

Construction Group Wins Final Judgment on Indemnity Claims and Defeats Bad Faith Claims

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A team of lawyers from the Construction and Surety Practice Group recently obtained final judgment in favor of its client Arch Insurance Company on indemnity claims arising out of a botched construction project for the new Dunkin Donuts Park minor league baseball stadium in Hartford, Connecticut. On July 18, 2019, federal district court Judge Vanessa Bryant entered final judgment in favor of Arch, after previously granting Arch's motion for summary judgment against its principal Centerplan Construction Company, LLC and several other indemnitors, including Centerplan's owner Robert Landino, in February of 2019. In granting summary judgment, Judge Bryant rejected the indemnitors' contention that Arch had acted in bad faith in responding to the City of Hartford's demand on Arch's performance bond following the City's default termination of Centerplan from the stadium construction project. In her latest ruling, Judge Bryant granted Arch's motion to dismiss the defendants' Third Amended Counterclaim (the last remaining claim in the action), rejecting the defendants' contention that Arch, as the surety on the defendants' performance bond, had an affirmative duty to the defendants and breached that duty by ignoring alleged breaches by the City of Hartford of related but un-bonded contracts involving the stadium project. The court then entered final judgment in the action in favor of Arch in the amount of \$39,107,334.47, which includes \$2.3 million in attorney's and consultant fees.

Arch had issued performance and payment bonds for Centerplan on its design build contract for the new stadium, part of the City's plans for the overall development of the "Downtown North" section of Hartford. Under its contract, Centerplan was obligated to complete its work so that the stadium would be ready in March for Opening Day of the 2016 baseball season. After certain changes and delays, the City and Centerplan agreed to extend the completion date to the middle of May, 2016, but by the beginning of June the work was still not complete and the City default-terminated Centerplan on June 6, 2016. The City immediately demanded that Arch complete the project pursuant to its performance bond. Arch retained an independent construction consultant, Cashin, Spinelli and Ferretti, LLC, and thoroughly investigated its principal's alleged default. In October of 2016 Arch entered into a Takeover Agreement with the City, whereby it agreed to complete the project by the start of the 2017 baseball season. Arch contracted with a completion contractor, the Whiting-Turner Contracting Company, to complete the project, and had the stadium open and ready for play by Opening Day of the 2017 baseball season. The new Dunkin Donuts Park, home of the Hartford Yard Goats, has been an unqualified success since its opening, consistently breaking records for attendance and selling out most of its games.

Arch filed a complaint for indemnity against the indemnitor defendants in November of 2016. The defendants vigorously denied liability on the grounds that Arch supposedly acted in bad faith in paying the numerous performance and payment bond claims that had been asserted against it under the Centerplan bonds. The defendants also filed counterclaims against Arch for breach of contract, breach of the implied covenant of good faith and fair dealing, surety bad faith, tortious interference with contract, and violations of the Connecticut Unfair Trade Practices Act, which Arch moved to dismiss. After considering Arch's motion for summary judgment, motion to dismiss, and the testimonial evidence presented during four days of hearings on Arch's motion for prejudgment remedies under Connecticut statute, the Court dismissed all of the defendants' counterclaims and granted Arch's motion for summary judgment. In her 63 page memorandum opinion, Judge Bryant held that Arch's rights were governed by the terms of the indemnity agreements which had been executed by the indemnitor/defendants, and not by the terms of the bonds which Arch had executed (as had been argued by the defendants). As to the payments made by Arch under the bonds, the Court held that "Arch introduced unrefuted evidence in support of its contention that these payments were made in good faith.... In testimony before the Court at the prejudgment remedy hearing [Arch's representative] explained the exhaustive process Arch used to fully investigate the status of the Hartford Stadium Project and the Bond claims.... This evidence constitutes *prima facie* evidence showing the Arch made good faith investigation and is

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also *prima facie* evidence of the Defendants' liability under the Indemnity Agreements." The Court concluded "[b]ecause Defendants have failed to provide evidence from which a jury could reasonably conclude that Arch acted on the Hartford Stadium payment and performance bonds in bad faith, there is no dispute as to an issue of material fact, and Arch is entitled to indemnity for payments on these claims as a matter of law."

Nevertheless, in its February memorandum decision the Court allowed the defendants one more chance to plead a counterclaim for breach of contract, and to also question the specific amount of damages being sought by Arch. However, after extensive briefing, Judge Bryant ruled in July that Centerplan failed to show how Arch, as the surety, had an affirmative duty to Centerplan, as the principal, under the bonds themselves. She further held that any alleged breach by the City of the related Development Services Agreement or the Ballpark Development Agreement would not have any impact upon Arch's obligations under its bonds, because Arch did not bond those two agreements, nor did the bond incorporate either of those two agreements by reference.

Lead counsel for Arch on this matter was William J. Taylor, co-chair of the firm's Construction and Surety Practice Group. Assisting Mr. Taylor were Justin Proper, Craig O'Neill and Zachary Roth.

