

IN THE IOWA DISTRICT COURT FOR WAPELLO COUNTY

ELDER CORPORATION, Plaintiff, v. 312 EAST ALTA VISTA, LLC, Defendant.	EQUITY NO. _____ PETITION TO FORECLOSE MECHANIC'S LIEN
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COMES NOW the Plaintiff Elder Corporation, by and through the undersigned counsel and the law firm of Whitfield & Eddy Law, and for its cause of action states:

1. Plaintiff Elder Corporation ("**Elder**") is an Iowa corporation with its principal place of business located at 5088 East University, Des Moines, IA 50327.
2. Defendant 312 East Alta Vista, LLC ("**312 EAV**") is an Iowa limited liability company with its principal place of business at 130 East 3rd Street, Suite 400, Des Moines, Iowa 50309.
3. At all times relevant hereto, the Defendant was the "owner, agent or trustee" of certain real estate, locally know as 312 East Alta Vista Avenue, Ottumwa, Iowa 52501, and legally described in Elder's mechanic's lien attached hereto as Exhibit 1 (the "**Property**")
4. Venue is proper in Wapello County, Iowa pursuant to Iowa Code 572.
5. This Court has jurisdiction over this case as the amount in controversy is in excess of the small claims threshold.
6. On or about December 6, 2017, Elder entered into written agreement with 312 EAV to demolish an existing structure situated on the Property.

7. Elder performed under the written agreement between December 21, 2017 and August 9, 2018.

8. 312 EAV has failed to pay Elder all amounts due and owing for the improvements Elder furnished to the Property despite repeated demand for the same.

9. Because of 312 EAV's failure and refusal to pay Elder for its work on the Property, Elder stopped work pursuant to the terms of the written agreement.

10. Elder notified 312 EAV on numerous occasions that it was ready, willing, and able to complete the work upon payment of the amount owed.

11. On August 29, 2018, Elder posted a mechanic's lien asserting an interest in Property. A copy of the Lien is attached hereto as Exhibit 1.

12. A true account of improvements Elder furnished to the Property is attached as Exhibit A of Exhibit 1.

13. The amounts expended by Elder to improve the Property were fair and reasonable.

14. The improvements Elder furnished to the Property enhanced the value of the Property.

15. 312 EAV has a mortgage against the Property filed on January 29, 2018.

16. The mortgage was filed after Elder's first work was performed on the Property.

17. Thus, Elder's mechanic's lien is superior to 312 EAV's mortgage.

18. Iowa Code § 572.32 provides for the award of attorney fees to a prevailing plaintiff.

WHEREFORE, Elder prays for judgment against the Defendant, with pre- and post-judgment at the highest rate allowed by law, costs as permitted by law, attorney fees, and that the judgment be established as a lien against the Property prior to all of Defendant's right, title and interest therein, including the mortgage interest, and foreclosed against . Also that Elder's lien be declared prior to and superior to all rights of the Defendant and that the Property be sold under special execution free of the rights of the Defendant, and after taking the account and that Plaintiff be awarded so much of the proceeds of the sale to apply on the judgment as provided by statute and for such other relief as this Court deems equitable and just.

Respectfully submitted,

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By: /s/ Jeffrey D. Stone
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