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FILED
LOS ANGELES SUPERIOR COURT

MAY 09 2007

JOHN A. CLARK, EXECUTIVE OFFICER/CLERK
BY R. Gamboa, DEPUTY
R. GAMBOA

1 LANAK & HANNA, P.C.
400 North Tustin Avenue, Suite 120
2 Santa Ana, CA 92705-3815
(Tel) 714/550-0418 (Fax) 714/550-7603
3
4 By: ROBERT STROJ, Bar No.: 242982
Email: rjstroj@lanak-hanna.com

5 Attorneys for Defendant and Cross-Complainant,
6 AMERICAN CONTRACTORS INDEMNITY COMPANY

SUMMONS ISSUED

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

D-78

10 KENNETH BERGER,
11
12 Plaintiff,
13 vs.
14 VISION REMODELING, INC.,
15
16 Defendants.

CASE NO. BC365437

- CROSS-COMPLAINT FOR:**
1. BREACH OF CONTRACT
2. INDEMNITY
3. DECLARATORY RELIEF
4. SPECIFIC PERFORMANCE

17 AMERICAN CONTRACTORS INDEMNITY
18 COMPANY, a California corporation,
19
20 Cross-Complainant,
21 vs.
22 NICOLAS RAUL ESPINOSA, JR., an
23 individual and dba CASTLE DEVELOPMENT
AND CONSTRUCTION;
24 ROES 1 through 20, inclusive,
25
26 Cross-Defendants.
27

1 Cross-Complainant, AMERICAN CONTRACTORS INDEMNITY COMPANY, alleges
2 as follows:

3 **FIRST CAUSE OF ACTION**

4 1. At all times herein mentioned, Cross-Complainant, AMERICAN CONTRACTORS
5 INDEMNITY COMPANY, was and is a corporation duly licensed by the State of California and
6 authorized to do business in this state as a surety company.

7 2. Cross-Complainant is informed and believes and thereon alleges that the activities
8 complained of and/or obligations sued upon herein, arose within this judicial district, and the Cross-
9 Defendants, and each of them, are indebted to Cross-Complainant on the obligations sued on herein.

10 3. At all times herein mentioned, each of the Cross-Defendants was the agent and employee
11 of each of their co-Cross-Defendants, and in doing the things herein mentioned, were acting in the
12 scope of their authority as such agents and employees, and with the permission and consent of their
13 co-Cross-Defendants.

14 4. The true names or capacities, whether individual, corporate, associate or otherwise, of
15 Cross-Defendants named herein as Roes 1 through 20, inclusive, are unknown to Cross-Complainant,
16 who sues said Cross-Defendants by such fictitious names. Cross-Complainant will amend this Cross-
17 Complaint to show the true names and capacities when the same have been ascertained. Cross-
18 Complainant is informed and believes and thereon alleges that the fictitiously named Cross-
19 Defendants named herein, and each of them, are in some way indebted to the Cross-Complainant for
20 the acts and obligations alleged herein.

21 5. On or about January 14, 2005, Cross-Defendants, NICOLAS RAUL ESPINOSA, JR.,
22 an individual and dba CASTLE DEVELOPMENT AND CONSTRUCTION, and ROES 1 through
23 20, inclusive, and each of them, in consideration of the execution by Cross-Complainant of a
24 Contractor's bond for NICOLAS ESPINOSA as principal, and the People of the State of California
25 as obligee, entered into a written indemnification agreement with Cross-Complainant. A copy of the
26 written indemnification agreement is attached hereto and marked as **Exhibit "1"**.

27 6. In consideration of the Indemnification Agreement and specifically the agreement by the
28 named Cross-Defendants, and each of them, and in reliance on their, and each of their, promise to

1 save Cross-Complainant harmless from any and all claims or demands or legal expense of any kind
2 or nature, Cross-Complainant did, on or about January 14, 2005, issue its contractor's bond number
3 100001491, to People of the State of California as obligee, with NICOLAS ESPINOSA as principal,
4 in the penal sum of \$10,000.00. A true and correct copy of bond number 100001491 is attached to
5 this Cross-Complaint and marked as **Exhibit "2"**.

6 7. Thereafter, the cross-complaint filed by VISION REMODELING, INC., against
7 AMERICAN CONTRACTORS INDEMNITY COMPANY in connection with the aforementioned
8 bond was served.

9 8. Subsequently, on or about April 4, 2007, Cross-Complainant made written demand
10 upon Cross-Defendants, and each of them, to indemnify and to save Cross-Complainant harmless
11 from liability in this lawsuit. A copy of that demand is attached hereto as **Exhibit "3"**.

12 9. Cross-Defendants, and each of them, have breached the terms of the written
13 indemnification agreement by refusing to perform as demanded as previously agreed upon.

14 10. Cross-Complainant has performed all the conditions and obligations to be performed on
15 its part under the Indemnification Agreement.

16 11. In the event that the trier of fact in this matter concludes that Plaintiff sustained any
17 damages, and if the trier of fact also finds that Cross-Complainant is liable to Plaintiff herein, such
18 facts would establish that Cross-Defendants, and each of them, are liable to Cross-Complainant in
19 a like amount and that Cross-Complainant is entitled to judgment against Cross-Defendants and each
20 of them in said amount, plus additional amounts to be proven at the trial of this matter.

21 12. Cross-Complainant has incurred, and continues to incur, necessary and reasonable
22 attorneys' fees and other legal costs in prosecuting this action against Cross-Defendants, and each of
23 them. By the terms of the Indemnification Agreement between Cross-Complainant and Cross-
24 Defendants, and each of them, Cross-Complainant is entitled to recover such fees and costs from
25 Cross-Defendants, and each of them.

26 **SECOND CAUSE OF ACTION**

27 13. Cross-Complainant incorporates herein by reference as though fully set forth herein, its
28 allegations contained in paragraphs 1 through 12, inclusive, of its First Cause of Action.

1 14. By reason of the foregoing, and in the event that Cross-Complainant incurs a loss on its
2 bond, Cross-Complainant is entitled to be indemnified by Cross-Defendants, and each of them, in full,
3 to the full extent of its loss, including costs and attorneys' fees.

4 **THIRD CAUSE OF ACTION**

5 15. Cross-Complainant incorporates herein by reference as though fully set forth herein, its
6 allegations contained in paragraphs 1 through 12, of the First Cause of Action.

7 16. An actual controversy has arisen and now exists between Cross-Complainant and Cross-
8 Defendants, and each of them, concerning their respective rights and duties under the Indemnification
9 Agreement, **Exhibit "1"**. Cross-Complainant contends that, by virtue of the Indemnification
10 Agreement, Cross-Defendants, and each of them, are obligated to reimburse Cross-Complainant for
11 any and all losses it might sustain under its bond, including reasonable attorneys' fees and costs
12 heretofore incurred and for reasonable costs which might be incurred in the future, as a result of the
13 alleged conduct of Cross-Defendants, which has given rise to claims being asserted against Cross-
14 Complainant.

15 17. Cross-Defendants, and each of them, on the other hand, by virtue of their refusal to honor
16 the contractual obligations herein, contend that the Indemnification Agreement does not obligate
17 them, nor any of them, to reimburse Cross-Complainant for any losses, including attorneys' fees and
18 costs that Cross-Complainant might sustain and incur under its bond, above mentioned, or to hold
19 Cross-Complainant harmless for any and all damages, judgment, or other awards which may be
20 recovered against Cross-Complainant as a result of the actions of Cross-Defendants.

21 18. Cross-Complainant desires a judicial determination of the respective rights and duties of
22 Cross-Complainant and Cross-Defendants, and each of them, under the Indemnification Agreement,
23 and a declaration that Cross-Defendants, and each of them, are obligated to reimburse Cross-
24 Complainant for any losses sustained by it, including attorneys' fees and costs and to hold Cross-
25 Complainant harmless from any and all damages, judgment or other awards which may be obtained
26 against Cross-Complainant as a result of its principal's alleged wrongful conduct.

27 19. Such declaration is necessary and appropriate at this time in order that Cross-Complainant
28 may ascertain its rights and duties with respect to the Indemnification Agreement and with respect

1 to payment of any damages, judgments, or other awards which may be recovered against Cross-
2 Complainant as a result of the claims being asserted against it by reason of its Bond.

3 **FOURTH CAUSE OF ACTION**

4 20. Cross-Complainant incorporates herein by reference as though fully set forth herein, its
5 allegations contained in paragraphs 1 through 12 of its First Cause of Action.

6 21. Cross-Defendants, and each of them, have refused, and continue to refuse, to hold
7 harmless and indemnify Cross-Complainant as demanded.

8 **WHEREFORE**, Cross-Complainant prays for judgment against Cross-Defendants, and each
9 of them, as follows:

10 **ON THE FIRST AND SECOND CAUSES OF ACTION:**

11 1. For the sum unascertained at this time from Cross-Defendants, and each of them,
12 for any sums Cross-Complainant is compelled to pay as the result of any damages, judgment, or other
13 awards recovered by Plaintiff against Cross-Complainant, plus additional amounts to be proven at the
14 trial of this matter, plus interest at the legal rate from date of judgment until paid, plus reasonable
15 attorneys' fees;

16 **ON THE THIRD CAUSE OF ACTION:**

17 2. For a declaration that the Indemnification Agreement between Cross-Complainant
18 and Cross-Defendants, and each of them, obligates Cross-Defendants, and each of them, to reimburse
19 Cross-Complainant for any losses it might sustain by reason of the claims being asserted against its
20 Bond including actual attorneys' fees and costs incurred by Cross-Complainant in defending itself
21 against said claims, and to indemnify Cross-Complainant against any and all damages, judgments,
22 or other awards which may be recovered against Cross-Complainant as a result of the actions of its
23 principal;

24 **ON THE FOURTH CAUSE OF ACTION:**

25 3. For a judgment of this Court for specific performance, ordering Cross-Defendants,
26 and each of them, to hold harmless and indemnify Cross-Complainant for any and all loss sustained
27 by Cross-Complainant, including reasonable attorneys' fees and costs incurred in defending this
28 lawsuit;

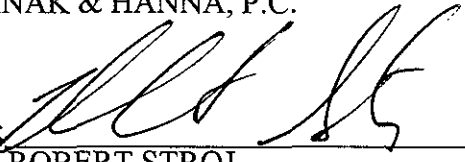
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ON ALL CAUSES OF ACTION:

- 4. For costs of suit herein incurred;
- 5. For reasonable attorneys' fees;
- 6. For such other and further relief as the Court may deem proper.

Dated: May 7, 2007

LANAK & HANNA, P.C.

By: 

ROBERT STROJ
Attorneys for Defendant/Cross-Complainant,
AMERICAN CONTRACTORS
INDEMNITY COMPANY

American Contractors Indemnity Company

\$10,000.00 CONTRACTORS LICENSE BOND

APPLICATION

These rates do not apply to Roofers, Swimming Pool Contractors or Disciplinary Bonds*

Complete the following: 1 YEAR \$93.00 2 YEARS \$156.00 3 YEARS \$207.00 (O.A.C.)

NAME (must be exactly as it appears on your pocket license or license application) <u>NICOLAS ESPINOSA</u>		<input checked="" type="checkbox"/> Individual <input type="checkbox"/> Corporation
STREET ADDRESS <u>17244 HORACE ST</u>		<input type="checkbox"/> Partnership <input type="checkbox"/> RME/RMO
CITY <u>GUANADA HILLS</u>		PHONE <u>818-831-8051</u>
STATE <u>CA</u>	ZIP <u>91344</u>	FAX
LICENSE NUMBER <u>549023</u>	LICENSE CLASS <u>B-1</u>	REQUESTED EFFECTIVE DATE <u>Now</u>
Note: If you are a new contractor, attach a copy of this letter from the License Board advising that you passed the exam.		
NAME OF FIRM ON LICENSE <u>CASTLE DEVELOPMENT AND CONSTRUCTION</u>		

INDEMNITY AGREEMENT - READ CAREFULLY AND SIGN

IN CONSIDERATION of the execution of such bond, and its compliance with a promise of the undersigned made prior thereto, the undersigned individually hereby agree, for themselves, their personal representatives, successors and assigns, jointly and severally, as follows:

- To reimburse American Contractors Indemnity Company ("Surety") upon demand for all payments made for and to indemnify Surety from:
 - all loss, contingent loss, liability and contingent liability, claim, expense, including attorneys' fees, for which Surety shall become liable or shall become contingently liable by reason of such suretyship, whether or not Surety shall have paid same at the time of demand; and
 - to pay Surety an advance premium for the first year or a fractional part thereof that is fully earned and to pay annually thereafter such annual premium for suretyship as is billed until satisfactory evidence of discharge or release of liability shall be furnished to Surety by the obligee.
 - Upon written demand, to deposit with the Surety a sum of money requested by Surety to cover any claim, suit, expense or judgment that Surety in its absolute discretion determines necessary and the deposit shall be pledged as collateral security on any bond or other bonds the Surety may have issued for the undersigned.
- Surety and undersigned agree that the place of performance of this agreement, including the promise to pay Surety, shall be in Los Angeles County, California and venue for any suit, arbitration, mediation or any other form of dispute resolution shall be in Los Angeles County, California.
- Surety is authorized to investigate, at any time, the undersigned's credit, employment history, and department of motor vehicle records. Privacy Notice: All nonpublic personal information gathered pursuant to the application shall not be disclosed except as permitted by law.

Regardless of the date of signature, this indemnity is effective as of the date of execution and renewal of the aforementioned bond(s) and is continuous until Surety is satisfactorily discharged from liability pursuant to the terms and conditions contained herein and in the bond(s).

If Individual - Sign Below

Signature Nick Espinosa

Printed Name NICK ESPINOSA

Soc. Sec. # [REDACTED] Driver's Lic. # [REDACTED]

If Partnership - Sign Below

Signature - Partner & Individually

Printed Name

Soc. Sec. # Driver's Lic. #

Signature - Partner & Individually

Printed Name

Soc. Sec. # Driver's Lic. #

FIRST YEAR'S PREMIUM OR \$100.00 MINIMUM PREMIUM, WHICHEVER IS GREATER, IS FULLY EARNED UPON ISSUANCE.

Date _____

If Corporation - Sign Below

Signature - President & Individually

Printed Name

Soc. Sec. # Driver's Lic. #

Witness

Printed Name

*Complete "Multi-App" if bond is for Swimming Pool Contractor, Roofing Contractor or Contractor applying for Disciplinary Bond.

AGENT INFORMATION	
Name <u>Certified Bond & Insurance Services</u>	Phone <u>(818) 225-6200</u>
Address <u>22801 Ventura Blvd., Ste 315</u>	Fax <u>(818) 225-5996</u>
City, State, Zip <u>Woodland Hills, Ca 91364</u>	ACIC Producer No. <u>2044</u>

To reach the branch closest to you, CALL 800-787-3896

CA109A12/03

Ex 1

THIS BOND SHALL BE FILED WITH THE REGISTRAR OF CONTRACTORS
STATE OF CALIFORNIA
CONTRACTORS STATE LICENSE BOARD

SURETY CODE G52
BOND NO. 100001491
LICENSE NO. 549023
OR
APP. FEE NO. _____

REC'D FEB 07 2005

Contractor's Bond

(BUSINESS AND PROFESSIONS CODE SECTIONS 7071.5-7071.11)

The premium on this bond is \$ 93.00 for the term 1/14/2005 to 1/14/2006

KNOW ALL BY THESE PRESENTS: That NICOLAS ESPINOSA
BUSINESS NAME SHOWN ON APPLICATION OR LICENSE

whose address for service is 17244 HORACE ST GRANADA HILLS CA 91344
STREET ADDRESS CITY STATE ZIP CODE

as Principal, and AMERICAN CONTRACTORS INDEMNITY COMPANY
NAME OF SURETY

a corporation organized under the laws of CALIFORNIA

and authorized to transact a general surety business in the State of California, as Surety, are held and firmly bound unto the State of California, for the penal sum of Ten Thousand Dollars (\$10,000) for the payment of which well and truly to be made we bind ourselves, our heirs, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, The provisions of Sections 7071.6 and 7071.8, Business and Professions Code, require that the Principal file or have on file with the Registrar a bond issued by an admitted surety in the sum of \$10,000 and this bond is executed and tendered in accordance therewith.

NOW THEREFORE, The conditions of the foregoing obligation are that if the Principal shall comply with and be subject to the provisions of Division 3, Chapter 9 (commencing with Section 7000) of the Business and Professions Code, then this obligation shall be null and void; otherwise to remain in full force and effect.

PROVIDED HOWEVER, This bond is issued subject to the following express conditions:

1. This bond may be cancelled by the Surety in accordance with the provisions of Sections 996.310 et seq. of the *Code of Civil Procedure*.
2. This bond shall be deemed continuous in form and shall remain in full force and effect and shall run concurrently with the license period for which license is granted and each and every succeeding license period or periods for which said Principal may be licensed, after which liability hereunder shall cease except as to any liability or indebtedness therefore incurred or accrued hereunder.
3. The limitation of the liability of the Surety and the conditions of the bond are set forth in Sections 7071.5, 7071.6, and 7071.11, *Business and Professions Code* and any person claiming against said bond may bring an action in a proper court on this bond for the amount of the damage he may suffer as the result of such acts or omissions by the Principal, except that such action must be brought within two (2) years after the expiration of the license period during which the act or omission occurred, except provided further that a claim for fringe benefits shall be brought within six (6) months after the date the fringe benefit delinquencies were discovered, and any civil action thereon shall be filed within two (2) years after the date the fringe benefit contributions were due.
4. This bond is executed by the Surety to comply with the provisions of Division 3, Chapter 9, (commencing with Section 7000) of the *Business and Professions Code* and of Chapter 2, Title 14, Part 2 (commencing with Section 995.010) of the *Code of Civil Procedure* and said bond shall be subject to all of the terms and provisions thereof.
5. This bond to become effective 1/14/2005
DATE

AMERICAN CONTRACTORS INDEMNITY COMPANY 9841 Airport Blvd., 9th floor, Los Angeles, CA 90045
NAME OF SURETY ADDRESS FOR SERVICE

I certify (or declare) under penalty of perjury under the laws of the State of California that I have executed the foregoing bond under an unrevoked power of attorney.

Executed in WOODLAND HILLS, CA on 1/14/2005, under the laws of the State of California.
CITY AND STATE DATE

Certificate of Authority # 5906 Signature of Attorney-in-Fact *Ronald D. Turner*



Printed or Typed Name of Attorney-in-Fact RONALD D. TURNER

Address of Attorney-in-Fact 22801 VENTURA BLVD., #315 WOODLAND HILLS, CA 91364

Telephone Number of Attorney-in-Fact (818) 222-1419



Ex 2



HCC SURETY GROUP

9841 Airport Blvd., Ninth Floor, Los Angeles, CA 90045 Telephone: (310) 649-0990 Fax: (310) 649-0891 www.hccsurety.com

VIA CERTIFIED & REGULAR MAIL

April 4, 2007

Nicolas Espinosa
Castle Development & Construction
9807 Comanche Ave.
Chatsworth, CA 91311

Re: Principal : Nicolas Esponola
Bond No. : 100001491 - Contractor's License Bond
Lawsuit : Kenneth Berger v. Vision Remodeling, Inc.
Cross-Complaint : Vision Remodeling, Inc. v. Nicolas Esponola dba: Castle Development & Construction; American Contractors Indemnity Company, et al
Los Angeles County Superior Court Case no. BC365437

Dear Mr. Espinosa:

We are the bonding company that issued you a contractor's bond, as referenced above, with Nicolas Espinosa named as principal.

We have been served with the referenced lawsuit - specifically a cross-complaint arising out of a lawsuit Kenneth Berger filed against Vision Remodeling. A copy of the lawsuit and a copy of a bond application and indemnity agreement you executed as a condition to our company issuing you the bond are enclosed. In the indemnity agreement, you agreed to hold harmless and indemnify us from any claim, loss, attorney fees and costs in connection with the issuance of the bond. The responsibility to resolve this lawsuit or undertake the defense of our company is yours.

We assume you are represented by an attorney in connection with your complaint. Please transmit the following demand to your attorney: we demand that your attorney respond in writing offering to defend our company pursuant to the obligations you owe us under the indemnity agreement. **Confirmation that the lawsuit has been resolved or your attorney's written response confirming our company's defense must be received on or before April 19, 2007, 2007.**

If neither is received by that date, we will undertake our own defense in this action. To the extent we incur any loss, attorney fees and costs, we will seek recovery of all such amounts from you. We will also cancel your bond and your license may be impacted. Your prompt written response as demanded above is critical to avoiding or minimizing any such amounts.

Very Truly Yours,

Amos A. Levy, Claims Examiner
On Behalf of American Contractors Indemnity Company
Direct Line & Fax: 310-957-3045
Email: alevy@hccsurety.com

Ex 3

1 **PROOF OF SERVICE**

2 *Kenneth Berger v. Vision Remodeling;*

3 Los Angeles County Superior Court, Case No. BC365437

4 STATE OF CALIFORNIA)
5) ss.
6 COUNTY OF ORANGE)

7 I am employed in the County of Orange, State of California. I am over the age of 18 years and not
8 a party to this action. My business address is 400 North Tustin Avenue, Suite 120, Santa Ana,
9 California 92705-3815.

10 On May 7, 2007, I served the foregoing document described as **ACIC's Cross-Complaint** on the
11 persons listed below as follows:

12 **PLEASE SEE ATTACHED SERVICE LIST.**

13 **(By U.S. Mail)** I enclosed the document(s) listed above in a sealed envelope or package
14 addressed to the persons listed below and placed the envelope for collection and mailing,
15 following ordinary business practices of Lanak & Hanna, P.C. I am readily familiar with the
16 firm's practice for collecting and processing correspondence for mailing. On the same day
17 that correspondence is placed for collection and mailing, it is deposited in the ordinary course
18 of business with the United States Postal Service, in a sealed envelope with postage fully
19 prepaid.

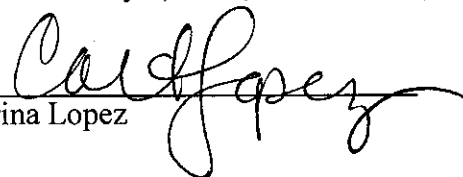
20 **(By Personal Service by Messenger)** I commissioned _____ to personally serve
21 the documents listed above by delivering a copy thereof to the office of the following, and
22 either handing the copy to the person named below or leaving it with the receptionist or other
23 person having charge of the office thereof. A proof of service has been requested from
24 _____ and if necessary, will be filed with the Court.

25 **(By Express/Overnight Mail Service)** I enclosed the documents in an envelope or package
26 provided by an overnight delivery carrier and addressed to the persons listed below. I placed
27 the envelope or package for collection and overnight delivery at an office or a regularly
28 utilized drop box of the overnight delivery carrier. The airbill confirmation number is *.
(CCP §1013)(CCP §437c(a))

(By Facsimile Transmission) Based on an agreement of the parties to accept service by fax
transmission, I faxed the documents to the persons at the fax numbers listed below. No error
was reported by the fax machine I used. A copy of the record of the fax transmission, which
I printed out, is attached.

(FEDERAL) I declare that I am employed in the office of a member of the bar of this Court
at whose direction the service was made.

I declare under penalty of perjury under the laws of the State of California that the above is true and
correct, and that this Proof of Service was executed on May 7, 2007, at Santa Ana, California.

25 
26 Corina Lopez

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SERVICE LIST

Kenneth Berger v. Vision Remodeling;
Los Angeles County Superior Court, Case No. BC365437

Christopher J. Olsen, Esq.
3075 E. Thousand Oaks Blvd.
Suite 100
Westlake Village, CA 91362

Attorney for, PLAINTIFF

Marc Weinberg, Esq.
Law Offices of Marc Weinberg
6320 Canoga Ave., Suite 1500
Woodland Hills, CA 91367

Attorney for,
DEFENDANT/CROSS-
COMPLAINANT VISION
REMODELING