IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

UNITED ELECTRIC COMPANY, D/B/A MAGIC AIRE,	:	October Term, 2001
Plaintiff,	:	
v.	:	No. 01555
ALLSTATES MECHANICAL, LTD, D/B/A ALLSTATES CONSTRUCTION COMPANY AND RLI INSURANCE COMPANY,	:	Commerce Program
Defendants,	:	
v.	:	Control Number 020728
CHASE & ASSOCIATES, INC.	:	
Additional Defendant.	:	

ORDER

AND NOW, this 17TH day of June, 2004, upon consideration of Defendant RLI Insurance Company's Motion for Summary Judgment, all responses in opposition, Memoranda, all matters of record and in accord with the contemporaneous Memorandum Opinion filed of record, it hereby is **ORDERED** and **DECREED** that Defendant RLI Insurance Company's Motion for Summary Judgment is **Granted**. All claims including crossclaims and counterclaims are dismissed against RLI Insurance Company.

BY THE COURT,

____

C. DARNELL JONES, II, J.

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

UNITED ELECTRIC COMPANY, D/B/A MAGIC AIRE,	:	October Term, 2001
Plaintiff,	:	No. 01555
v.	:	
ALLSTATES MECHANICAL, LTD, D/B/A ALLSTATES CONSTRUCTION COMPANY AND RLI INSURANCE COMPANY,	:	Commerce Program
Defendants,	:	
v.	:	Control Number 020728
CHASE & ASSOCIATES, INC.	:	
Additional Defendant.	:	

MEMORANDUM OPINION

Presently before the court is RLI Insurance Company's Motion for Summary Judgment to Plaintiff United Electric Company d/b/a Magic Aire's ("Magic Aire") amended complaint.[1] For the reasons that follow, RLI Insurance Company's Motion for Summary Judgment is Granted.

DISCUSSION[2]

A. Standard of Review

A proper grant of summary judgment depends upon an evidentiary record that either (1) shows the material facts are undisputed or (2) contains insufficient evidence of facts to make out a prima facie cause of action or defense. Destefano & Associates, Inc. v. Cohen, 2002 WL 1472340,* 2 (Pa. Com. Pl. 2002) (J. Herron). Under Pa. R.C. P. 1035.2(2), if a defendant is the moving party, he may make the showing necessary to

[1] In addition to the instant motion, there are three companion motions filed by the various parties which will be addressed in separate orders.
[2] The court adopts and incorporates the Background set forth in the Memorandum Opinion addressing Allstates Mechanical, Ltd.'s Motion for Summary Judgment. See, Memorandum Opinion, October Term, 2001, No. 01555, Control Number 020729.

support the entry of summary judgment by pointing to evidence which indicates that the plaintiff is unable to satisfy an element of his cause of action. Id. The nonmoving party must adduce sufficient evidence on an issue essential to its case and on which it bears the burden of proof such that a jury could return a verdict favorable to the non-moving party. Id. When the plaintiff is the moving party, "summary judgment is proper when if the evidence, viewed favorably to the plaintiff, would justify recovery under the theory he has pled." Id; quoting Horne v. Haladay, 728 A.2d 954, 955 (Pa. Super. 1999); citing Pa. R. Civ. P. 1035.2). Summary judgment may only be granted in cases where it is "clear and free from doubt that the moving party is entitled to judgment as a matter of law." Id.

B. Plaintiff's Claim for Breach of Surety Agreement (Count IV) Must Be Dismissed as a Matter of Law.

RLI Insurance Company argues, like Allstates Mechanical Ltd ("Allstates"), that Count IV alleging breach of surety agreement should be dismissed since plaintiff fails to allege any breach of surety agreement and since there exists no such agreement between Plaintiff and Moving Defendant. The court agrees.

Count IV of plaintiff's amended complaint alleges that under the terms of the bond, Allstates and RLI are jointly and severally liable to Magic Aire for the principal amount owed (Amended Complaint ¶ 33). As stated by this court in the Memorandum Opinion addressing Allstates' Motion for Summary Judgment on the identical claim, in order to determine whether the bond in issue covers the damages sought by Magic Aire, the proper place to start is the bond since the true intent and meaning of the instrument are the primary determinants of the extent of liability. Salvino Steel & Iron Works, Inc. v. Fletcher & Sons, Inc., 398 Pa. Super. 86, 580 A.2d 853 (1990). In examining the clear language of the bond attached to the amended complaint and as an exhibit to the pending motions before this court, RLI was guaranteeing only Allstates' performance under the contract which Allstates executed with the School District. The bond specifically states that Allstates and RLI are "jointly and severally held and firmly bound unto the School District of Philadelphia in the sum of $584,000.00 to be paid to the School District…" The bond does not provide for, nor does it contain language addressing the responsibility for the payment of labor and materialmen. The bond language refers only to RLI and Allstates' responsibility to the School District. Thus, under the terms of the bond RLI is not in breach of the surety agreement with respect to Magic Aires claims. [3] Accordingly, RLI's motion for summary judgment as it pertains to Count IV is Granted and Count IV is dismissed against RLI only as well as any counterclaims or crossclaims related thereto.[4]

C. Counts I-III Are Not Applicable to RLI.

RLI requests this court to enter summary judgment in its favor as it pertains to Counts I-III. A review of the amended complaint demonstrates that Count I-III do not apply to RLI. Indeed, Magic Aire in its response to the motion does not argue that Counts I-III are applicable to RLI. Based on the foregoing, RLI's motion for summary judgment to Counts I-III of the amended complaint is Granted.

---

[3] Pursuant to 8 P.S.A. § 193, Bonds Required, when any contract exceeding $5,000.00 is issued for the construction, reconstruction, alteration or repair of any public building or other public work or public improvement , including highway work, the prime contractor (Allstates) is required to furnish a performance bond and a payment bond. Id. A performance bond is issued at 100% of the contract amount and is conditioned upon the faithful performance of the contract in accordance with the plans, specifications of the contract. The performance bond is solely for the protection of the contracting body (the School District) which awarded the contract. 8 P.S.A. § 193(a)(1). The payment bond is issued at 100% of the contract amount and is solely for the protection of claimants supplying the labor and material (Magic Aire) to the prime contractor to whom the contract was awarded, or any of his subcontractors. 8 P.S.A. §193 (a)(2). Here, the parties have produced only one bond, a performance bond which inures to the benefit of the School District. No other bond is part of the record for the court nor was any evidence presented that RLI failed to issue a payment bond. This causes the court to believe that a payment bond was never issued.

[4] Since the court finds that the bond does not inure to the benefit of Magic Aire, the court will not address the statute of limitations argument raised by RLI Insurance Company.

CONCLUSION

Based on the foregoing, Defendant RLI Insurance Company's Motion for Summary Judgment is Granted. All claims including crossclaims and counterclaims are dismissed against RLI Insurance Company.

A Contemporaneous Order will follow.

BY THE COURT,

____
C. DARNELL JONES, II, J.