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Federal Common Law, Not State Law, Controls Interpretation of Federal Bail-Bond Contracts

The U.S. Court of Appeals for the Fifth Circuit, in *United States v. Miller*,¹ held that the liability of a surety on a federal bail-bond contract depends on the wording of the contract as interpreted under general federal common-law principles of suretyship and contract law.²

Resolute Insurance Company was surety for Thomas Miller on two identical appearance bonds. Miller was found guilty of assaulting an FBI agent, had pleaded guilty to interstate transportation of stolen goods, and was sentenced to a total of three years and three months of imprisonment. The trial court, at Miller's request and in the absence of any agent of Resolute, allowed a brief stay of incarceration, and one of the bonds was specifically continued.³ Miller then fled the jurisdiction of the court in violation of the bonds. The government moved to forfeit the bonds, and final judgment of forfeiture was entered by the federal district court. Resolute, claiming it was exonerated from liability once sentence had been passed, appealed to the Fifth Circuit Court of Appeals.

An appearance bond is merely a contract between the government on one hand and the principal and his surety on the other.⁴ The terms are generally construed in favor of the surety so that it will not be held liable for an undertaking to which it has not agreed.⁵ Yet the contract is to be construed to give effect to the reasonable intentions of the parties.⁶

In *United States v. D'Anna*,⁷ the Sixth Circuit Court of Appeals decided that the construction to be given federal bail-bond contracts should be in accordance with the law of the state in which they are made. In support of its position, the court merely relied on a number of older cases⁸ and failed to provide any independent analysis. Consequently, the court ap-

1. 539 F.2d 445 (5th Cir. 1976), *rehearing denied*, 542 F.2d 576 (5th Cir. 1976).

2. The Supreme Court, in *Erie R.R. v. Tompkins*, 304 U.S. 64, 78 (1938), stated that "[t]here is no Federal general common law." The court in *Miller* is using the phrase to represent the federal case law on interpretation of bail-bond contracts.

3. Resolute contended that since only one of the bonds was specifically continued, Miller was committed to custody immediately upon sentencing in the other case. The court called this contention spurious, since the bonds continued by their own terms until Miller surrendered for service of sentence. 539 F.2d at 449.

4. *United States v. Jackson*, 465 F.2d 964, 965 (10th Cir. 1972).

5. *United States v. Eisner*, 323 F.2d 38, 43 (6th Cir. 1963).

6. *United States v. Gonware*, 415 F.2d 82, 83 (9th Cir. 1969).

7. 487 F.2d 899 (6th Cir. 1973).

8. *Id.* at 900, *citing* *United States v. Gonware*, 415 F.2d 82 (9th Cir. 1969); *Swanson v. United States*, 224 F.2d 795 (9th Cir. 1955); *Heine v. United States*, 135 F.2d 914 (6th Cir. 1943); *Palermo v. United States*, 61 F.2d 138 (8th Cir. 1932).

plied the applicable state law and held that once sentence has been pronounced, a surety's liability is terminated unless a continuance is expressly consented to by the surety. The language of the bond, the court concluded, is immaterial.⁹

The Ninth Circuit also recently held, in *United States v. Gonware*,¹⁰ that state law is applicable in ascertaining the extent of a surety's undertaking on a federal bail-bond. But, like *D'Anna*, no independent analysis was undertaken, and the court merely cited precedent.¹¹

The court in *Miller* declined to follow the authority of *D'Anna* and *Gonware*, believing these decisions relied incorrectly on older cases decided under the old bail section of the U.S. Code.¹² That section stated that, "For any crime or offense against the United States, the offender may, by any . . . judge . . . of any State where he may be found, and agreeably to the usual mode of process against offenders in such State . . . be arrested and imprisoned, or bailed, as the case may be."¹³ This section was interpreted as requiring that state law be used in all federal cases concerning bail.¹⁴ But federal bail conditions and procedures are now controlled by the Bail Reform Act of 1966, which mandates that the offender be arrested and imprisoned, or released, as provided in Chapter 207 of Title 18 of the U.S. Code.¹⁵ The court construed this change, along with the Federal Rules of Criminal Procedure¹⁶ and suggested federal forms,¹⁷ to require that federal bail-bond contracts be interpreted and controlled by federal common law.

The court then proceeded to define the federal common law of suretyship. Pronouncement of sentence does not per se exonerate a surety.¹⁸ If a

9. *People v. Brow*, 253 Mich. 140, 234 N.W. 117, 118 (1931).

10. 415 F.2d 82 (9th Cir. 1969).

11. *Id.*, citing *Heine v. United States*, 135 F.2d 914 (6th Cir. 1943); *Western Surety Co. v. United States*, 72 F.2d 457 (9th Cir. 1934).

12. Act of March 2, 1901, ch. 814, 31 Stat. 956 (former 18 U.S.C.A. §591).

13. *Id.*

14. See *Heine v. United States*, 135 F.2d 914 (6th Cir. 1943); *Palermo v. United States*, 61 F.2d 138 (8th Cir. 1932).

15. 18 U.S.C.A. §§3041, 3141-3143, 3146-1352, 3568 (1966). Section 3041 reads: "For any offense against the United States, the offender may, by any . . . judge . . . of any state where the offender may be found . . . be arrested and imprisoned or released as provided in chapter 207 of this title, as the case may be . . . Any state judge or magistrate acting hereunder may proceed according to the usual mode of procedure of his state but his acts and orders shall have no effect beyond determining to hold the prisoner for trial or to discharge him from arrest."

16. FED. R. CRIM. P. 46. This rule, entitled "Release From Custody," is a guide to the various sections of Title 28. As well as release, the rule also sets out guidelines on forfeiture of the bail, exoneration of the surety, and supervision of defendants pending trial for the purpose of eliminating detention.

17. FED. R. CRIM. P. Form 17. This is a suggested form for an appearance bond. It specifically limits the surety's liability to assuring the defendant will appear at the named district court. The bond becomes void if the defendant appears.

18. 539 F.2d at 449.

surety has contracted only to have his principal in court until the case is determined, pronouncement of sentence relieves the surety of liability and passes custody of the accused to the government. But if the bond states that the principal is to surrender himself for execution of the sentence and abide by orders of the court in connection with judgment, a stay of imprisonment will not discharge the surety.¹⁹ The court agreed with the *Gonware* decision that since short stays of execution are common in federal courts, it is reasonable to infer that the parties to the bond intended the surety to remain liable.²⁰ The bonds between Miller, Resolute and the government did provide that Miller would "abide any judgment entered . . . by surrendering himself to serve any sentence imposed and obeying any order of direction in connection with such judgment as the court imposing it may prescribe."²¹ The court concluded that since Resolute had contracted to assure that Miller would abide by any judgment and obey any order, which Miller failed to do, Resolute was liable.

The main purpose behind the Bail Reform Act of 1966²² was to make it easier for minor offenders and indigents to obtain release.²³ This was accomplished by first setting a presumption in favor of a minor offender's right to obtain release. Guidelines and procedures were laid down for a judge to follow in determining whether this presumption has been overcome. But, other than a suggested form for bail-bond contracts,²⁴ the Act did not contain any substantive changes. The changes were based on procedural inconsistencies in the federal court system. The statute had no guidelines on the content or interpretation of the bail-bond contracts themselves.

The reasoning of the court in *Miller* is in accordance with one of the purposes of the Act, that of uniformity in the federal courts. As signified by *D'Anna* and *Gonware*, two almost identical bail-bond contracts drafted in accordance with the Act could lead to opposite results because of inconsistent interpretations by state courts.²⁵ The judges in *Miller* reasoned that an interpretation of all federal bail-bond contracts in accordance with the

19. *Id.* at 448, citing 8 AM. JUR. 2d *Bail and Recognizance* §105 (1963); 8 C.J.S. *Bail* §79g (1962).

20. 539 F.2d at 499. See *United States v. Gonware*, 415 F.2d at 84 (9th Cir. 1969).

21. 539 F.2d at 447 n. 3.

22. 18 U.S.C.A. §§3041, 3141-3143, 3146-3152, 3568 (1966).

23. See H.R. REP. NO. 1541, 89th Cong., 2d Sess. —, reprinted in [1966] U.S. CODE CONG. & AD. NEWS 2293, 2295-2296. See generally Bogomolny and Sonnenrelch, *The Bail Reform Act of 1966: Administrative Tail Wagging and Other Legal Problems*, 11 ARIZ. L. REV. 201 (1969); Miller, *The Bail Reform Act of 1966: Need For Reform in 1969*, 19 CATH. U. L. REV. 24 (1969); Wald & Freed, *The Bail Reform Act of 1966: A Practitioner's Primer*, 52 A.B.A.J. 940 (1966); Note, *The Bail Reform Act of 1966*, 53 IOWA L. REV. 170 (1967).

24. FED. R. CRIM. P. Form 17.

25. The court in *D'Anna* held that sentencing exonerated the surety completely, while the court in *Gonware* held that the surety was liable on the same language.

general scheme of federal common law would direct all federal courts to a uniform result on like contracts and thus eliminate this inconsistency.

By finding that the wording of the bonds made Resolute's intentions manifest,²⁶ the court in *Miller* failed to confront the real problem, that of determining what is the uniform common law of suretyship. Resolute could have intended to be absolved of liability once sentence was imposed, regardless of the language on the face of the bond. And the fact that Resolute contested this default action so strongly seems to indicate that it did not intend to be bound.

This decision suggests that the general law of all states is the basis of this federal common law,²⁷ but there are areas in which state disagreement over interpretation occurs.²⁸ With such disagreement, federal court interpretations will not be any more uniform than if the courts were applying state law. The court's reasoning seems sound, given the basic premise that one purpose of the Bail Reform Act of 1966 was to make consistent the system of federal bail-bonds. However, the court should have laid down specific guidelines to enable subsequent bail-bond draftsmen to better know with certainty the extent of their liability at the time of contracting.

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26. 539 F.2d at 447.

27. *Id.* at 448, citing 8 AM. JUR. 2D, *supra* note 20, and 8 C.J.S., *supra* note 20.

28. See Annot., 24 A.L.R. FED. 580, 607-611 (1975), for a discussion concerning pretrial bail bonds as extending to cover a defendant's release after conviction. This annotation points up the fact that some sureties have been held liable under such circumstances when others have not.