

20-CV-0471
Cause No. _____

NRS CONSTRUCTION, INC.	§	IN THE DISTRICT COURT
<i>Plaintiff</i>	§	
	§	
	§	GALVESTON COUNTY, TEXAS
	§	
GREENECO BUILDERS, LLC & KEVIN MARTINEZ, JR.	§	Galveston County - 56th District Court
<i>Defendant.</i>	§	
	§	____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff, **NRS CONSTRUCTION, INC.** ("NRS") complaining of Defendants, **GREENECO BUILDERS, LLC** ("GreenEco") and **KEVIN MARTINEZ, JR.** ("Martinez"), and in support thereof would show the Court the following:

DISCOVERY LEVEL

1. Plaintiff intends to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.4 and affirmatively pleads that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because Plaintiff has filed a claim governed by the Property Code.

CLAIM FOR RELIEF

2. Plaintiff seeks only monetary relief of \$100,000 or less including damages of any kind, penalties, court costs, expenses, prejudgment interest, and attorney fees. Tex. R. Civ. P. 47(c)(1).

PARTIES

3. Plaintiff is a Texas corporation doing business in Harris County at 8423 Arrowhead Ln., Houston, Texas 77075.

4. GreenEco a Texas limited liability company whose registered office is located in Harris County at 21408 Provincial Blvd Katy, Texas 77450. GreenEco may be served with process by serving its registered agent for service of process, H M Cohn in Harris County at 1401 McKinney

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St., Suite 1700, Houston, Texas 77010.

5. Martinez is an individual and may be served with process at his usual place of abode in Galveston County at 8826 Explorer Dr., Texas City, TX 77591, or wherever he may be found.

VENUE AND JURISDICTION

6. This Court has jurisdiction over this dispute and the Parties, as the amount in controversy is within the jurisdictional limits of this court, the dispute arises out of a contract formed within Texas, and each defendant has the requisite minimum contacts with Texas.

7. Venue for this cause of action is mandatory in Galveston County, Texas, because this suit involves foreclosure of a lien filed against real property located in Galveston County, Texas. Tex. Civ. Prac. & Remedies Code § 15.011.

NATURE OF THE CASE

8. This action involves NRS's suit to foreclose its Mechanic's and Materialman's Liens against parcels of real property made the basis of these proceedings and pursuant to Chapter 53 of the Texas Property Code. NRS is also entitled to, and does assert, a statutory claim under Chapter 162 of the Texas Property Code for Misapplication of Construction Trust Funds against GreenEco, for unauthorized withholding and wrongful misapplication of construction trust funds.

OPERATIVE FACTS

9. NRS is a local material supplier. NRS contracted with GreenEco to provide materials to

the following properties ("Properties"):

- a. 8809 Voyager Dr. Texas City, Texas 77591;
- b. 8806 Voyager Dr. Texas City, Texas 77591;
- c. 8810 Voyager Dr. Texas City, Texas 77591;
- d. 8826 Explorer Dr. Texas City, Texas 77591;
- e. 8613 Explorer Dr. Texas City, Texas 77591;
- f. 8621 Explorer Dr. Texas City, Texas 77591;
- g. 634 Forest Bend Lane La Marque, Texas 77568; and
- h. 645 Forest Bend Lane La Marque, Texas 77568.

10. GreenEco acted as owner and general contractor in performing improvements at the Properties. NRS supplied material to GreenEco. GreenEco incorporated the materials into the improvements at the Properties as required under its contract with GreenEco. GreenEco did not pay Plaintiff for the materials supplied. Due to the amount of properties and the similar addresses, Plaintiff will refer to each property as designated below.

Designation in Pleading	Physical Address of Property	Amount Owed
Property 1	8809 Voyager Dr. Texas City, Texas 77591	\$302.73
Property 2	8806 Voyager Dr. Texas City, Texas 77591	\$225.50
Property 3	8810 Voyager Dr. Texas City, Texas 77591	\$717.50
Property 4	8813 Explorer Dr. Texas City, Texas 77591	\$86.07
Property 5	8621 Explorer Dr. Texas City, Texas 77591	\$292.78
Property 6	8626 Explorer Dr. Texas City, Texas 77591	\$1,764.50
Property 7	634 Forest Bend Lane La Marque, Texas 77568	\$159.60
Property 8	645 Forest Bend Lane La Marque, Texas 77568	\$1,000.00

11. After NRS had supplied material to the Properties, GreenEco refused to pay. NRS filed Constitutional Mechanic and Materialman's Liens on and against Properties 1, 2, 3, and 6. After NRS filed its Constitutional Mechanic and Materialman's lien, GreenEco sold Property 6 to Martinez.

12. Once GreenEco realized that NRS would protect its right to be paid on the Properties, GreenEco sold Properties 4, 5, 7, and 8. These Properties were sold before NRS could file its Constitutional lien.

CAUSES OF ACTION AGAINST GREENECO

A. Foreclosure of Plaintiff's Constitutional Mechanic's and Materialman's Lien on Properties 1, 2, and 3.

13. NRS duly filed Mechanic's and Materialman's Liens on and against Properties 1, 2, and 3. NRS's liens were properly and timely filed and perfected. NRS is entitled to foreclose the liens on and against Properties 1, 2, and 3 pursuant to the Texas Constitution.

14. NRS and the materials provided qualify as improvements entitled to protection of a Mechanic's and Materialman's Lien on construction projects in Texas. GreenEco's Properties 1, 2, and 3, on which Plaintiff supplied materials, qualifies as property to which a Mechanic's and Materialman's Lien may be affixed in Texas.

15. The payment due to Plaintiff for the materials provided on GreenEco's Properties 1, 2, and 3 is entitled to be secured by the perfection and enforcement of the Mechanic's and Materialman's Liens filed by Plaintiff.

B. Misapplication of Trust Funds on Properties 1, 2, 3, 4, 5, 6, 7, and 8.

16. GreenEco, and possibly others, including one or more individuals associated with GreenEco, received construction payments and/or loan proceeds for the materials NRS supplied to the project. The payments and/or loan proceeds received by GreenEco are trust funds as that term is defined under Chapter 162, Section 162.001(a) of the Texas Property Code.

17. GreenEco received said trust funds, exercised control and direction of said trust funds, and thereby became trustees of said trust funds for NRS's sole and exclusive benefit. The trustees of said funds are not eligible for the exceptions set forth in Chapter 162, Section 162.004 of the Property Code and the trustees so named are obligated to fully pay all current or past due obligations incurred by the Trustees to the beneficiaries of those trust funds. All current or past due obligations incurred by the trustees have not been fully paid even though the trustees received

these specific trust funds as a direct result of Plaintiff's services.

18. GreenEco has retained, used, disbursed, or diverted said trust funds with the intent to deprive Plaintiff of the present use and enjoyment of same.

19. GreenEco intentionally or knowingly or with intent to defraud, directly, or indirectly, retained, used, disbursed, or otherwise diverted said trust funds without first fully paying all current or past due obligations incurred by the trustee for Plaintiff's benefit and has, by statutory definition, misapplied said trust funds.

20. All conditions precedent to Plaintiff's recovery under the Misapplication of Trust Fund Doctrine and Chapter 162 of the Texas Property Code have been met.

21. Plaintiff is entitled to an award of damages under Chapter 162 of the Texas Property Code against GreenEco and possibly others, including individuals associated with and/or related to GreenEco, for the entire unpaid balance of the materials delivered.

C. Breach of Contract on Properties 1, 2, 3, 4, 5, 6, 7, and 8.

22. In the alternative to the above action to Foreclose the Mechanic's Lien, Plaintiff asserts breach of contract on Properties 1, 2, and 3, Plaintiff asserts breach of contract. Plaintiff and GreenEco executed a valid and enforceable written contract for Properties 1, 2, 3, 4, 5, 6, 7, and 8. The contract provided that NRS would supply materials to GreenEco, and that GreenEco would pay for those materials.

23. NRS fully performed its contractual obligations. GreenEco breached the contract by not paying for the materials. GreenEco's breach caused injury to NRS which resulted in damages. Exhibit A.

D. Promissory Estoppel and Properties 1, 2, 3, 4, 5, 6, 7, and 8.

24. In the alternative to the above action to Foreclose the Mechanic's Lien, Plaintiff asserts

promissory estoppel on Properties 1, 2, and 3, Plaintiff asserts promissory estoppel. In the alternative to breach of contract on Properties 4, 5, 6, 7, and 8, GreenEco promised NRS that defendant would pay for the materials provided by NRS. Plaintiff relied on GreenEco's promise by providing the materials to the project. Because of the nature of the promise, NRS's reliance was both reasonable and substantial. GreenEco knew, or reasonably should have known, that NRS would rely on GreenEco's promise. Injustice to NRS can be avoided only if GreenEco's promise is enforced.

25. Plaintiff's reliance on GreenEco's promise resulted in injury to NRS, which caused damages. Exhibit A.

E. Quantum Meruit on Properties 1, 2, 3, 4, 5, 6, 7, and 8.

26. In the alternative to the above action to Foreclose the Mechanic's Lien, Plaintiff asserts quantum meruit on Properties 1, 2, and 3, Plaintiff asserts quantum meruit. In the alternative to promissory estoppel on Properties 4, 5, 6, 7, and 8, NRS provided defendant with the materials listed in Exhibit A. NRS provided the materials for GreenEco's benefit. GreenEco incorporated these materials into the project.

27. GreenEco knew or should have known that NRS expected compensation when GreenEco accepted the materials. GreenEco and NRS had an agreement that defendant would pay for the materials.

28. Because NRS expected compensation, GreenEco's acceptance of the materials without payment resulted damages. Exhibit A.

F. Fraud on Properties 1, 2, 3, 4, 5, 6, 7, and 8.

29. GreenEco represented to Plaintiff that they would pay for the services rendered. GreenEco's representation to Plaintiff was material because Plaintiff provided materials to

GreenEco with the expectation of payment. GreenEco's representation to Plaintiff was a false statement of fact.

30. GreenEco made the false representation knowing it was false. Alternatively, GreenEco made the false representation recklessly, as a positive assertion, and without knowledge of its truth. GreenEco intended for plaintiff to rely on or had reason to expect plaintiff would act in reliance on the false representation. Plaintiff justifiably relied on defendant's false representation when it provided materials to GreenEco.

31. GreenEco's false representation directly and proximately caused injury to Plaintiff, which resulted in damages like attorney fees and exemplary damages.

32. Exemplary damages. Plaintiff's injury resulted from defendant's actual fraud, gross negligence, or malice, which entitles plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

G. Negligent Misrepresentation on Properties 1, 2, 3, 4, 5, 6, 7, and 8.

33. GreenEco represented to Plaintiff that they would pay for the materials provided. GreenEco made the representation in the course of GreenEco's business. GreenEco's representation was a misstatement of fact. Plaintiff actually and justifiably relied on GreenEco's representation when plaintiff provided the services to defendants.

34. GreenEco misrepresentation resulted in damages to Plaintiff.

CAUSE OF ACTION AGAINST MARTINEZ

Foreclosure of Plaintiff's Constitutional Mechanic's and Materialman's Lien on Property 6.

35. NRS duly filed Mechanic's and Materialman's Liens on and against the Property 6. NRS's lien was properly filed and perfected. NRS is entitled to foreclose the liens on and against the Properties pursuant to the Texas Constitution.

36. NRS and the materials provided qualify as improvements entitled to protection of a Mechanic's and Materialman's Lien on construction projects in Texas. Martinez's Property, on which Plaintiff supplied materials, qualifies as property to which a Mechanic's and Materialman's Lien may be affixed in Texas.

37. The payment due to Plaintiff for the materials provided on Martinez's Property is entitled to be secured by the perfection and enforcement of the Mechanic's and Materialman's Liens filed by Plaintiff on Martinez's Property.

ATTORNEY'S FEES

38. Plaintiff presented its claims against Properties 1, 2, 3, 4, 5, 6, 7, and 8 to GreenEco and demanded payment thereof more than thirty (30) days prior to the filing of this suit. After said claim was not paid or otherwise satisfied, Plaintiff retained the undersigned attorney to represent it in the collection thereof. Plaintiff is entitled to recover reasonable attorney's fees under Texas Property Code § 53.156 and Chapter 38 of the Texas Civil Practice and Remedies Code.

39. Additionally, Plaintiff is entitled to its attorney's fees against Martinez under Texas Property Code § 53.156 because this is an action to foreclose on a lien against Property 6.

40. A reasonable fee for the services rendered and to be rendered in connection with this matter is at least \$450 an hour through the trial court level; an additional \$15,000.00 should this case be appealed to the Court of Appeals; an additional \$15,000.00 should a Motion for Rehearing or a Petition for Review to be filed in the Texas Supreme Court; and an additional \$15,000.00 should the Texas Supreme Court grant any such Petition for Review.

CONDITIONS PRECEDENT

41. All conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

REQUEST FOR DISCLOSURE

42. Under Texas Rule of Civil Procedure 194, plaintiff requests that defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

OBJECTION TO ASSOCIATE JUDGE

43. Plaintiff objects to the referral of this case to an associate judge for hearing a trial on the merits or presiding at a jury trial.

PRAYER

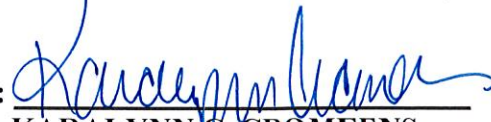
For these reasons, Plaintiff requests that it be awarded a judgment against the Defendants for the following:

- a. Actual damages against GreenEco in the minimum principal sum of \$2,783.08 for materials provided to Properties 1, 2, 3, 4, 5, 7, and 8;
- b. Actual damages against Martinez in the minimum principal sum of \$1,764.50 for materials provided to Property 6;
- c. Judgment recognizing Plaintiff's liens on the Properties;
- d. Judgment setting forth that an order of sale and writ of possession shall issue to any sheriff or any constable within the State of Texas, directing him to seize and sell the above-described real Properties and improvements made the basis of Plaintiff's liens the same as under execution, in satisfaction of the judgment directing that the proceeds of the sale be applied against the judgment requested above, and if the Properties cannot be found, or if the proceeds of such sale be insufficient to satisfy the judgment, then to take the money or any balance thereof remaining unpaid, out of any other Properties of the Defendant, as in the case of ordinary executions;
- e. Reasonable and necessary attorney's fees;
- f. Interest;
- g. Costs of Court; and
- h. For such other and further relief, both general and special, at law and in equity, to which Plaintiff may show itself to be justly entitled.

Respectfully submitted,

THE CROMEENS LAW FIRM, P.L.L.C.

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