NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., et al. v. DAVID A. BRAMBLE, INC.; NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., et al. v. WADSWORTH GOLF CONSTRUCTION COMPANY OF THE MIDWEST

In *National Union Fire Insurance Company of Pittsburgh, Pa., et al. v. David A. Bramble, Inc.; National Union Fire Insurance Company Of Pittsburgh, Pa., et al. v. Wadsworth Golf Construction Company of the Midwest,* 2005 Md. LEXIS 433, filed July 21, 2005, Maryland's highest court held that the subcontractors were entitled to summary judgment when the surety failed to detail disputed claims within the time frame set out in the contract. The Court held that the language of the surety bond required the surety to outline the disputed portions of the claim within a 45-day period, and that a failure to do so, under the language of the bond, resulted in the entire claim being undisputed. The decision highlights the dangers of a surety's failure to document its efforts to meet an explicit deadline contained in a standard surety contract.

This case arose from two underlying sub-contractor suits against National Union Fire Insurance Company of Pittsburgh PA, et al. (hereinafter the "Surety"). In November 1999, Clark Construction Group was contracted by Maryland Economic Development Corporation (hereinafter "MEDCO") to serve as the general contractor in the construction of a resort in Maryland. Clark executed a surety bond in favor of MEDCO to secure Clark's obligation to pay its subcontractors. The bond was a "form" surety bond, and no changes were made to the original language. Paragraph 4 of the bond provided that claimants were required to provide notice of their claim to the Surety and to MEDCO. Paragraph 6 provided that, after successful completion of the requirements of Paragraph 4, the Surety would, within 45 days, pay the undisputed portion of the claim and notify the claimants of the disputed amounts and the basis for the dispute.

Both Wadsworth Golf Construction (hereinafter "Wadsworth") and David A. Bramble, Inc. (hereinafter "Bramble") were subcontractors of Clark, hired to complete different aspects of the Maryland Resort. Wadsworth and Bramble submitted claims under the bond to the sureties. The sureties responded and required each subcontractor to complete a Proof of Claim, which they did. The sureties never responded to the subcontractors. The subcontractors filed suit against the sureties for breach of contract. The trial court granted the subcontractors' motions for summary judgment, finding non-compliance with Paragraph 6 of the surety bond. The Court of Special Appeals affirmed trial court's decisions.

The Surety petitioned for a writ of certiorari in both cases, and the Court of Appeals affirmed the decision of the Court of Special Appeals as to each. In affirming, the Court stated that its decision was based purely on their interpretation and application of the language of the surety bond. The Surety had argued that its failure to answer Wadsworth's and Bramble's claims within the 45 day period implied that it was disputing the entirety of the subcontractors' claims. The Court held that surety bonds are to be construed according to the familiar rules applicable to insurance contracts. As such, the terms of the insurance contract are to be given their usual, ordinary meaning unless there is evidence that the parties intended to give it a special or technical meeting. Additionally, the Court noted that a contract must be construed in its entirety, giving effect to each clause of the contract if possible.

The Surety did not contest that it had breached the requirements under Paragraph 6. However, it argued that the failure to answer within the 45-day period indicated that the entire claim was disputed. The Court of Appeals disagreed, noting that there were three requirements under Paragraph 6 of the bond: to answer the claimant's claim; to define the disputed amounts; and, to list the basis for challenging payment for the disputed amounts. This necessitated that the Surety communicate with the subcontractors. However, the Surety did not clarify which parts of the claims were disputed within the 45-day time period, instead ostensibly relying upon its silence to convey both the disputed amounts and the basis for rejecting such amounts by implication.

Not surprisingly, the Court noted that acceptance of the Surety's argument would render the 45-day time period requirement meaningless. This would go against a long standing principle of contract interpretation, i.e., that contracts should be interpreted so as to give effect to all contract provisions, if possible. Moreover, the essence of the Surety's argument was that silence, rather than implying acquiescence, was instead the equivalent of communicating the total rejection of all claims. In the absence of some affirmative statement in the claim indicating the subcontractors' understanding that a failure to reply would be taken to constitute a rejection, such a contention is difficult to sustain. This is particularly so where silence simply could not imply the basis for rejection, even if it could reasonably be said to imply rejection of the entire claim.

In support of its holding, the Court cited *Moore Bros., Co. v. Brown & Root, Inc.*, 207 F.3d 717 (4th Cir. 2000), where the US Court of Appeals for the Fourth Circuit held that the purpose of obtaining a surety bond was to ensure that claimants are paid for their work. To propose that non-payment by the owners relieves the surety of its obligation is irrational, as it goes against the very purpose of the surety bond. Based on this holding, and the language of Paragraph 6 of the bond, Maryland's high Court held that the 45-day time period and the specific procedures outlined in Paragraph 6 directly exemplified the purpose of surety bonds. As courts tend to construe contracts involving compensated sureties in favor of the party who is the beneficiary under the bond, construction of Paragraph 6 in favor of the beneficiaries in this instance was proper under Maryland law. The Court of Appeals accordingly held that the Surety's failure to delineate the disputed portions of the claim resulted in the entire claim being undisputed, and required the Surety to pay the subcontractors' claims in full.

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