

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

THE MOUNTBATTEN SURETY COMPANY, INC,	:	March Term, 2002
	:	
Plaintiff,	:	No. 1475
	:	
v.	:	Commerce Program
	:	
CENTRAL ENVIRONMENTAL SERVICES. INC.,	:	Control No.: 022537
and RICHARD J. LORENZ,	:	
	:	
Defendants.	:	
	:	

MEMORANDUM OPINION

GENE D. COHEN, J.

Before the Court is the Motion to Reduce Amount of Confessed Judgment (the “Motion”) filed by Richard J. Lorenz (“Lorenz”). For the reasons set forth below, the Motion is denied.

I. BACKGROUND

The facts of this case are relatively simple. Mountbatten Surety Company, Inc. (“Mountbatten”), confessed judgment against Lorenz and Central Environmental Services, Inc. in the amount of \$1,244,879.67 (the “Judgment”). The Judgment is the result of claims made under payment and performance bonds (the “Bonds”) issued by Mountbatten in connection with projects of CES. Lorenz agreed to indemnify Mountbatten for claims made under the Bonds. Thereafter, claims were made under the Bonds after CES defaulted under its contracts. As a result, Mountbatten was required to retain contractors to complete certain projects.

At the time Mountbatten confessed judgment against CES and Lorenz, it was

unaware that CES had filed a voluntary petition in bankruptcy under Chapter 11 of Title 11 of the United States Code. As a result of the bankruptcy, Mountbatten was forced to pursue its claims against CES through the bankruptcy court. Mountbatten received an allowed claim in the bankruptcy proceeding in the amount of \$644,409, to be paid out over several years pursuant to CES's plan of reorganization.¹ Mountbatten asserts it has not yet received any payments from CES. In addition to the possible receipt of money from CES, Mountbatten also reached an agreement with an owner of one of the construction projects under which it may receive additional funds.

Subsequent to the confession of judgment, Lorenz filed a petition to open and/or strike the Judgment. The Court denied Lorenz's petition to open and/or strike; however, the Court permitted Lorenz to file a motion to reduce the amount of the Judgment. Accordingly, Lorenz filed the motion to reduce and discovery was conducted by the parties. Apparently, the extent of Lorenz's discovery was to depose a single Mountbatten representative.²

III. Discussion

Lorenz makes essentially two arguments in support of his motion to reduce the Judgment, each wholly without merit. First, Lorenz argues that because Mountbatten may receive funds from a project owner and the CES bankruptcy estate, the Judgment should be reduced in anticipation of these payments. Second, the Judgment should be reduced because Mountbatten acted in bad faith when it allegedly failed to investigate CES's default in a satisfactory manner and made payments it did not have to pay.

¹ Mountbatten asserts that under the plan of reorganization it will receive substantially less than its allowed claim.

² Lorenz did take his own deposition, however, pursuant to a stipulation by the parties that was approved by the Court, the deposition was supposed to be limited only to issues of execution.

Firstly, the fact that Mountbatten *may* receive money in the future is not a reason to reduce the judgment. No money has been received as of yet, therefore, there is no reason to reduce the judgment. Additionally, Mountbatten may *never* receive money if the CES bankruptcy reorganization fails (as they often do). Of course, if Mountbatten does receive any money from either the CES bankruptcy or a project owner, those funds should of course be credited to the judgment.³

Secondly, Lorenz's argument that Mountbatten acted in bad faith does not warrant a reduction in the judgment. Regardless of whether Pennsylvania would recognize a bad faith action in a surety context, or impose such a duty on a surety outside of the normal contractual obligation of good faith and fair dealing, Lorenz fails to put forth any evidence to support a reduction in the Judgment.⁴ Furthermore, certain of Lorenz's bad faith claims go not to the amount of the judgment but the propriety of the Judgment itself.⁵ Therefore, the Court is unconvinced by his arguments for reduction.

³ In the event that Lorenz was to pay the Judgment in full, he clearly would be entitled to assignment of Mountbatten's claims in the CES bankruptcy and against the project owner.

⁴ Lorenz deposed a single Mountbatten representative who testified that he personally did not investigate the claims of CES. However, the deposed individual also testified that he became involved in the case late and there were other individuals who conducted an investigation and monitored the projects. Lorenz apparently chose not to depose those individuals. Lorenz also alleges that Mountbatten paid funds with recklessness and/or overpaid certain contractors or managers. Lorenz presents no invoices, bills, payment analyses, or any documents whatsoever to support any of these claims.

⁵ Lorenz presented his own deposition testimony that the defaults were not caused by CES and, therefore, CES was not responsible. First, this deposition testimony is outside of the permitted scope of the stipulation governing discovery. Second, the argument is a defense to the Judgment itself and not to the amount of the judgment. Third, and last, Lorenz fails to provide or offer any evidence in support other than his own self-serving testimony.

IV CONCLUSION

For the reasons set forth above, the Motion is **denied**.

BY THE COURT:

GENE D. COHEN, J.

Dated: December 29, 2003