

CAUSE NO. 2018-42734

ABG General Construction, Plaintiff,	§	IN THE DISTRICT COURT
	§	
	§	
v.	§	OF HARRIS COUNTY, TEXAS
	§	
3S Real Estate Investments, LLC – Series 3 Defendant.	§	269th JUDICIAL DISTRICT

**DEFENDANT’S MOTION TO COMPEL PLAINTIFF TO
RESPOND TO DEFENDANT’S INTERROGATORIES,
REQUEST FOR DISCLOSURE, AND REQUEST FOR PRODUCTION**

Defendant, 3S Real Estate Investments, LLC – Series 3, asks the Court to compel Plaintiff, ABG General Construction, to respond to Defendant’s discovery requests.

INTRODUCTION

1. Plaintiff, ABG General Construction (“ABG”), sued Defendant, 3S Real Estate Investments, LLC – Series 3 (“3S”), to foreclose on mechanic’s liens and for breach of contract, sworn account, constitutional liens, quantum meruit, unjust enrichment, and promissory estoppel.

2. Discovery in this suit is governed by a Level 2 discovery-control plan. The discovery period will end on May 22, 2019.

3. This case is not yet set for trial.

BACKGROUND

4. On June 23 and 24, 2018, Defendant served Plaintiff with the discovery requests in accordance with Texas Rules of Civil Procedure 21(a) and 21a.

5. Plaintiff responded by serving Defendant with inadequate responses on August 11, 2018. *See Exhibit A.*

6. Defendant merely seeks responses from Plaintiff that clarify Plaintiff’s claims so that Defendant can adequately present its defense to the Court. Plaintiff has filed, either in its original petition or its discovery responses, to provide any proof of its claims.

7. Following receipt of Plaintiff’s responses, counsel for the parties conferenced and Plaintiff agreed to revise and supplement its responses by August 16, 2018. As of the date of the filing of this motion, Plaintiff has not revised its responses as agreed.

ARGUMENT & AUTHORITIES

8. The purpose of discovery is to seek the truth so that disputes may be decided by what facts are revealed, not by what facts are concealed. *Axelson, Inc. v. McIlhany*, 798 S.W.2d 550, 555 (Tex. 1990). A party may seek discovery of any matter that is relevant to the subject matter and proportional to the needs of the case. *See* Tex. R. Civ. P. 192.3(a), 192.4(b); *In re State Farm Lloyds*, 520 S.W.3d 595, 607 (Tex. 2017). Discovery can include evidence that may be inadmissible as long as it “appears reasonably calculated to lead to the discovery of admissible evidence.” Tex. R. Civ. P. 192.3(a).

9. A court may compel a party to respond adequately to requests for disclosure, requests for production, and interrogatories. Tex. R. Civ. P. 215.1(c). Plaintiff did not respond adequately to Defendant’s requests for disclosure, requests for production, and interrogatories as required by Texas Rule of Civil Procedure 193.1. Therefore, the Court should compel Plaintiff to comply with the rule. Plaintiff’s responses are inadequate for the following reasons:

Interrogatories

- a. Plaintiff did not verify its response to interrogatories. Texas Rule of Civil Procedure 197.2(d) requires the interrogatories to be verified by Plaintiff.
- b. Plaintiff refused to respond fully to identification interrogatory 2, requesting Plaintiff identify all invoices relevant to the contract that is the subject of this suit. Texas Rule of Civil Procedure 193.1 requires the party to make a “complete response” to a discovery request.
- c. Plaintiff refused to respond fully to identification interrogatory 3, requesting Plaintiff identify all documents relevant to its purported provision of services at 2105 Morse Street. Texas Rule of Civil Procedure 193.1 requires the party to make a “complete response” to a discovery request.
- d. Plaintiff refused to respond fully to identification interrogatory 4, requesting Plaintiff identify all documents relevant to its purported lien on the property at 2105 Morse. Texas Rule of Civil Procedure 193.1 requires the party to make a “complete response” to a discovery request.
- e. Plaintiff refused to respond fully to standard interrogatory 1, requesting Plaintiff identify each person answering the interrogatories. Texas Rule of Civil Procedure 193.1 requires the party to make a “complete response” to a discovery request.
- f. Plaintiff refused to respond fully to standard interrogatory 5, requesting Plaintiff identify whether Plaintiff has ever been convicted of a felony or a crime involving moral turpitude. Texas Rule of Civil Procedure 193.1 requires the party to make a “complete response” to a discovery request.
- g. Plaintiff refused to respond fully to standard interrogatory 6, requesting Plaintiff identify the factual basis for its claim of promissory estoppel. Texas Rule of Civil

Procedure 193.1 requires the party to make a “complete response” to a discovery request.

- h. Plaintiff refused to respond fully to standard interrogatory 7, requesting Plaintiff identify the factual basis for its claim that services were provided to Defendant on an open-account basis. Texas Rule of Civil Procedure 193.1 requires the party to make a “complete response” to a discovery request.
- i. Plaintiff refused to respond fully to standard interrogatory 9, requesting Plaintiff identify the date and manner of presentment to Defendant of the proof of the filing of the lien [affidavit(s)]. Texas Rule of Civil Procedure 193.1 requires the party to make a “complete response” to a discovery request.
- j. Plaintiff refused to respond fully to standard interrogatory 10, requesting Plaintiff identify which representative of Plaintiff received an order for the services that were purportedly provided. Texas Rule of Civil Procedure 193.1 requires the party to make a “complete response” to a discovery request.
- k. Plaintiff refused to respond fully to standard interrogatory 11, requesting Plaintiff identify who performed the services and on which dates the services were performed. Texas Rule of Civil Procedure 193.1 requires the party to make a “complete response” to a discovery request.
- l. Plaintiff refused to respond fully to standard interrogatory 12, requesting Plaintiff identify whether Defendant agreed to the purported record of transactions between the Parties. Texas Rule of Civil Procedure 193.1 requires the party to make a “complete response” to a discovery request.

Request for Production

- m. Plaintiff refused to produce documents in response to request for production 1, requesting Plaintiff provide a file-stamped copy of Plaintiff’s lien [affidavit]. The Court should require Plaintiff to produce the requested documents.
- n. Plaintiff refused to produce documents in response to request for production 2, requesting Plaintiff provide documents that provide proof that notice was sent to Defendant of the filing of Plaintiff’s lien [affidavit]. The Court should require Plaintiff to produce the requested documents.
- o. Plaintiff refused to produce documents in response to request for production 3, requesting Plaintiff provide proof that the Plaintiff provided the services alleged in Plaintiff’s original petition. The Court should require Plaintiff to produce the requested documents.
- p. Plaintiff refused to produce documents in response to request for production 4, requesting Plaintiff provide copies of any communications between Plaintiff and Defendant. The Court should require Plaintiff to produce the requested documents.

- q. Plaintiff refused to produce documents in response to request for production 5, requesting Plaintiff provide copies of its communications with any non-party regarding the subject matter of this suit. The Court should require Plaintiff to produce the requested documents.
- r. Plaintiff refused to produce documents in response to request for production 6, requesting Plaintiff produce the contract on which this suit is based. The Court should require Plaintiff to produce the requested documents.
- s. Plaintiff refused to produce documents in response to request for production 7, requesting Plaintiff produce all drafts of the contract on which this suit is based. The Court should require Plaintiff to produce the requested documents.
- t. Plaintiff refused to produce documents in response to request for production 8, requesting Plaintiff produce copies of communications between Plaintiff and Defendant relating to the contract on which this suit is based. The Court should require Plaintiff to produce the requested documents.
- u. Plaintiff refused to produce documents in response to request for production 13, requesting Plaintiff produce documents relating to Defendant's order of stucco application services. The Court should require Plaintiff to produce the requested documents.
- v. Plaintiff refused to produce documents in response to request for production 14, requesting Plaintiff produce documents relating to the provision of price quotations or agreements. The Court should require Plaintiff to produce the requested documents.
- w. Plaintiff refused to produce documents in response to request for production 16, requesting Plaintiff produce ledgers and statements relating to the account described in Plaintiff's original petition. The Court should require Plaintiff to produce the requested documents.

Request for Disclosure

- x. Plaintiff refused to respond fully to request for disclosure 4, requesting Plaintiff state the amount of economic damages and method of calculating the damages. Plaintiff provides no information regarding the purported contracted rate for services or any calculation of sunk costs. Texas Rule of Civil Procedure 193.1 requires the party to make a "complete response" to a discovery request.
- y. Plaintiff refused to respond fully to identification interrogatory 5, requesting Plaintiff state the name, address and telephone number of persons having knowledge of relevant facts. Plaintiff provided no information regarding the original contractor, employees or agents of Plaintiff. Texas Rule of Civil Procedure 193.1 requires the party to make a "complete response" to a discovery request.

10. Defendant's discovery requests are within the scope of discovery permitted by Texas Rule of Civil Procedure 192.3. Even though Defendant's requests were proper, Plaintiff refused to comply with the rule and served the objections to avoid discovery that is clearly authorized under the discovery rules. Plaintiff objected to almost every request for production and interrogatory on the ground of vagueness, ambiguity, overbreadth, or that the information is equally available to Defendant as to Plaintiff. Plaintiff made no attempt to comply with the requests. Defendant requests that the Court overrule the objections and require Plaintiff to respond to the requests identified in this motion to compel, as the information requested is narrowly tailored to determine the origin of the contract(s) referred to by Plaintiff or the foundation of Plaintiff's lien claims.

EXPENSES OF MOTION

11. Defendant has incurred expenses in preparing and filing this motion to obtain relief. Under Texas Rule of Civil Procedure 215.1(d), Defendant is entitled to reasonable expenses incurred in obtaining the order, including attorney fees as described in the attached *Exhibit B*.

CONCLUSION

12. Plaintiff filed an original petition that lacked many critical facts or proof of its claims. Defendant served Plaintiff with narrowly tailored discovery aimed at the production of relevant documents and information to assist Defendant in understanding Plaintiff's claims and the preparation of Defendant's defense. Plaintiff's failure to comply with the discovery rules prevents Defendant from doing either.

PRAYER

13. For these reasons, Defendant asks the Court to set this motion for hearing and, after the hearing, to compel Plaintiff to file adequate responses to Defendant's discovery requests and order both Plaintiff and Plaintiff's attorney to pay Defendant \$1,000 for reasonable expenses incurred in filing this motion, including attorney fees.

Respectfully submitted,

By:  _____

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ATTORNEY FOR DEFENDANT 3S

**REAL ESTATE INVESTMENTS,
LLC**

CERTIFICATE OF CONFERENCE

On August 14, 2018, counsel for Defendant sent a letter via e-file to Plaintiff's counsel requesting Plaintiff revise its discovery responses. Following that letter, counsel for the parties conferred by phone regarding Plaintiff's responses, and Plaintiff's counsel agreed to revise Plaintiff's responses on or before August 16, 2018. Defendant's counsel sent an email to Plaintiff's counsel confirming the details of that call. Defendant files this motion having attempted to comply with TEX. R. CIV. P. 191.2 and Rule 3.3.6 of the LOCAL RULES OF THE CIVIL TRIAL DIVISION OF THE HARRIS COUNTY DISTRICT COURTS.

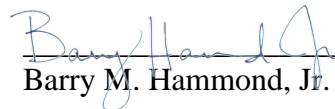
Barry M. Hammond, Jr.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served upon the following as outlined below on this 20th day of August 2018.

Javier Marcos, Jr.
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Attorney for Plaintiff

Via e-file


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