

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION**

**GERACE DESIGN GROUP, INC., d/b/a
GERACE CONSTRUCTION**

PLAINTIFF

VS.

NO. 1:11CV00106 JMM

**INDEPENDENCE COUNTY,
ARKANSAS**

**DEFENDANT
THIRD-PARTY PLAINTIFF**

VS.

**ACA FINANCIAL GUARANTY
CORPORATION**

THIRD-PARTY DEFENDANT

ORDER

Pending is Defendant, Independence County, Arkansas' motion for partial summary judgment. (Docket # 7). Plaintiff has filed a response and Defendant has filed a reply.

Plaintiff, Gerace Design Group, Inc., d/b/a Gerace Construction ("Gerace") filed suit on November 23, 2011 alleging causes of action for breach of contract, breach of duty under the contract to deal fairly and in good faith and unjust enrichment. Gerace alleges that it installed a three-foot concrete cap on a dam for Independence County, Arkansas ("the county") pursuant to a written contract between it and the county. Gerace alleges that it has not been paid in full for the work done under the contract.

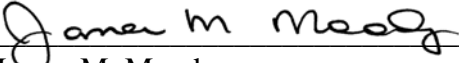
The county seeks partial summary judgment finding that the language of the contract precludes recovery from the county and any judgments resulting from this cause of action cannot be collected against the county. The county seeks a finding by the Court that Plaintiff can look only to a construction fund or other funds available from the proceeds of the revenue bonds

issued to finance construction, for the payment of any judgment entered in this case.

The Court finds the motion premature. The parties have not had the opportunity to conduct discovery and the liability of the parties, has not been decided. In fact, since filing the motion for partial summary judgment, the county has filed a third party complaint against ACA Financial Guaranty Corporation (“ACA”), alleging that the county is entitled to judgment over and against ACA in the event it is adjudged liable to Gerace in the underlying action. The parties may present these issues to the Court following the completion of discovery wherein the responsibilities and liabilities of the parties has been explored.

Wherefore, the Defendant’s motion for partial summary judgment is DENIED.

IT IS SO ORDERED this 18th day of June, 2012.



James M. Moody
United States District Judge