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Nebraska Judicial Branch

Case Summary

In the District Court of Douglas County
 The Case ID is CI 17 0009654
 Ready Mixed Concre v. Century-Omaha Land
 The Honorable James T Gleason, presiding.
 Classification: Foreclosure-Mechanic's Lien
 Filed on 11/13/2017
 This case is Open as of 11/13/2017

Parties/Attorneys to the Case

Party	Attorney
Plaintiff ACTIVE Ready Mixed Concrete Co.	Patrick T Vint 10250 Regency Circle, Ste 525 Omaha NE 68114 402-898-7400
Defendant ACTIVE Century-Omaha Land, LLC Don Wieseler, Registered Agent 909 St. Joseph St. #1000, POB 8007 Rapid City SD 57701	Gregory S Frayser 1900 U.S. Bank Building 233 S. 13th St. Lincoln NE 68508 402-474-6900

Court Costs Information

Incurred By	Account	Date	Amount
Plaintiff	Petition	11/13/2017	\$35.00
Plaintiff	Filing Fee - State	11/13/2017	\$1.00
Plaintiff	Automation Fee	11/13/2017	\$8.00
Plaintiff	NSC Education Fee	11/13/2017	\$1.00
Plaintiff	Dispute Resolution Fee	11/13/2017	\$0.75
Plaintiff	Indigent Defense Fee	11/13/2017	\$3.00
Plaintiff	Uniform Data Analysis Fee	11/13/2017	\$1.00
Plaintiff	J.R.F.	11/13/2017	\$6.00
Plaintiff	Filing Fee-JRF	11/13/2017	\$6.00
Plaintiff	Legal Aid/Services Fund	11/13/2017	\$6.25
Plaintiff	Complete Record	11/13/2017	\$15.00
Plaintiff	Service Fees	11/21/2017	\$6.77

Financial Activity

No trust money is held by the court
No fee money is held by the court

Payments Made to the Court

Receipt	Type	Date	For	Amount
280125	Electronic Trans	11/14/2017	Ready Mixed Concrete C	\$83.00
			Petition	\$35.00
			Filing Fee - State	\$1.00
			Automation Fee	\$8.00
			NSC Education Fee	\$1.00
			Dispute Resolution Fee	\$.75
			Indigent Defense Fee	\$3.00
			Uniform Data Analysis	\$1.00
			J.R.F.	\$6.00
			Filing Fee-JRF	\$6.00
			Legal Aid/Services Fun	\$6.25
			Complete Record	\$15.00

Register of Actions

04/11/2018 Signed Scheduling Order
This action initiated by James T Gleason
RT eNotice Certificate Attached
Image ID 001647680D01

04/10/2018 Proposed Scheduling Order
This action initiated by Patrick T Vint

03/14/2018 Notice Issued
The document number is 00524024
Notice of Intent to Dismiss
Patrick T Vint pvint@woodsaitken.com
Image ID D00524024D01

03/14/2018 Notice Issued

The document number is 00524023
Notice of Intent to Dismiss
Gregory S Frayser gfrayser@clinewilliams.com
Image ID D00524023D01

12/28/2017 Answer
This action initiated by party Century-Omaha Land, LLC
a1
Image ID N17362PZCD01

11/21/2017 Return Summons/Alias Summons
The document number is 00489469

MG

Served 11/17/2017, Certified Mail
Image ID N17325QSMD01

11/14/2017 Summons Issued on Century-Omaha Land, LLC
The document number is 00489469

Summons

e-mailed
Image ID D00489469D01

11/13/2017 Complaint-Praecipe
This action initiated by party Ready Mixed Concrete Co.

MM

Image ID N17317RRKD01

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

READY MIXED CONCRETE CO.)	Case No. _____
)	
Plaintiff,)	
)	
vs.)	<u>COMPLAINT</u>
)	
CENTURY-OMAHA LAND, LLC)	
)	
Defendant.)	
)	

COMES NOW Plaintiff Ready Mixed Concrete Co., by and through its undersigned counsel, and for its Complaint against Defendant Century-Omaha Land, LLC, hereby states and alleges as follows:

PARTIES

1. Ready Mixed Concrete Co. (hereafter "Ready Mixed") is a Nebraska corporation with a principal place of business in Omaha, Douglas County, Nebraska.
2. Upon information and belief, Century-Omaha Land, LLC (hereafter "Century") is a South Dakota limited liability company with a principal place of business in Omaha, Douglas County, Nebraska.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to Neb. Rev. Stat. § 24-302 because this is a civil matter over which this Court has general and original jurisdiction.
4. This Court has personal jurisdiction over Century pursuant to Neb. Rev. Stat. § 25-536 because Century transacts business in the state of Nebraska (including, but not limited to, the transaction giving rise to this action) and has an interest in real property located in Nebraska.
5. Venue is proper in this Court pursuant to Neb. Rev. Stat. § 25-401 and/or § 25-403.01(2) because the subject real estate is located in Douglas County, the Defendant's principal

place of business is located in in Douglas County, and the transaction giving rise to this Complaint occurred in Douglas County.

FACTUAL BACKGROUND

6. This dispute arises out of the restoration of the Hotel RL, 3321 South 72nd St., Omaha (the “Project”).

7. Upon information and belief, Century is the owner of the real property which was improved and where the Project is located. At all times relevant hereto, the legal description for the real property which was improved and where the Project is located was and is:

Lot 1, Block 0, Lawnfield Replat Four, an administrative subdivision of the City of Omaha, recorded in Douglas County, Nebraska

(hereinafter the “Real Estate”).

8. On or about November 14, 2016, Ready Mixed (though its parent corporation, Lyman-Richey Corporation) and Century entered into a Credit Agreement, whereby Ready Mixed would supply materials for the Project to Century.

9. On November 15 and 16, pursuant to the Credit Agreement, Ready Mixed provided materials to Century at its location at 3321 South 72nd Street, Omaha. Ready Mixed also supplied an invoice with each order, incorporating additional terms and provisions.

10. Century has failed to pay Ready Mixed for the materials supplied under the Agreement to improve the Real Estate.

11. The total amount due to Ready Mixed for the materials provided to and for the benefit of the Real Estate pursuant to the Agreement is \$7,590.54, inclusive of contractual finance charges.

12. The last date on which Ready Mixed furnished materials under the Credit Agreement and on the Real Estate was not earlier than November 16, 2016.

13. As a result of Century's failure to pay Ready Mixed, Ready Mixed filed a construction lien against the Real Estate with the Douglas County, Nebraska, Register of Deeds as Instrument No. 2017016292 (the "Construction Lien") in accordance with the Nebraska Construction Lien Act, Neb. Rev. Stat. §§ 52-125 through 52-159 (the "NCLA"). A true and correct copy of the Construction Lien is attached hereto as Exhibit A.

CAUSE OF ACTION – CONSTRUCTION LIEN FORECLOSURE

14. Ready Mixed repeats and realleges the allegations set forth in Paragraphs 1 through 13.

15. Century is the contracting owner of the Real Estate pursuant to Neb. Rev. Stat. § 52-127(3) who, as the owner of the Real Estate, entered into an express contract for the improvement of the Real Estate.

16. The Agreement is a real estate improvement contract as defined by Neb. Rev. Stat. § 52-130(1).

17. Ready Mixed was a prime contractor as defined by Neb. Rev. Stat. § 52-127(8) and the Agreement was a prime contract as defined by Neb. Rev. Stat. § 52-127(7).

18. A notice of commencement as defined by Neb. Rev. Stat. § 52-145 was recorded against the Real Estate on June 22, 2011.

19. The Construction Lien was recorded while there was a recorded notice of commencement covering the improvements on the Real Estate.

20. Under the NCLA, the Construction Lien attached to the Real Estate at the time the notice of commencement was recorded.

21. Ready Mixed has performed all of the conditions on its part to be performed.
22. Ready Mixed has properly filed and perfected the Construction Lien on the Real Estate for the unpaid amount of labor and materials furnished and incorporated into the Real Estate and/or provided under the Agreement.
23. Ready Mixed has complied with all applicable provisions of the NCLA and all conditions precedent to recording and perfecting the Construction Lien.
24. Ready Mixed has a valid, perfected construction lien under the NCLA in the amount of \$7,170.66, plus contractual finance charges.
25. Ready Mixed is entitled to foreclosure of the Construction Lien and the extinguishment of all junior and inferior liens on the Real Estate.
26. The Construction Lien has priority over all other liens and encumbrances on the Real Estate.

WHEREFORE Plaintiff Ready Mixed Concrete Co. prays that the Court find in its favor under Count One and enter a decree as follows:

- (a) That Ready Mixed Concrete Co. has a valid construction lien against Century-Omaha Land, LLC's interest in the Real Estate;
- (b) That the lien is in the amount of \$7,170.66 plus applicable pre-judgment and post-judgment interest and costs of suit, or such other amount as may be established at trial;
- (c) That the Court adjudicate Ready Mixed Concrete Co.'s lien and determine the relative priority between Ready Mixed Concrete Co.'s lien and any other interested parties claiming an interest in the Real Estate;

(d) That a writ of assistance be issued to the Sheriff of Douglas County, Nebraska, to put Ready Mixed Concrete Co. in possession of the Real Estate to the extent of Century-Omaha Land, LLC's interest in the Real Estate; and

(e) That the foreclosed interest in the Real Estate be sold at a Sheriff's sale as provided by law; and for such other and further relief as the Court finds just and equitable in the premises.

DATED this 13th day of November, 2017.

PRAECIPE FOR SUMMONS

TO THE CLERK OF THE COURT:

Please issue Summons and deliver the same to counsel for the Plaintiff for service upon the Defendant according to law, said service to be made by certified mail service as follows:

Century-Omaha Land, LLC
Don Wieseler, Registered Agent
909 St. Joseph Street, Suite 1000
PO Box 8007
Rapid City, SD 57701-3301

Please make said Summons returnable in accordance with law.

READY MIXED CONCRETE, INC., Plaintiff

By: /s/ Patrick T. Vint
Patrick T. Vint, #26176
WOODS & AITKEN LLP
10250 Regency Circle, Suite 525
Omaha, NE 68114
Telephone: 402-898-7400
Facsimile: 402-898-7401
pvint@woodsaitken.com
Attorney for Plaintiff