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WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE, LOUISIANA

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION

WESTERN SURETY CO.

CIVIL ACTION NO.: 12-0305

VERSUS

JUDGE DOHERTY

THOMAS A. HEBERT, ET AL.

MAGISTRATE JUDGE HANNA

**MEMORANDUM RULING**

Currently pending before this Court is a Motion for Partial Summary Judgment [Doc. 15], filed by plaintiff Western Surety Co.

In its motion, Western Surety argues it is a surety company authorized to issue bonds for construction projects in the State of Louisiana; defendants Saturn Construction Co., Inc. (“Saturn Construction”), Saturn Realty & Land Sales, Inc. (“Saturn Realty”), and Thomas Hebert signed an indemnity agreement in consideration of Western Surety issuing bonds on behalf of Saturn Construction for two construction projects, namely, the Dauterive Hospital project and the Grand Point Village Shopping Center project, whereby these defendants agreed to indemnify Western Surety for any losses Western Surety incurs as a result of issuing bonds on behalf of the indemnitors; Saturn Construction failed to pay its subcontractors on the hospital project and defaulted on the shopping center project; and Western Surety performed its bond obligations and paid the subcontractors on the hospital project and paid another contractor to complete the shopping center project. Western Surety argues under the indemnity agreement, Saturn Construction, Saturn Realty, and Thomas Hebert are liable for Western Surety’s costs, expenses, and attorneys’ fees associated

with finishing the projects.

In its motion, Western Surety seeks a judgment declaring that there are no genuine issues of material fact as to the liability of Saturn Construction Co., Inc., Saturn Realty & Land Sales, Inc., and Thomas Hebert under the indemnity agreement, and that these defendants are liable for the costs, expenses, and attorneys' fees associated with Western Surety's finishing the projects. The motion is not opposed by any of the defendants.

In support of its motion, Western Surety has attached a copy of the "General Agreement of Indemnity" signed by Thomas Hebert in three capacities: as president of Saturn Construction, Inc., president of Saturn Realty & Land Sales, Inc., and individually.<sup>1</sup> The agreement states in relevant part:

The Indemnitors will indemnify and save the Company [Western Surety] harmless from and against every claim, demand, cost, charge, suit, judgment and expense which the Company may pay or incur in consequence of having executed, or procured the execution of such bonds,....including, but not limited, to fees of attorneys, whether on salary, retainer or otherwise, and the expense of procuring, or attempting to procure, release from liability, or in bringing suit to enforce the obligation of any of the Indemnitors under this Agreement.....<sup>2</sup>

Considering the foregoing, the Motion for Partial Summary Judgment [Doc. 15] appearing to be well-founded in law and fact and being unopposed by the defendants, is hereby GRANTED.

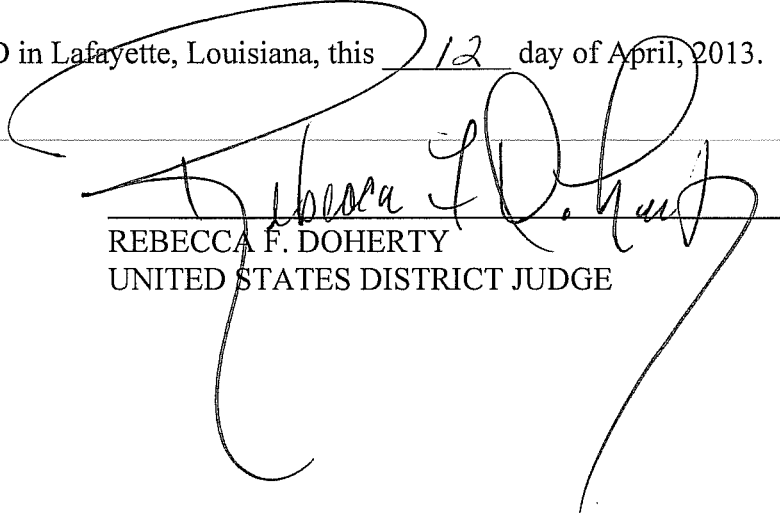
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<sup>1</sup> According to the motion, Mr. Hebert does not deny having signed the indemnity agreement. The indemnity agreement is also signed by Mr. Hebert's wife, Kathleen Hebert, however, Mrs. Hebert denies having signed the agreement and no can explain how her name was signed on the document. As a result, Western Surety only seeks a determination of the liability of Saturn Construction, Saturn Realty, and Mr. Hebert.

<sup>2</sup> See General Agreement of Indemnity, attached as exhibit to Western Surety's motion for partial summary judgment, ¶2.

Defendants Saturn Construction Co., Inc., Saturn Realty & Land Sales, Inc., and Thomas Hebert are liable to Western Surety under the indemnity agreement for the costs, expenses, and attorneys' fees associated with Western Surety's finishing the projects in question. The amount of Western's Surety's losses will be determined at trial, currently set on July ~~8~~<sup>15</sup>, 2013.

THUS DONE AND SIGNED in Lafayette, Louisiana, this 12 day of April, 2013.



REBECCA F. DOHERTY  
UNITED STATES DISTRICT JUDGE