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# Eleventh Circuit Affirms Summary Judgment in Favor of Surety Finding That Surety Is Not Bound by Default Judgment Against Bond Principal

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In *David Lawrence Federer v. Zurich Am. Ins. Co., et al.*, No. 16-16592, 2017 U.S. App. LEXIS 12358 (11th Cir. July 11, 2017), Keith Lichtman and Zack Anderson obtained a favorable decision from the Eleventh Circuit Court of Appeals affirming the District Court's (N.D. Ga. - Atlanta Division) grant of summary judgment in favor of their surety client. The question before the Eleventh Circuit was whether a default judgment against a surety's principal is binding on the surety, particularly where the surety had no notice of the action in which the default judgment was obtained. In the underlying case, the plaintiff obtained a default judgment against the surety's principal based on allegations of misconduct in connection with the origination of a loan. Thereafter, the plaintiff presented the surety with the default judgment and insisted that the surety was conclusively bound by it. The plaintiff filed suit, wherein the District Court granted the surety's motion for summary judgment finding that the default judgment merely raised a rebuttable presumption of liability, which the surety sufficiently rebutted based on *res judicata* grounds. On appeal, the Eleventh Circuit also rejected the plaintiff's argument that the default judgment is conclusively binding on the surety, and held that a default judgment merely raises a presumption of liability that the surety has a right to rebut. The Eleventh Circuit stated that the default judgment resulted in, "at worst, a rebuttable presumption of liability." Applying Georgia law, the Court agreed with the District Court that the action in which the default judgment was obtained should have been barred by *res judicata*. As a result, the Court affirmed the District Court's grant of summary judgment finding that the surety had rebutted any presumption of liability. This is an important decision, as the Eleventh Circuit has affirmed a surety's right to rebut a default judgment entered against the surety's bond principal.