Statute of Limitation Begins to Run When Principal Under Surety Bond Abandons Construction Project

By B. Michael Clark Jr.

The five-year statute of limitations for actions against surety bonds in construction disputes has been the subject of a number of significant Florida appellate court rulings over the years. The most recent case focusing on the question of which event triggers the tolling of the limitations period was before the Second District Court of Appeal, which ruled in Lexon Insurance v. City of Cape Coral and Coco of Cape Coral that the limitations period for action on the surety bond began to run when the principal under the bond abandoned the construction project.

The case stems from an ordinance that was adopted by the city of Cape Coral in January 2005 to initiate the development of an approximately 450-acre parcel, which included a single-family subdivision to be built by Priority Developers. The city's ordinance required the developer to provide a surety bond, and Lexon issued two subdivision bonds totaling $7.7 million. Disputes arose, and the contractor stopped work on the project in March 2007.

In March 2012, Coco of Cape Coral purchased the project for $6.2 million, and in July of the same year the city adopted a resolution demanding that Lexon fulfill its obligations under the bonds. When Lexon declined, the city filed suit against it for breach of contract and declaratory relief, and the claims were later assigned to Coco.

The trial court entered judgment on the bonds for Coco, rejecting Lexon's claim that the statute of limitations had expired before the city filed its complaint in October 2012. It concluded that surety bonds are a type of insurance contract and are breached once wrongful denial of a claim occurs. It also found that the bonds contain no deadline by which claims must be made, and under the city ordinance the bond principal's obligations were not due for 10 years from its adoption in January 2005.

Lexon appealed the judgment based on its contention that Coco's claims were barred by the five-year statute of limitations, which Lexon argued began to run in March 2007 when Priority abandoned the project and thus breached the surety bonds. The surety argued that the running of the five-year statute of limitations commences when the principal breaches its underlying obligation, which in this case was when Priority abandoned the project and the city's cause of action under the bonds accrued.

In its unanimous ruling, the Second DCA cited the court's prior ruling in a 1998 case that found the statute of limitations for an action on a surety bond began to run when the contractor defaulted. It concluded that the surety bond in the current case placed an obligation to construct the project on Priority (the principal), and when the principal failed to meet this obligation the city's right of action on the bond accrued.

The appellate panel noted that Lexon's duty to pay under the bond arose as a consequence of Priority's failure to construct the improvements, not as a result of the city's demand for damages. Otherwise, it would be contrary to the purpose of the statute of limitations and would allow the city to wait to bring a claim against Priority as late as 2017, 10 years after the developer failed in its obligation under the bonds.

The appellate court disagreed with the trial court's conclusion that because "surety bonds are a type of insurance contract," they "are breached once wrongful denial of a claim occurs." It found that because the unique nature of a surety contract bases a surety's liability on the liability of the principal, the default of Priority was the act that breached the bonds and started the running of the limitations period.

While the trial court relied on language in the city ordinance that provides "the physical development authorized under this development order shall terminate in 10 years … unless an extension is approved" by the city council, the second DCA concluded that this language only addressed when the city's authorization for the project would expire and had no bearing on when Priority breached the bonds. The city's action filed in October 2012 was therefore filed beyond the five-year statute of limitations and was time-barred.

This and other similar rulings by Florida district courts of appeal over the years send clear messages to claimants that the state's courts will look to the actions of the principals of bonds to determine when the limitations period for actions begins to run.

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