

FILED

2008 JUL 25 P 1:10

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS  
DISTRICT COURT

SECTION 12

STATE OF LOUISIANA

NO. 08-7729

DIV:



EARTH SERVICES & EQUIPMENT, INC. AND MOORE TESTING & INSPECTION,  
L.L.C.

VS

EVENSTAR, INC., THE GOLF CLUB OF NEW ORLEANS, L.L.C. AND EASTOVER  
REALTY, INC.

FILED

DEPUTY CLERK

**PETITION FOR DAMAGES, BREACH OF CONTRACT AND TO ENFORCE  
LIEN FILED AS PER THE LOUISIANA PRIVATE WORKS ACT**

The petition of EARTH SERVICES & EQUIPMENT, INC., a Louisiana Corporation domiciled in St Tammany Parish (hereinafter "Earth"), and MOORE TESTING & INSPECTION, L.L.C., a Louisiana Limited Liability Company domiciled in East Baton Rouge Parish (hereinafter "Moore"), respectfully represents that:

1.

Made defendants herein are EVENSTAR, INC., a domestic corporation doing business in this Parish and State (hereinafter "Evenstar"), and THE GOLF CLUB OF NEW ORLEANS, L.L.C., a domestic limited liability company doing business in this Parish and State (hereinafter "Golf Club") and EASTOVER REALTY, INC., a domestic Corporation doing business in this Parish and State (hereinafter "Eastover").

**BACKGROUND**

2.

In the below-described instances, Earth entered into contracts with Evenstar to perform the following work and provide the following services and things at Evenstar's

7-25-08

3 c/c Out 7-25-08  
C.F.

3.

On or around February 28, 2007, Evenstar requested that Earth perform services at the “Riverbirch / Willswood Property,” these services more fully described by the invoice attached to this Petition as **Exhibit A**. As per the agreement of the Earth and Evenstar, Earth rendered the services and an invoice was sent to Evenstar requesting payment under the payment terms “Net 30 Days.” The amount due to Earth for the services rendered as described in this invoice equals THIRTEEN THOUSAND FIVE HUNDRED AND 00/100 (\$13,500.00) DOLLARS. Earth has not received payment, despite amicable demand for the same. Upon information and belief, Evenstar has received payment from the Property Owner under its contract in compensation for the work performed by Earth. Upon information and belief, Evenstar has received payment from the Property Owner under its contract in compensation for the work performed by Earth.

4.

Beginning on or around March 30, 2007, Evenstar requested that Earth perform services at the “Eastover Property” on located within the Eastover Country Club in New Orleans, Louisiana, these services more fully described by the invoice attached to this Petition as **Exhibit B**. As per the agreement of the Earth and Evenstar, the services were rendered by Earth and invoices was sent to Evenstar requesting payment under the payment terms “Net 30 Days.” The amount due to Earth for the services rendered as described in this invoice equals THIRTY EIGHT THOUSAND FOUR HUNDRED AND SIXTY-THREE AND 49/100 (\$38,463.49) DOLLARS. Earth has not received payment, despite amicable demand for the same.

5.

On or around March 18, 2008, Evenstar requested that Earth perform services at

fully described by the invoice attached to this Petition as **Exhibit C**. As per the agreement of the Earth and Evenstar, Earth rendered the services and an invoice was sent to Evenstar requesting payment under the payment terms "Net 30 Days." The amount due to Earth for the services rendered as described in this invoice equals TWELVE THOUSAND THREE HUNDRED AND TWELVE 00/100 (\$12,312.00) DOLLARS. Earth has not received payment, despite amicable demand for the same. Upon information and belief, Evenstar has received payment from the Property Owner under its contract in compensation for the work performed by Earth.

6.

From April 30, 2007 through November 30, 2007, Evenstar requested that Earth perform services at other miscellaneous properties in Louisiana, these services more fully described by the invoices attached to this Petition as **Exhibit D**. As per the agreement of the Earth and Evenstar, Earth rendered the services and an invoice was sent to Evenstar requesting payment under the payment terms "Net 30 Days." The amount due to Earth for the services rendered as described in these invoices equal TWENTY-FOUR THOUSAND NINE HUNDRED AND TWENTY-FIVE AND 00/100 (\$24,925.00) DOLLARS. Earth has not received payment, despite amicable demand for the same.

7.

In connection with the work performed at the "Eastover Property" as more fully discussed in Paragraph 3 to this Petition on May 30, 2008, Earth timely and properly filed a Statement of Claim and Privilege for the outstanding amount owed. The State of Claim and Privilege is attached to this Petition as **Exhibit E**. The Statement of Claim and Privilege is filed against the property where work and services were performed, and upon information and belief, properly names THE GOLF CLUB OF NEW ORLEANS, L.L.C. and EASTOVER REALTY, INC. as parties thereto based on their interest in the Eastover Property.

In the below-described instances, Moore entered into contracts with Evenstar to perform the following work and provide the following services and things at Evenstar's request.

9.

In or around January 2007, Evenstar requested that Moore perform services at the "Pomez Pit," these services more fully described by the invoices attached to this Petition as **Exhibit F**. As per the agreement of the Moore and Evenstar, Moore rendered the services and an invoice was sent to Evenstar requesting payment under the payment terms "Net 30 Days." The amount due to Moore for the services rendered as described in these invoices equal TWENTY-TWO THOUSAND AND TWENTY-SIX AND 62/100 (\$22,026.62) DOLLARS. Moore has not received payment, despite amicable demand for the same. Upon information and belief, Evenstar has received payment from the Property Owner under its contract in compensation for the work performed by Moore.

10.

Between November 2006 and April 2007, Evenstar requested that Moore perform services at the "Mrytle Grove" Project, these services more fully described by the invoices attached to this Petition as **Exhibit G**. As per the agreement of the Moore and Evenstar, Moore rendered the services and an invoice was sent to Evenstar requesting payment under the payment terms "Net 30 Days." The amount due to Moore for the services rendered as described in these invoices equals TWO HUNDRED THIRTY-SIX THOUSAND, ONE HUNDRED AND EIGHTY AND 41/100 (\$236,180.41) DOLLARS. Moore has not received payment, despite amicable demand for the same. Upon information and belief, Evenstar has received payment from the Property Owner under its contract in compensation for the work performed by Moore.

11.

Between December 2006 and April 2007, Evenstar requested that Moore perform services at the "Riverbirch" Project, these services more fully described by the invoices attached to this Petition as **Exhibit H**. As per the agreement of the Moore and Evenstar, Moore rendered the services and an invoice was sent to Evenstar requesting payment under the payment terms "Net 30 Days." The amount due to Moore for the services rendered as described in these invoices equal EIGHTEEN THOUSAND TWO HUNDRED AND EIGHTY AND 97/100 (\$18,280.97) DOLLARS. Moore has not received payment, despite amicable demand for the same. Upon information and belief, Evenstar has received payment from the Property Owner under its contract in compensation for the work performed by Moore.

12.

Prior to April 2007, Evenstar requested that Moore perform services at the "Eastover" Project, these services more fully described by the invoices attached to this Petition as **Exhibit I**. As per the agreement of the Moore and Evenstar, Moore rendered the services and an invoice was sent to Evenstar requesting payment under the payment terms "Net 30 Days." The amount due to Moore for the services rendered as described in these invoices equal THIRTY-FOUR THOUSAND AND SEVEN HUNDRED AND SIXTY AND 97/100 (\$34,760.97) DOLLARS. Moore has not received payment, despite amicable demand for the same.

13.

In connection with the work performed at the "Eastover Property" as more fully discussed in Paragraph 12 to this Petition on May 30, 2008, Moore timely and properly filed a Statement of Claim and Privilege for the outstanding amount owed. The State of Claim and Privilege is attached to this Petition as **Exhibit J**. The Statement of Claim and Privilege is filed against the property where work and services were performed, and

L.L.C. and EASTOVER REALTY, INC. as parties thereto based on their interest in the Eastover Property.

14.

Prior to May 2007, Evenstar requested that Moore perform services at the “Legrieco Pit” Project, these services more fully described by the invoices attached to this Petition as **Exhibit K**. As per the agreement of the Moore and Evenstar, Moore rendered the services and an invoice was sent to Evenstar requesting payment under the payment terms “Net 30 Days.” The amount due to Moore for the services rendered as described in these invoices equal FOURTEEN THOUSAND AND EIGHT HUNDRED AND TWENTY-FOUR AND 11/100 (\$14,824.11) DOLLARS. Moore has not received payment, despite amicable demand for the same. Upon information and belief, Evenstar has received payment from the Property Owner under its contract in compensation for the work performed by Moore.

15.

Between January 2007 and April 2007, Evenstar requested that Moore perform services at the “Willswood” Project, these services more fully described by the invoices attached to this Petition as **Exhibit L**. As per the agreement of the Moore and Evenstar, Moore rendered the services and an invoice was sent to Evenstar requesting payment under the payment terms “Net 30 Days.” The amount due to Moore for the services rendered as described in these invoices equal FORTY-ONE THOUSAND AND EIGHT HUNDRED AND SEVENTY-SEVEN AND 77/100 (\$41,877.87) DOLLARS. Moore has not received payment, despite amicable demand for the same. Upon information and belief, Evenstar has received payment from the Property Owner under its contract in compensation for the work performed by Moore.

### **CAUSE OF ACTION**

16.

Despite reaching full and final completion of the obligations of the contract and despite Earth's & Moore's efforts to properly apply for payment in accordance with the agreement between the parties, Evenstar has continuously and maliciously made an outright refusal to pay Earth and Moore the amounts owed it under contract.

17.

Evenstar's actions constitute violations of several Louisiana laws including failure of contractor to make prompt payment to Subcontractor for work performed as required by La. R.S. 9:2784; failure of contractor to perform its duties to pay in violation of its contract as required by La. C.C. Art. 1994; failure of contractor to perform its duties and obligations under the contract with subcontractor in bad faith, as contemplated by La. C.C. Art. 1997.

18.

Evenstar's bad faith refusal to faithfully perform its obligations owed to Earth and Moore has resulted in severe and undue damages impacted upon Moore and Earth, its members, employees, and business. Due to lack of expected income, Moore and Earth has experienced enhanced difficulty in operation which has resulted loss of business income, loss of business opportunities, damage to reputation, interest and finance charges, cost of time diverted from business opportunities in order to pursue payment and any other damages allowed under Louisiana law which may be proven at the trial of this matter.

19.

Evenstar is liable to Earth and Moore for the full benefit of the contractual bargains related to all of the properties mentioned above and any others which may be unknown at this time. In addition, Evenstar is liable for the foreseeable consequential damages of

the full amount of legal interest as this court may deem, and reimbursement for costs and attorney's fees associated with these and all other proceedings or legal pursuits.

20.

In the alternative that this court cannot enforce any contractual relationship between the Moore and Evenstar and/or Earth and Evenstar, the Petitioners requests that this court enter an order against the defendants and grant it damages for the full value of its services, materials, and incidental costs which have been incurred for the unjust enrichment without justification of the defendants.

21.

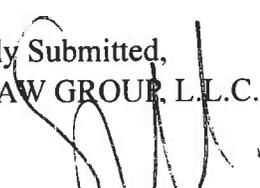
In relation to the work performed at the Eastover property, and above-described, a Statement of Claim and Privilege has been properly filed against the Defendants with respect to their interests in the property: The Golf Club of New Orleans, LLC and Eastover Realty, Inc. The Petitioners assert a cause of action against these two parties in accordance with the Louisiana Private Works Act, codified in LA R.S. 9:4801 *et seq.*

22.

Plaintiffs reserve its rights to plead other items of damage should the need so occur. Plaintiffs reserve their rights to demand a trial by jury.

WHEREFORE, Petitioners EARTH SERVICES & EQUIPMENT, INC. and MOORE TESTING & INSPECTION, INC. prays that after due proceedings had, judgment be rendered in its favor and against Defendants, together with damages, expenses, attorneys fees, costs, interest and all other general or equitable relief to which Petitioners may be entitled.

Respectfully Submitted,  
WOLFE LAW GROUP, L.L.C.

  
**Scott G. Wolfe, Jr. (Bar Roll 30122)**  
**James Ludwig Jr. (Bar Roll 39021)**  
4821 Prytania Street  
New Orleans, LA 70115

**PLEASE SERVE:**

**EASTOVER REALTY, INC.**

Through its registered agent for service of process,  
RICHARD B. MONTGOMERY  
755 MAGAZINE STREET  
NEW ORLEANS, LA 70130

**THE GOLF CLUB OF NEW ORLEANS, L.L.C.**

Through its registered agent for service of process,  
DONALD E. PATE  
5690 EASTOVER DRIVE  
NEW ORLEANS, LA 70128

**EVENSTAR, INC.**

Through its registered agent for service of process,  
TRAVIS D'AQUILLA  
1111 VETERANS MEMORIAL BLVD, #7  
KENNER, LA 70062

ATTORNEY'S NAME: Wolfe, J. Scott 30122

AND ADDRESS:

NEW ORLEANS LA 70115

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CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO: 2008 -- 07729 2

SECTION: 12 -- H

EARTH SERVICES & EQUIPMENT, INC. ET AL VERSUS EVENSTAR, INC. ET AL

CITATION

TO: EASTOVER REALTY, INC.

THROUGH: ITS REGISTERED AGENT FOR SERVICE OF PROCESS: RICHARD B. MONTGOMERY 755 MAGAZINE STREET

NEW ORLEANS LA 70128

YOU HAVE BEEN SUED:

You must either comply with the demand contained in the petition FOR DAMAGES, BREACH OF CONTRACT AND TO ENFORCE LIEN

a certified copy of which accompanies this citation, or file an answer or other legal pleading in the office of the Clerk of this Court, Room 402, Civil Courts Building, 421 Loyola Avenue, New Orleans, LA, within fifteen (15) days after the service hereof under penalty of default

ADDITIONAL INFORMATION

Legal assistance is advisable. If you want a lawyer and can't find one, you may call the New Orleans Lawyer Referral Service at 561- 8828. This Referral Service operates in conjunction with the New Orleans Bar Association. If you qualify, you may be entitled to free legal assistance through the New Orleans Legal Assistance Corp.; you may call 529 - 1000 for more information.

COURT PERSONNEL ARE NOT PERMITTED TO GIVE LEGAL ADVICE

IN WITNESS HEREOF, I have hereunto set my hand and affix the seal of the Civil District Court for the Parish of Orleans, State of LA July 25, 2008

Clerk's Office, Room 402, Civil Courts Building, 421 Loyola Avenue New Orleans, LA

DALE N. ATKINS, Clerk of The Civil District Court for the Parish of Orleans State of LA

by [Signature] Deputy Clerk

SHERIFF'S RETURN

(for use of process servers only)

PERSONAL SERVICE

On this 29 day of JULY 2008 served a copy of the w/i petition FOR DAMAGES, BREACH OF CONTRACT AND TO ENFORCE LIEN

On EASTOVER REALTY, INC.

THROUGH: ITS REGISTERED AGENT FOR SERVICE OF PROCESS: RICHARD B. MONTGOMERY

Returned same day

11:10 am c. Montre No. 138 Deputy Sheriff of

Mileage: \$

PAPER ENTERED / RETURN 9/10/08 ES

SERIAL NO. DEPUTY PARISH

DOMICILIARY SERVICE

On this day of served a copy of the w/i petition FOR DAMAGES, BREACH OF CONTRACT AND TO ENFORCE LIEN

On EASTOVER REALTY, INC.

THROUGH: ITS REGISTERED AGENT FOR SERVICE OF PROCESS: RICHARD B. MONTGOMERY

by leaving same at the dwelling house, or usual place of abode, in the hands of a person of suitable age and discretion residing therein as a member of the domiciliary establishment, whose name and other facts connected with this service I learned by interrogating HIM / HER the said EASTOVER REALTY, INC.

being absent from the domicile at time of said service. Returned same day

No.

Deputy Sheriff of

RECEIVED CIVIL DISTRICT COURT SHERIFF'S OFFICE JUL 28 12:27 PM 2008 VERIFIED

28

ATTORNEY'S NAME: Wolfe, Scott 30122

AND ADDRESS:

NEW ORLEANS LA 70115

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS  
STATE OF LOUISIANA

NO: 2008 -- 07729

3

SECTION: 12 -- H

EARTH SERVICES & EQUIPMENT, INC. ET AL VERSUS EVENSTAR, INC. ET AL

CITATION

TO: THE GOLF CLUB OF NEW ORLEANS, L.L.C.

THROUGH: ITS REGISTERED AGENT FOR SERVICE OF PROCESS: DONALD E. PETE  
5690 EASTOVER DRIVE

NEW ORLEANS LA 70128

YOU HAVE BEEN SUED:

You must either comply with the demand contained in the petition  
FOR DAMAGES, BREACH OF CONTRACT AND TO ENFORCE LIEN

a certified copy of which accompanies this citation, or file an answer or other legal pleading in the office of the Clerk of  
this Court, Room 402, Civil Courts Building, 421 Loyola Avenue, New Orleans, LA, within fifteen (15) days after the  
service hereof under penalty of default

\*\*\*\*\*  
ADDITIONAL INFORMATION  
\*\*\*\*\*

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\* If you qualify, you may be entitled to free legal assistance through the New Orleans Legal Assistance Corp.; you  
\* may call 529 - 1000 for more information.  
\*\*\*\*\*

\* COURT PERSONNEL ARE NOT PERMITTED TO GIVE LEGAL ADVICE  
\*\*\*\*\*

IN WITNESS HEREOF, I have hereunto set my hand and affix the seal of the Civil District Court for  
the Parish of Orleans, State of LA July 25, 2008

Clerk's Office, Room 402, Civil Courts Building,  
421 Loyola Avenue  
New Orleans, LA

DALE N. ATKINS, Clerk of  
The Civil District Court  
for the Parish of Orleans  
State of LA

by [Signature]  
Deputy Clerk

RECEIVED  
JUL 27 2008  
SHERIFF'S OFFICE

SHERIFF'S RETURN

(for use of process servers only)

PERSONAL SERVICE

DOMICILIARY SERVICE

On this 29 day of July  
2008 served a copy of the w/i petition

On this \_\_\_\_\_ day of \_\_\_\_\_  
served a copy of the w/i petition

FOR DAMAGES, BREACH OF CONTRACT AND TO ENFORCE LIEN

FOR DAMAGES, BREACH OF CONTRACT AND TO ENFORCE LIEN

On  
THE GOLF CLUB OF NEW ORLEANS, L.L.C.

On  
THE GOLF CLUB OF NEW ORLEANS, L.L.C.

THROUGH: ITS REGISTERED AGENT FOR SERVICE OF  
PROCESS: DONALD E. PETE

THROUGH: ITS REGISTERED AGENT FOR SERVICE OF  
PROCESS: DONALD E. PETE

by leaving same at the dwelling house, or usual place of  
abode, in the hands of \_\_\_\_\_  
a person of suitable age and discretion residing therein as  
a member of the domiciliary establishment, whose name  
and other facts connected with this service I learned by  
interrogating HIM / HER the said \_\_\_\_\_  
THE GOLF CLUB OF NEW ORLEANS, L.L.C.

Returned same day

R. Jordan No. 377  
Deputy Sheriff of ORLEANS PARISH

being absent from the domicile at time of said service.  
Returned same day

Mileage: \$ \_\_\_\_\_

PAPER / ENTERED / ES  
1 / 9702 / RETURN

SERIAL NO. DEPUTY PARISH

Deputy Sheriff of \_\_\_\_\_

VERIFIED  
[Signature]  
1-21-08