

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED
CA
2013 SEP 20 PM 4:36

LARRY LOVINS, D/B/A
APPALACHIAN HOME CENTER,
a Kentucky Business and TRI-STATE
HOTELS, LLC, a Kentucky Limited Liability
Company

Civil Action No. 13-C-1701
KING
KAWAWHA COUNTY CIRCUIT COURT

Plaintiffs,

v.

JAI SAI, LLC, a West Virginia
Limited Liability Company; NATIONAL
REPUBLIC BANK OF CHICAGO; RIVER
CITIES GLASS & CONSTRUCTION, LLC,
a Kentucky Limited Liability Company

**COMPLAINT OF LARRY LOVINS D/B/A APPALACHIAN
HOME CENTER AND TRI-STATE HOTELS, LLC**

COMES NOW Larry Lovins, d/b/a Appalachian Home Center (hereinafter referred to as "Appalachian Home Center") and Tri-State Hotels, LLC (hereinafter referred to as "Tri-State Hotels"), by and through their counsel, J. Philip Fraley and the law firm of Orndorff Hatfield & Fraley, and for their Complaint against Defendants, hereby states as follows:

1. Appalachian Home Center is a Kentucky business entity, with its principal place of business located in Ashland, Boyd County, Kentucky.
2. Tri-State Hotels, LLC is a Kentucky limited liability company, with its principal place of business located in Cattlesburg, Boyd County, Kentucky.
3. Upon information and belief, Defendant Jai Sai, LLC is a West Virginia limited liability company and the owner of record of certain real estate located in Cross Lanes, Kanawha County, West Virginia, which is the subject of this action, and which is recorded in the Office of the Clerk of the County Commission of Kanawha County in Trust Deed Book 3800, Page 245. Said

property bearing the physical address 420 Goff Mountain Road, Cross Lanes, Kanawha County, West Virginia (hereinafter referred to as the "Subject Property").

4. Appalachian Home Center was contracted by Jai Sai, LLC to perform certain work on the Subject Property.

5. Tri-State Hotels, LLC was also contracted to manage and perform certain work on the Subject Property.

6. Plaintiffs engaged in their work per their agreements, but Jai Sai, LLC, failed to pay for the completed work, as agreed upon.

7. To date, Jai Sai, LLC owes Appalachian Home Center Twenty Three Thousand One Hundred Seventy-Seven Dollars a (\$23,177.00) for work performed and/or materials supplied.

8. To date, Jai Sai, LLC, owes Tri-State Hotels Six Hundred Thirty Thousand Dollars (\$630,000.00) for work performed and materials supplied.

9. Appalachian Home Center, pursuant to W.Va. Code § 38-2-2, recorded a Mechanic's Lien in the Office of the Clerk of County Commission of Kanawha County, West Virginia on April 12, 2013, which was recorded in said Clerk's Mechanics' Lien Book 61, Page 488. (Attached hereto as "Exhibit A").

10. Tri-State Hotels, pursuant to W.Va. Code § 38-2-2, recorded a Mechanic's Lien in the Office of the Clerk of County Commission of Kanawha County, West Virginia on April 15, 2013, which was recorded in said Clerk's Mechanics' Lien Book 61, Page 490 . (Attached hereto as "Exhibit B").

11. Plaintiffs bring this action against Jai Sai, LLC for enforcement of their respective liens, pursuant to W.Va. Code § 38-2-34.

12. Plaintiffs also asserts claims of unjust enrichment and breach of contract against Jai

Sai, LLC, on the basis that Jai Sai, LLC has enjoyed and is presently enjoying the value of Plaintiffs' services when Plaintiffs have not been fully compensated for said services.

9. The following Defendants are also lien holders with claims against the subject party and are included in this action so that all claims against the subject property may be resolved:

- National Republic Bank of Chicago, by Deed of Trust recorded in the Office of the Clerk of the County Commission of Kanawha County, Trust Deed Book 3800, Page 245; Modified at Trust Deed Book 3931, Page 706; Further Modified at Trust Deed Book 3935, Page 734;
- River Cities Glass & Construction, LLC, by Mechanic's Lien filed in the Office of the Clerk of the County Commission of Kanawha County, West Virginia in Mechanic's Lien Book 61, Page 495.

WHEREFORE, Plaintiffs respectfully request this Court enter judgement as follows:

- a. Judgement against Jai Sai, LLC in the amount of Twenty Three Thousand One Hundred Seventy-Seven Dollars a (\$23,177.00), plus pre-judgment and post-judgement interest in favor of Appalachian Home Products;
- b. Judgement against Jai Sai, LLC in the amount of Six Hundred Thirty Thousand Dollars (\$630,000.00), plus pre-judgment and post-judgement interest in favor of Tri-State Hotels, LLC;
- c. Declaring Plaintiffs' liens to apply to all property as identified in their respective claims of mechanics liens, including all buildings, attachments and/or improvements thereto;
- d. The Court prioritize the liens asserted and determine the rights of all lien holders;
- e. Direction by the Court that the property at issue be sold and that the proceeds, less costs and expenses related to the sale, be used to satisfy the liens asserted against the property,

including Plaintiffs' liens;

e. An award of damages against Jai Sai, LLC, for its breach of contract and/or unjust enrichment;

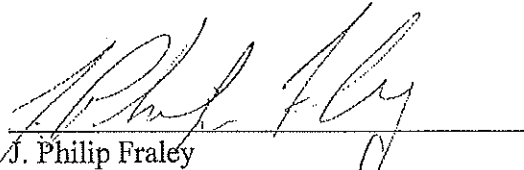
f. Plaintiffs be awarded their costs and reasonable attorney's fees in this matter, including the costs of filing and recording their lien;

g. Plaintiffs be awarded damages for aggravation, annoyance and inconvenience;

h. Such other relief as this Court deems just and proper.

LARRY LOVINS, D/B/A APPALACHIAN HOME
CENTER AND TRI-STATE HOTELS, LLC

BY COUNSEL



J. Philip Fraley
West Virginia State Bar No. 9454
ORNDORFF HATFIELD & FRALEY
Village Professionals Building
99 Cracker Barrel Drive, Suite 100
Barboursville, WV 25504
Telephone: (304) 302-0500
Facsimile: (304) 302-0504

CLAIM OF MECHANIC'S LIEN

STATE OF West Virginia
COUNTY) Kanawha

I, the undersigned, whose address is 2733 Greenup Ave., Ashland, KY, affirm that in accordance with a contract between myself and JAI SAI LLC, I furnished labor, services or materials consisting of: case work, and counter tops including installation

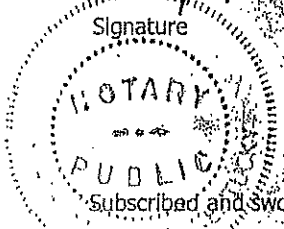
of a total value of 73,177.00 Dollars (\$) of which there remains unpaid amount of 23,177.00 Dollars (\$), on the following described real property located at Holiday Inn Express Hotel & Suites ^{410 New Goff Mountain Rd.} Cross Lanes in Kanawha County, State of West Virginia:

which is owned by JAI SAI LLC, I furnished the final labor, service, or materials on the 1st day of January, 2013.

Notice of this Claim has been served on:

_____ by _____ at _____
_____ on _____
_____ by _____ at _____
_____ on _____

Larry Lovins - Appalachian Home Center



Subscribed and sworn before me on this 12th day of April, 2013

WITNESS my hand and seal.

Barera Elaine Moore My commission expires: 10-9-2016

Notary public # 476331

MECHLN 61 488
Recorded in Above Book and Page
04/12/2013 01:06:43 PM
Vera J. McCormick
County Clerk
Kanawha County, WV
Deed Tax 0.00
Recording Fee 11.00
TOTAL 11.00

Exhibit A

A parcel of and situated on the westerly side of West Virginia Route 622 approximately 2000 feet southeasterly from the Cross Lanes Interchange of Interstate 64 and on the westerly side of Rocky Fork of Pocatalico River in Union District, Kanawha County, West Virginia, and more particularly bounded and described as follows:

Beginning on a 5/8 inch diameter rebar set at the southwesterly corner of the Raymond R. Gibson Parcel No. 1 (Deed Book 2443, page 728) and in the northerly boundary line of the Lyle D. And Lucy Milam 9.32 acre parcel (Deed Book 865, page 214), and beginning, bears S. 67° 02' W 871.20 feet from the original point of beginning of said Parcel No 1 at the westerly right of way line of West Virginia Route 622, said beginning also bears N 67° 02' E., 212.82 feet from a 30 inch diameter sycamore found at the northwesterly corner of said Milam 9.32 acre parcel, said beginning also bears S. 67° 02' W, 11.86 feet from a 1 inch diameter iron pipe found on the northerly line of said Milam parcel; thence with the westerly boundary line of said Gibson Parcel No. 1. and then the Raymond L. Gibson parcel No. 2 (Deed Book 2443, page 723);

N. 28° 59' W. 202.78 feet to a 5/8 inch diameter rebar set at the northwesterly corner of said Gibson Parcel No 2; thence with the northerly boundary line of said Gibson Parcel No. 2;

N. 67° 13' E. At 182.56 feet passing a 5/8 inch diameter rebar set at the southwesterly corner of the James D Moore Trust Property (Deed Book 2369) at page 862) and then with the common boundary line between said Gibson parcel No. 2 and said Moore Trust property, in all 468.38 feet to the common northerly corner between proposed Lot B and Lot A; thence with the common boundary line between said proposed Lot B and Lot A and through said Gibson parcel No. 2 and Parcel No. 1;

S 22° 47' E. 200.19 feet to a 5/8 inch diameter rebar set in the common boundary line between said Gibson Parcel No 1 and said Milam 9.32 acre parcel and in the centerline of an Appalachian Power Company right of way; thence with the northerly boundary line of said Milam parcel;

S. 67° 02' W. 436.50 feet to the point of beginning, containing 2.064 acre, more or less, as surveyed by Augusta Land Consultants, Danville, West Virginia;

The aforesaid real Property has an address of 420 Goff Mountain Road, Cross Lanes, West Virginia and is sometimes hereinafter referred to as "the Property" or "the Land;"

And being the same real estate conveyed to JAI SAI LLC, a West Virginia limited liability company, by deed dated May 31, 2011, from National Republic Bank of Chicago and of record in the Office of the Clerk of the County Commission of Kanawha County, West Virginia, in Deed Book 2795, page 468;

This instrument was presented to the Clerk of the County
Commission of Kanawha County, West Virginia, on
and the same is admitted to record.

APR 12 2013

Teste: Tara J. McCombs Clerk

Kanawha County Commission

Exhibit B

NOTICE OF MECHANICS LIEN

RECORDED IN DEED BOOK 2795 PAGE 468
01/15/2013 12:18:25 PM
Vera J. McCormick
County Clerk
Kanawha County, WV
Deed Tax 0.00
Recording Fee 11.00
TOTAL 11.00

TO : Jai Sai LLC

4644 U S Route 60 E.

Huntington, WV 25705

Please take notice, that the undersigned **Tri State Hotels LLC** at 16037 Lone Oak Drive, Catlettsburg, Kentucky 41129 has furnished and delivered to your property a quantity of materials and Labor, for the use in the erection and construction of improvements on a certain parcel of real estate in Kanawha County, West Virginia, more particularly described as follows:

The property conveyed unto Jai Sai LLC and having been duly recorded in the records with the Office of the Clerk of the Kanawha County Commission in Deed book 2795 , at page 468, See exhibit A for legal description.

The last furnishing of material/labor in connection with the project occurred on 01/08/2013, You are further notified that there is still due and owing to the undersigned thereon the sum of \$630,000 and that the undersigned claims a lien upon your improvements thereon, to secure the payment of the said sum.

"D. Patel"

Prepared by:

Tri State Hotels LLC

16037 Lone Oak Drive

Catlettsburg, Kentucky 41129

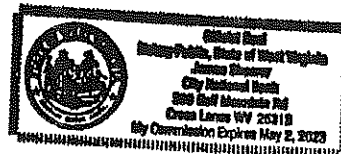
STATE OF WEST VIRGINIA,

COUNTY OF Kanawha

Dolatrai Patel, being first duly sworn, upon his oath says that the statement in the foregoing notice of lien contained are true, as he verily believes, Taken, subscribed and sworn to before me this 15th day of April, 2013.

My commission expires 05/02/2013

[Signature]
NOTARY PUBLIC.



line between said proposed Lot B and Lot A and through said Gibson Parcel No. 2 and Parcel No. 1,

S. 22° 47' E. 200.19 feet to a 5/8 inch diameter rebar set in the common boundary line between said Gibson Parcel No. 1 and said Milan 9.32 acre parcel and in the centerline of an Appalachian Power Company right of way; thence with the northerly boundary line of said Milan parcel;

S. 67° 02' W. 436.50 feet to the point of beginning, containing 2.064 acre, more or less, as surveyed by Augusta Land Consultants, Danville, West Virginia.

The aforesaid real Property has an address of 420 Goff Mountain Road, Cross Lanes, West Virginia and is sometimes hereinafter referred to as "the Property" or "the Land."

Together with all of Grantor's right, title and interest in and to the following property, rights, interest and estates acquired by Cross Lanes Hospitality, LLC., a West Virginia limited liability company, as Borrower, as set forth in that certain Credit Line Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing bearing date June 20, 2008 executed and delivered to Robert D. Fluharty and Steven M. Condaras, as Co-Trustees, to secure a Promissory Note payable to The National Republic Bank of Chicago, in the original principal amount of Five Million Three Hundred Thousand Dollars (\$5,300,000.00), which said Deed of Trust is of record in the Office of the Clerk of the County Commission of Kanawha County, West Virginia, in Trust Deed Book 3588 at page 301:

- (a) Additional Land. All additional lands, estates and development rights acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of the Security Instrument;
- (b) Improvements. All buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (the "Improvements");
- (c) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights

and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land or the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land to the center line thereof, and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances therein; and

(d) all machinery, equipment, fixtures described in the deed of trust (including, without limitation, all heating, air conditioning, plumbing, lighting, communications, elevator fixtures, inventory and goods), inventory and articles of personal property and accessions thereof and renewals, replacements thereof substitutions therefore owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Property, or appurtenances thereto, or usable in connection with the present or future operation and occupancy of the Property (collectively, the "Personal Property").

The party of the first part covenants with the party of the second part that it will WARRANT SPECIALLY the property herein conveyed.

DECLARATION OF CONSIDERATION OF VALUE: The undersigned Grantor does hereby declare the total consideration for the property transferred by the document to which this declaration is appended is \$5,225,000.00.

WITNESS the following signature and seal:

THE NATIONAL REPUBLIC BANK
OF CHICAGO

By 

Its 

THIS DEED, made this 27th day of May, 2011, by and between THE NATIONAL REPUBLIC BANK OF CHICAGO, a national banking association, party of the first part, GRANTOR, and JAI SAI LLC, a West Virginia limited liability company, party of the second part, GRANTEE.

NOW, THEREFORE, THIS DEED WITNESSETH: That the said National Republic Bank of Chicago, as aforesaid, doth GRANT and CONVEY unto the said JAI SAI LLC, a West Virginia limited liability company, all that certain lot, tract or parcel of land, situated in Union District, Kanawha County, West Virginia, and more particularly bounded and described as follows:

A parcel of and situated on the westerly side of West Virginia Route 622 approximately 2000 feet southeasterly from the Cross Lanes Interchange of Interstate 64 and on the westerly side of Rocky Fork of Pocatalico River in Union District, Kanawha County, West Virginia, and more particularly bounded and described as follows:

Beginning on a 5/8 inch diameter rebar set at the southwesterly corner of the Raymond R. Gibson Parcel No. 1 (Deed Book 2443, page 728) and in the northerly boundary line of the Lyle D. and Lucy Milam 9.32 acre parcel (Deed Book 865, page 214), said beginning, bears S. 67° 02' W. 871.20 feet from the original point of beginning of said Parcel No. 1 at the westerly right of way line of West Virginia Route 622, said beginning also bears N. 67° 02' E. 212.82 feet from a 30 inch diameter sycamore found at the northwesterly corner of said Milam 9.32 acre parcel, said beginning also bears S. 67° 02' W. 11.85 feet from a 1 inch diameter iron pipe found on the northerly line of said Milam parcel; thence with the westerly boundary line of said Gibson Parcel No. 1 and then the Raymond L. Gibson Parcel No. 2 (Deed Book 2443, page 728);

N. 28° 59' W. 202.78 feet to a 5/8 inch diameter rebar set at the northwesterly corner of said Gibson Parcel No. 2; thence with the northerly boundary line of said Gibson Parcel No. 2,

N. 67° 13' E. at 182.56 feet passing a 5/8 inch diameter rebar set at the southwesterly corner of the James D. Moore Trust Property (Deed Book 2369) at page 862) and then with the common boundary line between said Gibson Parcel No. 2 and said Moore Trust property, in all, 458.38 feet to the common northerly corner between proposed Lot B and Lot A; thence with the common boundary

RECORDED IN DEED BOOK 464
PAGE 2795
05/26/2011 09:59:44 PM
Wesley A. McCreath
County Clerk
Kanawha County, WV
Deed Tax \$279.00
Recording Fee \$300.00
TOTAL

This instrument was presented to the Clerk of the County Commission of Kanawha County, West Virginia, on and the same is admitted to record.

APR 15 2013

Teste: Wesley A. McCreath Clerk
Kanawha County Commission

