

DISTRICT COURT, EAGLE COUNTY, COLORADO

Address: P.O. Box 597
Eagle, CO 81631

Plaintiff:

THE RIVERWALK EMERALD BUILDING
ASSOCIATION, a Colorado Nonprofit corporation

v.

Defendants:

EAGLE II DEVELOPERS, INC., a Colorado corporation,
EDWARDS LAND INVESTORS, INC., a Colorado
corporation, RIVERWALK ASSOCIATES, LLLP, a
Colorado limited liability limited partnership, WILLIAM
L. WILLIAMS, individually, A. LEONARD NACHT,
individually, and DEBORAH L. CHRISTNER,
individually

Third-Party Plaintiffs:

RIVERWALK ASSOCIATES, LLLP, a Colorado limited
liability limited partnership, WILLIAM L. WILLIAMS,
individually, A. LEONARD NACHT, individually, and
DEBORAH L. CHRISTNER, individually; EAGLE II
DEVELOPERS, INC., a Colorado corporation,
EDWARDS LAND INVESTORS, INC., a Colorado
corporation

v.

Third-Party Defendants:

EAGLE VALLEY GLASS AND MIRROR, INC., a
Colorado corporation; EDEN ARCHITECTS, LLC, an
Arizona limited liability company; KIMAN KEFALAS
d/b/a DOUBLE K PAINTING; ROOFING SYSTEMS,
INC., a voluntarily dissolved Colorado corporation;
STUCCO SYSTEMS, INC., an administratively dissolved
Colorado corporation

***Attorney for Defendants Eagle II Developers, Inc. and
Edwards Land Investors, Inc.:***

Jersey M. Green, Esq., #13251
& Preeo Silverman Green & Egle, P.C.

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Case Number: 07CV25

Division: 2

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<p style="text-align: center;">THIRD-PARTY COMPLAINT AND JURY DEMAND OF EAGLE II DEVELOPERS, INC. AND EDWARDS LAND INVESTORS, INC.</p>

Defendants/Third-Party Plaintiffs, Eagle II Developers, Inc. and Edwards Land Investors, Inc. (collectively “Defendants/Third-Party Plaintiffs”), by and through their attorneys, Preeo Silverman Green & Egle, P.C., submit the following *Third-Party Complaint and Jury Demand of Eagle II Developers, Inc. and Edwards Land Investors, Inc.* In support thereof, Defendants/Third-Party Plaintiffs allege as follows:

GENERAL ALLEGATIONS

1. Plaintiff is the Riverwalk Emerald Building Association. (hereinafter the “Association” or “Plaintiff”). The Plaintiff initiated this action by filing a Complaint on January 16, 2007.
2. The subject matter of Plaintiff’s Complaint is “The Riverwalk Emerald Building” (the “Project”) located in Edwards, Colorado. The Project consists of condominium units, offices, and commercial retail spaces.
3. Plaintiffs’ Complaint alleges defects in the design and/or construction of the Project, including, but not limited to: improper installation of stucco/EIFS façade, with resulting and consequential damage; improper installation of various sidings, with resulting and consequential damage; and improper installation of windows and doors, with resulting and consequential damage.
4. If Plaintiff succeeds in proving its claims against Defendants/Third-Party Plaintiffs, which Defendants/Third-Party Plaintiffs deny, then the following Third-Party Defendants who performed services in connection with the design and/or construction of the Project are responsible for all or part of the damages so proven: Eagle Valley Glass And Mirror, Inc.; Eden Architects, LLC; Kiman Kefalas d/b/a Double K Painting; Roofing Systems, Inc.; and Stucco Systems, Inc.
5. Third-Party Defendant is Eagle Valley Glass and Mirror, Inc. (“Eagle Valley”), a Colorado corporation, with a principle place of business located at 485 Lindbergh Dr, Gypsum, CO 81637,. Eagle Valley performed construction related services at the Project, including installation of storefront windows and doors.

6. Third-Party Defendant is Eden Architects, LLC (“Eden”), an Arizona limited liability company, with a principle place of business located at 922 N. Gilbert Road, #14, Mesa, Arizona 85203. Eden was the architect of record for the Project.

7. Third-Party Defendant is Kiman Kefalas d/b/a Double K Painting (“Kefalas”), a sole proprietorship. Kefalas performed construction related services at the Project, including installation of caulking/sealant.

8. Third-Party Defendant is Roofing Systems, Inc. (“Roofing Systems”), a voluntarily dissolved Colorado corporation, with a principle place of business formally located at 517 Main Street, Lyons, Colorado 80540. Roofing Systems performed construction related services at the Project, including installation of the roof system.

9. Third-Party Defendant is Stucco Systems, Inc. (“Stucco Systems”), an administratively dissolved Colorado corporation, with a last known principle place of business located at 202 North Avenue, Suite 146, Grand Junction, Colorado 81501. Stucco Systems performed construction related services at the Project, including installation of stucco/EIFS.

FIRST CLAIM FOR RELIEF

(Breach of Contract – All Third-Party Defendants except Eden)

10. Defendants/Third-Party Plaintiffs incorporate by reference the allegations set forth above.

11. Defendant Eagle II Developers, Inc. (“Eagle II”), as owner, entered into written contracts with Third-Party Defendants, as subcontractors, to perform services related to the construction and/or design of the Project.

12. Pursuant to the written contracts, the Third-Party Defendants were to “provide all work essentially required to completed the Work in a complete ‘system sense,’ whether or not specifically shown, specified, listed or mentioned, and in accordance with all codes.”

13. Edwards Land Investors, Inc. was intended to benefit directly from the written contracts entered into by Eagle II and the Third-Party Defendants.

14. Pursuant to the written contracts, the Third-Party Defendants owed a contractual duty “to complete ‘the work’ in strict accordance with the Contract Documents and all code requirements.” The Contract Documents include the written subcontract, any exhibits to the written subcontract, the Drawings and Specifications for the Project, and all addenda and/or change orders issued thereto.

15. To the extent Plaintiffs' allegations are true, which Defendants/Third-Party Plaintiffs deny, Third-Party Defendants each breached their contractual duties by failing to perform their services in strict accordance with the Contract Documents and all code requirements.

16. As a direct result of the aforesaid breaches of contract, Defendants/Third-Party Plaintiffs have suffered damages in an amount to be proven at trial.

SECOND CLAIM FOR RELIEF
(Breach of Contract – Eden)

17. Defendants/Third-Party Plaintiffs incorporate by reference the allegations set forth above.

18. Eden entered into an oral contract with Defendants/Third-Party Plaintiffs to perform services related to the design of the Project.

19. To the extent Plaintiff's allegations are true, which Defendants/Third-Party Plaintiffs deny, Eden breached its contractual duties by failing to perform its services in strict accordance with the terms of its contract.

20. As a direct result of the aforesaid breach of contract, Defendants/Third-Party Plaintiffs have suffered damages in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF
(Breach of Express and/or Implied Warranty – All Third-Party Defendants)

21. Defendants/Third-Party Plaintiffs incorporate by reference the allegations set forth above.

22. In performing services related to the construction of the Project, Third-Party Defendants each impliedly warranted that the Project would be built in a good and workmanlike manner, in accordance with all plans and specifications, and in conformity with all applicable building codes, ordinances, regulations, and industry standards.

23. In performing construction related services at the Residence, Third-Party Defendants each expressly warranted that the work performed would be strictly according to the project plans and specifications and in conformance with good construction practices, the applicable building code, and all applicable ordinances, regulations, statutes, and industry standards.

24. Defendants/Third-Party Plaintiffs reasonably relied upon these express and/or implied warranties in selling the units which comprise to Project to Plaintiffs and/or its members.

25. To the extent that Plaintiff's allegations are true, which Defendants/Third-Party Plaintiffs deny, Third-Party Defendants each breached their express and/or implied warranties.

26. As a direct result of the aforesaid breaches of express and/or implied warranty, Defendants/Third-Party Plaintiffs have suffered damages in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF
(Contribution – All Third-Party Defendants)

27. Defendants/Third-Party Plaintiffs incorporate by reference the allegations set forth above.

28. Plaintiff seeks to recover damages solely from Defendants/Third-Party Plaintiffs based upon allegations that Defendants/Third-Party Plaintiffs caused the Project to be negligently constructed and/or designed.

29. Each of the Third-Party Defendants owed an independent duty of care to Plaintiff to ensure the Project was built in a good and workmanlike manner and free from negligence. *See A.C. Excavating v. Yacht Club II Homeowners Association, Inc.*, 114 P.3d 862, 863 (Colo. 2005).

30. To the extent that Plaintiff's allegations are true, which Defendants/Third-Party Plaintiffs deny, the Third-Party Defendants have breached the independent duty of care owed to Plaintiffs.

31. C.R.S. § 13-50.5-102 provides:

(1) Except as otherwise provided in this article, where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them.

(2) The right of contribution exists only in favor of a tortfeasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share. No tortfeasor is compelled to make contribution beyond his own pro rata share of the entire liability.

32. To the extent Plaintiff's allegations are true, which Defendants/Third-Party Plaintiffs deny, Defendants/Third-Party Plaintiffs and Third-Party Defendants are joint tortfeasors in that each owed an independent duty to Plaintiffs, the breach of which has contributed to Plaintiffs' damages.

33. To the extent Plaintiff's allegations are true, which Defendants/Third-Party Plaintiffs deny, Defendants/Third-Party Plaintiffs and Third-Party Defendants are liable in tort for the same injury to property.

34. To the extent that Plaintiff's allegations are true, which Defendants/Third-Party Plaintiffs deny, Defendants/Third-Party Plaintiffs are entitled to contribution from the Third-Party Defendants, the joint tortfeasors, for their pro rata share of liability for damages, caused to Plaintiff by reason of Third-Party Defendants' breach of duty.

FIFTH CLAIM FOR RELIEF
(Negligence – All Third-Party Defendants)

35. Defendants/Third-Party Plaintiffs incorporate by reference the allegations set forth above.

36. Third-Party Defendants each had a duty to exercise reasonable care in the provision of services in relation to the construction of the Residence, to ensure that it would be built in accordance with all applicable building codes and standards, design plans and specifications, and in accordance with the practices and standards in the trade or industry.

37. The Plaintiff alleges that the Defendants/Third-Party Plaintiffs caused the subject Residence to be built in a defective and negligent manner. To the extent that the allegations made in the Plaintiff's Complaint are true, which Defendants/Third-Party Plaintiffs deny, the Third-Party Defendants breached their respective duties to perform their services in a non-negligent manner.

38. To the extent that Plaintiff's allegations are true, which Defendants/Third-Party Plaintiffs deny, the Third-Party Defendants' breach was the proximate cause of the damages claimed by Plaintiff against Defendants/Third-Party Plaintiffs.

39. As a direct result of the negligence of the Third-Party Defendants, Defendants/Third-Party Plaintiffs have suffered damages in an amount to be proven at trial.

SIXTH CLAIM FOR RELIEF
(Common Law Indemnification – All Third-Party Defendants)

40. Defendants/Third-Party Plaintiffs incorporate by reference the allegations set forth above.

41. Plaintiff's Complaint seeks to hold Defendants/Third-Party Plaintiffs vicariously liable for alleged deficient work performed by the Third-Party Defendants.

42. To the extent that Plaintiff's allegations are true, which Defendants/Third-Party Plaintiffs deny, and Defendants/Third-Party Plaintiffs are found liable to Plaintiff,

Defendants/Third-Party Plaintiffs are entitled to indemnification from the Third-Party Defendants for any such amount.

SEVENTH CLAIM FOR RELIEF

(Contractual Indemnification – All Third-Party Defendants except Eden)

43. Defendants/Third-Party Plaintiffs incorporate by reference the allegations set forth above.

44. Eagle II entered into written contracts with Third-Party Defendants to perform services related to the construction and/or design of the Project.

45. Edwards land Investors was intended to benefit directly from the written contracts entered into by Eagle II and the Third-Party Defendants.

46. Section 14 of the written contracts provides:

HOLD HARMLESS: The SUBCONTRACTOR agrees to assume entire responsibility and liability for any and all damages or injury of any kind or nature whatsoever (including death resulting therefrom) to all persons, whether employees of the SUBCONTRACTOR or otherwise and to all property (including loss or use thereof), waterways, tress and environment caused by, resulting from, arising out of, or occurring in connection with the execution of his Work or caused by an act or omission of the SUBCONTRACTOR, its employees, agents, invitees, or licensees; and shall indemnify and hold harmless OWNER and all OWNER's agents and employees from and against any and all suits, claims, demands, attorneys fees, costs and expenses based on, or resulting from any alleged injury to any persons or property as a result of the above assumption of responsibility and liability from any cause whatsoever excepting solely negligent active conduct on the part of OWNER.

47. To the extent that the allegations in Plaintiff's Complaint are true, which Defendants/Third-Party Plaintiffs deny, the proximate cause of any and all damage suffered by Plaintiff was caused by, resulted from, arose out of and occurred in connection with the execution of the Work of the Third-Party Defendants and/or was caused by an act or omission of the Third-Party Defendants, their employees, agents, invitees, or licensees.

48. Pursuant to the terms of the written subcontracts, Defendants/Third-Party Plaintiffs are entitled to indemnification from the Third-Party Defendants for any damages

awarded to Plaintiff and against Defendants/Third-Party Plaintiffs, and for attorneys fees and costs.

WHEREFORE, Defendants/Third-Party Plaintiffs, Eagle II Developers, Inc. and Edwards Land Investors, Inc., pray that the Court enter judgment in their favor and against the Third-Party Defendants named herein, in amounts to be proven at trial, including but not limited to, all amounts awarded to Plaintiff against Defendants/Third-Party Plaintiffs, and award them attorney fees, costs, pre and post judgment interest and such further relief as the Court deems appropriate.

DEFENDANTS/THIRD-PARTY PLAINTIFFS DEMAND A TRIAL BY JURY FOR ALL ISSUES SO TRIABLE

Respectfully submitted,

PREEO, SILVERMAN, GREEN & EGLE
Professional Corporation

SIGNATURE ON FILE WITH PREEO, SILVERMAN, GREEN & EGLE, P.C.

By: /s/ Jersey M. Green
Jersey M. Green, Esq., #13251

*Attorney for Defendants Eagle II Developers, Inc.
and Edwards Land Investors, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of March 2008, a true and correct copy of the foregoing **THIRD-PARTY COMPLAINT AND JURY DEMAND OF EAGLE II DEVELOPERS, INC. AND EDWARDS LAND INVESTORS, INC.** was served upon the following via e-filing through LexisNexis:

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/s/

SIGNATURE ON FILE WITH PREEO, SILVERMAN, GREEN & EGLE, P.C.