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Blog Post: Ohio Appellate Court Holds That Aggrieved Customer Has Standing To Pursue Bond Claim Against Surety

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On September 8, 2016, the Eighth District Court of Appeals reversed a trial court's holding granting summary judgment in favor of a surety that had issued a bond to a contractor, ruling that the aggrieved customer had standing to pursue a bond claim issued by the surety. *Koster v. Mohammed Chowdhury*, 8th Dist. No. 103489, 2016-Ohio-5704. The court held that the parties had intended that the bond issued by the surety was intended to benefit the residents of Cleveland aggrieved by a licensed contractor, thus providing an aggrieved citizen with standing to sue under the bond.

Under Cleveland Codified Ordinances 3107.02(a), to register as a building contractor in the city of Cleveland, an applicant must furnish a $25,000 surety bond to the city. In *Koster*, the defendant, a building contractor, registered with the city and furnished a surety bond provided by Western Surety Company ("Western Surety"). An aggrieved customer of the contractor subsequently brought a claim on the bond against the contractor and Western Surety. In the trial court, Western Surety sought summary judgment on the grounds that the customer had no standing because the city ordinance did not provide the customer with a private right of action against the bond. The customer opposed, arguing that she was an intended third-party beneficiary of the bond. The trial court agreed with Western Surety and granted its motion for summary judgment.

On appeal, the Eighth District reversed and remanded. The Eighth District began its analysis with the plain language of the bond: "Western Surety Company as surety are held and firmly bound unto the City of Cleveland . . . for *the use of any person*, persons, firm, or corporation with whom such principal shall contract to construct, alter, repair, add to, subtract from, reconstruct or remodel any building, structure, or appurtenance thereto or any part thereof . . . ." Interpreting the bond's plain language, the Eighth District stated that the bond issued by Western Surety bound the contractor as principal, the city as obligee, and Western Surety as the surety, and was "to be held for the use of *any person* with whom the contractor shall contract to construct or remodel any building or structure in accordance with the Ohio Building Code and the city's building code." Thus, the bond was payable to the city if the contractor failed to indemnify and pay "any person" for damage sustained on account of the contractor as the result of a violation of the city's building code.

The key language in the bond was "any person." Because of this language, the Eighth District held that the customer of the contractor did have standing even though she was not a party to the bond.

The language “any person” established that the parties intended that the bond issued by Western Surety benefit city residents aggrieved by a licensed contractor. Moreover, although the bond was payable to the city, the indemnification language in the bond provided that it was to benefit “persons,” not just the city.

Koster highlights that a surety bond is interpreted under ordinary contract principles. Although not a performance bond, any building contractor seeking to register with the city of Cleveland must furnish a $25,000 surety bond to the city. Going forward, contractors and sureties should closely examine the language of their respective surety bonds and tailor the scope of the bond, including its intended recipients, appropriately.