

# **Bond Case Briefs**

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## **SUBDIVISION BOND - ILLINOIS**

### **Village of Montgomery v. Fidelity and Deposit Co. of Maryland**

**Appellate Court of Illinois, Second District - April 21, 2016 - Not Reported in N.E.3d - 2016 IL App (2d) 150571-U - 2016 WL 1621971**

After a subdivision developer, Kimball Hill, Inc. (KHI), went bankrupt, the Village of Montgomery (Village), demanded that Fidelity and Deposit Company of Maryland (Fidelity), complete certain public improvements secured by a subdivision bond Fidelity had issued to KHI. After Fidelity refused, the Village sued Fidelity, alleging breach of the subdivision bond.

TRG Venture Two, LLC (TRG), had purchased all of KHI's remaining property in the subdivision from KHI's bankruptcy estate. Fidelity filed an amended third-party complaint against TRG, alleging that TRG, as successor owner, was primarily liable to the Village for the installation of certain public improvements in the subdivision covered by Fidelity's subdivision bond and that Fidelity, as surety, was only secondarily liable. Fidelity brought claims for indemnity/reimbursement, exoneration, and quia timet /collateralization, all of which were premised on its argument that it adequately pleaded a surety relationship between it and TRG.

TRG moved to dismiss Fidelity's third-party complaint and the trial court granted TRG's motion and dismissed Fidelity's complaint with prejudice. (Subsequently, the Village and Fidelity settled their dispute.) Fidelity appealed the dismissal of its third-party complaint against TRG, alleging primarily that the Illinois Municipal Code (65 ILCS 5/1-1-1 et seq. and/or an annexation agreement between the Village and KHI reflect that TRG, as successor in title to KHI's holdings, assumed KHI's obligations to install public improvements in the subdivision and that TRG's obligations are primary and Fidelity's obligations are only secondary. For the following reasons, we reverse and remand.

The appeals court reversed, holding that the trial court erred in dismissing, for failure to state a claim, surety's complaint seeking, among other relief, indemnity/reimbursement from successor owner of subdivision for payments for public improvements that surety had secured with bond it issued to initial developer, who had defaulted. Annexation agreement between municipality and initial developer, which is binding on successor owners, provided that initial developer would not be released of its obligations until property was conveyed and substitute bond was posted, the latter of which never occurred. Although the initial developer was never released, agreement's substitute-bond provision did not apply to successor owner, who, upon acquisition of property, became primarily liable for payment for the improvements and surety remained secondarily liable. Further, surety stated a claim for indemnity/reimbursement.