

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**WOODS OF SOMMERSET, LLC, ET AL.,
RESPONDENT**

vs.

**DEVELOPERS SURETY AND INDEMNITY COMPANY,
APPELLANT**

DOCKET NUMBER WD75533 (Consolidated with WD75534)

DATE: SEPTEMBER 24, 2013

Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable James A. Kanatzar, Judge

Appellate Judges:

Division One: Victor C. Howard, Presiding Judge, Joseph M. Ellis, Judge and Anthony Rex Gabbert, Judge

Attorneys:

John W. Roe, for Respondent

Lawrence Lerner, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

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vs.

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WD75533 (Consolidated with WD75534)

Jackson County, Missouri

Before Division I: Victor C. Howard, Presiding Judge, Joseph M. Ellis Judge and Anthony Rex Gabbert, Judge

This case arises from the cross-claims and third-party claims of Developers Surety and Indemnity Company (“DSI”) against Daniel Waldberg, Brenda Waldberg, Barney Ashner, Marlene Ashner, and Woods of Somerset, LLC (“the Somerset defendants”) relating to an indemnity agreement they signed to obtain a payment bond in connection with the development of a subdivision. The trial court entered judgment in favor of the Somerset defendants concluding that the indemnity agreement was unenforceable because it was not properly executed and because there was no meeting of the minds. On appeal, DSI contends that the indemnity agreement was properly executed because all four individuals with any ownership interest in any of the Somerset entities signed the document, that it applies to each of the Somerset defendants, and that it was accepted by its use in obtaining the bond that the agreement was made to induce and delivering it to the City of Kansas City. DSI also contends that the trial court erred in concluding that there was no meeting of the minds because such conclusion was irrelevant due to the indemnity agreement being unambiguous. The judgment of the trial court is reversed, and the case is remanded.

REVERSED AND REMANDED.

Division One Holds:

Where the indemnity agreement clearly evidences the personal nature of the guaranty, it is not ambiguous. The actions of the Somerset defendants in signing the document in the manner in which they did were not sufficient to give rise to any ambiguity as to whether they were personally liable under the agreement. The trial court’s implicit finding that the contract was ambiguous and its conclusion that the Somerset defendants were not personally liable were erroneous.

Opinion by: Victor C. Howard, Judge

Date: September 24, 2013

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