

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

| | | |
|-------------------------|---|------------------|
| DEVELOPERS SURETY AND |) | |
| INDEMNITY COMPANY, |) | |
| |) | |
| Plaintiff, |) | |
| |) | CIVIL ACTION NO. |
| v. |) | 2:09cv757-MHT |
| |) | (WO) |
| OLD TOWNE STATION, LLC, |) | |
| et al., |) | |
| |) | |
| Defendants. |) | |

OPINION

This case is now before the court on the motion for summary judgment submitted by plaintiff Developers Surety and Indemnity Company. Rule 56(c)(2) of the Federal Rules of Civil Procedure provides that summary judgment "should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law."

Defaults (but not default judgments) have already been entered against defendants Sandbox Properties, LLC and Old Towne Station, LLC, and the court has granted Developers Surety's motion to dismiss defendants Lauren Carroll and Alison Green. Thus, the motion for summary judgment is brought only against remaining defendants, Irma and Scott Brandt. The Brandts do not dispute the evidence that is now before the court, as follows.

Developers Surety executed a subdivision completion bond, with defendant Old Towne as principal, in connection with the development of the "Old Towne Station project," to be built in the City of Auburn, Alabama. Developers Surety acted as a surety on the bond only after entering into a general indemnity agreement, signed by each of the Brandts and notarized. The agreement stated that Developers Surety would be compensated and held harmless for all losses to the city, the obligee on the bond, incurred in the completion of the project.

Thereafter, Old Towne failed to perform on its obligations in the construction of the project, and the city then brought claims against Developers Surety as the guarantor. The Brandts have failed to indemnify Developers Surety for its losses. Developers Surety now seeks an award of \$ 184,150.60 in damages against the Brandts, as well as attorneys' fees, costs, and expenses.

In support of its motion for summary judgment, Developers Surety offers copies of the checks, totaling \$ 184,150.06, it has paid in satisfaction of the city's claims as well as affidavits from a recovery analyst employed with Developers Surety, validating the losses suffered by the company over the course of the project.

As this is the only evidence before the court and after an independent review of the record, the court finds that the requirements of Rule 56(c)(2) have been met and that summary judgment should be entered in favor of Developers Surety and against the Brandts for \$ 184,150.60, along with attorneys' fees, costs, and

expenses. An appropriate judgment will be entered against the Brandts. However, because only defaults, and not default judgments, have been entered against Sandbox Properties and Old Towne, this case still remains pending as to Sandbox Properties and Old Towne.

DONE, this the 11th day of June, 2010.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE