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✓ 3/16/07

FILED
LOS ANGELES SUPERIOR COURT

DEC 13 2007

JOHN A. CLARKE, CLERK
BY JALON TAYLOR, DEPUTY

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

KENNETH BERGER, Etc.,
Plaintiff,

vs.

VISION REMODELING INC., Etc.,
Defendants.

RELATED CROSS-ACTIONS

RACHEL FADLON,
Cross-complainant,

vs.

VISION REMODELING, INC. Etc., et al.,
Cross-defendants.

CASE NO.: BC365437

VISION REMODELING INC., AND ASHER "MAX" ATIAS, ANSWER TO: CROSS-COMPLAINT OF RACHEL FADLON

Case Assigned to Judge, William F. Fahey

Dept.78

Fees Pd on 1/22/08 BR

Cross-defendants, **Vision Remodeling, Inc.,** and **Asher "Max" Atias** answers the cross-complaint of cross-complainant, **Rachel Fadlon,** as follows:

Pursuant to the provisions of California Code of Civil Procedure §431.30(d), these answering cross-defendants deny both generally and specifically, each and every allegation contained in each and every cause of action alleged in the cross-complaint, and the whole thereof.

FIRST SEPARATE AND AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

The cross-complaint and each purported causes of action contained therein alleging a cause of action against these answering cross-defendants, fails to state facts sufficient to constitute a meritorious cause of action against these answering cross-defendants.

SECOND SEPARATE AND AFFIRMATIVE DEFENSE

(Co-Defendant Liability)

Cross-defendants allege that the other named cross-defendants, and each of them, named and unnamed in the cross-complaint of cross-complainant, were guilty of breaches of contract, negligence, or other acts or omissions, which proximately caused or contributed to the damages or loss complained of, if any of cross-complainant, and that the Court is requested to determine and allocate the percentage of fault attributable to each of the cross-defendants named in cross-complainant's cross-complaint. Cross-defendants further allege that cross-complainant, herself, bears responsibility for all or some of the acts that she alleges against these answering cross-defendants.

THIRD SEPARATE AND AFFIRMATIVE DEFENSE

(Indemnity)

Cross-defendants are informed and believe, and on that basis allege, that cross-complainant's damages, if any, were caused by the negligence, tortuous and wrongful conduct, and prior breach of third parties including cross-defendant, Nicolas Raul Espinosa, Jr. dba Castle Development and Construction, and cross-complainant Fadlon herself. Cross-defendants are therefore entitled to an allocation of damages according to the percentage of fault of each such party.

FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

(Mitigation of Damages)

If any damages or losses were suffered by cross-complainant, and cross-complainant failed to take reasonable and necessary steps in order to mitigate, lessen, reduce and minimize said damages and losses, then any recovery must be reduced by that amount.

FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

(Set-off)

Cross-defendants are informed and believe, and upon such information and belief allege that, cross-complainant's claim is totally or partially subject to set off, credit, and/or adjustment, in an amount to be proven at trial.

SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

(Intervening Acts)

Cross-defendants are informed and believe, and allege thereon that cross-complainant's damages, if any, are the result of intervening acts subsequent to the conduct alleged of cross-defendants.

SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Additional Defenses)

Cross-defendants presently have insufficient knowledge or information upon which to form a belief, whether they may have additional unstated affirmative defenses. These answering cross-defendants reserves the right to assert additional affirmative defenses in the event discovery indicates additional affirmative defenses are appropriate, and will seek leave to amend this answer to assert such defenses when the same shall have been ascertained.

EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE

(Cross-complaint)

Prior to filing this answer to cross-complaint, cross-defendant Vision as a cross-complainant, filed a cross-complaint against Kenneth Berger and Thu Phan, Nicolas Raul Espinosa Jr. dba Castle Development and Construction. Vision, as a cross-defendant with cross-defendant Atias, has concurrently filed with this answer to cross-complaint of Rachel Fadlon, a cross-complaint against

cross-complainant, Rachel Fadlon, and Nicolas Raul Espinosa dba Castle Development and Construction, for indemnity. Cross-defendants incorporate by this reference all allegations alleged in said cross-complaint, as an additional Affirmative Defense in response to the cross-complaint of cross-complainant, Rachel Fadlon.

WHEREFORE, these answering cross-defendants pray judgment as follows:

1. That cross-complainant take nothing by her cross-complaint;
2. For costs of suit incurred herein;
3. For reasonable attorney's fees; and,
4. For such other and further relief as the Court deems just and proper.

Dated: December 12, 2007

LAW OFFICES OF MARC WEINBERG

MARC WEINBERG, Attorney for
Cross-defendants, Vision and Atias

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF

I have read the foregoing _____

_____ and know its contents.

☐ **CHECK APPLICABLE PARAGRAPHS**

☐ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am ☐ an Officer ☐ a partner _____ ☐ a _____ of _____

_____, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. ☐ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am one of the attorneys for _____ a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on _____, at _____, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

_____ _____

Type or Print Name Signature

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California.

I am over the age of 18 and not a party to the within action; my business address is: 6320 Canoga Avenue, Suite 1500, Woodland Hills, CA 91367

On, December 12, 2007 I served the foregoing document described as ANSWER TO CROSS-COMPLAINT OF FADLON on Interested parties in this action

☐ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

Christopher J. Olsen, Esq., 3075 E. Thousand Oaks Blvd, Ste 100, Westlake Village, CA 91362
John M. Correlli, Esq., 3835 R. East Thousand Oaks Blvd., #119, Westlake Village, CA 91362
Robin J. Willett, Esq., Lanak & Hanna, 400 N. Tustin Avenue, Suite 120, Santa Ana, 92705
Gerald N. Silver, Esq., 7100 Hayvenhurst Avenue, Penthouse Suite C, Van Nuys, CA 91406

☒ **BY MAIL**

☒ *I deposited such envelope in the mail at Woodland Hills, California. The envelope was mailed with postage thereon fully prepaid.

☐ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at _____ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on December 12, 2007, at Woodland Hills, California.

☐ **(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on _____, at _____, California.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (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.

Marc Weinberg _____

Type or Print Name Signature

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

**(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)