SUPREME COURT OF APPEALS OF WEST VIRGINIA

Hartford Fire Insurance Co. v. Micah A. Curtis and Angela L. Curtis; Hartford Fire Insurance Co. v. Jerry Lee Rhodes and Bonnie M. Cochran

Hartford Fire Insurance · No. Nos. 12-0037 and 12-0522 · Decided June 21, 2013

SUMMARY

This document is a dissenting opinion by Chief Justice Benjamin in consolidated West Virginia Supreme Court of Appeals cases involving mortgage broker and lender surety bonds. The dissent argues that the bonds are performance bonds rather than judgment bonds, contending that claimants must establish the principals' statutory violations and allow the surety an opportunity to assert defenses before recovery.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Benjamin
JURISDICTION	West Virginia
DECIDED	June 21, 2013
DOCKET	Nos. 12-0037 and 12-0522
DISPOSITION	other
PROCEDURAL POSTURE	Hartford Fire Insurance Co. challenged circuit-court rulings permitting claimants to proceed against mortgage broker and lender surety bonds after obtaining judgments against the bond principals.
PRECEDENTIAL VALUE	Separate dissenting opinion; nonbinding
PARTIES	Hartford Fire Insurance Co. v. Micah A. Curtis, Angela L. Curtis, Jerry Lee Rhodes, Bonnie M. Cochran

TOPICS

insurance · commercial litigation · statutory interpretation · default judgment · civil procedure

PRACTICE AREAS

insurance · commercial litigation · statutory interpretation · civil procedure

QUESTIONS PRESENTED

1. Whether the mortgage broker and lender surety bonds were judgment bonds requiring the surety to pay a judgment against the principal without an opportunity to assert defenses or contest damages.
2. Whether the bond language instead created performance bonds whose liability depended on the principal's failure to comply with applicable law and regulations, followed by the contractually specified procedure for asserting a claim.

HOLDINGS

1. In Chief Justice Benjamin's view, the bonds were performance bonds rather than judgment bonds because they conditioned liability on the principal's failure to conform to the governing Act and applicable rules or to pay amounts due, and did not guarantee unconditional payment of a judgment.

KEY QUOTATIONS

> *"Thus, the procedure to be followed in asserting a claims on these bonds is to recover a judgment against the principal and, if such judgment goes unpaid, sue the surety, i.e., "maintain an action upon the bond.""*

> *"Clearly, a plain reading of the bonds at issue establishes that they do not guarantee payment unconditionally."*

FACTUAL BACKGROUND

The bonds issued for Calusa Investments, LLC and other mortgage-related principals required the principals to conform to applicable statutes, rules, and orders or pay amounts due to the State or designated persons. The bond language also stated that an aggrieved person could recover a judgment against the principal and, if the judgment remained unpaid, maintain an action on the bond. Claimants sought to collect from Hartford after obtaining judgments against the principals, although the dissent states that the principals' underlying statutory or regulatory violations and the amount of damages had not been determined on the merits.

PROCEDURAL HISTORY

The circuit courts ruled against Hartford in two matters involving claims on mortgage broker or lender bonds. The dissent states that no determination had been made on the merits that the principals violated applicable laws or regulations and that Hartford had not been given an opportunity to assert defenses or contest damages. Chief Justice Benjamin would have held the circuit courts' rulings erroneous.

DISPOSITION

other

CASES CITED

- State v. Myers, 74 W. Va. 488, 82 S.E. 270 (1914)
- Hartford Fire Insurance Co. v. iFreedom Direct Corp., 718 S.E.2d 103 (Ga. App. 2011)
- Lingo v. Hartford Fire Ins. Co., 2010 WL 1837718, at *3 (E.D. Mo. 2010)

- All Cities Privacy Class v. Hartford Fire Insurance Co., 798 N.W.2d 909 (Wis. App. 2011)