

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-008033

11/18/2008

HON. EDWARD O. BURKE

CLERK OF THE COURT
L. Nixon
Deputy

UNITED METRO MATERIALS INC

KIRSTEN L COPELAND

v.

REQUIP L L C, et al.

WILLIAM J SIMON
SEAN P ST CLAIR

MINUTE ENTRY

Based upon two telephone conferences with counsel the court has reconsidered the ruling it made in its October 8, 2008 minute entry in regard to Defendants' Motion To Alter or Amend the Judgment Entered July 29, 2008, and enters the following ruling.

Paragraph 2 of the July 29, 2008, judgment awarded Plaintiff judgment against both Defendant U.S. Development Land, LLC as principal and Western Surety Company as surety in the principal sum of \$669,543.75 plus pre-judgment at the rate of 10% per annum from February 14, 2006. As of November 14, 2008 the accrued interest is \$195,283.59 and the total due for principal and interest is \$864,827.34.

Paragraph 3 of the July 29, 2008, judgment awarded Plaintiff judgment against both Defendant U.S. Development Land, LLC as principal and Western Surety Company as surety in the sum of \$235,456.15 for attorneys' fees and \$3622.08 for costs, plus interest at the judgment rate of 10% per annum from the date of judgment until paid. The interest will total \$7039.53 as of November 14, 2008.

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The total amount of the judgment against both Defendants as of November 14, 2008, is \$1,110,945.10. The penal sum of the Statutory Discharge of Lien Bond recorded by Western Surety Company is \$1,004,316.00.

Plaintiff argues that both Defendants are liable on the judgment for all sums awarded to it and for all accrued and accruing interest and attorneys fees even though they exceed the penal sum of the bond, citing A.R.S. §33-1004(E) and Coppenbarger Homes, Inc. v. Williamson, 611 So.2d 33, 34 (Fla. 1st DCA 1992).

Defendants argue that their total liability is limited to the penal sum of the Statutory Discharge of Lien Bond, citing James Weller, Inc. v. Hansen, 21 Ariz. App. 217, 223, 517 P.2d 1110 (App. 1973); Stratton v. Inspiration Consolidated Copper Co., 140 Ariz. 528, 531, 683 P.2d 327 (App. 1984); and Keefer v. Lavender, 74 Ariz. 24, 25, 243 P.2d 457 (1952).

At the time the Statutory Discharge of Lien Bond was recorded by Western Surety Company A.R.S. §33-1004(E) provided:

“In an action to foreclose a lien under this article, where a bond has been filed and served as provided herein, a judgment for the claimant on the bond shall be against the principal and his sureties for the reasonable value of the labor and material furnished and shall not be against the property.”

As a result of a 2008 amendment, A.R.S. §33-1004(E) now provides:

“In an action to foreclose a lien under this article, where a bond has been filed and served as provided herein, a judgment for the claimant on the bond shall be against the principal and his sureties for the reasonable value of the labor and material furnished and shall not be against the property. A judgment for the claimant on the bond, including any recovery for interest, expenses, costs and attorney fees awarded by the court, shall not exceed the penal sum of the bond. If the amount the claimant recovers exceeds the penal sum of the bond, the claimant shall also be entitled to judgment against the principal for the excess amount.”

The 2008 amendment to A.R.S. §33-1004(E) would answer the questions the parties have posed. However, the parties agree and the court finds that the pre-2008 provisions of A.R.S. §33-1004(E) govern this case.

The court finds that under either version of A.R.S. §33-1004(E) the principal, Defendant U.S. Development Land, LLC, is liable for the entire judgment. Coppenbarger Homes, Inc. v. Williamson, 611 So.2d 33, 34 (Fla. 1st DCA 1992). The court further finds that because the pre-

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2008 version of A.R.S. §33-1004(E) provided for judgment against the surety for the reasonable value of the labor and material furnished, Defendant Western Surety Company is also liable for the entire judgment. If this were not the case there would have been no need for the clarification the legislature provided in the 2008 amendment.

Therefore, Defendants' Motion To Alter or Amend the Judgment Entered July 29, 2008, is DENIED. The court's October 8, 2008 minute entry is hereby amended to delete the last sentence thereof.