

CAUSE NO. 11-931-C26

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

VS.

SOLIDARITY CONTRACTING, L.L.C.  
AND  
COSMOS FOUNDATION, INC.

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IN THE 26<sup>th</sup> JUDICIAL

DISTRICT COURT OF

WILLIAMSON 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 77099.

**FILED**  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M

**AUG 30 2011**

*Lisa David*  
District Clerk, Williamson Co., TX.

### III.

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 1B, 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.

VI.

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 18<sup>th</sup> 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

By: \_\_\_\_\_

  
JOHN H. AKIN  
STATE BAR NO. 00958000

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



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

Tract 1: Lot 1B, 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.

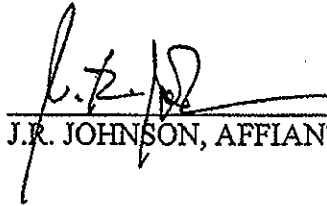
Tract 2: Non-Exclusive Easement Estate, appurtenant to Tract 1 above, as created by and described in that certain Joint Access Easement dated June 23, 2000, and recorded in Document No. 2000040488, Official Public Records, Williamson County, Texas, over and across that certain 30 foot wide strip of land, 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.

7. Claimant claims a Mechanic's and Materialman's lien upon the above-described 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.

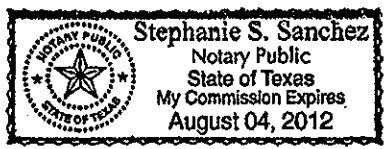
8. Claimant's physical and mailing address is 2745 C.R. 122, Hico, Texas 76457.

9. 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 18<sup>th</sup> day of August, 2011, to certify which witness my hand and seal of office.



  
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NOTARY PUBLIC, STATE OF TEXAS

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

**FILED AND RECORDED**  
**OFFICIAL PUBLIC RECORDS 2011055600**

*Nancy E. Rister*

08/22/2011 02:14 PM

CPHELPS \$24.00

NANCY E. RISTER, COUNTY CLERK  
WILLIAMSON COUNTY, TEXAS