

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

DSL HOSPITALITY, LLC)	CASE NO.: CI 19-8449
)	
Plaintiff and)	
Cross-Claim Defendant,)	
)	
vs.)	
)	
RONCO CONSTRUCTION CO., INC.)	
)	
Defendant and)	ANSWER,
Third-Party Plaintiff,)	COUNTERCLAIM,
)	and
vs.)	CROSS-CLAIM
)	
FOREST CITY GROUP, LLC d/b/a)	
HURST MASONRY,)	
)	
Third-Party Defendant,)	
Counterclaimant, and)	
Cross-Claim Plaintiff,)	
)	
STEPHENS & SMITH CONSTRUCTION)	
CO., INC.)	
)	
Intervenor.)	

COMES NOW Forest City Group, LLC, d/b/a Hurst Masonry (hereinafter “Hurst Masonry”), as third-party defendant, counterclaimant, and cross-claim plaintiff, by and through its undersigned counsel, and for its Answer and Counterclaim to the third-party complaint filed by Ronco Construction Co., Inc, (hereinafter “Ronco”) and for its Cross-Claim against the plaintiff DSL Hospitality, LLC (hereinafter “DSL”) pursuant DSL’s demand to institute proceedings, states and alleges as follows:\

1. Hurst Masonry denies each and every allegation contained in Ronco's Third-Party Complaint except those which are hereafter admitted or those which constitute admissions against the interests of Ronco.

2. Admits paragraph 49 of Ronco's Third-Party Complaint to the extent that it alleges that Forest City Group, LLC is a Nebraska limited liability company with its principal place of business located in Sarpy County, Nebraska and does business under the trade name Hurst Masonry.

3. Admits paragraph 51 of Ronco's Third-Party Complaint.

AFFIRMATIVE DEFENSES

4. Ronco's Third-Party Complaint fails to state a claim against Hurst Masonry upon which relief can be granted.

5. Ronco's claims are barred, in whole or in part, by the failure of Plaintiff to meet or perform all necessary covenants, conditions and/or promises to be performed.

6. Ronco's claims are barred, in whole or in part, under the doctrines of waiver, estoppel, gratification, laches, pre-emption, forfeiture and/or unclean hands.

7. Ronco's claims are barred, in whole or in part, by any potential offset.

8. Hurst Masonry reserves the right to assert additional defenses and matters in avoidance of Plaintiff's claims as may become apparent during the course of subsequent investigation and discovery.

WHEREFORE, Hurst Masonry prays that Ronco's Third-Party Complaint and each cause of action alleged therein as asserted against Hurst Masonry be dismissed in the entirety,

with prejudice, at Third-Party Plaintiff's costs, for attorney fees as allowed by law, and for such other and further relief as the Court deems just and equitable in the premises.

COUNTERCLAIM
(Breach of Contract – Ronco)

1. Forest City Group, LLC, d/b/a Hurst Masonry is a Nebraska limited liability company organized and existing under the laws of the State of Nebraska, with its principal place of business in Sarpy County, Nebraska.

2. Ronco is a Nebraska corporation organized and existing under the laws of the State of Nebraska, with its principal place of business in the City of Omaha, Douglas County, Nebraska.

3. DSL is a Nebraska limited liability company organized and existing under the laws of the State of Nebraska and the owner of record of the following described real property:

LOT 1, SADDLE CREEK MIDTOWN, AN ADDITION TO THE
CITY OF OMAHA IN DOUGLAS COUNTY NEBRASKA.

The above-described real estate, for purposes of this Complaint, shall be referenced herein as the "Real Estate."

4. That Hurst Masonry and Ronco entered into a subcontract agreement whereby Hurst Masonry agreed to furnish labor, materials and services on the Real Estate owned by DSL, and Ronco agreed to pay Hurst Masonry \$856,099.00 subject to change orders increasing or decreasing the contract price.

5. Hurst Masonry performed all obligations required of it in connection with its contract with Ronco.

6. Payment for the work Hurst Masonry performed on DSL's Real Estate is due and owing in the amount of \$85,925.79, but Ronco has refused and failed to pay Hurst Masonry and has retained material which is the property of Hurst Masonry.

WHEREFORE, Hurst Masonry prays for judgment against Ronco in a sum to be proved at trial amounting to the unpaid contract price of \$85,925.79 and the cost of retained materials together with interest accruing at the legal rate of interest, and the costs of this action.

CROSS-CLAIM
(Foreclosure of Construction Lien – DSL)

7. Hurst Masonry hereby realleges and incorporates herein by reference paragraphs one (1) through six (6) of this Counterclaim and Cross-Claim.

8. Hurst Masonry furnished labor and materials on the Real Estate for use in construction, the last date of tender being within 120 days of the filing of the Construction Lien Instrument No. 2019082913, but notwithstanding said performance, there is now due and owing to Hurst Masonry a balance of \$85,925.79, together with interest accruing thereon at the lawful rate.

9. The goods, services and materials furnished by Hurst Masonry in the construction and installation of improvements on Real Estate inure to the benefit of DSL as the owner of the property.

10. Hurst Masonry filed its Lien Notice ("Construction Lien") in the office of the Registered of Deeds of Douglas County, Nebraska on the 2nd day of October 2019, within 120 days of the final furnishing of such labor and materials, as Instrument No. 2019082913, Hurst Masonry paid \$10.00 as a filing fee for the filing of said Construction Lien.

11. No action at law, other than the captioned action, has been brought for the recovery of the debt secured by said Construction Lien, or any part thereof, and no part of the debt has been collected and paid, except as otherwise alleged herein.

12. On or about November 18, 2019, DSL served Hurst Masonry with a Demand to Institute Judicial Proceedings within Thirty Days pursuant to Neb. Rev. Stat. § 52-140.

13. Hurst Masonry has complied fully with all conditions precedent to the bringing of this action and is entitled to foreclose its Construction Lien.

WHEREFORE, Hurst Masonry prays that its rights and interest in the above-described Real Estate be protected; that an accounting be had of the amounts due to Hurst Masonry on its Contract; that the Court decree that the Hurst Masonry Construction Lien constitutes a first and paramount lien upon the above-described real estate; that the rights, title and interests, if any, of the parties to this action be determined and be decreed to be junior and inferior to the rights and interest of Hurst Masonry in and to the above-described real estate; that DSL, be forever barred and foreclosed of all right, title, lien, equity of redemption or other interest in, to or upon said real estate; that an Order of Sale be issued to the Sheriff of Douglas County, Nebraska or to a Master Commissioner appointed by the Court directing him/her to sell said real estate as upon execution and to apply the proceeds of said sale first to the amounts adjudged to be due Hurst Masonry upon its indebtedness, together with interest, advancements and Hurst Masonry's costs in this action; and that a writ shall issue to the Sheriff or Master Commissioner forthwith after the sale of said Real Estate to put the purchaser thereof in immediate possession of the Real Estate; that Hurst Masonry have such other and further relief as the Court deems just and equitable in the premises.

DATED this 17th day of December, 2019.

FOREST CITY GROUP, LLC d/b/a
HURST MASONRY, Third-Party
Defendant/Counterclaimant/Cross-Claim Plaintiff

By: /s/ Jonathan M. Brown
Jonathan M. Brown, #25021
VALENTINE O'TOOLE, LLP
P.O. Box 540125
11240 Davenport Street
Omaha, Nebraska 68154
Ph: (402) 330-6300 Fax: (402) 330-6303
Email: jbrown@valentineotoole.com
Attorneys for Third-Party Defendant,
Counterclaimant, and Cross-Claim Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was sent by email to the following counsel of record:

Gregory C. Scaglione
Brady H. Godbout
Koley Jessen, PC, LLO
1125 S. 103rd St. Suite 800
Omaha, NE 68124
Greg.scaglione@koleyjessen.com
Attorneys for DSL Hospitality, LLC

Diana J. Vogt
Sherrets Bruno & Vogt, LLC
260 Regency Parkway Dr., Suite 200
Omaha, NE 68114
dvogt@sherrets.com
Attorney for Ronco Construction Co., Inc.

Brian S. Koerwitz
Endacott Peetz & Timmer, PC LLO
444 S. 10th Street
Lincoln, NE 68508
bkoerwitz@eptlawfirm.com

/s/ Jonathan M. Brown

Certificate of Service

I hereby certify that on Wednesday, December 18, 2019 I provided a true and correct copy of the Answer & Counterclaim to the following:

DSL Hospitality, LLC represented by Brady H Godbout (Bar Number: 26753) service method: Email

DSL Hospitality, LLC represented by Scaglione,Greg, (Bar Number: 19368) service method: Electronic Service to greg.scaglione@koleyjessen.com

Stephens & Smith Const. Co., Inc. represented by Brian Koerwitz (Bar Number: 23655) service method: Electronic Service to bkoerwitz@eptlawfirm.com

Forest City Group LLC service method: No Service

Ronco Construction Company, Inc. represented by Vogt,Diana,J (Bar Number: 19387) service method: Electronic Service to law@sherrets.com

Ronco Construction Company, Inc. represented by Jared Olson (Bar Number: 25288) service method: Electronic Service to law@sherrets.com

Signature: /s/ Jonathan M Brown (Bar Number: 25021)