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**FILED**

2022 DEC 21 A 10: 16

SUPERIOR COURT OF CALIFORNIA  
CONTRA COSTA COUNTY

CLERK OF THE SUPERIOR COURT  
COUNTY OF CONTRA COSTA, CA  
K. VAQUEZ, DEPUTY CLERK

FIDELITY AND DEPOSIT COMPANY  
OF MARYLAND, a Maryland corporation,

Case No. MSC 19-01396

PLAINTIFF,

**JUDGMENT ON JURY VERDICT**

v.

DIABLO CONTRACTORS, INC. a  
California corporation; ARTHUR D.  
BRANDT, an individual and trustee of the  
Brandt 2001 Living Trust; DEBORAH K.  
BRANDT, an individual and trustee of the  
Brandt 2001 Living Trust; and Does 1  
through 50, inclusive,

DEFENDANTS.

DIABLO CONTRACTORS, INC. a  
California corporation; ARTHUR D.  
BRANDT, an individual; and DEBORAH  
K. BRANDT, an individual,

CROSS-  
COMPLAINANTS

v.

FIDELITY AND DEPOSIT COMPANY  
OF MARYLAND, a Maryland corporation;  
and DOES 1 THROUGH 10, inclusive.

CROSS-DEFENDANTS

1 This action came on regularly for trial on August 23, 2022 in Department 18 of the  
2 Superior Court of California, Contra Costa County, before the Hon. Danielle Douglas presiding.  
3 The plaintiff and cross-defendant Fidelity and Deposit Company of Maryland appearing by  
4 attorney David Veis, defendants and cross-complainants Diablo Contractors Inc., Arthur Brandt  
5 and Deborah Brandt appearing by attorney Steven Copeland, and defendant Fremont Bank  
6 appearing by attorney Steven Copeland.

7 A jury of persons was regularly impaneled and sworn. Witnesses were sworn and  
8 testified. The parties stipulated that Fidelity and Deposit Company of Maryland's total losses on  
9 the Caltrans Fresno project were \$7,311,332.99. After hearing the evidence and arguments of  
10 counsel, the court granted cross-defendant Diablo Contractors Inc.'s motion for partial directed  
11 verdict on its damages which the Court ruled were established in the amount of \$9,828,745.00  
12 should the jury find a breach of the Proposal by Fidelity and Deposit Company of Maryland  
13 occurred on or before January 1, 2012, and the jury was duly instructed by the Court and the  
14 cause was submitted to the jury with directions to return a verdict on special issues. The jury  
15 deliberated and thereafter returned into court with its verdict as follows:

16  
17 Breach of Agreement of Indemnity by Diablo Contractors, Inc., Arthur Brandt and  
18 Deborah Brandt.

19 QUESTION No. 1: Did Fidelity and Deposit Company of Maryland incur any loss on the  
20 bonds it issued to Diablo Contractors for which Diablo Contractors, Inc., Arthur Brandt  
21 and Deborah Brandt agreed to indemnity and hold Fidelity and Deposit Company of  
22 Maryland harmless?

23 ANSWER: Yes.

24 QUESTION 2: Did Fidelity and Deposit Company of Maryland do all or substantially all  
25 of the significant things that the Agreement of Indemnity required it to do?

26 Answer: Yes.

27 QUESTION 3: Did Diablo Contractors, Inc., fulfill all the requirements?  
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ANSWER: No.

QUESTION 4: Did Diablo Contractors, Inc., Arthur Brandt and Deborah Brandt, failed to do something that the Agreement of Indemnity required them to do?

ANSWER: Yes.

QUESTION NO. 5: Was Fidelity and Deposit company of Maryland harmed by Diablo Contractors, Inc., Arthur Brandt and Deborah Brandt breach of the agreement?

ANSWER: Yes.

Breach of Financing and Collateral Agreement by Diablo Contractors, Inc., Arthur Brandt and Deborah Brandt.

QUESTION 1: Did Fidelity and Deposit Company of Maryland incur any loss on the bonds it issued to Diablo Contractors, Inc., for which Diablo Contractors, Inc., Arthur Brandt and Deborah Brandt, agreed to indemnify and hold Fidelity and Deposit Company of Maryland harmless?

ANSWER: Yes.

QUESTION 2: Did Fidelity and Deposit Company of Maryland do all or substantially all of the significant things that the Financing and Collateral Agreement required it to do?

ANSWER: Yes.

QUESTION 3: Did Diablo Contractors, Inc., fulfill all the requirements?

ANSWER: No.

QUESTION 4: Did Diablo Contractors, Inc., Arthur Brandt and Deborah Brandt, fail to do something that the Financing and Collateral Agreement required them to do?

ANSWER: Yes.

QUESTION 5: Was Fidelity and Deposit Company of Maryland harmed by Diablo Contractors, Inc.'s, Arthur Brandt's and Deborah Brandt's breach of the Financing and Collateral Agreement?

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ANSWER: Yes.

Breach of Assignment Agreement by Diablo Contractors, Inc., Arthur Brandt and  
Deborah Brandt.

QUESTION 1: Did Fidelity and Deposit Company of Maryland incur any loss on the  
bonds it issued to Diablo Contractors, Inc., for which Diablo Contractors, Inc., Arthur  
Brandt and Deborah Brandt, agreed to identify and hold Fidelity and Deposit Company  
of Maryland harmless?

ANSWER: Yes.

QUESTION 2: Did Fidelity and Deposit Company of Maryland do all or substantially all  
of the significant things that the Assignment Agreement required it to do?

ANSWER: Yes.

QUESTION 3: Did Diablo Contractors, Inc., fulfill all of the requirements?

ANSWER: No.

QUESTION 4: Did Diablo Contractors, Inc., Arthur Brandt and Deborah Brandt fail to  
do something that the Assignment Agreement required them to do?

ANSWER: Yes.

QUESTION 5: Was Fidelity and Deposit Company of Maryland harmed by Diablo  
Contractors, Inc.'s, Arthur Brandt's and Deborah Brandt's breach of the Assignment  
Agreement?

ANSWER: Yes.

Diablo Contractos Inc.'s, Arthur and Deborah Brandt's affirmative defenses to  
Financing and Collateral Agreement and Assignment Agreement.

QUESTION 1: Under the terms of the Financing and Collateral Agreement and  
Assignment Agreement, did Fidelity and Deposit Company of Maryland agree to perform  
any new obligation in favor of Diablo Contractors, Inc., Arthur Brandt and Deborah, that

1 Fidelity and Deposit Company of Maryland did not already have to perform for them  
2 under a preexisting contractual duty or legal duty or good faith? Any good faith cannot  
3 be inconsistent with the terms of the contract at the time the Financing and Collateral  
4 Agreement and Assignment Agreement were signed.

5 ANSWER: No.

6 QUESTION 2: Was Fidelity and Deposit Company of Maryland in a relationship of trust  
7 and confidence with Diablo Contractors, Corporation, Arthur Brandt and Deborah Brandt,  
8 and/or did Fidelity and Deposit Company of Maryland use Diablo Contractors, Inc.'s,  
9 Arthur Brandt's and Deborah Brandt's needs and distress to get them to sign the Financing  
10 and Collateral Agreement and the Assignment Agreement without which Diablo  
11 Contractors, Inc., Arthur Brandt and Deborah Brandt would have not have otherwise  
12 consented to the Financing and Collateral Agreement and Assignment Agreement?

13 ANSWER: Yes.

14 QUESTION 3: Did Fidelity and Deposit Company of Maryland use a wrongful act or  
15 wrongful threat as defined in the jury instructions towards Diablo Contractors Inc., Arthur  
16 Brandt and Deborah Brandt to pressure them to sign the Financing and Collateral  
17 Agreement and Assignment Agreement such that a reasonable person in Diablo  
18 Contractors, Inc.'s, Arthur Brandt's and Deborah Brandt's position would have believed  
19 there was no reasonable alternative but to consent to the Financing and Collateral  
20 Agreement and Assignment Agreement without which Diablo Contractors, Inc., Arthur  
21 Brandt and Deborah Brandt, would not have consented to the Financing and Collateral  
22 Agreement and Assignment Agreement?

23 ANSWER: No.

24  
25 Breach of Proposal by Fidelity and Deposit Company of Maryland.

26 QUESTION 1: Was the proposal an offer of contract from Fidelity and Deposit Company  
27 of Maryland to Diablo Contractors, Inc. and did Diablo Contractors, Inc. accept that offer?  
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ANSWER: Yes.

QUESTION 2: Was the proposal an offer of the surety from Fidelity and Deposit Company of Maryland to Diablo Contractors, Inc. and did Diablo Contractors, Inc. act upon it?

ANSWER: Yes.

QUESTION 3: Did Diablo Contractors, Inc. do all or substantially all of the significant conditions that the proposal required it to do or were they prevented from doing all or substantially all of those significant conditions by the actions or inactions of Fidelity and Deposit Company of Maryland?

ANSWER: Yes.

QUESTION 4: Were there required conditions agreed to in the proposal that did not occur but were excused or waived by Fidelity and Deposit Company of Maryland?

ANSWER: Yes.

QUESTION 5: Did all the conditions required by the proposal of Fidelity and Deposit Company of Maryland occur?

ANSWER: Yes.

QUESTION 6: Did Fidelity and Deposit Company of Maryland fail to do something that the proposal required it to do?

ANSWER: No.

Breach of Covenant of Good Faith and Fair Dealing in the Proposal by Fidelity and Deposit Company of Maryland.

QUESTION 1: Was the proposal an offer of contract from Fidelity and Deposit Company of Maryland to Diablo Contractors, Inc. and did Diablo Contractors, Inc. accept that offer?

ANSWER: Yes.

QUESTION 2: Was the proposal an offer of suretyship from Fidelity and Deposit Company of Maryland to Diablo Contractors, Inc. and did Diablo Contractors, Inc. act

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upon it?

ANSWER: Yes.

QUESTION No. 3: Did Diablo Contractors, Inc. do all or substantially all of the significant conditions that the proposal required it to do or were they prevented from doing all or substantially all of those significant conditions by the actions or inactions of Fidelity and Deposit Company of Maryland?

ANSWER: Yes.

QUESTION 4: Were there required conditions agreed to in the proposal that did not occur but were excused or waived by Fidelity and Deposit Company?

ANSWER: Yes.

QUESTION 5: Did all the conditions required by the proposal of Fidelity and Deposit Company of Maryland occur?

ANSWER: No.

QUESTION 6: Did Fidelity and Deposit Company of Maryland unfairly interfere with Diablo Contractors, Inc.'s rights to receive the benefits of the contract?

ANSWER: Yes.

QUESTION 7: Was Diablo Contractors harmed by Fidelity and Deposit Company of Maryland's breach of the implied covenant of good faith and fair dealing in the proposal?

ANSWER: Yes.

QUESTION 8: Did the breach occur no later than January 1<sup>st</sup>, 2012?

ANSWER: Yes.

Mitigation Offsets.

QUESTION 1: Did Diablo Contractors, Inc., Arthur Brandt and Deborah Brandt have any valid offset related to the loss of the \$7,311,332.99?

ANSWER: Yes.

If you answered yes, what is the total amount of any valid offset?

1 ANSWER: \$550,000.00.

2 QUESTION 2: Did Fidelity and Deposit Company of Maryland mitigate its losses?

3 ANSWER: Yes.

4 QUESTION 3: If you found the breach of the proposal or breach of implied duty of good  
5 faith, does Fidelity and Deposit Company of Maryland have any valid offset to reduce  
6 Diablo Contractor, Inc.'s losses related to the proposal?

7 ANSWER: No.

8 QUESTION 4: Did Diablo Contractors, Inc. mitigate its losses?

9 ANSWER: Yes.

10

11 It appearing by reason of said special verdict that Cross-Complainant Diablo Contractors,  
12 Inc. is entitled to judgment against Cross-Defendant Fidelity and Deposit Company of Maryland.

13

14 NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that said Cross-  
15 Complainant Diablo Contractors, Inc. have and recover from said Cross-Defendant Fidelity and  
16 Deposit Company of Maryland the sum of \$3,067,412.01 with interest thereon at the rate of ten  
17 percent (10%) per annum from the date of the entry of this judgment until paid, together with  
18 costs and disbursements of \$128,981.00 and reasonable attorney's fees of \$1,037,746.00 with  
19 interest thereon at the rate of ten percent (10%) per annum from the date of the entry of this  
20 judgment until paid. Cross-Defendant Fidelity and Deposit Company of Maryland shall also  
21 cause to be removed any Lis Pendens and/or deeds of trust recorded against any real property  
22 owned by Diablo Contractors, Inc., Arthur Brandt and Deborah Brandt or the Brandt 2001 Living  
Trust.

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24 DATED: December 19, 2022

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By: 

Hon. Danielle Douglas



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**PROOF OF SERVICE**

**Name of Action: Fidelity and Deposit v. Diablo Contractors et al.  
Solano Superior Court and Action No: MSC 19-01396**

I declare that I am over the age of eighteen years and not a party to this action or proceeding. My business address is 19201 Sonoma Hwy., Suite 106, Sonoma, CA 95476. On December 15, 2022, I caused the following document(s) to be served:

**UNSIGNED – JUDGMENT ON JURY VERDICT**

By placing a true copy of the document(s) listed above, enclosed in a sealed envelope, addressed as set forth below, for collection and mailing on the date and at the business address shown above following our ordinary business practices. 'I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the United States Postal Service. On the same day that a sealed envelope is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

by placing a true copy of the document(s) listed above, in a box or other facility regularly maintained by UPS Ground, an express service carrier, or delivered to a courier or driver authorized by the express service carrier to receive documents, in an envelope designated by the express service carrier, with delivery fees paid or provided for, addressed as set forth below.

I electronically served the above referenced document(s) through E-mail. E-service in this action was completed on all parties listed on the service list with E-Service.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 15, 2022 at Sonoma, California.

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Steven B. Copeland, Esq.

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**SERVICE LIST**

**David Veis, Esq.  
Clyde & Co.  
355 S. Grand Ave., 14<sup>th</sup> Floor  
Los Angeles, CA 90071**