costs it incurred plus a fee equal to 5.5% of those costs.

48. The Design-Build Contract required DCG to design and to build the Project in accordance with Cardinal's criteria, program, design requirements, and physical characteristics as set forth in Design-Build Contract Exhibits C and G (collectively the "Owner's Program").

49. The Owner's Program included development of a site with roads, utilities, sidewalks, and paths plus the design and construction of multiple buildings and improvements on that site.

50. The Design-Build Contract was amended once (the "First Amendment") to identify additional parties for which DCG was to provide various insurance coverages.

51. Beginning with DCG's first Application for Payment, Cardinal was consistently late making payments to DCG as required by the Design-Build Contract.

52. On or about February 22, 2023, Dillon placed a telephone call to Jeff Bernstein ("Bernstein"), a representative for Bradford Allen and Cardinal, regarding Cardinal's late payments.

53. Bernstein, who had executed the Design-Build Contract on behalf of Cardinal, stated that, "I'm not dealing with this <expletive>. I hate this <expletive> design-build <expletive>. You're terminated."

54. Mr. Bernstein called Mr. Dillon the next day and stated that, "I'm not putting my reputation on the line for some little contractor. If you want to work with Clark [Construction], fine, but if you're not going to JV with them, you're done. If you want to go to war with a bunch of international billionaires, we'll bury you."

55. Clark Construction is a large construction contractor with whom Bradford Allen apparently has a longstanding relationship.

56. Bradford Allen had not previously mentioned Clark Construction to DCG.

57. On February 23, 2023, counsel for Cardinal emailed to counsel for DCG a proposed Third Amendment to the Design-Build Contract.

58. A true and accurate copy of that email and the proposed Third Amendment is included herewith as Exhibit B.

59. The proposed Third Amendment sought dramatically to reduce the scope of the Design-Build Contract by limiting DCG to performing only site work—thus eliminating roughly 90% of DCG’s work and fees.

60. On February 26, 2023, counsel for DCG transmitted to counsel for Cardinal a letter noting that the Design-Build Contract bound Cardinal to use DCG as the design-builder for the Project; objecting to the unilateral scope reduction; and rejecting Cardinal’s insistence that DCG joint venture with Clark Construction.

61. A true and accurate copy of that February 26, 2023, letter is included herewith as Exhibit C.

62. During a subsequent telephone conversation, counsel for Cardinal indicated to counsel for DCG that, “Cardinal never intended to hire DCG for anything beyond the site work,” and that Cardinal “needs a large, financially-backed contractor to obtain funding.”

63. Cardinal had negotiated, revised, and executed the Design-Build Contract, which clearly includes both the site and building.

64. Prior to the execution of the Design-Build Contract, Cardinal never expressed concern about the size of DCG or the need for a large contractor to obtain funding, and any such concern is unfounded.

65. On March 1, 2023, counsel for DCG again transmitted to counsel for Cardinal a letter stating that the Design-Build Contract included the design and construction of the entire Project.

66. A true and accurate copy of that March 1, 2023, letter is included herewith as Exhibit D.

67. On March 9, 2023, counsel for DCG transmitted to counsel for Cardinal a formal claim that Cardinal had anticipatorily breached the Design-Build Contract and demanding payment of costs and fees already incurred by DCG, payment of reasonable overhead and profit on the remainder of the Project work, and warning Cardinal that its breach of the Design-Build Contract invalidated its license to use DCG's Project design documents, and demanding mediation.

68. A true and accurate copy of that March 9, 2023, letter is included herewith as Exhibit E.

Termination of the Design-Build Contract

69. On March 10, 2023, Cardinal transmitted to DCG a letter that called for the Design-Build Contract to be terminated following 7-days' notice to DCG (the "Termination Notice").

70. A true and accurate copy of the Termination Notice is included herewith as Exhibit F.

71. Understanding that the termination was wrongful, Bernstein notified Dillon by email dated March 17, 2023, as follows: "Dale: See below. As we discussed this morning, your contract is reinstated. My only request is that any work contracted by you or any financial commitments that you make are, as the contract dictates, first cleared

with us. If there is any issue with this, please feel free to reach out to me directly. Also, as we discussed, I will make sure that January's draw will be paid in full ASAP. Thanks so much, good weekend. Jeff.”

72. Notwithstanding Cardinal's express revocation of the 7-day notice of termination letter, on May 11, 2023, counsel for Cardinal transmitted to counsel for DCG a letter claiming that the Design-Build Contract had been terminated for cause on April 7, 2023.

73. A true and accurate copy of that May 11, 2023, letter is included herewith as Exhibit G (portions of that letter discussing settlement have been redacted).

Transfer of Property

74. Prior to February 2023, title to the real property on which the Project is located was vested solely in Cardinal.

75. In December of 2022, Cardinal prepared but did not sign a “Second Amendment” to the Design-Build Contract that redefined the term “Owner” in the Design-Build Contract to include Cardinal plus Bradford Allen Investment Advisors LLC; BAIHP HOLDINGS LLC; Bradford Allen Capital Investments, LLC; Bradford Allen Corporate Holdings LLC; Bradford Development Company; and BAIHP Management LLC—and thus would have made those additional entities' assets subject to any judgment obtained by DCG.

76. On February 8, 2023, at a time when it owed DCG \$2,155,874.51, Cardinal transferred title to the property on which the Project is located (the “Property”) by quitclaim deed to Motorsport Real Estate Ventures, LLC (“Motorsport”).

77. Cardinal and Motorsport share identical or common ownership.

78. Motorsports actively consented to the Project and the improvements to the Project made by DCG.

79. DCG did not consent to the transfer of ownership of the property from Cardinal to Motorsport.

Mechanic's Liens

80. On May 4, 2023, DCG recorded its Sworn Statement and Notice of Intent to Hold Mechanic's Lien against the Property in the office of the Hamilton County Recorder as Instrument No. 2023015887 ML (the "DCG Lien").

81. A true and accurate copy of the DCG Lien is included herewith as Exhibit H.

82. On May 16, Studio M recorded its Sworn Statement and Notice of Intent to Hold Mechanic's Lien against the Property in the office of the Hamilton County Recorder as Instrument No. 2023017705 ML (the "Studio M Lien").

83. A true and accurate copy of the Studio M Lien is included herewith as Exhibit I.

84. On May 17, 2023, Gradex recorded its Sworn Statement and Notice of Intent to Hold Mechanic's Lien against the Property in the office of the Hamilton County Recorder as Instrument No. 2023017716 ML (the "Gradex Lien").

85. A true and accurate copy of the Gradex Lien is included herewith as Exhibit J.

86. On May 19, 2023, Glenmark recorded its Sworn Statement and Notice of Intent to Hold Mechanic's Lien against the Property in the office of the Hamilton County Recorder as Instrument No. 2023018105 ML (the "Glenmark Lien").

87. A true and accurate copy of the Glenmark Lien is included herewith as Exhibit K.

Mediation

88. Section 14.3.1 of the Design-Build Contract requires all disputes or other matters in controversy arising out of or related to the Design-Build Contract to be submitted to mediation “as a condition precedent to binding dispute resolution,” but section 14.3.2 states that the request for mediation “may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing”

89. Contemporaneously with the filing of this Complaint, DCG has filed in this action a Motion to Stay Proceedings and has filed with the American Arbitration Association a Request for Mediation.

COUNT 1

(Breach of Contract against Cardinal)

90. DCG incorporates herein by reference paragraphs 1 – 89.

91. The Design-Build Contract is a valid and binding contract.

92. Prior to Cardinal’s termination of the Design-Build Contract, DCG incurred and billed to Cardinal costs and fees totaling One Million, Eleven Thousand, Four Hundred Sixty-Two Dollars and Twenty-One Cents (\$1,011,462.21) (the “Past Due Amount”).

93. Despite demand, Cardinal has failed and refused to pay the Past Due Amount.

94. All conditions precedent to payment of the Past Due Amount have been performed, have occurred, or have been excused.

95. Cardinal's failure and refusal to pay the Past Due Amount is a material breach of the Design-Build Contract.

96. Section 13.2.4.1 of the Design-Build Contract provides a mechanism for Cardinal to terminate the Design-Build Contract "for convenience": "The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause."

97. Section 13.2.4.3 of the Design-Build Contract states that "in case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed."

98. Bernstein of Cardinal decided to terminate the Design-Build Contract and hire Clark Construction but did not want to pay DCG overhead and profit on the remaining work as required by the Design-Build Contract.

99. Instead of terminating the Design-Build Contract "for convenience," Cardinal fabricated reasons to terminate the Design-Build Contract "for cause" that are non-substantial, specious, and a pretext to disguise Cardinal's true intent: to avoid the terms of a contract it had negotiated and executed and to replace DCG with Clark Construction.

100. Cardinal's termination of DCG is a material breach of the Design-Build Contract.

101. Cardinal alleges as a basis for termination that DCG failed to submit design drawings for approval, but that allegation is false: DCG presented and discussed

updated drawings during multiple design meetings, drawings were available to Cardinal and its consultant Ridge & Partners, LLP (“Ridge”) via ProCore, an electronic project document repository, and Cardinal and Ridge participated in ongoing design iterations, and Ridge approved DCG designs.

102. Cardinal alleges as a basis for termination that DCG’s design drawings were untimely and erroneous, but that allegation is false: The January 31, 2023, permit drawings were made necessary by Cardinal’s delay approving interior designs and the need to keep the Project moving forward, provide flexibility for daylighting, mezzanines, and other possible changes, and reflect design loads obtained from Ridge; and the only permit sought and received by DCG is the foundation permit, which conforms to the scope of the building requested by Cardinal.

103. Cardinal alleges as a basis for termination that DCG failed to maintain the design schedule, but that allegation is false: DCG met all dates and discussed design progress during multiple design meetings.

104. Cardinal alleges as a basis for termination that DCG awarded subcontracts without Cardinal’s approval, but that allegation is false: The only subcontracts awarded by DCG are those to Studio M, who is the Project architect and engineer, was working on the Project prior to Cardinal’s involvement, was introduced to Cardinal immediately, was approved by Cardinal, and who participated in many design meetings with Cardinal; Gradex, who is the site contractor, was working on the Project prior to Cardinal’s involvement, whose mobilization and work on the Project is critical to achieving timely completion, was approved by Cardinal; DEEM, who was working on the Project prior to Cardinal’s involvement, whose design of mechanical, electrical, and

plumbing systems is critical to achieving timely completion, was approved by Cardinal; and Wilhelm, who has been released only to design rebar, which is critical to achieving timely completion.

105. Section 13.2.3.1 of the Design-Build Agreement states that “the Owner may, without cause, order the Design-Builder *in writing* to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.”

106. Cardinal alleges as a basis for termination that DCG ignored a suspension of work order issued verbally on or about January 21, 2023, but that allegation is false: Cardinal’s suspension order applied only to the earthwork portion of the Project, and not the continuing design work and on-site work to protect the Project site and maintain erosion control.

107. Cardinal alleges as a basis for termination that DCG failed to understand Andretti’s criteria, but that allegation is false: DCG participated in several design meetings with Andretti before Cardinal’s involvement, continued to hold design meetings almost weekly after that, and suggested numerous cost-saving and value-enhancing ideas.

108. Cardinal alleges as a basis for termination that DCG requested shop drawings without Cardinal’s approval, but that allegation is false: The only shop drawings requested by DCG were for anchor bolts and rebar, were discussed with Cardinal at multiple design meetings, and were critical to achieving timely completion; and there is no contract requirement for shop drawings to be submitted to Cardinal. Shop drawings were submitted to the Engineer of record, approved and placed on Procore for use on the Project.

109. Cardinal alleges as a basis for termination that DCG failed to provide monthly reports, but that allegation is false: DCG provided monthly reports with every pay application after execution of the Design-Build Contract.

110. Cardinal alleges as a basis for termination that DCG increased the Project budget without Cardinal approval, but that allegation is false: DCG's Applications for Payment never increased any amount in the schedule of values or the total budget not requested or approved by Cardinal or Ridge.

111. Cardinal alleges as a basis for termination that DCG wrongly communicated with the City of Fishers, but that allegation is false: The Design-Build Contract does not prohibit such communications, DCG necessarily communicated with Fishers regarding ILPs (should this be spelled out?), infrastructure, and the Nickel Plate project; and DCG's ongoing communications with Fishers was essential to timely completion.

WHEREFORE, DCG, by counsel, respectfully prays for judgment in its favor and against Cardinal in an amount to be proved at trial but consisting, at a minimum, of the Past Due Amount plus 5.5% of the cost of completing the Project, for costs of this action, and for all other just and proper relief.

COUNT 2

(Fraudulent Transfer against Cardinal and Motorsport)

112. DCG incorporates herein by reference paragraphs 1 – 89.

113. Cardinal transferred the Property to Motorsport with the actual intent to hinder, delay, or defraud DCG or without receiving a reasonably equivalent value in exchange for the transfer or obligation while Cardinal was engaged in the Project and its remaining assets were unreasonably small in relation to the cost of the Project.

114. Cardinal's transfer of the Property to Motorsport is fraudulent and voidable under the Uniform Fraudulent Transfer Act.

WHEREFORE, DCG, by counsel, respectfully prays for an injunction against Cardinal and Motorsport preventing further transfer of the Property, for an attachment or other provisional remedy against the Property, for judgment in its favor and against Cardinal and Motorsport voiding the transfer of the Property to Motorsport, for costs of this action, and for all other just and proper relief.

COUNT 3
(Copyright Infringement against Cardinal)

115. DCG incorporates herein by reference paragraph 1 – 89.

116. The Design-Build Contract granted to Cardinal a limited, irrevocable, and nonexclusive license to use the tangible and intangible creative work developed by DCG ("Instruments of Service").

117. However, the Design-Build Contract also deems DCG as the author and owner of the Instruments of Service and indicates that DCG retains all common law, statutory and other reserved rights, including copyrights.

118. Moreover, the Design-Build Contract specifies that the license granted by DCG to Cardinal terminates if Cardinal does not substantially perform its obligations, including prompt payment of all sums when due.

119. Cardinal wrongfully terminated the Design-Build Contract and failed to pay DCG all sums when due, and the license for it to use DCG's Instruments of Service has terminated.

120. Despite being warned by DCG counsel, Cardinal has continued to use DCG's Instruments of Service.

121. The Instruments of Service are architectural works of original authorship under 17 USC § 102(a)(8) and thus subject to copyright protection.

122. By continuing to use the Instruments of Service without license from DCG, Cardinal has infringed DCG's copyright.

WHEREFORE, DCG, by counsel, prays for an injunction to prevent or restrain Cardinal's infringement of DCG's copyright; for an order impounding the Instruments of Service; for judgment in its favor and against Cardinal that Cardinal has violated DCG's copyright in the Instruments of Service, for an award of statutory damages, attorney's fees, and costs; and for all other just and proper relief.

COUNT 4

(Lien Foreclosure against Motorsport, Gradex, Studio M, and Glenmark)

123. DCG incorporates herein by reference paragraphs 1 – 89.

124. The DCG Lien is a valid and subsisting lien upon the Property.

125. Pursuant to Indiana law, DCG is entitled to foreclose the DCG Lien against the Property to satisfy DCG's claim and debt.

126. Studio M is made a party hereto to answer for its interests in the Property pursuant to the Studio M Lien.

127. Gradex is made a party hereto to answer for its interests in the Property pursuant to the Gradex Lien.

128. Glenmark is made a party hereto to answer for its interests in the Property pursuant to the Glenmark Lien.

WHEREFORE, DCG, by counsel prays for an in-rem judgment in its favor and against Motorsport and the Property in an amount to be proved at trial; for an award of its attorney's fees; for costs of this action; for the DCG Lien to be declared the first and

prior security on the Property; for the DCG Lien to be foreclosed; that the equity of redemption be foreclosed and barred; that the Property be ordered sold to pay and satisfy DCG's claim and debt with the proceeds of sale to be applied first against the payment of costs and expenses of sale, second to satisfy and pay DCG's claim and debt, and any excess proceeds to be used to pay the claims of Studio M and Gradex and that all rights of Studio M, Gradex, and Glenmark against the Property be foreclosed and barred; and for all other appropriate relief.

DEMAND FOR JURY TRIAL

Pursuant to Indiana Trial Rule 39(B), DCG hereby demands a trial by jury of all issues triable of right by a jury.

Respectfully submitted,

J. Michael Cavosie

J. Michael Cavosie, Atty. No. 16674-49

J. Greg Easter, Atty No. 8420-49

Elizabeth S. Schmitt, Atty. No. 30146-53

Katelyn Klingler, Atty No. 36867-49

mcavosie@easterandcavosie.com

geaster@easterandcavosie.com

eschmitt@easterandcavosie.com

kleveque@easterandcavosie.com

EASTER & CAVOSIE

11555 N. Meridian Street, Suite 410

Carmel, IN 46032

(317) 574-0828 telephone

(317) 574-0969 facsimile

Attorneys for Plaintiff, DCG Indiana, Inc. d/b/a
Dillon Construction Group A/K/A Dillon
Construction A/K/A DCG Construction

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of May 2023, a copy of this pleading was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

J. Michael Cavosie

J. Michael Cavosie