Lexon Ins. Co. v. City of Cape Coral

Year: 2016
Court: Florida Court of Appeal, Second District
Case Number: 2D16-1533/12-CA003073

A typical surety relationship is created where a contractor undertakes a construction project and obtains a bond to assure its performance. Contractors that undertake public projects generally are required by statute to obtain both payment and performance bonds. If the contractor on a public project defaults on the contract, and the surety performs under its bond obligations, the surety is entitled to its right of equitable subrogation. Subdivision bonds are intended to protect the policyholder (here, the city), to protect the public, and to ensure that lot purchasers are provided with the promised improvements. A surety's liability under a bond is controlled by the language of its bond and the ordinance requiring a bond. However, when the language of the bond is unconditional, it does not require the policyholder to return subdivided land to acreage in order for performance. In other words, a failure to do so is not a breach of the implied covenant of good faith so the insurer must pay. Public policy requires that the insurer must pay in order to prevent the development from remaining stalled, impairing marketability, and the infrastructure will stay unfinished. The policyholder buys a bond in reliance on the existing development scheme and governing ordinance so a failure to perform results in damage to the city and its residents.

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