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AB446-Protection from Construction Defects

Presented by
Nevada Trial Lawyers Association

April 8, 2003

1 of 21

ASSEMBLY JUDICIARY

DATE: 4/8/03 ROOM: 3138 EXHIBIT Q

SUBMITTED BY: Scott Canepa

AB446-Ensures court access

- §1, §2, §3 and §13 Preclude mandatory arbitrations

Q 20521

12.75 month
 804

CONTRACT OF SALE

Buyer and Seller agree to sell and convey to Buyer the property described below, together with the improvements, fixtures, and all other property located on the premises referred to as the "Property".

Property Address: 1111 W. Green City: Las Vegas State: NV Zip: 89101

Buyer's Name: 1800

Buyer's Address: 4244 S. Durango City: Las Vegas State: NV Zip: 89115

Buyer's Phone: 702-735-1111

Seller's Name: 1800

Seller's Address: 4244 S. Durango City: Las Vegas State: NV Zip: 89115

Seller's Phone: 702-735-1111

2. CONTRACT SALES PRICE:

A. Cash Down Payment Payable: \$ 6600.00

B. All Notes Described Below in the Amount of: \$ 134,820.00

C. Sales Price Payable to Seller at Closing (Sum of A and B): \$ 141,420.00

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Buyer and Seller agree that any dispute or claims between the parties, whether arising from a tort, this Contract, any breach of this Contract or in any way related to this transaction, including but not limited to claims or disputes arising under the terms of the express limited warranty referenced in Paragraph 10 of this Contract, shall be settled by binding arbitration under the direction and procedures established by the American Arbitration Association "Construction Industry Arbitration Rules" except as specifically modified herein or dictated by applicable statutes including the Nevada Revised Statutes Chapter 38 and/or the Federal Arbitration Act. If Buyer does not seek arbitration prior to initiating any legal action, Buyer agrees that Seller shall be entitled to liquidated damages in the amount of ten thousand dollars (\$10,000.00). Any dispute arising from this Contract shall be submitted for determination to a board of three (3) arbitrators to be selected for each such controversy. The decision of the arbitrators shall be in writing and signed by such arbitrators, or a majority of them, and shall be final and binding upon the parties. Each party shall bear the fees and expenses of counsel, witnesses and employees of such party, and any other costs and expenses incurred for the benefit of such party. All other fees and expenses shall be divided equally between Buyer and Seller.

SELLER: _____

Accepted by: _____

Buyer: _____

Accepted by: _____

Vice President and Division Manager, Las Vegas

APR 7. 2003 12:19PM (559)-490-1919

NO. 6425 P. 7/7



American Arbitration Association
Dispute Resolution Services Worldwide

6755 North Palm Ave., 2nd Floor
Fremont, CA 94558

INVOICE/STATEMENT

Scott K. Casper
Venable, Connelly, Casper, Riedy & Rubin
1850 R. Plankton Rd., Suite 215
Las Vegas NV 89115



American Arbitration Association
Dispute Resolution Services Worldwide

6755 North Palm Ave., 2nd Floor
Fremont, CA 94558

NAME
Scott K. Casper
Venable, Connelly, Casper, Riedy & Rubin
1850 R. Plankton Rd., Suite 215
Las Vegas NV 89115

Please Dench and Return with Payment to the Above Address

Please Indicate Case No. on check

START DATE	CASE	PREVIOUS BALANCE	CURRENT CHARGE	NEW CHARGE	TOTAL BALANCE DUE
04/07/2003	79-110-00106-01 02 790-2	0.00	500.00-	2350.00	1750.00

02/22/2002	1378470	1/2 share estimated arb comp for panel for prelim (4 hrs @ \$675/hr; total \$3300) ... vax	1750.00	1750.00
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Remarks: For any inquiry please call: 559-490-1919
This is a full statement showing all financial activity on this case.

INVOICE SUMMARY:
INITIAL/COMPT-CLAIM FEE
HEARING/POSTHEARING/NOON/PROCESSING FEE
RELOCATION AT CASE AND FEE
NEUTRAL COMPENSATION/EXPENSES

NET DEDUCT	NET PAID	NET DUE
0.00	0.00	0.00
0.00	0.00	0.00
0.00	0.00	0.00
1750.00	0.00	1750.00

1750.00	1750.00
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AB446-Ensures court access

- §1, §2, §3 and §13 Preclude mandatory arbitrations
- §13 Permits voluntary binding or non-binding arbitration
- §13 Honors Chapter 40 mediation and court mandated ADR
- §15 Precludes contrary future provisions

Q 5x21

AB446-Protecting subcontractors from unwarranted developer lawsuits

- Subs shouldn't be liable for "covering up" defects they didn't cause or know about

Q 60521

TORINO CONSTRUCTION CORPORATION, A Nevada Corporation
State License No. 28378, Type B-12
4820 Alpine Place, Suite E202, Las Vegas, Nevada 89107

SUBCONTRACT AGREEMENT

JOB NO.: CWR002 ITEM NO.: 2012 FINISH CARPENTRY CONTRACT NO.: CW6008

This agreement made this 12th day of September, 1996 by and between TORINO CONSTRUCTION CORPORATION OF NEVADA, A Nevada Corporation, hereinafter called "Contractor," and ANANTI DOOR GROUP, INC., hereinafter called "Subcontractor".

That in consideration of the mutual covenants herein contained, the parties hereto contract and agree as follows:

I. The subject matter of this Subcontract Agreement is to be incorporated into the construction of CANYON WILLOW PECOS CONDOMINIUMS (A/C/A SILVER CANYON CONDOMINIUMS) located at the South East corner of Pease Road and Russell Road, Las Vegas, Nevada, for the benefit of Canyon Wilow East LLC (hereinafter referred to as "Owner").

II. Subcontractor agrees to furnish all materials, equipment, labor and services (hereinafter referred to as the "Work"), to fully construct and complete the following: FINISH CARPENTRY as shown by and in strict conformity with the plans, specifications, list sheet(s) and contract documents for said construction which are incorporated herein by reference, provided, however, that in the event of conflict between such plans, specifications and documents, the Subcontract Agreement shall govern. The Subcontractor accepts the responsibility for the knowledge of said documents, plans, specifications and list sheet and that but for said subcontractor's acceptance of responsibility would not enter into this Agreement. The Subcontractor further acknowledges that he has carefully examined them and understands them completely.

III. For the complete performance of the Work, Contractor agrees to pay Subcontractor subject to such offsets, additions, and deductions as herein and by law provided, the sum of NINETY NINE THOUSAND TWO HUNDRED NINETY SEVEN DOLLARS (\$99,297), hereinafter called "Contract Price", payable IN ACCORDANCE WITH THE TERMS AND CONDITIONS SET FORTH HEREIN.

IV. The Contractor employs the Subcontractor as an independent Contractor, to perform the work of Subcontractor in this Agreement.

V. The plans and specifications referenced above, the supplementary and the special conditions of said specifications, and any addenda thereto to the Subcontract Agreement INCLUDING THE PROVISIONS SET FORTH ON PAGES 1 through 8 AND EXHIBITS "A", "B", "C", "D", "E", "F", "G", "H", "I", "J", "K", "L", "M", "N", "O", "P", "Q", "R", "S", "T", "U", "V", "W", "X", "Y", "Z", ATTACHED HERETO AND MADE A PART HEREOF, shall constitute the contract. All prior negotiations, commitments or agreements whether oral or written are merged herein and superseded hereby.

VI. This agreement shall inure to the benefit of the successors and assigns of the Contractor and Owner.

VII. If Subcontractor is a corporation, limited liability corporation, or general or limited partnership, the person signing this contract on behalf of such entity hereby warrants that he has full authority for such entity to sign this Contract and obligate the entity. Said person and the entity shall be jointly and severally liable for all obligations hereunder.

SUBCONTRACTOR INFORMATION

Nevada Contract Lic. No.: 0032460
Type of Lic.: C-3a
Bd Limit: \$250,000.00
Type of Entity (Check One) Corporation ☒ Partnership ☐ or Sole Proprietor ☐ Other ☐
Name: THE ANANTI DOOR GROUP, INC.
Address: 4650 SOUTH DECATUR BLVD., LAS VEGAS, NEVADA 89103
Office Phone No.: 702-873-1885 Emergency Phone No.: 702-379-3824
City License No.: TLD-005412-6-001077 County: License #25420-415-246
State Business Tax No.: C-0005605 Federal ID No.: 88-0125739
Insurance Agent: MCLEODEN INS. AGENCY Address: 1570 S. BALCHOW BLVD., IV. 89126
Liability Insurance Company Name: NORTHBROOK INS. Address: 51 W. KEOGHAS ROAD, SO. BARRINGTON, ILL.
Liability Insurance Policy No.: NORTHBROOK INS. Expiration Date: MAY 16, 1997
Workers Compensation or Equivalent Policy No.: 067777.4

I CERTIFY THAT THE ABOVE INFORMATION IS CORRECT AND I AM AUTHORIZED TO SIGN FOR AND IN BEHALF OF

James P. Cordova JERRY R. CORDOVA (PRINT NAME)
(SIGNATURE)

POSTED

EXHIBIT
25
10/11/96
Cordova

Q 708 21

6.11 Before proceeding with the subcontract work, Subcontractor shall check the correctness of any and all contiguous work installed by others, and the failure to detect or report discrepancies in writing shall preclude the Subcontractor from any resulting cost, expense or damage. Subcontractor by the performance of his work accepts the work and conditions of the work contiguous with or related to in any manner of the work of Subcontractor and assumes any and all responsibility for that work performed.

Q 808 21

Division of Insurance Task Force on Contractor Liability Insurance

Perspectives from a defense attorney.

December 5, 2002

Christian L. Moore, Esq.

775-786-6858

cim@igc.net

P. 02

FAX NO. 1 775 687 3937

DEC-18-2002 WED 09:09 AM NV DIV OF INSURANCE

Q 90521

Positive Ideas from NTLA

- Subcontractor not responsible for covering other trade's work.
- Good faith settlement determination eliminates express contractual indemnity.
- Certificates of Merit.
- Bad Faith Findings.
- Improve Quality of Construction.
- Homeowners Warranties.

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AB446-Protecting subcontractors from unwarranted developer lawsuits

- §4 – Subs not liable for “covering up” defect they didn’t cause
- §4 – Exception if actual knowledge of defect and failure to notify
- §4 – Disables contrary provisions

① 11 of 21

AB446-Protecting subcontractors from unwarranted developer lawsuits

- §9 Disables provisions which prevent subs from settling claims

Q 12 of 21

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IV. INDEMNIFICATION:

4.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the General Contractor and/or the Owner and the Architect and their agents and employees from and against all claims, damages, losses, and expenses, including, but not limited to, attorney's fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Subcontractor, any Sub-Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph IV.

Unidentified Insurance Company Number 6

OCT-02-02 07:47 AM DOI M/C SELF-INSURANCE 7756848761 P.17

party to try to segregate out that portion of the damage which was actually caused or contributed to by its work, the practical reality is that this often cannot be done. For example, in cases involving water intrusion, responsible parties include the roofer, sheet metal subcontractor, window installer, and others, including such peripheral parties as the installer of caulking.

- *Contractual Indemnity Provisions.* A pervasive problem is that powerful general contractors and developers often (routinely) include in their written agreements with subcontractors strongly worded language or clauses of indemnification. These provisions often require the

In the meantime, to deal with the problem of such provisions in existing contracts, the legislature might establish a procedure for the parties to obtain an early and prompt determination of the scope and extent of the contractual liability of the party who was the indemnitor. This should be done in the context of settlement. In other words, once a subcontractor agrees upon a settlement with a plaintiff, such as an HOA, it would request a hearing from the court to determine that its settlement monies paid to the plaintiff discharged its contractual indemnity obligations fully, on a prospective basis. The litigants and their attorneys would have the ability to craft their settlement agreement in such a fashion as to

1230 K 0621

AB446-Ensuring proper repairs

- §5 Requires independent supervision/inspection of repairs
- §5 Requires payment and performance bonds for repairs
- §7 Penalizes bad repairs

Q 15 of 21

Industry quote

- "Property insurers believe that slack code enforcement has cost them literally billions of dollars in catastrophic losses."
- ...
- "... investigators noticed that one subdivision might be utterly devastated while a similar one just across the road sustained only light to moderate damage. Construction quality made the difference. South Florida's building codes were judged to be fine. It's just that many homes were built out of code. Insurers estimated that a quarter to half of their \$15.5 billion payout might have been preserved if building codes had been strictly enforced."
- ...
- *Insurers Spend Millions to Boost Code Enforcement*, by Jim Olszynski, editorial director of Plumbing & Mechanical magazine, June, 2000.

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Company #8

Issue:

This company provided liability insurance for contractors. In the late 1990's, their results for this classification of liability insurance showed dramatic deterioration forcing them to

While the high cost of litigation is one reason for claim severity, they believe that the most critical cost driver from a claims perspective is the substandard construction practices and poor workmanship by the contractors.

suggests that the diminished degree of adequate construction practices by contractors, the potential increase in exposure to toxic mold infestation, the high cost of repair and increased litigation costs forced their company into making a difficult decision.

Proposed Solution: This company did not provide a proposed solution.

AB446-Protects homeowners from corporate dissolution

- §10-§12 – Prevents corporate circumvention of time bar statutes

Q 18 of 21

5. The Task Force was asked how the price and availability of insurance has affected the number of housing starts in Nevada over the past five years. There was no evidence presented to the Task Force to suggest that the increase in price and decrease in availability of insurance are correlated with the number of housing starts over the past five years.
6. The Task Force was asked how many times a builder, in response to a Chapter 40 notice of defects, made an offer to repair that was rejected by a homeowner and how such rejections have affected the price and availability of insurance. There was no testimony by any homeowners or contractors that any repairs were refused, but since no exhaustive statewide study has been done on Chapter 40 cases, the Task Force does not know the answer. The NTLA provided a list of 120

7. The Task Force was asked how many builders or subcontractors create legal entities to build homes and then collapse or dissolve the legal entity after the construction has been completed, the effect of such activity on the homeowner's ability to get his or her home repaired and the effect of this practice on the price and availability of insurance. The Task Force did not undertake to study this issue and does not know the answer.

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AB446-Protects homeowners from corporate dissolution

- §10- §12 – Prevents corporate circumvention of time bar statutes
- §10- §12 – Prevents insurers from hiding behind dissolution statutes

Q 20 & 21

AB446-Clarifies HOA voting requirements

- §14 – Requires vote of members before start of civil action
- §14 – Civil action dismissed if majority vote against
- §14 – Ratification provisions

Q 21st 21