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Southern District of Florida Upholds the Bond Pre-Claim Terms as Conditions Precedent to Filing a Claim Against a Surety

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In *Arch Insurance Company v. John Moriarty & Associates of Florida, Inc.*, Case No. 1:15-cv-22403-RNS (S.D. Fla. December 12, 2016), Arch Insurance Company (“Arch”) sued John Moriarty & Associates of Florida, Inc. (“Moriarty”) seeking a declaration that there was no coverage under a performance-and-payment bond (“Bond”) that Arch issued on a project naming Moriarty as the obligee. Moriarty was the general contractor and sought \$995,239.83 from Arch, under the performance side of the Bond, related to alleged shortfalls of the subcontractor/principal.

Arch filed a motion for summary judgment claiming that Moriarty could not recover because it failed to satisfy conditions precedent under the Bond and chose to unilaterally complete the subcontract without allowing Arch to exercise its completion rights. The Court upheld prior Eleventh and Fifth Circuit decisions providing that “a surety’s liability on a bond is determined strictly from the terms and conditions of the bond agreement.” The Court then made specific findings related to the language of the Bond. First, the Court found that the Bond provided that Moriarty needed to take the following steps before triggering Arch’s obligations: (1) provide Arch with notice that it was considering default of the principal; (2) declare the principal in default and notify the surety of the same; and (3) agree to pay the balance of the contract price to Arch or to a contractor performing the completion work. Once the three conditions precedent occurred, the Bond required that Moriarty allow Arch to mitigate damages by arranging completion of subcontract. Last, the Bond required that Moriarty could not file a claim on the Bond until it issued a seven days’ notice of the claim to Arch.

The Court found that Moriarty failed to: declare the principal in default; terminate the principal; agree to pay the balance of contract price to Arch; and provide the seven day notice prior to filing its lawsuit. Therefore, the Court granted Arch’s motion for summary judgment and ruled that the explicit terms of the Bond were conditions precedent that precluded Moriarty from bringing a Bond claim.

The case is a reminder that satisfying conditions precedent is a critical step in asserting a bond claim.