CAUSE NO. 11-931-C26

J.R. JOHNSON
D/B/A CENTEX CONSTRUCTION

VS.

DISTRICT COURT OF
SOLIDARITY CONTRACTING, L.L.C.
AND
COSMOS FOUNDATION, INC.

WIILIAMSON COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES J.R. JOHNSON D/B/A CENTEX CONSTRUCTION, Plaintiff, complaining of SOLIDARITY CONTRACTING, L.L.C. and COSMOS FOUNDATION, INC., Defendants, and for cause of action Plaintiff would respectfully show the Court as follows:

I.

Discovery is intended to be conducted under Discovery Control Plan Level 2, in accordance with Tex. R. Civ. P. 190.3.

II.

Plaintiff is a natural person who resides in Hamilton County, Texas.

Defendant SOLIDARITY CONTRACTING, L.L.C. ("Solidarity") is a limited liability company organized and existing under the laws of the state of Texas, and it may be served with citation by delivery thereof to its registered agent Levent Ulusal at its registered office 10100 W. Sam Houston Parkway South, Suite 340, Houston, Texas 77099. Defendant COSMOS FOUNDATION, INC. ("Cosmos") is a Texas corporation, and it may be served with citation by delivery thereof to its registered agent Soner Tarim at its registered office 9431 W. Sam Houston Parkway South, Houston, Texas 77090 Parkway South, Houston, Texas 77000 Parkway South, Houston, Parkway South, Par

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District Clerk, Williamson Co., TX.

Pursuant to a written contract, Plaintiff furnished materials and labor to SOLIDARITY, as general contractor, for the construction of the improvements known as the Harmony School of Political Science on the property locally known as 13405 - 13415 N FM 620, Austin, Texas 78759, and further described as follows:

Tract 1: Lot IB, Block A, RESUBDIVISION OF LOT 1, BLOCK A, RESUBDIVISION OF BLOCK A, MACONDA PARK, EAST SECTION ONE, according to the map or plat thereof recorded in Cabinet AA, Slide 174, Plat Records, Williamson County, Texas, and

Tract 2: Non-Exclusive Easement Estate, appurtenant to Tract 1 above, as created by and described in that certain Joint Access Easement dated June 23, 2000, and recorded in Document No. 2000040488, Official Public Records, Williamson County, Texas, over and across that certain 30 foot wide strip of land, out of Lot 1A, Block A, RESUBDIVISION OF LOT 1, BLOCK A, RESUBDIVISION OF BLOCK A, MACONDA PARK, EAST SECTION ONE, according to the map or plat thereof, recorded in Cabinet AA, Slide 174, Plat Records, Williamson County, Texas

(together the "Property").

IV.

There is due and unpaid for such work the amount of \$432,995.00, such being the balance remaining of the amount Solidarity agreed to pay Plaintiff under the written contract as modified by written change orders, and also being a reasonable amount therefor. Such labor and materials were furnished to provide the stucco/Eifs System and facade of the building, which work was performed during the months of May through July 2011. Plaintiff has a lien against the Property under Property Code §53.023 (1), for such labor and materials furnished.

V.

Cosmos is the owner of the Property.

Plaintiff has made demand for Solidarity's payment of the balance due as above described, but Solidarity has failed and refused, and still fails and refuses, to pay the same.

VII.

Plaintiff mailed his affidavit claiming mechanic's and materialman's lien for the above described work and balance due to the Williamson County Clerk on the 18th day of August, 2011 for filing, and it was filed and recorded by the Williamson County Clerk on August 22, 2011 under document number 2011055600. A copy of the affidavit as recorded is attached hereto as Exhibit A and is made a part hereof by reference for all purposes. Copies of the affidavit were mailed to Solidarity and to Cosmos by Plaintiff by certified mail to their addresses shown therein on the day the affidavit was mailed to the Clerk for filing.

VIII.

Plaintiff served notice of his claim, as stated in the affidavit, upon Solidarity and upon Cosmos, by certified mail, return receipt requested, on August 4, 2011.

IX.

Plaintiff is entitled to recover judgment against Solidarity and Cosmos for his attorney's fees necessitated by the filing and prosecution of his claim and enforcement of his lien, including his appellate attorney's fees in the event of an appeal.

X.

The Court should enter judgment recognizing the validity of Plaintiff's mechanic's and materialman's lien against the Property and ordering that such lien be foreclosed.

XI.

All prerequisites to the filing of this action have been complied with.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that citation issue to Defendants SOLIDARITY and COSMOS requiring them to appear and answer herein and that upon hearing Plaintiff be given judgment against Defendant SOLIDARITY in the amount of \$432,995.00, together with prejudgment interest through date of judgment and post-judgment interest thereafter, plus attorney's fee and costs of court, and against Defendant COSMOS for attorney's fees and costs of court; and, further, that the court's judgment (i) recognize the validity of Plaintiff's lien against the Property for his claim and attorney's fees, (ii) order the lien be foreclosed, and (iii) grant all writs and other processes necessary to effectuate such relief. Plaintiff also prays for such other and further relief to which he may show himself justly entitled, either at law or in equity.

Respectfully submitted,

AKIN & AKIN, L.L.P. 515 Congress Avenue, Suite 2024 Austin, TX 78701 (512) 476-6258

Telecopier: (512) 469-0212

Bv:

JOHN H/AKIN

STATE **B**AR NO. 00958000

ATTORNEYS FOR PLAINTIFF J.R. JOHNSON D/B/A CENTEX CONSTRUCTION

3 PGS



NOTICE: THIS IS NOT A LIEN. THIS IS ONLY AN AFFIDAVIT CLAIMING A LIEN. AMENDED

AFFIDAVIT CLAIMING MECHANIC'S AND MATERIALMAN'S LIEN

STATE OF TEXAS COUNTY OF WILLIAMSON	§
	§ §

BEFORE ME, the undersigned authority, on this day personally appeared J.R. JOHNSON, the undersigned Affiant, who swore on his oath that the following facts are true:

My name is J.R. JOHNSON ("Claimant"). I am the sole proprietor of Centex Construction. I make this Affidavit to perfect the Mechanic's and Materialman's Lien against the real property described below:

- 1. Claimant has an unpaid claim in the amount of \$432,995.00 for labor and materials furnished on the construction of improvements generally known as Harmony School of Political Science, 13405 13415 N FM 620, Austin, Texas 78759, construction project (the "Project"). Such claimed amount is, within my personal knowledge, just and true, the same is due and unpaid, and all just and lawful offsets, payments and credits have been allowed. Such claimed amount is for labor and materials furnished and described below, on which a systematic record has been kept.
- 2. The name and last known address of the owner or reputed owner (the "Owner") of the real property and improvements upon which this claim is made is: Cosmos Foundation, Inc., 9431 W. Sam Houston Parkway S. Attn: Mr. Umit Pecen, Houston, Texas 77099-1849.
- 3. The claim amount of \$432,995.00 represents the unpaid contract price due Claimant, or, in the alternative, is the reasonable value of the unpaid portion of Claimant's labor and materials furnished, which are described below.
- 4. Claimant's labor and materials furnished for construction of improvements on the real property described below are generally described as stucco/Eifs System and facade of the building. Payment is requested for work performed or materials furnished during each of the following months: May, June, and July, 2011.
- 5. Claimant furnished the above-described labor and materials under a subcontract with Solidarity Contracting, L.L.C., which is the original contractor on the Project (the "Original Contractor"). The Original Contractor's last known address is 10100 W. Sam Houston Parkway S., Suite 340, Houston, Texas 77099.

6. The legal description of the real property improved by Claimant's abovedescribed labor and materials, and which real property and improvements thereon are sought to be charged with Claimant's lien, is:

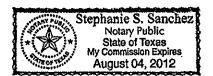
> Tract 1: Lot IB, Block A, RESUBDIVISION OF LOT 1, BLOCK A, RESUBDIVISION OF BLOCK A, MACONDA PARK, EAST SECTION ONE, according to the map or plat thereof recorded in Cabinet AA, Slide 174, Plat Records, Williamson County, Texas.

> Tract 2: Non-Exclusive Easement Estate, appurtenant to Tract 1 above, as created by and described in that certain Joint Access Easement dated June 23, 2000, and recorded in Document No. 2000040488, Official Public Records, Williamson County, Texas, over and across that certain 30 foot wide strip of land, out of Lot 1A, Block A, RESUBDIVISION OF LOT 1, BLOCK A, RESUBDIVISION OF BLOCK A, MACONDA PARK, EAST SECTION ONE, according to the map or plat thereof, recorded in Cabinet AA, Slide 174, Plat Records, Williamson County, Texas.

- Claimant claims a Mechanic's and Materialman's lien upon the above-described 7. real property and improvements thereon to secure payment of its claim in the amount of \$ 432,995.00 in accordance with the Texas Property Code.
 - Claimant's physical and mailing address is 2745 C.R. 122, Hico, Texas 76457. 8.
- Claimant's notice of mechanic's lien was sent to the Owner by United States certified mail, return receipt requested, on August 4, 2011.
- 10. In compliance with the Texas Property Code. Claimant is sending one copy of this Affidavit to the Owner at its last known address and also one copy to the Original Contractor at its last known address.

J.R. JOHNSON, AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME by the said J.R. JOHNSON this 18th day of August, 2011, to certify which witness my hand and seal of office.



AFTER FILING RETURN TO: AKIN & AKIN, L.L.P. 515 Congress Avenue, Suite 2024 Austin, TX 78701

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS 2011055600

Dancy E. Renter

08/22/2011 02:14 PM

CPHELPS \$24.00

NANCY E. RISTER, COUNTY CLERK

WILLIAMSON COUNTY, TEXAS