COALEX STATE INQUIRY REPORT - 195

September 1991

Mark Secrest, Esq.
Department of Mines
4040 N Lincoln, Suite 107
Oklahoma City, Oklahoma 73105

TOPIC: REFORMATION OF BOND

INQUIRY: In the early days of SMCRA, Oklahoma used an existing form to issue its bonds. The bond form referenced the old law, not the SMCRA regulation. Subsequently, the court reformed the bond form to reflect the correct regulation. The state wants to forfeit a bond which was issued on the old form and reformed; however, the surety refuses to pay, claiming it has no liability because the form referenced the old law. Please locate any relevant caselaw.

SEARCH RESULTS: Research, conducted using LEXIS, failed to identify cases which discuss the specific issues in question. A number of bond reformation cases, with varying fact situations, were retrieved. The most relevant cases are discussed below. Copies of the cases are attached.

BOND FORM ERRORS

THE AMERICAN GUARANTY CO. v THE CLIFF WOOD COAL & SUPPLY CO., 115 Ohio St 524, 155 NE 127 (Ohio 1926).

"Where bond is given by a compensated surety in connection with a contract for the erection of a public school building... [pursuant to Ohio General Code]...and even though it does not in all of its terms comply with the statute, it is controlled by and subject to the provisions of the statute with regard to recovery for all labor performed or materials furnished in the construction of such building."

DAVIS v MOORE, 7 Ill App 2d 519, 130 NE 2d 117 (Ill Ct App 1955).

"[T]his court holds that the statutory requirements of an appeal bond are a part of such bond, whether fully recited therein or not, that it is not error for a court to decree a reformation of a bond to conform to the statute (although it may not be necessary), and that judgment may be entered on an appeal bond according to the provisions of the statute, regardless of any error in the form of the bond."

See ROSEWOOD CORP. v TRANSAMERICA INSURANCE CO., 8 Ill App 3d 592, 290 NE 2d 656 (Ill Ct App 1972), aff'd 51 Ill 2d 247, 311 NE 2d 673 (1974), both cases attached, which cite to DAVIS v MOORE.

SOUTHERN SURETY CO. v UNITED STATES CAST IRON PIPE & FOUNDRY CO., 13 F 2d 833 (8th Cir 1926).

The surety used its own form, rather than the city's form to prepare a bond covering a construction contract; the bond did not cover payments to subcontractors in the event the builder defaulted on the city contract. The court reversed the lower court in ruling against the reformation of the bond, finding that:

"[t]here was no showing that the minds of the parties clearly met upon an agreement that the bond should be conditioned for the payment of material used in the work.... To permit a party to enlarge the obligations of a solemn written contract, deliberately entered into, by the character of parol proof relied upon in this case, would destroy the sanctity of written contracts...."

In making its determination, the court reasoned as follows:

"It may be stated as a general rule that reformation may not be had on account of a mere mistake of law, but to this general rule there are certain well-recognized limitations. A court of equity may grant relief where the parties having agreed to the terms of a contract, through a mutual mistake, or through a mistake of one and fraud of the other, in reducing the contract to writing, fail to express the contract agreed upon and intended."

AETNA CASUALTY & SURETY CO. v L D BRECKENRIDGE et al., 97 Fla. 375, 121 So. 102 (Fla 1929).

By mutual mistake, a surety bond, written to cover a building contract, was dated incorrectly. The court determined that reformation of the bond to correct the date was not necessary, that the bond, if reformed, "would have the same effect that it has in its present form.... The bond expresses the agreement as it was understood and designed to be made."

With a similar ruling, see NATIONAL UNION FIRE INSURANCE CO. OF PITTSBURGH v DENVER BRICK AND PIPE CO. et al., 162 Colo 519, 427 P 2d 861 (Colo 1967), attached.

COMMERCIAL CASUALTY INSURANCE CO. v LAWHEAD, 62 F 2d 928 (4th Cir 1933), cert. den. 289 US 731 (1933).

In choosing the form of a bond to guarantee the payment of a time deposit, the surety issued the wrong form "because of mistake in the selection of the form or as to the meaning of the language used in the form selected." The court found that all of the parties were in agreement at the time the bond guaranteeing the payment of the deposit was executed, that through "mutual mistake the bond as executed did not cover the agreement", therefore, the bond should be "reformed to embody the agreement".

UNILATERAL MISTAKES

OHIO FARMERS INSURANCE CO. v CLINTON COUNTY NATIONAL BANK AND TRUST CO., 8 Ohio Misc 228, 220 NE 2d 383* (Ohio Misc 1965).

A mistake was made in the execution of a banker's blanket bond, a given clause was not excluded. The court ruled that the acceptance and retention of the bond was a mutual mistake of the parties and ordered it to be reformed.

"The bond as executed and delivered to the defendant, was not...a correct integration of the agreement of the parties. In such case reformation is a proper remedy, even if it can be said the mistake was unilateral and not mutual."

*Correct cite may be 220 NE 2d 381.

SNEDEGAR v MIDWESTERN INDEMNITY CO., 44 Ohio App 3d 64, 541 NE 2d 90 (Ohio Ct App 1988).

The court cited to OHIO FARMERS in ruling for reformation of an insurance policy where unilateral mistake affects the policy "to such an extent that the contract is not a correct integration of the agreement of the parties."

NATIONAL UNION FIRE INSURANCE CO. OF PITTSBURGH v D & L CONSTRUCTION CO., 353 F 2d 169 (8th Cir 1965), cert. den. 384 US 941 (1966).

National's agents issued separate payment and performance bonds for interior and exterior construction work (a total of four bonds) because no combination bond forms were available. National sued to reform the bonds to eliminate double coverage. The Eighth Circuit Court reversed the District Court's ruling in disallowing National to reform the bonds, finding that the evidence "at most" established "a unilateral mistake of law on the part of National."

"National should be held to be competent to apprehend the legal effect of bonds it is engaged in the business of writing and selling."

CITY OF CYPRESS v NEW AMSTERDAM CASUALTY CO., 259 Cal App 2d 219, 66 Cal Rptr 357 (Cal Ct App 1968).

The bonding company requested reformation of a performance bond, claiming that at the time the agreement to install street improvements was written, the city and the developer knew the true condition of the property to be improved (existence of an oil easement and pipe lines) and concealed that knowledge from the bonding company. The bonding company argued that it should be liable for the cost of the street improvements without the cost of moving the oil lines. The court found that the city and developer did not know of the existence of the underground lines; there was no "unilateral mistake". There was "no allegation that there was fraud, intentional concealment or other harsh practice on the part of the city."

MUTUAL MISTAKE/AGREEMENT OF PARTIES/CLEAR & CONVINCING EVIDENCE

GRISWOLD v HAZARD, 141 US 260, 11 S Ct 972 (1891).

The Court found that the "instrument binding the sureties for the appearance of the principal" did not "express the thought and intention which the parties had at the time of its execution."

"There was no mistake as to the mere words of the bond...there was a mistake, on both sides, as to the legal import of the terms employed to give effect to the mutual agreement."

"A court of equity ought not to allow that mistake, satisfactorily established and thus caused, to stand uncorrected, and thereby subject a surety to liability he did not intend to assume...."

PHILIPPINE SUGAR ESTATES DEVELOPMENT CO., LTD v GOVERNMENT OF THE PHILIPPINE ISLANDS, 247 US 385 (1918).

"Where, owing to a mutual mistake, a written contract fails to express the intention of the parties, it may be reformed to express their true intention, although the mistake was one of law respecting its interpretation and construction."

SKELTON v FEDERAL SURETY CO., 15 F 2d 756 (8th Cir 1926).

In this construction contract case, the court found satisfactory proof that the parties understood that the indemnity contract would cover both the performance bond and the statutory bond even though, by mutual mistake, the "specific mention of the statutory bond" was inadvertently omitted "from the written instrument."

"[A]ppellant understood that he was indemnitor as to both bonds; that he recognized his liability while the contract was being performed, and after it had been completed."

MULBY v DUNHAM, 29 Ohio App 51, 162 NE 718 (Ohio Ct App 1927).

In holding that the evidence was insufficient to "warrant reformation of a supersedeas bond" the court found that:

"In an action to reform an instrument for mistake, the presumption is that the contract or written instrument, as executed, contains the agreement of the parties, and to overcome this presumption the mistake must be proved by satisfactory evidence."

FIREMAN'S FUND INDEMNITY CO. v BOYLE GENERAL TIRE CO, INC., 381 SW 2d 937 (Texas Ct App 1964), modified 392 SW 2d 352 (1965).

Fireman's Fund's agent issued an employee fidelity bond on one of Boyle's companies; Boyle's understanding was that the bond would cover both of his companies. The trial court found, and

the appeals court affirmed, that Boyle proved the necessary requisites for reformation of the bond: mistake on the part of Boyle and misrepresentation on the part of the insurance agent.

RIVER VALLEY, INC. v AMERICAN STATES INSURANCE CO., 287 Ark 386, 699 SW 2d 745 (Ark 1985).

The court ruled in favor of reforming a substitute bond to conform to an earlier bond.

"[E]veryone in the transaction... mistakenly believed that the second bond was making no change except the addition of the bank as an obligee. This proof only satisfies the requirement that the proof be clear and convincing."

ATTACHMENTS

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B. DAVIS v MOORE, 7 Ill App 2d 519, 130 NE 2d 117 (Ill Ct App 1955).
C. ROSEWOOD CORP. v TRANSAMERICA INSURANCE CO., 8 Ill App 3d 592, 290 NE 2d 656 (Ill Ct App 1972).
D. ROSEWOOD CORP. v TRANSAMERICA INSURANCE CO. 51 Ill 2d 247, 311 NE 2d 673 (1974).
E. SOUTHERN SURETY CO. v UNITED STATES CAST IRON PIPE & FOUNDRY CO., 13 F 2d 833 (8th Cir 1926).
F. AETNA CASUALTY & SURETY CO. v L D BRECKENRIDGE et al., 97 Fla. 375, 121 So. 102 (Fla 1929).
G. NATIONAL UNION FIRE INSURANCE CO. OF PITTSBURGH v DENVER BRICK AND PIPE CO. et al., 162 Colo 519, 427 P 2d 861 (Colo 1967).
H. COMMERCIAL CASUALTY INSURANCE CO. v LAWHEAD, 62 F 2d 928 (4th Cir 1933), cert. den. 289 US 731 (1933).
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