

NO. 2018-42734

ABG GENERAL CONSTRUCTION	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
V.	§	269TH JUDICIAL DISTRICT
	§	
3S REAL ESTATE INVESTMENTS,	§	
LLC- SERIES 3	§	
Defendant.	§	OF HARRIS COUNTY, TEXAS

PLAINTIFF'S SECOND AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES ABG General Construction, hereinafter called Plaintiff, complaining of and about 3S Real Estate Investments, LLC- Series 3, hereinafter called Defendant, and for cause of action shows unto the Court the following:

DISCOVERY CONTROL PLAN LEVEL

1. Plaintiff intends that discovery be conducted under Discovery Level 2.

PARTIES AND SERVICE

2. Plaintiff, ABG General Construction, is an entity doing business in Texas.
3. Defendant, 3S Real Estate Investments LLC- Series 3, has already made an appearance.

CLAIM FOR RELIEF

4. Plaintiff seeks monetary relief of \$100,000 or less and non-monetary relief.

JURISDICTION AND VENUE

5. This Court has subject-matter jurisdiction over this lawsuit because the amount in controversy exceeds this Court's minimal jurisdictional requirements and because district courts have exclusive jurisdiction over foreclosure suits to enforce mechanic's liens. This Court has personal jurisdiction over Plaintiff because they are Texas residents and over

Defendant, because it purposefully availed itself of the privileges and benefits of conducting business in Texas by engaging in business in Texas in a continuous and systematic manner.

6. Venue is mandatory in Harris County, Texas, pursuant to Tex. Civ. Prac. & Rem. Code § 15.011 because lawsuits to foreclose mechanics' liens on real property are to be maintained in the county in which all or a part of the property is located, and this is the county in which all of the property at issue is located. Venue is also proper in Harris County, Texas, pursuant to Tex. Civ. Prac. & Rem. Code §§15.002(a)(1) and (3) since all or a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Harris, Texas.

FACTUAL ALLEGATIONS

7. ABG General Construction agreed with United Plus Construction (a subcontractor) to improve the real property that belongs to 3S Real Estate Investments, LLC-Series 3. ABG General Construction agreed to demo, design, build a BBQ including but not limited to stucco and related thereto in exchange for \$4,000. ABG General Construction has not been paid and complete all the work. 3S Real Estate Investments, LLC- Series 3 received proper notices. 3S Real Estate Investments, LLC – Series 3 did not tender nor retain any monies as required. After all, just offsets the amount owed is \$4,000.00.

- 1) **OWNER:** 3S Real Estate Investments, LLC- Series 3
LEGAL ADDRESS: LT 6 BLK 16 HYDE PARK MAIN of Harris County, Texas
COMMON ADDRESS: 2105 Morse St., Houston, Texas 77019
CLAIM AMOUNT: \$4,000.00

8. Plaintiff provided valuable goods or services that benefited the Defendant, specifically construction and related work.

9. Defendant accepted the goods or services, with knowledge that the Plaintiff expected payment for same.

10. In reliance on the promise of payment, Plaintiff performed work.

11. The actions taken by the Plaintiff was reasonable and foreseeable in light of the promise made.

12. Plaintiff, through counsel, an affidavit with the Real Property Records of Harris County, claiming mechanic's and materialmen's liens against the Projects (the "Lien").

FORECLOSURE OF MECHANIC'S LIENS AGAINST THE PROJECT

13. Plaintiff has taken all steps necessary to perfect and create mechanic's liens against the Project pursuant to Chapter 53 of the Texas Property Code. Plaintiff gave timely notice to the real property owner, of all unpaid invoice amounts in its notice letter. Plaintiff duly and timely filed its Affidavits claiming Mechanic's and Materialman's Liens against the Project with the Real Property Records of Harris County, Texas ("Lien Affidavits"). The Lien Affidavits were indexed and recorded by the Harris Clerk. Plaintiff sent copies of the Lien Affidavits to Defendant. Plaintiff also made demand on Defendant for payment of the Lien Affidavits.

14. After all, just and lawful offsets, payments, and credits have been allowed, the balance due and unpaid to Plaintiff on the lien claims.

15. Plaintiff is entitled to and seek the establishment and foreclosure of its mechanic's liens on the property described above together with all improvements located thereon. Plaintiff is entitled to an Order of Sale and a Writ of Possession to be issued by a sheriff or constable with the State of Texas, directing him/her to seize and sell said property as under execution and satisfaction of Defendant obligations by reason of its failure to pay the sums due and owing as set forth above. If the proceeds of such sale are insufficient to satisfy Defendant Obligations, then Plaintiff request that the sheriff or constable take the money and any balance thereof remaining unpaid out of any other property of Defendant, as in the case of ordinary

execution. Any excess amounts should be paid to Defendant.

16. All conditions precedent have been performed, have occurred, or have been waived in order for Plaintiff to possess its mechanic's liens on the real estate, improvements, and removables located on the property.

LIABILITY UNDER TEXAS PROPERTY CODE SECTION 53.083

17. Plaintiff gave notice to Defendant pursuant to Section 53.083 of the Texas Property Code. Plaintiff made demand for payment to Defendant pursuant to Section 53.083, neither contractor (at all levels) nor Owner of Property paid debt. Notices were given in writing and under the proper time table. Therefore, pursuant to Section 53.083 of the Texas Property Code, since Defendant assented to the demand, Defendant was required to pay Plaintiff's lien claims, which they failed to do. Section 53.083 of the Texas Property Code provides that under such conditions Plaintiff's lien claims should have been paid by Defendant. However, since Defendant failed to pay Plaintiff, despite its statutory obligations to do same, Defendant is personally indebted to Plaintiff for the amount of the subject materialman's liens. Plaintiff is further entitled to a personal judgment against Defendant and for prejudgment and post-judgment interest as may be allowed by the law, and costs.

QUANTUM MERUIT

18. In the alternative, Plaintiff provided labor, materials or equipment to Defendant under circumstances which Defendant knew, or should have known, that Plaintiff expected payment. Defendant is liable to Plaintiff respectively in the amounts owed, the reasonable value of the labor and materials furnished to Defendant under *quantum meruit* for which payment have not been made.

DAMAGES/FORCLOSURE

19. Plaintiff has sustained damages in excess of this Court's jurisdictional minimum, as a result of the actions and/or omissions of Defendant described hereinabove and seek a judicial foreclosure to satisfy the judgment.

PRE-JUDGEMENT AND POST-JUDGEMENT INTREST

20. Plaintiff seeks recovery of prejudgment interest at the maximum rate permitted by law, more specifically, 1.5% compounded monthly under Texas Property Code Chapter 28.

ALTERNATIVE ALLEGATIONS

21. Pursuant to Rules 47 and 48, Texas Rules of Civil Procedure and the rules of pleadings, allegations in this petition are made in the alternative.

VIOLATIONS OF TEXAS PROMPT PAY ACT AND CLAIM FOR INTEREST

22. By way of additional plea and/or in the alternative, Plaintiff seeks recovery of interest as outlined in this pleading pursuant to Tex. Prop. Code Ch. 28, et seq., known as the Texas Prompt Pay Act. Specifically, the Texas Prompt Pay Act requires prompt payment to subcontractors, such as Plaintiff, which Defendant has failed to do despite receipt of payment of all or part of the amount due for the work performed by Plaintiff on the Project. Therefore, Defendant has violated the Texas Prompt Pay Act. There is no dispute regarding the validity of Plaintiff's claim, Plaintiff is entitled to recover from Defendant statutory penalty interest at a rate of one and a half percent (1½%) per month beginning date of completion.

23. In the alternative, Plaintiff seeks to recover from Defendant interest on the respective principal sums owed by them at the highest rate allowed by law as provided and authorized by the Texas Finance Code.

ATTORNEYS' FEES AND INTEREST

24. Plaintiff is entitled to recover its attorneys' fees and costs from Defendant pursuant to Texas Civil Practice and Remedies Code § 38.001 et seq. Plaintiff is entitled to recover its attorneys' fees, interest and costs for bringing its lien foreclosure actions against Defendant pursuant to Tex. Prop. Code § 53.156.

25. All conditions precedent to Plaintiff's right to recover its attorneys' fees have been performed or have occurred.

26. Plaintiff is also entitled to recover pre-judgment and post-judgment interest at the highest legal rate from Defendant, pursuant to applicable Texas law.

CONDITIONS SATISFIED

27. Plaintiff has fully or substantially performed all acts necessary to perfect and establish all claims and causes of action asserted in this lawsuit.

28. All conditions precedent to Plaintiff's right to recover on any of the claims and causes of action asserted in this lawsuit have been discharged, satisfied or fully performed.

REQUEST FOR DISCLOSURE

29. Pursuant to Texas Rule of Civil Procedure 194, Defendant 3S Real Estate Investments LLC Series 3 are hereby requested to disclose, within fifty (50) days of service of this request, the information and material described in R.190.2(b)(6) and Rule 194.2 (a) through (l).

NOTICE

30. Plaintiff incorporate by reference paragraphs 1 through 39 above.

31. This is an attempt to collect a debt. Any information obtained will be used for

that purpose.

TEX. R. CIV. P. 193.7 NOTICE

32. This paragraph serves as notice, pursuant to Tex. R. Civ. P. 193.7, that documents produced in response to written discovery requests served by Plaintiff will be used against the producing party in any pretrial proceeding and/or trial.

PRAYER

33. For these reasons, Plaintiff asks that Defendant be cited to appear and answer, further, that the Court enter a Judgment that Defendant take nothing, dismiss Defendant's claims with prejudice and that Plaintiff has judgment against Defendant in their proportionate share, for:

- a) All Plaintiff's actual damages
- b) The foreclosure of Plaintiff's mechanic's liens against the Project to satisfy its claims;
- c) Order of sale of the Project with the proceeds of such sale being paid to Plaintiff in satisfaction of the debt owed to it plus interest, attorney's fees and costs of Court;
- d) Statutory penalty interest under the Prompt Payment Statute against Defendant;
- e) Costs per Section 53.156 of the Texas Property Code;
- f) Reasonable attorneys' fees in the trial court and all appellate courts;
- g) All costs of court in the trial court and all appellate courts; and
- h) All such other and further relief, both general and specific, at law and in equity, to which it may show itself to be justly entitled.

Respectfully submitted,

The Law Offices of Marcos & Associates, P.C.

By: 

Javier Marcos, Jr.

Texas Bar No. 24028925

Email: jmarcos@marcoslaw.com

228 Westheimer Road

Houston, TX 77006

Tel. (713) 528-7711

Fax. (713) 528-7710

Attorney for Plaintiff ABG General Construction

CERTIFICATE OF SERVICE

I certify that on September 20, 2018 a true and correct copy of Plaintiff's Second Amended Petition was served by e-file to all counsel of record.



Javier Marcos, Jr.

Affidavit Claiming Mechanic's and Materialman's Lien

NOTICE: THIS IS NOT A LIEN.
THIS IS ONLY AN AFFIDAVIT CLAIMING A LIEN.

Affiant, Silvia Victoriano, on oath swears that the following statements are true and are within the personal knowledge of Affiant:

My name is Silvia Victoriano. I am the President of ABG General Construction ("Claimant"). This affidavit is made to perfect a mechanic's and materialman's lien against the real property described below:

1. Claimant has an unpaid claim in the amount of \$4,000.00 ("Claim Amount") for labor and materials furnished on the construction of improvements generally known as the 2105 Morse St construction project. The Claim Amount is, within my personal knowledge, just and true, the same is due and unpaid, and all just and lawful offsets, payments, and credits have been allowed. The Claim Amount is for labor and materials furnished and described below, on which a systematic record has been kept.

2. The name and last known address of the owner or reputed owner ("Owner") of the real property and improvements on which this claim is made are:

3S Real Estate Investments LLC Series 3
2105 Morse St
Houston, Texas 77019

3. The Claim Amount represents the unpaid contract price due Claimant, or, in the alternative, is the reasonable value of the unpaid portion of Claimant's labor and materials furnished, which are described below.

4. Claimant's labor and materials furnished for construction of improvements on the real property described below are generally described as labor and materials for work including but not limited to demo, design, build a BBQ including stucco and related thereto. Payment of the Claim Amount is requested for work performed or materials furnished during each of the following months: Middle of December 2016.

5. Claimant furnished the above-described labor and materials under a subcontract with United Plus Construction, whose last known address is:

United Plus Construction
Attn: Richard Hernandez
1009 Majorca Dr
Houston, Texas 77076

6. The name and last known address of the original contractor on the above-referenced project is:

United Plus Construction
Attn: Richard Hernandez
1009 Majorca Dr.
Houston, Texas 77076

7. The legal description of the real property improved by Claimant's above-described labor and materials is:

Legal Description:
LT 6 BLK 16 HYDE PARK MAIN of Harris County, Texas

More Commonly Known As:
2105 Morse St., Houston, Texas 77019.

That real property and improvements on it are sought to be charged with Claimant's lien.

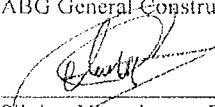
8. Claimant claims a mechanic's and materialman's lien on the above-described real property and improvements thereon to secure payment of its Claim Amount in accordance with the Texas Property Code.

9. Claimant's physical address is 412422 Tracelynn Ln, Houston, Texas 77066. Claimant's mailing address is 412422 Tracelynn Ln, Houston, Texas 77066.

10. Claimant's notice of mechanic's lien was sent to Owner by United States certified mail, return receipt requested, on the following date: January 9, 2017; Claimant's notice of affidavit claiming mechanic's lien was sent to Owner and Original Contractor on February 9, 2017; of which, both notices were sent by United States certified mail, return receipts requested.

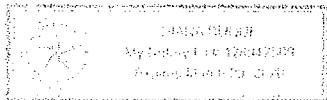
11. In compliance with the Texas Property Code, Claimant is sending one copy of this affidavit to Owner at its last known address and also one copy to the above-referenced original contractor at its last known address.

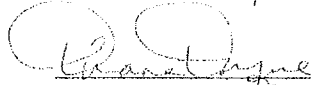
ABG General Construction



Silvia Victoriano, President of ABG General Construction

SUBSCRIBED AND SWORN TO before me on February 9, 2017, by Silvia Victoriano.





Notary Public, State of Texas

AFTER RECORDING RETURN TO:

Law Offices of Marcos & Associates, PC
228 Westheimer Road
Houston, TX 77006
Tel: (713) 528-7711
Fax: (713) 528-7710

FILED FOR RECORD

11:11:43 AM

Monday, February 13, 2017

Stan Stewart

COUNTY CLERK, HARRIS COUNTY, TEXAS

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.

THE STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me, and was duly RECORDED, in the Official Public Records of Real Property of Harris County, Texas.

Monday, February 13, 2017



Stan Stewart
COUNTY CLERK
HARRIS COUNTY, TEXAS

