

NO. 46388-1-II

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

NINA FIREY,

Respondent,

v.

TAMMIE MYERS, ET AL,

Appellant.

RESPONDENT'S BRIEF OF
RLI BEING A JOINDER IN THE
RESPONDENT'S BRIEF OF
MICHAEL F. LYON AND JOAN D. LYON D/B/A
CROWN MOBILE HOME SET-UP/SVC

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INTRODUCTION

RLI Insurance Company (RLI herein) is the bondsman for the Respondents Michael F. Lyon and Joan D. Lyon, husband and wife, d/b/a Crown Mobile Home Set-up/SVC (Crown Mobile herein). RLI was secured by Crown Mobile for its contractor's registration as required in Chapter 18.27 RCW. RLI was named and served as a party Defendant in the operative Second Complaint of Nina Firey dated March 20, 2012.

ADOPTION OF AND JOINDER IN THE RESPONDENT'S BRIEF OF CROWN MOBILE

RLI does hereby adopt and join in the Respondent's Brief of Crown Mobile.

ARGUMENT

The summary judgment dismissing Crown Mobile and the order dismissing RLI should be affirmed. Any discussion of bonds or the promises of sureties in Washington begins with Washington's version of the Statute of Frauds at RCW 19.36.010. It provides in pertinent part:

“(2) Every special promise to answer for the debt, default, or misdoings of another person,”

In this instance the “any debt” from Crown to the Plaintiff has been extinguished in an order granting Summary Judgment and dismissing the case as to Crown Mobile.

In his respected treatise on the law of suretyship, Professor Simpson gives several reasons why the release of the principal, Crown, also releases the surety. At §63 of his Handbook on The Law of Suretyship (West Publishing 1950) he opens with the conclusion:

It has always been held that the creditor's release of the principal discharges the surety.

Professor Simpson goes on to give several reasons for this conclusion:

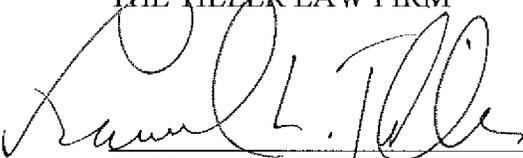
Various other reasons have been advanced for the rule that the creditor's release of the principal discharges the surety. It has been said that the surety's obligation is so far accessory that it cannot survive extinguishment of the principal's debt. (citation omitted) Otherwise stated, that "no collateral promise to pay the debt of another can have any force when the debt of the other has been satisfied." (citation omitted) The Restatement of Security advances this reason in terms as follows: "Where the principal and surety are not bound jointly, (citation omitted) but the obligation of the surety is to answer for the duty of the principal. The termination of the principal's duty is also a termination of the surety's obligation. If the principal has no longer a duty as a result of the creditor's act, the surety should not be held to an obligation to answer for the default of that duty." (citation omitted) All of the above assume that the surety's undertaking was to pay for that which the principal might legally owe, and fails to include those undertakings whereby the promisor assumed an obligation to pay a fixed sum irrespective of the legal liability of another.

CONCLUSION

The dismissal of Crown Mobile should be confirmed. With the

dismissal of Crown Mobile no action against its surety may lie and the order dismissing RLI should likewise be affirmed.

Respectfully submitted this 16 day of December, 2014.

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CERTIFICATE OF SERVICE

I hereby certify, under penalty of perjury under the laws of the State of Washington, that on December 16, 2014, I cause to be served a true and correct copy of the foregoing **RESPONDENTS RLI RESPONDENT'S BRIEF** in the manner noted below, to the following parties:

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