

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

THE GUARANTEE COMPANY OF NORTH
AMERICA,

Plaintiff,

v.

PAT COOK CONSTRUCTION, INC.; PDC
PROPERTIES, LLC; A BUN IN THE OVEN,
INC.; TJC PROPERTIES; PATRICK J.
COOK; and DARLA COOK,

Defendants.

Civil Action No.:

COMPLAINT

The Guarantee Company of North America (“GCNA”) files its Complaint against the Defendants, respectfully showing the Court as follows:

THE PARTIES, JURISDICTION, AND VENUE

1. GCNA is a citizen of Michigan, and is a Michigan company authorized to conduct surety business in among other places, Florida and Georgia, and with its principal place of business located at 25800 Northwestern Highway, Suite 720, Southfield, Michigan 48075.

2. Pat Cook Construction, Inc. (“PCCI”) is a citizen of Florida, and is a corporation with its principal place of business in the Middle District of Florida, Tampa Division. PCCI is subject to the jurisdiction of this Court, and may be

served through its registered agent, Gregory Brown, with the law firm of Hill Ward Henderson, at 101 East Kennedy Boulevard, Suite 3700, Tampa, Florida 33602.

3. PDC Properties, LLC (“PDC”) is a Florida limited liability corporation with its principal place of business in Bradenton, Florida, which is located within the boundaries of the Middle District of Florida, Tampa Division. Upon information and belief, PDC has only two members, Darla W. Cook and Patrick J. Cook.

a. Upon information and belief, Darla W. Cook is a citizen of the state of Florida.

b. Upon information and belief, Patrick J. Cook is a citizen of the state of Florida.

c. Therefore, because both Darla W. Cook and Patrick J. Cook, the only members of PDC, are citizens of the state of Florida, PDC is a citizen of the state of Florida for purposes of diversity jurisdiction.

d. PDC is subject to the jurisdiction of this Court, and may be served through its registered agent, Gregory Brown, with the law firm of Hill Ward Henderson, at 101 East Kennedy Boulevard, Suite 3700, Tampa, Florida 33602.

4. A Bun in the Oven, Inc. (“Bun”) citizen of Florida, and is a corporation with its principal place of business in the Middle District of Florida,

Tampa Division. Bun is subject to the jurisdiction of this Court, and may be served through its registered agent, Gregory Brown, with the law firm of Hill Ward Henderson, at 101 East Kennedy Boulevard, Suite 3700, Tampa, Florida 33602.

5. TJC Properties, LLC (“TJC”) is a Florida limited liability corporation with its principal place of business in Bradenton, Florida, which is located within the boundaries of the Middle District of Florida, Tampa Division. Upon information and belief, TJC has only two members, Darla W. Cook and Patrick J. Cook.

a. Upon information and belief, Darla W. Cook is a citizen of the state of Florida.

b. Upon information and belief, Patrick J. Cook is a citizen of the state of Florida.

c. Therefore, because both Darla W. Cook and Patrick J. Cook, the only members of TJC, are citizens of the state of Florida, TJC is a citizen of the state of Florida for purposes of diversity jurisdiction.

d. TJC is subject to the jurisdiction of this Court, and may be served through its registered agent, Gregory Brown, with the law firm of Hill Ward Henderson.

6. Patrick J. Cook is a citizen of Florida who is subject to the jurisdiction and venue of this Court. Process may be perfected by serving Patrick Cook at 1904 Manatee Avenue West, #300, Bradenton, Florida 34205.

7. Darla W. Cook is a citizen of Florida who is subject to the jurisdiction and venue of this Court. Process may be perfected by serving Darla Cook at 1904 Manatee Avenue West, #300, Bradenton, Florida 34205.

8. Each of the Defendants in this action are collectively being referred to herein at times as the “General Indemnitors”.

9. Jurisdiction and venue are proper under 28 U.S.C. §§ 1332 because:

- (i) the matter in controversy exceeds \$75,000.00, exclusive of interest and costs;
- (ii) complete diversity of citizenship exists between GCNA and the Defendants;
- (iii) some or all of the Defendants reside within the District over which this Court presides; and/or
- (iv) some or all of the actions and/or inactions giving rise to the losses/damages at issue occurred within the District over which this Court presides.

FACTS

10. Each of the Defendants executed an Agreement of Indemnity dated February 15, 2012 (hereinafter referred to as the “GIA”) in favor of GCNA. An accurate copy of the GIA is attached to this Complaint as **Exhibit “A”** and is incorporated herein by reference.

11. GCNA relied on the GIA as part of issuing bonds on behalf of PCCI in connection with construction work it wanted to perform.

12. In reliance on the GIA, GCNA executed payment and performance bonds listing PCCI as principal for a project commonly known as the Value Place Alpharetta, Georgia project (“Value Place Project”). The bonds for the Value Place Project are referred to as the (“Bonds”).

13. PCCI served as the general contractor on the Value Place Project.

14. Several contractors, subcontractors, and sub-subcontractors on the Value Place Project have made payment claims against GCNA and CGNA investigated and resolved them for the following amounts:

a.	C&C Fence Company <i>a/k/a</i> Lindavid, Inc.	\$ 698.90
b.	Clean Net USA	\$ 5,000.00
c.	Eagle General Construction, LLC	\$29,845.75
d.	Georgia Roma Plumbing, Inc.	\$28,198.94
e.	Kenyon International	\$24,269.00
f.	Onity, Inc.	\$15,794.57
g.	Orlando Winnelson Company	\$11,985.70
h.	Pacesetter Personnel Services	\$13,907.36
i.	A&W Contracting, Inc.	\$1,100.00

j.	AA Bar Electric, Inc.	\$53,803.57
k.	Ahern Rentals, Inc.	\$5,537.00
l.	American Direct Procurement, Inc.	\$28,484.42
m.	Byrd Holbrook All Purpose Paving and Reid & Reid Contractors	\$87,619.86
n.	Cornerstone Masonry Group, LLC	\$3,300.00
o.	Edwards Heating & Air, LLC	\$33,965.25
p.	Elite Florring & Design, Inc.	\$98,195.00
q.	GB Painting <i>d/b/a</i> Tradewinds Group Central FL, Inc.	\$22,646.00
r.	Goodman Company, LP	\$12,542.99
s.	Grandview Products Co., Inc.	\$6,980.90
t.	Green Acres Landscaping, Inc.	\$51,792.50
u.	Harbor Glass & Mirror, Inc.	\$590.00
v.	L&W Supply Corp. <i>d/b/a</i> Building Specialties and Marietta Dry	\$25,576.84
w.	Mac Gray Services, Inc.	\$12,326.74
x.	Mardale Specialties Direct	\$10,962.15
y.	Marietta Drywall, Inc.	\$19,673.16
z.	Martin-Robbins Fence Company, Inc. and Reid & Reid Contractors	\$5,665.56

aa.	Mid-South Construction & Building Products, Inc.	\$5,935.50
bb.	Mid-South Floor Systems, Inc.	\$1,971.70
cc.	Overhead Door Company of Sarasota	\$1,987.00
dd.	Paragon Turnkey, LLC	\$7,964.37
ee.	Pro Exterior Solutions, LLC	\$2,635.50
ff.	Reid & Reid Contractors, LLP	\$15,387.28
gg.	Shirey, Nelson & Associates, Inc. & Reid & Reid Contractors	\$6,505.00
hh.	Southern Siding & Gutters, LLC	\$2,748.50
ii.	Sunrise Industries, LLC and Reid & Reid Contractors, LLP	\$1,925.00
jj.	Universal Engineering Sciences	\$1,843.88
kk.	Whirlpool Corporation	\$55,238.13
ll.	Stephanie Warren and Onity, Inc.	\$855.00

The total amount of claims paid on behalf of the General Indemitors is \$715,459.02. GCNA paid these amounts to resolve these claims, and also incurred legal and/or consulting fees exclusive of those incurred in bringing and maintaining this action, which are also recoverable against the General Indemnitors under the GIA.

15. Per the GIA, GCNA is entitled to recover all of its principal damages resulting from any monies it may have to pay to settle claims on the Bonds, as well as to recover these fees, costs, and expenses (incurred, or incurred going forward) associated with investigating and resolving the claims referenced above, and for bringing and maintaining this lawsuit.

16. According to the GIA, the General Indemnitors agreed that, among other things, they shall:

[I]ndemnify, the Surety [GCNA] and hold it harmless from and against all claims, damages, expenses, losses, costs, professional and consulting fees, disbursements, interests and expense of every nature (including premiums and fees due for the issuance and continuance of any BOND or BONDS) which Surety may sustain, incur or become liable for by reason of having executed or procured the execution of any BOND or BONDS, or by making any investigation of any matter concerning any BOND or BONDS, or by prosecuting or defending any action in connection with any BOND or BONDS, or by recovering any salvage or enforcing this Agreement. In the event Surety advances funds for the benefit of any Contractor in connection with work subject to a BOND or BONDS (hereinafter sometimes referred to as BONDED CONTRACT) and/or for the discharge of obligations incurred in connection with a BONDED CONTRACT, such advances shall be deemed "losses" under the terms of this Agreement whether or not such advances have been so used by the Contractor....."

See GIA, Exhibit "A".

17. GCNA demanded that PCCI and the other General Indemnitors deposit collateral with GCNA, as the GIA requires of them, yet they have all failed or refused to do so.

18. GCNA retained the undersigned attorneys to represent it in this action and is obligated to pay these attorneys a reasonable fee for their services rendered and costs incurred.

19. All conditions precedent to maintaining this action have occurred, been excused, or have otherwise been waived.

COUNT I
(Breach of Contract – Against All Defendants/General Indemnitors)

20. GCNA realleges and incorporates paragraphs 1 through 19 above, as though fully set forth herein.

21. The General Indemnitors are required to indemnify GCNA to ensure it suffers no losses resulting from these claims and lawsuit relating to the Project, including any attorneys' and consulting fees, costs, and expenses GCNA has incurred or will incur going forward.

22. Despite GCNA's demand for indemnification, the General Indemnitors have failed and/or refused to honor the demand and have otherwise failed to satisfy their obligations to GCNA under the GIA.

23. The General Indemnitors have breached the terms of the GIA by failing and/or refusing to indemnify GCNA.

24. Pursuant to the GIA, GCNA is entitled to an award against the General Indemnitors, jointly and severally, for its principal damages.

25. GCNA is also entitled to recover its attorneys' fees, costs, and expenses incurred in pursuing this lawsuit against each of the General Indemnitors, jointly and severally.

WHEREFORE, GCNA demands judgment against the General Indemnitors (jointly and severally) for its principal damages, plus its attorneys' fees, costs, expenses in pursuing this action, plus pre- and post-judgment interest, and such other and further relief as this Court deems just and proper.

COUNT II

(Specific Performance Against All Defendants/General Indemnitors)

26. GCNA realleges and incorporates paragraphs 1 through 25 above, as though fully set forth herein.

27. The GIA requires the General Indemnitors to indemnify GCNA and to post collateral with GCNA, as GCNA has demanded.

28. The General Indemnitors have not posted any collateral with GCNA, despite GCNA demanding that they do so.

29. GCNA has no adequate remedy at law to enforce its rights.

30. The GIA is just and reasonable and supported by adequate consideration.

31. The terms of the GIA are sufficiently definite to allow enforcement by this Court.

32. The performance GCNA seeks is substantially identical to that promised in the GIA.

WHEREFORE, GCNA requests that this Court enter a decree of specific performance compelling the General Indemnitors to:

- a. deposit with GCNA an amount that GCNA establishes in light of the claims at issue, in its discretion, as the GIA provides for;
- b. indemnify and protect GCNA from all losses, expenses, and liability incurred or that may be incurred, per the terms of the GIA;
- c. otherwise honor all other agreements and obligations contained in the GIA.

COUNT III
(Common law indemnity against PCCI)

33. GCNA realleges and incorporates paragraphs 1, 2, and 9, above, as though fully set forth herein.

34. GCNA executed payment and performance bonds listing PCCI as principal for a project commonly known as Value Place Alpharetta, Georgia (“Value Place Project”). Those bonds are referred to as the (“Bonds”).

35. PCCI served as the general contractor on the Project.

36. Several contractors, subcontractors, and sub-subcontractors on the Projects have also made payment claims against GCNA for the following amounts or more:

a.	C&C Fence Company <i>a/k/a</i> Lindavid, Inc.	\$ 698.90
b.	Clean Net USA	\$ 5,000.00
c.	Eagle General Construction, LLC	\$29,845.75
d.	Georgia Roma Plumbing, Inc.	\$28,198.94
e.	Kenyon International	\$24,269.00
f.	Onity, Inc.	\$15,794.57
g.	Orlando Winnelson Company	\$11,985.70
h.	Pacesetter Personnel Services	\$13,907.36
i.	A&W Contracting, Inc.	\$1,100.00
j.	AA Bar Electric, Inc.	\$53,803.57
k.	Ahern Rentals, Inc.	\$5,537.00
l.	American Direct Procurement, Inc.	\$28,484.42
m.	Byrd Holbrook All Purpose Paving and Reid & Reid Contractors	\$87,619.86
n.	Cornerstone Masonry Group, LLC	\$3,300.00
o.	Edwards Heating & Air, LLC	\$33,965.25
p.	Elite Florrying & Design, Inc.	\$98,195.00

q.	GB Painting <i>d/b/a</i> Tradewinds Group Central FL, Inc.	\$22,646.00
r.	Goodman Company, LP	\$12,542.99
s.	Grandview Products Co., Inc.	\$6,980.90
t.	Green Acres Landscaping, Inc.	\$51,792.50
u.	Harbor Glass & Mirror, Inc.	\$590.00
v.	L&W Supply Corp. <i>d/b/a</i> Building Specialties and Marietta Dry	\$25,576.84
w.	Mac Gray Services, Inc.	\$12,326.74
x.	Mardale Specialties Direct	\$10,962.15
y.	Marietta Drywall, Inc.	\$19,673.16
z.	Martin-Robbins Fence Company, Inc. and Reid & Reid Contractors	\$5,665.56
aa.	Mid-South Construction & Building Products, Inc.	\$5,935.50
bb.	Mid-South Floor Systems, Inc.	\$1,971.70
cc.	Overhead Door Company of Sarasota	\$1,987.00
dd.	Paragon Turnkey, LLC	\$7,964.37
ee.	Pro Exterior Solutions, LLC	\$2,635.50
ff.	Reid & Reid Contractors, LLP	\$15,387.28
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hh.	Southern Siding & Gutters, LLC	\$2,748.50

ii.	Sunrise Industries, LLC and Reid & Reid Contractors, LLP	\$1,925.00
jj.	Universal Engineering Sciences	\$1,843.88
kk.	Whirlpool Corporation	\$55,238.13
ll.	Stephanie Warren and Onity, Inc.	\$855.00

37. GCNA paid these amounts to resolve these claims, and at this time, the total amount of claims paid on behalf of PCCI is \$715,459.02.

38. GCNA paid the amounts above to settle the referenced claims, and has incurred attorneys' and/or consulting fees, costs, and expenses as part of investigating and defending against the claims. GCNA is entitled to its principal damages resulting from any monies it has paid or may have to pay to settle claims on the Bonds, as well as to recover these fees, costs, and expenses (incurred, or incurred going forward).

39. GCNA retained the undersigned attorneys to represent it in this action and is obligated to pay these attorneys a reasonable fee for their services rendered and costs incurred.

40. All conditions precedent to maintaining this action have occurred, been excused, or have otherwise been waived.

41. PCCI is obligated to indemnify GCNA under Georgia law for the losses incurred and potential losses referenced above.

WHEREFORE, GCNA demands judgment against PCCI for its principal damages, plus prejudgment interest and such other and further relief as this Court deems just and proper under the circumstances.

Respectfully submitted this 28th day of June, 2013.

Respectfully Submitted,
MILLS PASKERT DIVERS



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