SUPREME COURT OF NEW MEXICO

City of Santa Fe v. Travelers Casualty & Surety Co.

147 N.M. 699 (N.M. 2010) · No. No. 31,549 · Decided February 16, 2010

SUMMARY

The Supreme Court of New Mexico held that a shorter time-to-sue provision in a performance bond issued under the Little Miller Act is unenforceable against a governmental entity unless the entity directly contracted with the contractor or surety for that limitation. Because Santa Fe was an intended third-party beneficiary of the bond and did not directly agree to the two-year provision, the six-year statute of limitations governing the underlying contract applied. The court reversed the district court and Court of Appeals and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of New Mexico
WRITING FOR THE COURT	Chávez, Chief Justice; Patricio M. Serna; Petra Jimenez Maes; Richard C. Bosson; Charles W. Daniels
JURISDICTION	New Mexico
DECIDED	February 16, 2010
DOCKET	No. 31,549
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The City appealed from a district court summary judgment enforcing a two-year time-to-sue provision in a performance bond. The New Mexico Court of Appeals affirmed, and the Supreme Court of New Mexico granted review.
STANDARD OF REVIEW	De novo review applies to questions of statutory and constitutional interpretation and to whether a contract violates public policy.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of New Mexico.
PARTIES	City of Santa Fe v. Travelers Casualty & Surety Company

TOPICS

government contracts · insurance coverage · construction law · municipal law · statutory interpretation

PRACTICE AREAS

government contracts | insurance | construction law | municipal law | contract disputes

QUESTIONS PRESENTED

1. Whether a two-year time-to-sue provision in a performance bond issued under New Mexico's Little Miller Act is enforceable against a governmental entity when the entity did not directly contract with the contractor or surety for that shortened period.
2. Whether Section 13-4-18(A)(1) requires a governmental entity to review and accept all terms of a performance bond, thereby making the entity a party to the bond.

HOLDINGS

1. Unless the governmental entity directly contracts for a shorter time-to-sue provision with the contractor or surety, a shorter limitations provision contained in a performance bond issued under the Little Miller Act is unenforceable against the governmental entity.
2. Section 13-4-18(A)(1)'s requirement that the performance bond be satisfactory to the governmental entity concerns the surety's qualifications and the amount of the bond; it does not make the governmental entity a party to the bond or impose a duty to negotiate or accept every other bond term.

KEY QUOTATIONS

> *"We reverse and hold that unless the governmental entity directly contracts for a shorter time-to-sue provision with either the contractor or the surety, a shorter time-to-sue provision contained in a performance bond is unenforceable."* (484)

> *"Because neither Travelers nor Lone Mountain directly contracted with Santa Fe for a shorter time-to-sue provision, the two-year time-to-sue provision in the bond violates public policy and is unenforceable against Santa Fe."* (487)

FACTUAL BACKGROUND

Santa Fe contracted with Lone Mountain Contracting, Inc., to repair a water tank. To comply with New Mexico's Little Miller Act, Lone Mountain obtained a performance bond from Travelers. Although the underlying contract contained no shortened limitations period and was governed by the six-year statute of limitations, the bond required proceedings to be brought within two years after specified triggering events. Santa Fe declared Lone Mountain in default on September 29, 2004, Travelers denied the claim on October 28, 2005, and Santa Fe filed suit on May 14, 2007.

PROCEDURAL HISTORY

Santa Fe sued Travelers for performance under a public-works performance bond after declaring the contractor in default. The district court granted Travelers summary judgment, concluding that the bond's two-year limitations provision barred the action. The Court of Appeals affirmed, relying on State ex rel. Udall v. Colonial Penn Insurance Co. The Supreme Court of New Mexico reversed both lower courts and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the district court for further proceedings consistent with the opinion, applying the six-year statute of limitations rather than the unenforceable two-year bond provision.

CASES CITED

- State ex rel. Udall v. Colonial Penn Insurance Co., 112 N.M. 123, 812 P.2d 777 (1991)
- State v. Lucero, 2007-NMSC-041, ¶ 8, 142 N.M. 102, 163 P.3d 489
- K.R. Swerdfeger Constr., Inc. v. Bd. of Regents, Univ. of N.M., 2006-NMCA-117, ¶ 23, 140 N.M. 374, 142 P.3d 962
- N.M. State Highway & Transp. Dep't v. Gulf Ins. Co., 2000-NMCA-007, ¶¶ 16-17, 128 N.M. 634, 996 P.2d 424
- Employment Sec. Comm'n v. C.R. Davis Contracting Co., 81 N.M. 23, 25, 462 P.2d 608, 610 (1969)
- Silver v. Fidelity & Deposit Co. of Maryland, 40 N.M. 33, 40, 53 P.2d 459, 463-64 (1935)
- Colorado Structures, Inc. v. Insurance Co. of the West, 161 Wash. 2d 577, 167 P.3d 1125, 1138 n.13 (2007) (en banc)
- United Wholesale Liquor Co. v. Brown-Forman Distillers Corp., 108 N.M. 467, 471, 775 P.2d 233, 237 (1989)
- Gloucester City Bd. of Educ. v. American Arbitration Ass'n, 333 N.J. Super. 511, 755 A.2d 1256, 1265 (2000)
- United States v. Phoenix Indemnity Co., 231 F.2d 573, 575 (4th Cir. 1956)
- United States v. Seaboard Surety Co., 817 F.2d 956, 961 (2d Cir. 1987)
- Leyba v. Whitley, 120 N.M. 768, 771, 907 P.2d 172, 175 (1995)
- State v. Ogden, 118 N.M. 234, 242, 880 P.2d 845, 853 (1994)
- State v. Guerra, 2001-NMCA-031, ¶ 14, 130 N.M. 302, 24 P.3d 334