

Forest Hills School District sued for \$2 million in Anderson High School renovation project

Jeanne Houck, Cincinnati Enquirer

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(Photo: Jeanne Houck/The Enquirer)

A company that did site preparation work for renovations at Anderson High School is suing the Forest Hills Board of Education and the former general contractor for more than \$2 million in unpaid invoices.

J&D Rack Co. claims in a lawsuit filed in Hamilton County Common Pleas Court that Forest Hills is withholding money it owes Rack for change orders because the school board is over budget in its \$103 million, districtwide building project.

Forest Hills' failure to pay has forced Rack to lay off a third of its employees, Rack's lawsuit says.

The Green Township company is airing more than its financial complaints.

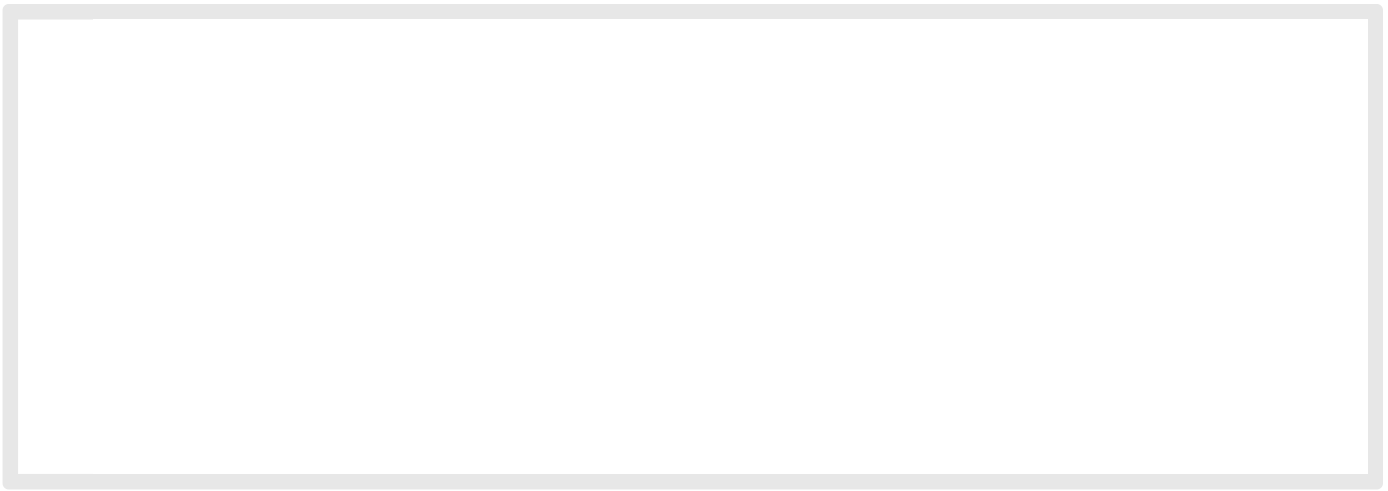
"(Forest Hills) is mired in public scandals and, upon information and belief, substantially over budget in its \$103 million district-wide construction project," Rack says in its lawsuit.

The district has had a run of creating headlines dating back to 2015:

- Former superintendent Dallas Jackson stepped down in 2015 after teachers alleged he bullied them (</story/news/2015/05/04/dallas-jackson-to-resign-as-forest-hills-superintendent/26898519/>) into changing his son's grades.
- The start of the Anderson High School school year was delayed in 2017 because of renovations of the building were behind schedule. In October of that year, the school had to close because it had no heat (</story/news/2017/10/31/high-school-closed-because-temperature-concerns-while-heating-system-installed/818687001/>). Then, in November 2017 the school board fired the construction company. (</story/news/local/anderson-township/2017/11/10/anderson-high-school-construction-contractor-fired-forest-hills-board-education-fires-company-workin/852019001/>).
- Three district employees departed earlier this year after records showed a multitude of email and text messages indicated a sexting scandal (</story/news/education/2018/09/05/forest-hills-sexting-scandal-employee-got-30-k-settlement/1203705002/>).
- The school board decided to revisit the possibility of changing Anderson High School's name from Redskins. (</story/news/education/2018/06/12/anderson-mascot-committee-moves-toward-recommendation/693920002/>) A committee recommended to the board the name remain the same in June.
- The board paid Doug Evans, CEO of Evans Landscaping, \$2.15 million for property to create a new bus hub this year (</story/news/local/anderson-township/2018/11/08/forest-hills-schools-deal-doug-evans-cannot-control-public-opinion/1779120002/>), despite the price being more than twice the market value and Evans being under federal indictment for fraud charges. Evans was found guilty on all charges earlier this week (</story/news/2018/12/12/evans-landscaping-how-wire-fraud-scheme-worked-doug-evans/2283122002/>).

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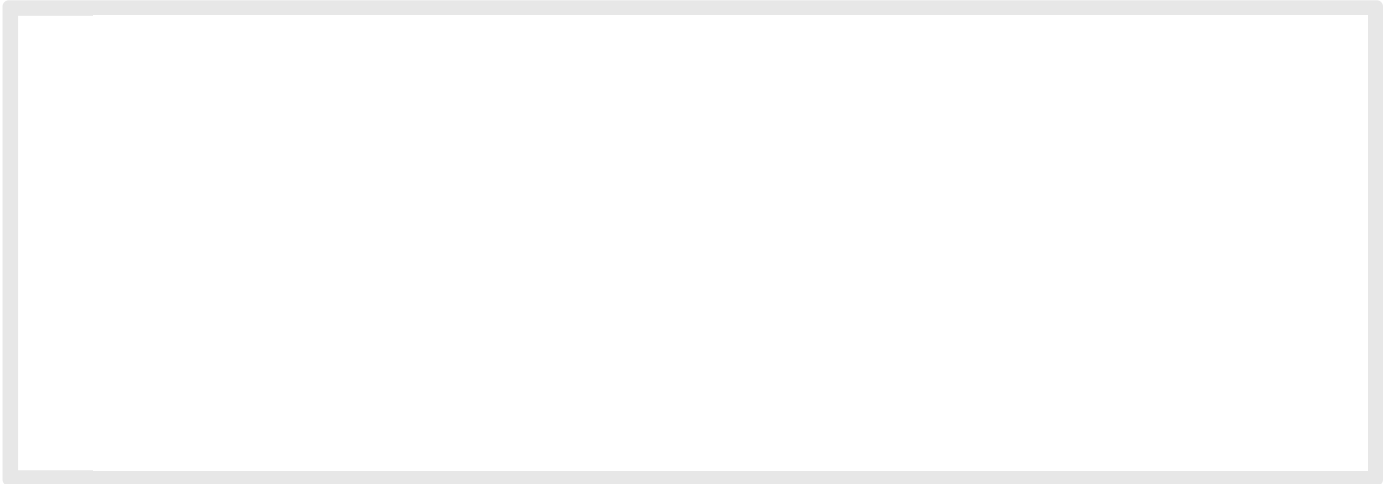
“To compensate, (Forest Hills) is unjustifiably withholding payment for Rack’s work to coerce Rack to accept unreasonable adjustments to amounts properly owed to Rack.”

In answer to the lawsuit, the Forest Hills Board of Education denies it is over budget in its building project.

Performance Construction fired

Rack was a subcontractor to Performance Construction of North Bend, which was general contractor for the work at Anderson High School until Forest Hills fired it in November 2017 because of delays and dissatisfaction with work performed beginning the summer before.

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Rack says in its lawsuit that it was supposed to be paid by Performance Construction, but Performance can’t pay Rack because Forest Hills has not paid Performance.

Rack wants the courts to enforce a lien it has filed in the Hamilton County Recorder’s office against \$2.06 million of Forest Hills’ public funds.

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Rack says nearly \$1.3 million of that sum was for subgrade stabilization work it did, and that Forest Hills wants to reduce that to about \$188,700 based on a typo in a bid form.



Work renovating Anderson High School has led to a lawsuit. (Photo: File photo)

Counter-claims, cross-claims

Performance Construction, whom Rack also has sued, says in an answer to the lawsuit that Forest Hills has grossly undervalued the value of Rack's work due to a known error on the bid form, but adds in a counter-claim against Rack that the \$2 million-plus Rack is seeking is unjustifiably high. It also asserts that the lien is hurting Performance's attempt to collect money it says Forest Hills owes it.

Performance Construction says in a cross-claim against Forest Hills that the school district owes Performance \$647,708 in approved work and \$172,465 in unbilled work it said it would pay – in addition to money that is the subject of Rack's lawsuit.

Rack also has sued David Zimmer and his business, The Zimmer Co. of Hebron, which provided Forest Hills with construction-management services, and the SSOE Group of Toledo, the school district's architect for the project.

According to Rack's lawsuit, the three conspired with Forest Hills to delay or withhold payment to Rack in an attempt to coerce Rack into seeking less money for the change orders.

Garbage dump uncovered

Rack says in its lawsuit that Forest Hills failed to conduct soil borings and permeability tests at a detention pond on the Anderson High School site at 7560 Forest Road before seeking bids, even though the school district knew or should have known it was formerly used as a garbage dump and full of massive chunks of old concrete that needed to be excavated and compacted.

This resulted in change orders approved by agents of Forest Hills, Rack says.

"(Forest Hills) instructed Performance that completion of these change orders was necessary so that the 2017-2018 school year opening would not be delayed, and asked Performance and Rack to expedite or 'fast-track' the work," Rack says in its lawsuit.

"In order to timely complete the Rack change orders, so student(s) could return to school, Rack pulled employees from other projects, directed (and paid) its employees to work overtime and weekends, and canceled and/or postponed other projects to devote resources to the site project.

"Despite Rack's devotion of substantial time and resources, however, Rack has still not been paid for the Rack change orders," Rack says.

Rack says jobs are lost due to lack of payment

"Rack has paid, and continues to pay, numerous of its own subcontractors and material suppliers for the site project despite not being paid itself," the lawsuit states.

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is been materially damaged," the suit reads.

Rack also says that it has laid off one-third of its workforce since Oct. 17, 2017, as a result of nonpayment from the district.

"Since Oct. 17, 2017, Rack's officers and shareholders have forgone salaries and dividends from the corporation," the lawsuit reads.

In addition to being paid for the change orders, Rack wants compensatory and punitive damages from defendants in the lawsuit based on various and differing claims.

Forest Hills, Performance Construction, Zimmer, The Zimmer Co. and SSOE Group all have denied wrongdoing in answers filed to Rack's lawsuit.

The school board also said some of the work performed by Rack was not at the direction of Forest Hills, its agents or Performance Construction.

Gun threats and sexting

Rack says in its lawsuit that during a meeting at the Anderson High School site Aug. 9, 2017, someone identified as "DZ, as agent of (Forest Hills) and Zimmer," yelled and cursed at John Rack and called him a liar in front of a number of people.

"Upon information and belief, DZ also threatened certain Performance employees that he would pull a gun on them. The threat was made on school grounds," Rack says.

Performance agreed in its filings that this happened. Forest Hills, Zimmer and The Zimmer Co. said it did not.

Rack also says Ray Johnson, then director of business operations for Forest Hills, assured the company that day it would be paid in full for the change orders.

Johnson resigned in October 2017 after he and two other Forest Hills employees were involved in a sexting scandal.

Rack says Forest Hills Local Schools Superintendent Scot Prebles on Oct. 2, 2017, "assured Rack it would be paid 'on the fast-track,' but that (Forest Hills) was unable to write checks until the board confirmed their new treasurer following the 'sexting' scandal."

Performance Construction agreed Prebles said that.

Forest Hills said he did not.

Judge Leslie Ghiz is presiding in the case, for which a conference is to be held Jan. 8.

More: 'Public scrutiny could be significant': Why Forest Hills did a deal with Doug Evans anyway [\(\(/story/news/local/anderson-township/2018/11/08/forest-hills-schools-deal-doug-evans-cannot-control-public-opinion/1779120002/\)\)](https://www.cincinnati.com/story/news/local/anderson-township/2018/11/08/forest-hills-schools-deal-doug-evans-cannot-control-public-opinion/1779120002/).

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