

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

THE GUARANTEE COMPANY OF NORTH AMERICA USA, a Michigan Corporation;

Plaintiff,

vs.

CONSTRUCTION SERVICES UNLIMITED, a Nevada Corporation; GLOBAL DEVELOPMENT GROUP, LLC, a Nevada limited liability company; MICHAEL D. FROELICH, an individual; BARBARA FROELICH, an individual;

Defendants.

Case No.: 2:14-cv-01745-APG-NJK

ORDER REQUIRING POSTING OF COLLATERAL SECURITY, REQUIRING PRODUCTION OF DOCUMENTS, AND PRELIMINARILY ENJOINING DEFENDANTS

(Dkt. ##6, 7, 8)

Plaintiff The Guarantee Company of North America USA's ("GCNA") moved for (1) an Order requiring posting of collateral security by defendants Construction Services Unlimited, Global Development Group, LLC, Michael D. Froelich, and Barbara Froelich (the "Indemnitors") (Dkt. #6); (2) an Order requiring the Indemnitors to produce various documents (Dkt. #7); and (3) a Preliminary Injunction restraining the Indemnitors from alienating or encumbering their assets (Dkt. #8). No opposition was filed. Pursuant to Local Rule 7-2(d), "[t]he failure of an opposing party to file points and authorities in response to any motion shall constitute a consent to the granting of the motion." Moreover, I have reviewed the pleadings and the papers on file and determined that good cause exists for entry of the Preliminary Injunction. Accordingly, I hereby find and order as follows:

1. GCNA issued the following Payment Bonds on behalf of Construction Services Unlimited:

<u>BOND NO.</u>	<u>PROJECT</u>	<u>OBLIGEE</u>	<u>PENAL SUM</u>
70014832	Trihalomethanes Treatment at Laughlin 780 Zone Reservoir	Las Vegas Valley Water District	\$257,500
70014834	Construct a New Wetlands Park Duck Creek Trailhead	City of Henderson	\$1,084,480
70014837	Sunset Road/1-515 Landscaping Project	City of Henderson	\$917,879.78

1 2. In requesting that these Payment Bonds be issued, the Indemnitors entered into an
2 Indemnity Agreement in favor of GCNA wherein the Indemnitors agreed, jointly and severally, as
3 follows:

4 4. The UNDERSIGNED shall indemnify SURETY and hold it
5 harmless from and against all claims, damages, expenses, losses, costs,
6 professional and consulting fees, disbursements, interests and expenses
7 of every nature (including premiums and fees due for the issuance and
8 continuance of any BOND or BONDS) which SURETY may sustain,
9 incur or become liable for by reason of having executed or procured
10 the execution of any BOND or BONDS, or by making any
11 investigation of any matter concerning any BOND or BONDS, or by
12 prosecuting or defending any action in connection with any BOND or
13 BONDS, or by recovering any salvage or enforcing this Agreement.

14 3. The Indemnitors further agreed to provide collateral security upon GCNA's demand:

15 5. Upon SURETY's reasonable belief that it may incur a loss on a
16 BOND or BONDS, SURETY may demand and, upon SURETY's
17 demand, the UNDERSIGNED shall deliver over to SURETY
18 collateral security acceptable to SURETY to cover any contingent
19 losses and any subsequent increase thereof.

20 4. The Indemnitors also agreed to provide documentation and information to GCNA:

21 9. a) The UNDERSIGNED shall furnish to SURETY such information
22 as it may request concerning their financial condition, the status of
23 work under any contract, bonded or unbonded, the condition of the
24 performance of any such contract, and the payment of obligations
25 incurred in connection therewith, and the UNDERSIGNED hereby
26 authorize those with whom such contracts are made to furnish to
27 SURETY all information concerning such contracts and the work
28 thereunder. SURETY may from time to time, in its sole discretion,
examine and copy the books, accounts, and records of the
UNDERSIGNED and inspect the work at any project (whether bonded
or unbonded).

b) Upon request of SURETY, the UNDERSIGNED shall provide
reports to SURETY regarding all construction or service contracts
(whether bonded or unbonded) in such detail and in such format as
may be reasonably requested by SURETY. Each UNDERSIGNED
represents, warrants, and covenants that all information provided in, or
in connection with, any application for any BOND or BONDS, or in
connection with the Agreement, is complete and accurate. SURETY
may obtain information concerning the affairs and operation of the
UNDERSIGNED and any transaction between or among them from
any banks, depositories, obligees or the BOND or BONDS,
materialmen, supply houses, credit reporting agencies and any other
person

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2 5. Claims have been asserted by various claimants against the Payment Bonds. These
3 claims include the following:

Claimant	Bond	Claimed Amount
Aztech Materials Testing, Inc.	Duck Creek Bond	\$6,653.00
Impact Sand & Gravel	Sunset Road Bond	\$ 236,805.01
Ferguson Enterprises, Inc.	LVVWD Bond	\$ 35,855.85
Arizona Civil Constructors	Sunset Road Bond	\$ 583,000.00
Rowley Contracting, Inc.	Sunset Road Bond	\$ 261,270.00
TOTAL		\$1,116,930.86

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9 6. As a result of these claims, on August 21, 2014 GCNA demanded collateral security
10 from the Indemnitors in the amount of \$40,000, and on October 2, 2014 GCNA increased this
11 demand for collateral security to \$350,000.

12 7. To date, the Indemnitors have failed to provide the collateral security as demanded
13 by GCNA.

14 8. GCNA has made repeated and multiple demands for documentation and information
15 from the Indemnitors in relation to claims asserted against the Payment Bonds and on issues related
16 to the Payment Bonds.

17 9. To date, the Indemnitors have failed to provide the requested documentation and
18 information to GCNA.

19 10. Because the Indemnitors have failed to post collateral as requested, GCNA does not
20 have an adequate remedy at law to protect the security arrangement to which it is entitled in
21 accordance with the Indemnity Agreement.

22 11. Without the requested injunctive relief, GCNA will not receive the collateral security
23 to which it is entitled and it will forever and irreparably lose its rights to the collateral.

24 12. GCNA has a reasonable probability of success on the merits of its claims.
25 Moreover, the balance of hardships tips sharply in favor of GCNA, and the public has an interest in
26 the enforcement of indemnity agreements such as those at issue in this case.

27 13. Based on the foregoing, good cause exists to enter the following injunctive relief:
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1 IT IS HEREBY ORDERED that the Indemnitors must immediately post collateral security in
2 the amount of \$350,000.00 with GCNA based on the Indemnity Agreement and by virtue of the
3 equitable doctrines of specific performance, exoneration, and *quia timet*.

4 IT IS FURTHER ORDERED that the Indemnitors must provide GCNA immediate access to
5 the books, records, and/or accounts of Construction Services Unlimited (“CSU”), Global
6 Development Group, LLC (“GDG”), Michael D. Froelich, and Barbara Froelich.

7 IT IS FURTHER ORDERED that the Indemnitors are prohibited, enjoined, and restrained
8 from selling, transferring, disposing of, encumbering or liening their assets and property until the
9 collateral security in the amount of \$350,000 is posted by the Indemnitors to GCNA.

10 IT IS FURTHER ORDERED that, pursuant to Fed.R.Civ.P. 65(c), GCNA shall post
11 security in the amount of \$1,000.00 to pay the costs and damages sustained by any party found to
12 have been wrongfully enjoined or restrained.

13 DATED: December 18, 2014.

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16 UNITED STATES DISTRICT JUDGE
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