

Mechanics of Construction Law: Choice of Completion Contractor at Discretion of Surety, Florida Court Finds

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Clients executing a performance bond must pay extra attention to the terms and conditions of the bond, which terms are binding upon the parties. Many standard bonds authorize the bonding company to complete the project with contractors of its choosing upon default by the contractor, even if the owner disagrees with the bonding companies' selection of a completion contractor.

This was the case in *Seawatch at Marathon Condominium Association, Inc. v. The Guarantee Company of North America, USA* where Florida's Third District Court of Appeal upheld the contractual right of a surety to pick the completion contractor upon taking over the project, over the objection of the owner. In this case, the completion contractor was the original contractor that had defaulted. The Court found no issue with the surety using the original contractor as the completion contractor, as the surety was completing the contract as required by the surety bond, and there was no limitation in the contract (the bond) as to who the surety could choose.

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