

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

DSL HOSPITALITY, LLC	Case No. CI 19-8449
Plaintiff,	COMPLAINT IN INTERVENTION
v.	TO FORECLOSE LIEN
RONCO CONSTRUCTION CO., INC.,	
Defendant and Third-Party	
Plaintiff.	
v.	
FOREST CITY GROUP, LLC, d/b/a Hurst	
Masonry,	
Third Party Defendant	
STEPHENS & SMITH CONSTRUCTION	
CO., INC.,	
Intervenor.	

For its Complaint in Intervention, Stephens & Smith Construction Co., Inc., states and alleges as follows:

1. Intervenor, Stephens & Smith Construction Co., Inc. ("S&S"), is a Nebraska corporation with offices in Douglas County, Nebraska.
2. DSL Hospitality ("DSL"), is a Nebraska limited liability company. DSL owns real estate that is legally described as Lot 1 Saddle Creek Midtown, an Addition to the City of Omaha in Douglas County, Nebraska (the "Real Estate").
3. This court has jurisdiction and venue is proper pursuant to Neb. Rev. Stat. § 25-403.01.

4. As a lien claimant, S&S is entitled to become a party pursuant to Neb. Rev. Stat. § 25-328 as it has an interest in the litigation and should have previously been brought in as a necessary party. DSL brought an action to attempt to establish the amounts of liens against the Real Estate and to substitute collateral for the Real Estate. Defendant Ronco Construction Co, Inc., has brought an action to foreclose a construction lien it holds on the Real Estate.

5. DSL was a contracting owner for improvements to the Real Estate. Pursuant to subcontracts with Ronco Construction Company, Inc., S&S provided labor and materials for the improvements to the Real Estate. The subcontracts were real estate improvement contracts as defined by the Nebraska Construction Lien Act.

6. S&S was not and has not been paid in full for the labor and materials it provided for the improvements of the Real Estate. On October 21, 2019, S&S recorded a construction lien against the Real Estate for the amounts that it was owed under the real estate improvement contracts. Attached hereto as Exhibit A is a true and correct copy of the recorded lien (the "Lien").

7. Subsequent to the filing of the Lien, S&S received a payment directly from DSL in the amount of \$5,771.70; thus, the amount due and owing under the Lien is \$113,894.23.

8. S&S fully performed the work required under its real estate improvement contracts and satisfied all conditions precedent to receiving payment for its work or is otherwise excused therefrom.

9. S&S has a valid and perfected construction lien on the Real Estate and the amount it is owed is not less than \$113,894.23.

10. Ronco Construction Co., Inc., and Forest City Group, LLC, each claim an interest in the Real Estate by virtue of their lien filings.

11. Pursuant to the Nebraska Construction Lien Act, S&S is entitled to judgment of foreclosure of its Lien.

WHEREFORE, S&S prays that the Court find in its favor and against DSL and enter a decree finding that S&S has a valid construction lien in the amount represented herein, or such other amount as may be established at trial; that such amount, pre-judgment and post-judgment interest allowed by law, and the costs of this suit be decreed to be part of and secured by such construction lien; that DSL and any other parties claiming an interest be foreclosed of all right, title, and interest in the Real Estate and all equity of redemption in the Real Estate; that a writ of assistance be issued to the Sheriff of Douglas County, Nebraska, to put S&S in possession of the Real Estate; that 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 15th day of December, 2019.

STEPHENS & SMITH CONSTRUCTION
CO., INC., INTERVENOR

By /s/ Brian S. Koerwitz

Brian S. Koerwitz, No. 23655
ENDACOTT PEETZ & TIMMER, PC LLO
444 S. 10th Street
Lincoln, NE 68508
402-904-3629 | 402-904-7097 (fax)
bkoerwitz@eptlawfirm.com

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was served upon the following by email:

<p>Greg Scaglione Koley Jessen, PC, LLO 1125 S. 103rd Street, Suite 800 Omaha, NE 68124 Greg.scaglione@koleyjessen.com Attorneys for DSL Hospitality, LLC</p>	<p>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.</p>
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/s/ Brian S. Koerwitz

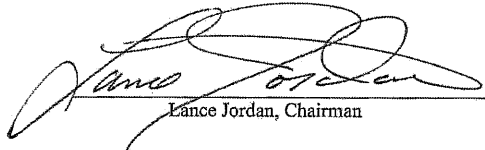
Brian S. Koerwitz, No. 23655
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CLIN Inst. # 2019089964, Pg: 1 of 1
Rec Date: 10/21/2019 14:51:10.933
Fee Received: \$10.00 By: MJ
NE Doc Stamp Tax Fee:
Douglas County, NE, Assessor
Register of Deeds DIANE L. BATTIATO

CONSTRUCTION LIEN

1. THE REAL ESTATE SUBJECT TO THIS LIEN IS:
LOT 1 SADDLE CREEK MIDTOWN, AN ADDITION TO THE CITY OF OMAHA IN DOUGLAS COUNTY, NEBRASKA
2. THE PERSON AGAINST WHOSE INTEREST IN THE REAL ESTATE THE LIEN IS CLAIMED IS:
DSL HOSPITALITY LLC., 22052 W. 66TH STREET, #221, SHAWNEE, KS. 66226
3. THE NAME AND ADDRESS OF THE CLAIMANT IS:
Ret - Stephens & Smith Construction Co., Inc., 5711 So. 60th St., Omaha, NE 68117
4. THE NAME AND ADDRESS OF THE PERSON WITH WHOM THE CLAIMANT CONTRACTED IS:
RONCO CONSTRUCTION COMPANY, INC., 1717 N. 74TH STREET, OMAHA, NE. 68114-1805
5. A GENERAL DESCRIPTION OF THE CLAIMANT'S SERVICES PERFORMED, TO BE PERFORMED, OR MATERIALS FURNISHED OR TO BE FURNISHED
CONCRETE WORK AND GYPRETE UNDERLAYMENT
6. THE AMOUNT UNPAID, WHETHER DUE OR NOT, TO THE CLAIMANT FOR THE SERVICES OR MATERIALS IS:
\$119,665.93
7. THE TIME THE LAST SERVICES OR MATERIALS WERE FURNISHED WAS:
08/24/2019

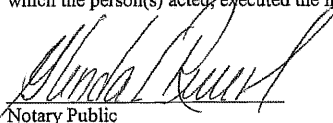

Lance Jordan, Chairman

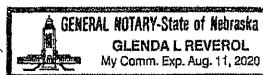
Subscribed and sworn to before me this 21st day of October, 2019

State of Nebraska)
SS
County of Douglas)

STATE OF NEBRASKA
COUNTY OF DOUGLAS

On Oct. 21st, 2019, before me, Glenda Reverol, a Notary Public in and for the County of Douglas, State of Nebraska, personally appeared Lance Jordan, Vice President of Stephens & Smith Construction Co., Inc., personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/ their signature on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.


Notary Public



**EXHIBIT
A**

Certificate of Service

I hereby certify that on Monday, December 16, 2019 I provided a true and correct copy of the Complaint-Intervene to the following:

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

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

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

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

Forest City Group LLC service method: No Service

Signature: /s/ Brian Koerwitz (Bar Number: 23655)