



84's Antagonists

Supplier accused of running roughshod over small contractor in legal battle over New Orleans school projects

Addie Mills battles 84 Lumber in a legal fight involving two school construction projects in Louisiana.

Sometimes even the best-run construction jobs head south, but in two projects involving 84 Lumber's installed sales division in New Orleans, alleged poor work, bad management, and legal bullying have left several small contractors devastated.

The news of a fresh legal entanglement for the Eighty-four, Pa.-based supplier comes less than a year after a similar PROSALES report, which involved 84 Lumber and a western Maryland builder who has waged a four-year legal battle over allegedly shoddy construction by the supplier's installed sales division that resulted in newly built homes being condemned and the builder in bankruptcy.

To some observers, the New Orleans dispute highlights the need for tight controls and oversight in installed-sales projects, while others point to what they say is a culture of arrogance at 84 Lumber that exacerbated an already problematic commercial project.

For dealers, 84 Lumber's travails offer a couple lessons, according to LBM experts. First, stick with what you're good at and only add services as you develop expertise in those areas. If you're going to do installations, regardless of size, you better know what you're doing because, if you screw up, it can cost you a lot of money.

Also, follow best practices, pay attention to details, draft a clear and

well-written Scope of Work document, provide jobsite management, and specifically spell out the responsibilities of all parties involved in the project.

Two Schools

The latest saga began nearly three years ago when Chicago-based construction firm F.H. Paschen contracted to build two schools in Louisiana. The company subcontracted with J&A Construction Management of Jena, La., for concrete foundation and other work at South Plaquemines High School in Port Sulfur, La., and Mildred Osborne Elementary School in New Orleans.

Addie Mills, owner of J&A, learned through the local chapter of

the National Association for the Advancement of Colored People that 84 Lumber offered special programs to assist small minority contracting firms like hers with bonding, project supervision, and materials for large construction projects.

Mills started J&A (which stands for Jesus Almighty) in 1983. The company focuses on commercial construction, construction management, concrete work, framing, painting, and roofing, as well as bridge work. "I know the business that well," Mills says. "I eat, sleep, and breathe it."

She turned to 84 Lumber primarily because the company offered to provide bonding for the school project, something she couldn't afford by herself. "They gave the impression they could do all these things, which, in actuality, they could not," Mills says.

In New Orleans, no sooner had the ink dried on the agreement between J&A and 84, than, Mills says, 84 began squeezing her out, taking over all aspects of the projects. She signed the original Master Service Agreement without having a lawyer look it over, only to discover that it gave the building materials firm 98% of any profits. Hiring a lawyer, she renegotiated the agreement to split the profits 40% to 60%, with the supplier getting the bigger share.

As the concrete work progressed, Mills quickly realized that the supervisors and workers that 84 had hired to perform the concrete work didn't know what they were doing. Nonconformance reports by a Paschen project manager cite numerous instances of faulty and substandard concrete work, including columns out of line, anchor bolts in the wrong location, poured concrete with honeycombing and voids, and exposed rebar.

Mills claims 84 hired a roofing

company that had no experience doing concrete work. She and another contractor on the project say that 84 rotated through six to eight project managers, bringing in salespeople from as far away as Florida who didn't know how to run a construction

\$731,903 outstanding for "extra work performed by 84 Lumber on both projects that Paschen has refused to acknowledge and for which Paschen has failed to pay 84 Lumber," according to legal documents.

Paschen responded to the lawsuit,

**"They left a whole trail of devastation."
—Addie Mills**

project or even order materials.

"My thing was the quality of work and safety," Mills says. "They left a whole trail of devastation."

Mills received bonding for the project through the dealer's insurance arm, Maggie's Management, named after 84 Lumber president Maggie Hardy Magerko. Mills called in the bonds when she and inspectors noticed mildew in one of the structure's basements and other installation flaws but found that 84 had registered the bonds in its own name, not J&A's. Maggie's Management charged Mills \$218,399 for the bonds, but she later discovered that the company only paid \$53,526 and pocketed the \$165,654 difference, Mills says.

Paschen, itself running short of cash, stopped paying because of faulty work by 84 Lumber; and 84 filed suit in July 2012 against Paschen, seeking more than \$10 million in unpaid balances. "Despite 84 Lumber satisfactorily performing its portion of the J&A Subcontract Work on both Projects, 84 has not been paid fully for the work performed," the company says in its complaint, filed in the U.S. District Court for the Eastern District of Louisiana.

84 Lumber alleges that Paschen owes \$1,042,080 on the high school and \$808,520 on the elementary school. The company also cites additional sums of \$2,489,031 and

adding J&A as a third-party defendant. J&A then entered the fray, charging 84 with "breach of contract, interference with contractual relationship, fraudulent misrepresentation, conversion, and unjust enrichment," according to the company's court filing.

At one point, 84 offered to defend Paschen against any future claims and liens if the contractor would pay \$1 million for the South Plaquemines High School project. Paschen agreed and wrote the check. But then, as claims and liens from subcontractors and material suppliers began to pile up, 84 "refused to defend" the contractor, resulting in additional damages and costs, Paschen says in its counterclaim.

In June 2013, 84 filed a motion to stop the trial and settle out of court via an arbitrator, per the terms of the projects' Master Service Agreement. The district judge ruled in 84's favor and the dispute headed for arbitration.

Jeff Nobers, 84's vice president of sales and marketing, acknowledged the case but declined to comment. "As this is in litigation, we will not comment on the case at this time," Nobers said in an Aug. 13 email. "We will comment after the case is resolved."

All at Fault

"I would say all parties are at fault," says the source close to 84, who

asked not to be named. “It certainly isn’t all 84 Lumber’s fault, and certainly Addie Mills is not innocent in the whole debacle, and Paschen had issues.”

Paschen stumbled, he says, by not managing the project properly and also going through a lot of management changes itself. The source says 84 was a small part of the job, but its work couldn’t be completed because “people ahead of them weren’t done.” Representatives for Paschen did not return calls seeking comment.

“There are problems at every large job. There always are,” he says. “And, 84 wasn’t getting paid by Paschen, even though they should have been.” He also suggested that Mills might not have bid high enough for the project, something Mills adamantly denies, noting that 84 ran its own cost analysis and came up with the same estimate.

In the Greg Mortimer case, the source says, “84 completely botched that deal.”

“The issues in the homes were not that significant, but they needed to be resolved in a timely fashion,” he says. “That should have been easily fixed and should have been fixed immediately.”

Boosting Margins

Mike Butts, general manager for General Materials in Lansing, Mich., and a former consultant and executive on installed sales by dealers, says LBM operations turn to installed sales to boost margins. Instead of simply selling a pre-hung exterior door, for instance, a dealer offering installation makes money off the door’s sale, and, most likely, a lockset to go with it, a threshold, perhaps some brick mold, and then the labor for the actual installation. The installation potentially triples the profit off the sale of that single door.

But in 84’s case, Butts says, “I don’t think it’s a problem with installed sales. Installed sales is incredibly simple.” A successful project revolves around a detailed Scope of Work document and a qualified project manager who’s able to hold people accountable for getting the work done correctly and on time, he says.

“We’re dealing with a culture issue—lack of competency, lack of planning, poor management overall with the company,” Butts says.

“Look at the turnover [at 84]. When you’re rolling managers as quick as they are, you can’t hope to have expertise that’s going to stick around,” he says.

“They don’t execute. They don’t have necessarily the best-qualified people managing these projects. They don’t follow sound contract management procedures,” says Butts, who for several years ran installed sales programs at Stock Building Supply. “At the end of the day, they piss people off, jobs go south, and they write big checks.”

For Mills and Mortimer, 84’s strategy seems to be to starve them out. “We’re a big company. We can afford to hold off,” Butts imagines 84 execs saying. “It’ll be years before they get a penny out of them.”

Small companies such as J&A lack the resources for a prolonged legal battle. Arnold Baker of Baker Ready Mix in New Orleans, which set up a portable concrete plant at one of the projects and provided about \$600,000 worth of concrete, says 84 stiffed him, but he’s large enough to withstand the blow while the legal gears grind on.

“We have thousands of delivery receipts that they signed that everything was great. And then after we shut down and walked off the project for nonpayment, they came up with all these claims,” Baker says, noting that there were about a dozen contractors waiting to get paid, including metal suppliers and finishers.

“If I didn’t have the funding to offset that, I’d be out of business—60 employees completely out of work,” Baker says. “I’m not dead. I’m coming back, but I’ve been critically injured.”

Addie Mills, who has lost her 20-year-old business, credit, and home, wonders if she’ll ever “stop living the nightmare.”

“They don’t care who they hurt,” Mills says, her voice breaking. “It’s about them and that money, and they leave destruction behind that is just unreal.” —*Steve Campbell*

Installed Sales Success

For dealers, 84 Lumber’s travails offer a couple lessons, according to LBM experts.

1. Stick with what you’re good at and only add services as you develop expertise to manage them.
2. Adhere to best practices.
3. Pay attention to details.
4. Draft a well-written Scope of Work document.
5. Hire qualified jobsite managers who know what they’re doing and can hold all parties accountable during the entire project.
6. Specifically spell out responsibilities of all parties involved in the project.
7. It’s better to turn away a project than ruin a customer relationship.

Have a good system in place, take on work you know how to do, and then, as Nike says, “Just do it.”