

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DILLON)
)
 Weaver Contracting, LLC,)
)
 Plaintiff,)
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 v.)
)
 Metro Contracting, Inc. and The Guarantee)
 Company of North America, USA,)
)
 Defendants.)
)
 _____)
 The Guarantee Company of North)
 America, USA,)
)
 Third-Party Plaintiff,)
)
 v.)
)
 Dillon County School District, et al.,)
)
 Third Party Defendants.)
)
 _____)

IN THE COURT OF COMMON PLEAS

CASE #: 2014-CP-17-479

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 SC Court of Appeals

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 DILLON COUNTY

**ORDER GRANTING SUMMARY JUDGMENT AGAINST
 THE GUARANTEE COMPANY OF NORTH AMERICA, USA**

THIS matter came before me on November 19, 2015 for a hearing on the Motion for Summary Judgment filed by Weaver Contracting, LLC (“Weaver”) against The Guarantee Company of North America, USA (“Guarantee Company”). After careful review and consideration of the Motion, the pleadings of record, and the briefs and oral argument of counsel, the Court hereby grants the Motion for Summary Judgment as follows:

STATEMENT OF FACTS

On March 2, 2011 Dillon County School District One (the “Owner”) entered a contract with Metro Contracting, Inc. (“Metro”) to act as the general contractor for the Early Childhood

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Development Center in Latta, South Carolina (the "Project"). As required by the applicable government procurement requirements, Metro as principal and Guarantee Company as surety executed and issued a payment bond (the "Bond") for the benefit of suppliers and subcontractors which provided labor and/or material to the Project. Pursuant to the Bond, Guarantee Company agreed that it and Metro were "held and firmly bound to...all persons, firms, and corporations who or which may furnish labor, or who furnish materials" to the Project.

On March 14, 2011 Metro and Weaver entered a subcontract (the "Subcontract") in which Weaver agreed to perform certain site work at the Project from March of 2011 to May of 2012. Thereafter, Weaver provided the labor and material required by the Subcontract and, at the request of Metro, Weaver provided additional labor and material to the Project above and beyond the scope of the Subcontract. Due to its performance of additional work and due to project delays caused by others, Weaver last provided labor and material to the Project in February of 2014.

On October 29, 2014 Weaver filed this action against Metro for breach of contract, *quantum meruit*, and recovery under South Carolina Code Section 27-2-15 and against Guarantee Company for recovery under the Bond and under South Carolina Code Section 27-2-15. In its Complaint Weaver sought a total of \$279,619.51 for the unpaid balance due on the Subcontract, the additional work performed at the request of Metro, and the damages related to the delays in the construction of the Project, plus costs, interest, and attorney's fees.

Guarantee Company filed an Answer to the Complaint which asserted various defenses to the claims against it, including "surety" defenses such as the lack of proper notice under the Bond and the failure to timely file suit against the Bond. Metro failed to file an Answer or otherwise plead in response to the Complaint, so Weaver submitted default paperwork to the

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Court seeking an Order granting Default Judgment against Metro. On January 14, 2015 this Court issued the Order of Judgment by Default Against Metro in the amount of \$311,206.59.

SUMMARY JUDGMENT

An award of summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to Judgment as a matter of law. Rule 56, SCRPC. The purpose of summary judgment is to obviate delay where there is no material issue of fact involved, Manly v. Manly, 353 S.E.2d 312, 314 (S.C. App. 1987), and it should be granted in those cases in which plain, palpable, and undisputed facts exist on which reasonable minds cannot differ. Hansen v. DHL Laboratories, Inc., 459 S.E.2d 850, 851 (S.C. 1991).

Although summary judgment is a drastic remedy and should be cautiously invoked, Dawkins v. Fields, 580 S.E.2d 433 (S.C. 2003), it may not be avoided by creating inference which is not reasonable or an issue of fact that is not genuine. Priest v. Brown, 396 S.E.2d 638 (S.C. App. 1990). The party "opposing a properly supported motion for summary judgment ... may not rest on mere allegations or denials of his pleading, but must set forth or point to specific facts showing that there is a genuine issue of material fact." Bravis v. Dunbar, 449 S.E.2d 495, 496 (S.C. App. 1994) (citations omitted).

CONCLUSIONS OF LAW

It is the well-settled law of South Carolina that a surety is bound by and obligated to pay a judgment rendered against its principal. In Ward v. Federal Ins. Co., 106 S.E.2d 169 (S.C. 1958) the South Carolina Supreme Court ruled that a surety was liable for a judgment against its principal on a bond issued by the surety. In so ruling, the Court stated: "As a general rule, in all cases where the liability of a surety is dependent on the outcome of litigation in which his principal is or may be involved, a judgment against the principal is binding and conclusive on the

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surety.” Id. at 170. The Court went on to state that in such instances, “the surety may not interpose defenses which should or might have been set up in the action in which the judgment was recovered, or require proof of facts on which the judgment rests, or attack the validity of the judgment, except for fraud or collusion or want of jurisdiction.” Id.

Importantly, the Ward decision expressly rejected the argument that the rule should not apply when the judgment is obtained by the principal’s default. The Court indicated that it was “of no importance” that the judgment at issue was obtained by default and, quoting a decision from another jurisdiction, the Court stated: “We have no hesitancy in holding that, in the absence of fraud, mistake, collusion, or conspiracy between the principal and other persons, a surety is not released from his obligation to pay the amount due in a decree or upon judgment, because his principal did not contest the same, or because he consented thereto.” Id.

In the more recent case of Cooper v. Beaulieu, 426 S.E.2d 819 (S.C. App. 1992), the Court of Appeals of South Carolina relied upon Ward to uphold an award of summary judgment against a surety in favor of the holder of a judgment against its principal despite the fact that the surety had no notice of the lawsuit out of which the judgment against the principal arose. Citing the Ward decision, the court held that “the liability of [the surety] was dependent upon the outcome of litigation in which ... its principal was involved. There being no suggestion of fraud, collusion, or want of jurisdiction, [the surety] is liable on its bond even though it had no notice of the action against [its principal] and had no opportunity to defend the action.” Id. at 820.

Additionally, in International Fidelity Ins. Co. v. China Constr. America, Inc., 650 S.E.2d 677 (S.C. App. 2007) the Court of Appeals of South Carolina upheld the trial court’s decision that a surety was liable as a matter of law for a judgment obtained against its principal. In so ruling, the International Fidelity court rejected the surety’s argument that the judgment against its

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principal was not binding because the damages awarded exceeded the scope of the bond and ruled that, pursuant to the Ward and Cooper opinions, a surety is not entitled to "argue defenses which should or might have been raised in the action in which the judgment was recovered." Id. at 679. Based on those opinions, the court also reiterated that it would "refuse to revisit the issue of damages and liability absent any suggestion of fraud, collusion, or want of jurisdiction." Id.

Guarantee Company argues that Ward, Cooper, and International Fidelity are inapplicable because, unlike the current matter, in those cases the surety was not a party to the litigation in which the Judgment against its principal was obtained or was not a party to the litigation at the time the Judgment against the surety's principal was obtained. Guarantee Company further argues that even if those decisions are applicable, a ruling that it is bound by the Judgment against Metro in this case would violate general concepts of surety law and public policy.

The Court is not persuaded by those arguments, as the cited cases give no indication that the surety's inclusion in the litigation is determinative of whether the surety is bound by a judgment against its principal. Furthermore, a ruling against Guarantee Company in this matter is entirely consistent with the "general rule" of surety law that a surety is liable for a judgment against its principal. Ward at 170. Finally, the Court finds that reaching a different result from that dictated by Ward, Cooper, and International Fidelity based on whether the surety was a party to the litigation in which the judgment against its principal was obtained would itself violate public policy by encouraging claimants to purposefully exclude the surety from litigation against the principal in the hope of obtaining a judgment against that principal and then providing it to the unsuspecting surety for collection rather than encouraging claimants to pursue all their claims against all the appropriate entities in a single legal action.


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Accordingly, pursuant to the well-settled case law in South Carolina law, the Order of Judgment which Weaver obtained against Metro in this case is binding on and conclusive as to Guarantee Company absent a showing of fraud, collusion, or lack of jurisdiction. Since Guaranty Company has not alleged the Judgment against Metro was invalid based on fraud, collusion, or a lack of jurisdiction, the Judgment is enforceable against Guarantee Company as a matter of law.

CONCLUSION

Based on the foregoing, it is clear that there are no genuine issues of material fact regarding the validity of the Judgment obtained by Weaver against Metro in the amount of \$311,206.59 and that said Judgment is binding on and conclusive as to Guarantee Company as a matter of law. Accordingly, this Court hereby grants Weaver's Motion for Summary Judgment and awards Judgment in favor of Weaver and against Guarantee Company in the amount of \$311,206.59.

IT IS SO ORDERED.


The Honorable Roger E. Henderson

Chesterfield, South Carolina

December 8, 2015