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In re Western Insurance Company

Supreme Court of Utah - October 27, 2022 - P.3d - 2022 WL 15048431 - 2022 UT 38

County sought hearing after insurer's liquidator denied county's claims to recover on surety bonds purchased from insurer by developer which defaulted and ceased work on municipal projects.

The Third District Court entered judgment for liquidator, and county appealed.

The Supreme Court held that:

- Release and waiver was ambiguous such that extrinsic evidence was admissible to interpret the document;
- Any error by district court in admitting or excluding evidence was not harmful; and
- County failed to show that court's determination that liquidator could amend determination of insurer's liability was faulty.

Release and waiver which insurer's liquidator sent to county, which sought to recover on surety bonds purchased from insurer by developer which defaulted and ceased work on municipal projects, which provided that county's claim would be "fully compromised and settled and [ ] not in dispute" was ambiguous such that extrinsic evidence was admissible to interpret the document; while county argued that they had entered into a binding settlement agreement which required liquidator to recommend county's claims to the court, liquidator argued that the document simply affirmed the statutory rights and obligations placed on each party and that the "compromised and settled" language warned county that, if it objected, it would lose its statutory right to object to the liquidator's determination.

County failed to establish that Insurer Receivership Act did not allow insurer's liquidator to amend determination of insurer's liability to county on surety bonds purchased by developer which defaulted and ceased work on municipal projects; while county contended that insurer's liability became fixed on the date court issued liquidation order, county provided no analysis or authority to back up its claims, and did not show why the district court's determination that the Act allowed the liquidator to amend the notice of determination, after obtaining additional information, was faulty.

Record on appeal in action regarding notice of determination for liquidated insurer did not support county's contention that the district court found that bonded projects had been substantially completed, and that such finding was error; district court concluded that the county had failed to demonstrate that it would need to expend any money to finish the projects and therefore dismissed the county's objection to the amended notice of determination because the county failed to provide sufficient evidence to demonstrate that the liquidator got it wrong when he concluded that the county had not suffered a loss.

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