

Bond Case Briefs

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PERFORMANCE BONDS - NORTH CAROLINA

Town of Black Mountain v. Lexon Ins. Co.

Court of Appeals of North Carolina - December 16, 2014 - S.E.2d - 2014 WL 7124838

The Town of Black Mountain, North Carolina and the County of Buncombe, North Carolina filed suit against Lexon Insurance Company and Bond Safeguard Insurance Company seeking to enforce a series of subdivision performance bonds. The bonds were entered into in connection with a subdivision to be constructed on County property and thus the County was the obligee. At around the same time, the Town annexed the property covered by the bonds from the County, which assigned the bonds to the Town. Defendants did not consent to the assignment.

Defendants first argued that neither the Town nor the County had standing to bring suit. Specifically, defendants contended that once the Town annexed the property covered by the bonds, the bonds were extinguished, leaving no rights for the County to assign. The court disagreed, finding nothing in the law or within the agreements themselves indicating that assignment of the bonds from the County to the Town was impermissible or without legal effect.

In addition, the court found that plaintiffs were engaged in a governmental function and were therefore exempt from the otherwise applicable statute of limitation.