

CAUSE NO. _____

EARTHWORKS, INC. <i>Plaintiff,</i>	§	IN THE DISTRICT COURT
	§	
v.	§	_____ JUDICIAL DISTRICT
	§	
HARTMAN SPE, LLC <i>Defendant.</i>	§	HARRIS COUNTY, TEXAS

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, EARTHWORKS, INC., hereinafter designated as Plaintiff and files this action complaining of Defendants **HARTMAN SPE, LLC** (“Defendant” or “HARTMAN”), for causes of action would respectfully show unto the Court as follows:

I. DISCOVERY LEVEL

1. Discovery in this case is intended to be conducted under Level 1 of TEX. R. CIV. P. 190.2 and affirmatively pleads that this suit is governed by the expedited actions process pursuant to TEX. R. CIV. P. 169.

II. PARTIES AND SERVICE

2. Plaintiff, **EARTHWORKS, INC.** is a corporation organized and existing under the laws of the State of Texas.

3. Defendant **HARTMAN SPE, LLC** is a foreign limited liability company authorized to conduct business in the State of Texas and may be served with citation through its registered agent Mark T. Torok at 2909 Hillcroft Street, Suite 420, Houston, Texas 77057.

III. JURISDICTION AND VENUE

4. The subject matter in controversy is within the jurisdictional limits of this court. Plaintiff seeks monetary damages of \$250,000.00 or less, excluding statutory interest and court costs, and

attorneys' fees and non-monetary relief.

5. Venue is proper in Harris County, Texas under TEXAS CIVIL PRACTICE & REMEDIES CODE section 15.002(a)(1) because Harris County is the county in which all or a substantial part of the events or omissions giving rise to this claim occurred.

IV. CAUSES OF ACTION

A. TEX. R. CIV. P. RULE 185: SUIT ON SWORN ACCOUNT

6. At the request of HARTMAN or their managing agent, for the month of April 2022, and in the usual course of business, Plaintiff sold and delivered labor and materials to HARTMAN through its on-site agent on an open account at the following location: 3100 Timmons Lane, Houston, Texas 77027 (the "Property"). HARTMAN and/or its agent accepted said labor and materials and became bound to pay Plaintiff the designated price, which is a reasonable, usual, and customary price for such labor and materials.

7. After allowance of all just and lawful offsets and credits, the amount of \$14,849.80 is currently due and owing for the labor and materials provided by Plaintiff to HARTMAN and/or their agent for the services provided to the Property.

8. A verified account, on which a systematic record has been kept, is attached hereto as *Exhibit A-1* and incorporated herein fully by reference. Despite written demand for payment, HARTMAN and/or its agent have failed and refused to pay Plaintiff, and the amount currently due and owing is \$14,849.80.

B. ALTERNATIVE CAUSE OF ACTION: QUANTUM MERUIT

9. Plaintiff incorporates each and every allegation contained in paragraphs 6-8 as though again fully set forth.

10. Pleading further and in the alternative, Plaintiff sues HARTMAN under the implied contract

theory of *quantum meruit*. At the specific request of HARTMAN and/or its managing agent, Plaintiff furnished valuable labor and plumbing materials at the aforesaid Property owned by HARTMAN. *Exhibit A-1*. HARTMAN accepted Plaintiff's labor and materials and knew that Plaintiff expected to be compensated by HARTMAN for same.

11. The reasonable value of the labor and materials at the time and place furnished was \$14,849.80, but HARTMAN has failed and refused to pay Plaintiff said amount or any part thereof despite written demand. As a result, Plaintiff seeks the unpaid balance of Plaintiff's services in the amount of \$14,849.80.

C. PROMISSORY ESTOPPEL

12. Plaintiff incorporates each and every allegation contained in paragraphs 6-11 as though again fully set forth.

13. HARTMAN through and/or its managing agent, unequivocally promised Plaintiff that it would pay Plaintiff directly for the amount due and owed for the labor and materials furnished and installed by Plaintiff at the Property.

14. Plaintiff relied on HARTMAN's promise to its own detriment by continuing to furnish labor and materials in the expectation that it would be paid directly by HARTMAN. Based on the nature of HARTMAN's statements to Plaintiff, Plaintiff's reliance was reasonable and substantial.

15. HARTMAN knew, or should have known, that Plaintiff would rely on HARTMAN's statements to Plaintiff.

16. Injustice to Plaintiff can be avoided only if HARTMAN's promise is enforced.

17. Plaintiff's reliance on HARTMAN's promise resulted in injury to Plaintiff which caused \$14,849.80 in damages.

18. Plaintiff is entitled to recover reasonable and necessary attorneys' fees under TEXAS CIVIL

PRACTICE & REMEDIES CODE section 38.001 because this suit is for promissory estoppel.

19. Plaintiff retained counsel, who presented Plaintiff's claim to HARTMAN care of its registered agent, who did not tender the amount owed within 30 days after the claim was presented.

D. FORECLOSURE OF CONSTITUTIONAL MECHANIC'S LIEN

20. Plaintiff incorporates each and every allegation contained in paragraphs 6-11 as though again fully set forth.

21. Defendant HARTMAN was the owner of the Property during the month of April 2022 during which the work was performed.

22. As original contractor, Plaintiff furnished labor and materials to improve the Property. HARTMAN agreed to pay Plaintiff for the labor and materials but have failed to do so. The amount of \$14,849.80 remains due and owing to Plaintiff for said labor, materials, and improvements.

23. Pursuant to, and to the extent permitted by TEXAS CONSTITUTION, ARTICLE XVI, § 37 and 50(a)(5), Plaintiff has and hereby asserts a self-executing constitutional lien on HARTMAN's Property in the amount of \$14,849.80. Plaintiff filed a constitutional lien affidavit on October 21, 2022, although not required, as Instrument No. RP-2022-518277 in the real property records of Harris County Texas. Plaintiff sent a notice of the filed lien affidavit to HARTMAN on October 21, 2022.

24. All conditions precedent to the perfection and foreclosure of Plaintiff's constitutional lien against HARTMAN's Property have occurred or been performed.

25. Plaintiff requests judgment of the Court foreclosing the mechanic's lien against the aforesaid real property, an order of sale and writ of possession.

V. ATTORNEY'S FEES

26. Plaintiff seeks recovery of its reasonable and necessary attorney's fees from Defendant

through trial and appeal pursuant to Section 38.001, *et. seq.*, of the TEXAS CIVIL PRACTICE AND REMEDIES CODE.

VI. CONDITIONS PRECEDENT

27. All conditions precedent to Plaintiff's right to recover on all of the causes of action pleaded herein have been performed or have occurred.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that Defendant **HARTMAN SPE, LLC** be cited to appear and answer herein, and that upon a final hearing of the cause, a judgment be entered for the Plaintiff against Defendant for damages in the principal amount of \$14,849.80 and pre-judgment interest at the maximum rate allowed by law, post-judgment interest at the legal rate, and costs of court and attorney's fees as applicable. Plaintiff further prays that the Court enter a judgment foreclosing the constitutional lien against the aforesaid real property and permitting Plaintiff to obtain an order of sale and writ of possession on such Property. Plaintiff further prays for such other and further relief to which Plaintiff may be justly entitled at law or in equity.

Respectfully submitted,

By: /s/ George A. (Tony) Mallers

GEORGE A. (TONY) MALLERS

Texas Bar No. 12861500

Email: tmallers@cowlesthompson.com

COWLES & THOMPSON, P.C.

Preston Park Financial Center East

4965 Preston Park Blvd., Suite 320

Plano, TX 75093

(214) 672-2133 (Tel)

(214) 672-2333 (Fax)

ATTORNEYS FOR PLAINTIFF

EARTHWORKS, INC.

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Trechelle Andersen on behalf of George (Tony) Mallers
Bar No. 12861500
tandersen@cowlesthompson.com
Envelope ID: 73902020
Filing Code Description: Petition
Filing Description: Plaintiff's Original Petition
Status as of 3/22/2023 12:38 PM CST

Associated Case Party: Earthworks, Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
Trechelle Andersen		tandersen@cowlesthompson.com	3/22/2023 12:25:31 PM	SENT
George Mallers		tmallers@cowlesthompson.com	3/22/2023 12:25:31 PM	SENT
DeAnna Puckett		dpuckett@cowlesthompson.com	3/22/2023 12:25:31 PM	SENT

EXHIBIT A

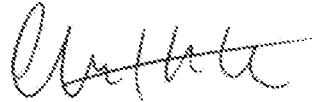
AFFIDAVIT OF CHRIS LEE

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared Chris Lee, known to me to be the person whose name is subscribed to the following instrument, and who, having been by me duly sworn, upon his oath deposes and states as follows:

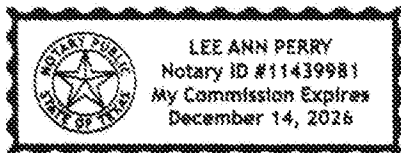
1. "My name is Chris Lee."
2. "I am the President of Plaintiff **EARTHWORKS, INC.** in the above-captioned lawsuit. I am over the age of 21 years, having never been convicted of a felony, and I am fully authorized by Plaintiff to make this Affidavit and testify to all matters herein. I have personal knowledge of the facts stated herein and they are true and correct."
3. "I am a records custodian for Plaintiff **EARTHWORKS, INC.** I have care, custody and control of all records concerning the account of Defendant, **HARTMAN SPE, LLC.**"
4. "These records show that a total principal balance of \$14,849.80, exclusive of interest, is due and payable by such Defendant to Plaintiff."
5. "Defendant's account is attached hereto as *Exhibit A-1*. This account is within my knowledge just and true, and all just and lawful offsets, payments, and credits have been allowed. The documents attached as *Exhibit A-1* were kept and delivered to Defendant **HARTMAN SPE, LLC** in the ordinary course of business."

Earthworks, Inc., a Texas corporation



Chris Lee, President

SUBSCRIBED AND SWORN TO BEFORE ME on this 16 day of March 2023.




Notary Public, State of Texas

**EXHIBIT
A-1**



STATEMENT

P.O. Box 199
Lillian, TX 76061
Toll-Free Phone: 844-425-8168
Phone: 817-477-3910
Fax: 817-477-3310

Date
10/17/22

Bill To
3100 Timmons AP Hartman Attn: Property Manager 3100 Timmons Lane Houston, TX 77027

Property Address
3100 Timmons 3100 Timmons Lane Houston, TX 77027

Date	Transaction	Inv Amount	Inv Amt Due	Balance
4/29/2022	INV# 20740	\$14,849.80	\$14,849.80	\$14,849.80

Credit card payments subject to 3.5% processing fee.

Current	1-30 Days	31-60 Days	61-90 Days	90+ Days	Balance
\$0.00	\$0.00	\$0.00	\$0.00	\$14,849.80	\$14,849.80



P.O. Box 199
 Lillian, TX 76061
 Toll-Free Phone: 844-425-8168
 Phone: 817-477-3910
 Fax: 817-477-3310

Invoice 20740

Date	PO#
04/29/22	14961
Sales Rep	Terms
Shaun Callaway	Net 30

Bill To
3100 Timmons AP Attn: Property Manager 3100 Timmons Lane Houston, TX 77027

Property Address
3100 Timmons 3100 Timmons Lane Houston, TX 77027

Item	Qty / UOM	Amount
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#14001 - Install new plant material to the bed area at the north side between the parking lot and the neighboring building (includes installing irrigation to the area, saw cutting the asphalt parking lot, installing the sleeve and repairing the disturbed asphalt).

Landscape Enhancement - 04/08/2022		\$7,509.80T
h- Stone, Boulder, Landscape (Material)	12,000.00 Lb	
Labor - Install Boulders (Labor)	5.00 Hrs	
Labor - Landscape (Labor)	15.00 Hrs	
Mulch, Native - Mulch Install (Kit)	7.00 Each	
Salvia, Red - Install 3 Gallon (Kit)	100.00 Each	
Soil, Planting Mix - Install Soil (Cu Yds) (Kit)	2.00 Each	
Irrigation Installation Parts & Labor - 04/08/2022		\$2,914.25T
Concrete/Asphalt Work - 04/18/2022		\$3,294.00T
Asphalt cut/repour (Sub)	1.00 Each	
	Subtotal	\$13,718.05
	Sales Tax	\$1,131.75
	Total	\$14,849.80
	Credits/Payments	(\$0.00)
	Balance Due	\$14,849.80

Credit card payments subject to 3.5% processing fee.

Current	1-30 Days Past Due	31-60 Days Past Due	61-90 Days Past Due	90+ Days Past Due
\$0.00	\$0.00	\$0.00	\$0.00	\$14,849.80