



Regions Building
100 North Tampa Street, Suite 3700
Tampa, Florida 33602
813-229-3500 Phone
813-229-3502 Fax
www.mpdlegal.com

MEMORANDUM

TO: RPPTL Construction Law Committee

FROM: Ty G. Thompson
Surety & Insurance Subcommittee

DATE: July 8, 2013

RE: July 2013 Case Law Update

In *American Contractors Indemnity Co. v. Carolina Realty and Development Company, Inc.*, the Fourth Circuit affirmed summary judgment for the principal and indemnitors (originally reported at 2012 WL 2711802 (D.S.C. July 9, 2012)). The principal was a subcontractor on a project in Florida. The principal and surety were involved in claims and counterclaims with the prime contractor and its sureties in an action in Florida. The Florida action was settled and a release executed that included all claims among the parties and their sureties and all other matters between the parties arising out of or related to the project. The Court held that the settlement agreement was unambiguous and the surety's indemnification claims had been released. The Court concluded, "American Contractors drafted and executed a Settlement Agreement with extremely broad language. It must now live by the terms of the contract."

Lafarge Building Materials, Inc. v. Federal Insurance Co., Case No. 12-14396 (11th Cir. February 27, 2013), is a case involving two Georgia private projects where the supplier to a subcontractor filed liens. The prime contractor bonded off the liens. The claimant obtained a judgment against the subcontractor and then sued the principal and surety on the bonds. The district court granted partial summary judgment holding that the judgment against the subcontractor "conclusively establishes the value of the materials that Plaintiff delivered to the Property and that the materials were incorporated into the improvements thereon." The parties agreed on an offset amount, and after final judgment was entered, the prime contractor and surety appealed the partial summary judgment on the effect of the claimant's judgment against the subcontractor. The Eleventh Circuit held that under Georgia law, the judgment against the subcontractor was not conclusive against the contractor and surety but did establish a prima facie claim and shifted the burden to the contractor and surety to introduce evidence to rebut the presumption of validity. The prime contractor and surety did not meet this burden, and the trial court correctly granted the claimant partial summary judgment. The Court affirmed the final judgment in favor of the claimant.