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Middle District of Florida Judicially Expands Definition of Statutory Payment Bond

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Maschmeyer Concrete Co. of Fla. vs. American Southern Ins. Co., Case No. 6:15-cv-912-Orl-37KRS (M. D. Fla. 2016), involved a materialman's claim against a payment bond for materials furnished to the bonded contractor on a City of Orlando concrete repair and construction project. The initial contract between the City and the contractor contained a one year term subject to renewal annually upon mutual agreement of the City and contractor. Upon renewal, the contract provided that the contractor "shall provide a new or amended bond to reflect the new or extended period and increased value of the contract." The initial contract was in effect through November 30, 2012. The parties renewed the contract effective December 1, 2012, and, in the letter renewing the contract, the City required the contractor to submit a new bond. Accordingly, the surety executed a bond for the renewal term expressly providing that the "term of this bond shall be for a period of one year dated 12/01/12 – 11/30/13." The parties extended the contract again effective December 1, 2013, and, again, the City notified that the contractor that it must provide a new bond. The contractor never submitted a new bond, and the surety never issued an additional bond (or rider, renewal certificate, etc.) extending the term of the bond beyond November 30, 2013.

The materialman did not provide any materials until 2014, after the expiration of the bond's stated term. Nevertheless, the materialman made a claim against the bond for non-payment for materials furnished between October, 2014 and January, 2015. The surety denied the claim because the materials were furnished after the bond term expired. The materialman argued the term of the initial contract was actually a 60 month period because, if it were not, then renewing the contract annually without competitively bidding the project would violate Florida law.

In an admitted issue of first impression, the Court agreed with the materialman. It found that the initial contract and renewal letters were ambiguous as to the contract's term, but that the competitive bidding requirements eliminated the ambiguity. In other words, the Court found the parties must have contemplated a 60 month term otherwise the renewals could have violated Florida competitive bidding law. The Court then relied upon language from section 255.05 - which renders unenforceable any provision in a payment bond limiting or expanding the effective duration of the bond - in finding that the bond's language limiting its term to one year was unenforceable. Accordingly, the Court found the bond covered the entirety of the contract period, and thus covered the materials in question.