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INSURANCE - ILLINOIS

City of Elgin v. Arch Ins. Co.

Appellate Court of Illinois, Second District - December 10, 2015 - N.E.3d - 2015 IL App (2d) 150013 - 2015 WL 8526250

City, which had entered into agreement with developer to develop certain property and make improvements to property, brought action against surety, from which developer had received bonds guaranteeing its performance, and buyer of remaining property after developer went bankrupt, which refused city's demands that it complete improvements required by annexation agreement between city and developer. Surety filed counterclaim against buyer alleging that it should be held primarily liable for improvements. The Circuit Court granted buyer's motion to dismiss surety's counterclaim. Surety appealed.

The Appellate Court held that:

- Buyer assumed developer's underlying obligation to complete improvements to property;
- Surety sufficiently pled claim of unjust enrichment in counterclaim; and
- Surety's failure to name as counter-defendants those individual homeowners who bought home in development did not warrant dismissal of counterclaim.

Buyer of remaining property after developer went bankrupt assumed developer's underlying obligation to complete improvements to property, pursuant to developer's annexation agreement with city, even though surety, from which developer had received bonds guaranteeing its performance, was not party to agreement. Agreement provided that it was binding on successors and assigned that its terms constituted covenant running with land, and obligations secured by bonds arose out of agreement, even if that agreement was not specifically mentioned in bonds.

Surety, from which developer had received bonds guaranteeing its performance, sufficiently pled claim of unjust enrichment in its counterclaim against buyer of remaining property after developer went bankrupt, in city's action against surety and buyer, after buyer refused city's demands to complete improvements to property required by annexation agreement between city and developer. Surety alleged that buyer was primary obligor bounds to perform underlying obligation under agreement that was secured by bonds issued by surety, that city sought payment from surety because buyer did not perform that obligation, that any recovery city received from surety must have been used to make improvements required by agreement, that buyer would be benefited by those improvements, and that it was unjust for buyer to retain benefit when its own wrongful failure to perform underlying obligation gave rise to surety's liability.

Surety's failure to name as counter-defendants those individual homeowners who had bought homes in development did not warrant dismissal of its counterclaim against buyer of remaining property after developer went bankrupt, in city's action against surety, from which developer had received bonds guaranteeing its performance, and buyer, after buyer refused city's demands to complete improvements to property required by annexation agreement between city and developer. Although counterclaim alleged that buyer was current owner of some or all of property in development, counterclaim did not allege that there were, in fact, any other owners, and causes of action pled in

counterclaim did not show that homeowners were necessary parties.

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