

OLD REPUBLIC SURETY COMPANY	§	STATE OF ALABAMA
P.O. Box 1635		DEPARTMENT OF REVENUE
Brookfield, WI 53201,	§	ADMINISTRATIVE LAW
DIVISION		
Petitioner,	§	DOCKET NO. MISC. 00-716
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

FINAL ORDER

Old Republic Surety Company (“Old Republic”) issued a \$10,000 bond to Danny Jackson, as principal, payable to the Revenue Department, as obligee. The Department made a demand against Old Republic on the bond. Old Republic appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-8(a). A hearing was conducted on February 20, 2001. Kay Cason represented Old Republic. Assistant Counsel John Breckenridge represented the Department.

ISSUE

The issue in this case is whether Old Republic is liable to the Department on the bond in question.

FACTS

Old Republic issued a \$10,000 used motor vehicle dealer’s bond to Danny Jackson, d/b/a DJ Auto Sales and Brokerage, as principal, pursuant to Code of Ala. 1975, §40-12-398. Old Republic issued a surety rider on February 2, 1998, changing the principal on the bond to Danny Jackson and Bill Johnson, d/b/a Value Auto Sales.

In 1999, Undrea Carter filed a complaint in Montgomery County Circuit Court against Value Auto Sales, Bill Johnson, and Charles Bell. The complaint

alleged, in part, that the defendants had misrepresented the sales transaction concerning a vehicle purchased by Carter, had falsely completed the retail buyer's order to inaccurately reflect the transaction between the parties, and had wrongly repossessed the vehicle. Old Republic was not notified of the lawsuit.

The Circuit Court issued a default judgment against the defendants in December 1999. The Court also entered an Order on February 23, 2000 awarding Carter compensatory damages of \$40,000. That Order found, in part, that the defendants had misrepresented the purchase price of the vehicle, had falsely completed the retail buyer's order to inaccurately reflect the transaction between the parties, had breached the sales contract with Carter, and had wrongly repossessed the vehicle.

Carter was unable to collect from the defendants. On September 22, 2000, Carter's attorney requested that the Department make a demand on the bond issued by Old Republic. The Department reviewed the documents submitted with the request, and on October 19, 2000, demanded that Old Republic pay on the bond. Old Republic was not aware of the lawsuit before that demand. Old Republic refused the demand, and appealed.

ANALYSIS

Section 40-12-398 requires a used motor vehicle dealer in Alabama to provide the Department with a \$10,000 bond. That statute provides in pertinent part as follows:

Such bond shall be in a form to be approved by the commissioner, and shall be conditioned that the motor vehicle dealer, motor vehicle reconditioner, motor vehicle rebuilder, or motor vehicle wholesaler shall comply with the conditions of any contract made by such dealer in connection with the sale or exchange of any motor vehicle and shall not violate any of the provisions of law relating to the conduct of the business for which he is licensed. Such

bond shall be payable to the commissioner and to his successors in office, and shall be in favor of any person who shall recover any judgment for any loss as a result of any violation of the conditions hereinabove contained.

Old Republic argues it is only liable under the bond for the wrongful acts of a principal relating to the sale of a vehicle. It thus contends it is not liable in this case because the wrongful act that resulted in the \$40,000 judgment was the wrongful repossession of Carter's vehicle, which does not come within the conditions of the bond. I disagree.

While the Circuit Court did find that the defendants had wrongfully repossessed the vehicle in issue, it also found that the defendants had breached the sales contract with Carter by misrepresenting the sales transaction between the parties. That breach of the sales contract clearly came within the conditions of the bond.¹

Old Republic also argues that to hold it liable on the bond would be a denial of due process because it did not have prior notice of Carter's lawsuit, and thus was not allowed to raise any defenses that could have been raised by the defendants/principals.

Old Republic has cited various Alabama cases that hold that a surety may raise any defenses available to a principal. However, in those cases, the surety was allowed to contest the claim against the principal either as defendant in an action, or as co-defendant with the principal.² Old Republic has cited no case in which a surety has been allowed to

¹In addition to all acts relating to the sale of a vehicle, the bond also covers any violation of "the provisions of law relating to the conduct of the business" of a used car dealer. It is problematical whether a wrongful repossession comes within that broad coverage.

²The cases referred to are *Commercial Standard Ins. Co. v. Ala. Surface Min. Reclamation Com'n*, 443 So.2d, 1245 (Ala.Civ.App. 1983); *U.S. for Ben. and Use of Berkowitz v. Frankini Const. Co.*, 139 F.Supp. 153 (D.C. Mass. 1956); *State v. Bi-States Const. Co., Inc.*, 269 N.W.2d 455 (Iowa 1978); and *United States Fidelity & Guaranty Co. v. Town of Dothan*, 56 So. 953 (Ala. 1911).

collaterally attack a judgment against a principal after the fact.

Section 40-12-398 specifies that the surety shall be liable for “any judgment” against a principal resulting from a violation of the conditions of the bond. Consequently, if any judgment, including a default judgment, is entered against a principal based on a violation of the conditions of the bond, the surety’s liability is absolute under the terms of the statute and bond, regardless of the merits of the case. The surety’s liability is not conditioned on it being notified of and allowed to defend any action against a principal.

Old Republic has been allowed due process pursuant to this appeal in which it has been allowed to contest whether the acts of the principals that resulted in the judgment violated the conditions of the bond. Due process does not, however, allow Old Republic to contest the Circuit Court judgment after the fact. As indicated, if a judgment against a principal is based on a violation of the conditions of the bond, Old Republic’s liability as surety is absolute. The Administrative Law Division certainly has no authority to reopen the Circuit Court case against the principals, or to otherwise look behind the Circuit Court judgment. Old Republic may appeal this Final Order and attempt to collaterally attack the prior judgment in the jurisdiction in which the judgment was entered.

The Department’s demand that Old Republic pay on the subject bond is affirmed.³ This Final Order may be appealed to circuit court within 30 days. Code of Ala. 1975, §40-2A-9(g).

Entered March 15, 2001.

³For a similar result, see *Old Republic Surety Company v. State of Alabama*, Misc. 98-487 (Admin. Law Div. 7/21/99).