Diamond Ridge Homeowners Association v. Diamond Ridge Estates Investments

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Jensen and Judy Chen, Richard A. and Peggy Eckroth, Hoa Quynh Duong, Boh Umir Marik, and Anna Slin Tak (collectively Homeowners) appeal the court's grant of a motion for judgment of non-suit brought by Jeld-Wen, Inc., dba Wenco (Wenco). Homeowners contend that, as part of their good faith settlement with the developer, the settlement proceeds did not need to be allocated to the categories of damage caused by subcontractors and suppliers in order to preserve the developer's right to equitable indemnity from them. We agree and reverse the judgment of non-suit.

FACTUAL AND PROCEDURAL HISTORY

Homeowners owned single-family homes in the Diamond Ridge Estates development in Dana Point. The Diamond Ridge Homeowner Association and several individual homeowners brought two different construction defect actions that were later consolidated against Diamond Ridge Estates Investments and others (collectively Diamond Ridge). The Homeowners did not sue any subcontractors or suppliers, nor did they settle with any of them.

Homeowners settled with Diamond Ridge for $375,000, which represented the balance of available insurance, as Diamond Ridge's assets were insufficient to satisfy any judgment or settlement. Additionally, Diamond Ridge assigned its contractual and indemnity rights against subcontractors and others to Homeowners and agreed to file a cross-complaint against those others on behalf of the Homeowners. There was no allocation of the $375,000 settlement to any specific categories of damages. On December 21, 1995, the court approved the settlement as a good faith settlement.

On December 29, 1995, Diamond Ridge filed a cross-complaint against various subcontractors and suppliers, including Wenco. Wenco is a window manufacturer who supplied but did not install windows for the Diamond Ridge Estates development. On July 14, 1997, Homeowners noticed the assignment of the cross-complaint to them.

On March 31, 1999, the court granted Wenco's unopposed motions to limit recovery to the $375,000 Diamond Ridge paid in settlement and to further reduce the recovery by the payments of those

cross-defendants that settled. The court also granted other in limine motions.

On April 5, 1999, the court heard argument on Wenco's motion to bifurcate the trial to first determine the allocation of the Diamond Ridge settlement to specific categories of damages. The court invited Wenco to make an offer of proof that Homeowners' evidence was insufficient as a matter of law to prove a specific allocation of damages. Wenco contended that because there was no allocation of the settlement, the entire settlement must be allocated to defects other than windows. Wenco relied upon Dillingham Construction, N.A., Inc. v. Nadel Partnership, Inc. (1998) 64 Cal.App.4th 264, 287 (Dillingham), which provides that an unallocated settlement must be allocated in a way most favorable to the non-settling parties. Homeowners admitted the settlement with Diamond Ridge was not allocated to specific categories of damage. Homeowners argued they would offer evidence at trial to allow the trier of fact to allocate the settlement, which would consist of estimates of the cost to repair the homes, which were prepared in 1999, and an architectural expert who would testify that those repair estimates were reasonable and accurately represented the amount that would have been allocated to windows had there been an allocation at the time of settlement. The parties stipulated these would be the only facts Homeowners would offer to prove an allocation of the settlement. Based upon the stipulation, the trial court, following Dillingham, granted a non-suit holding that as a matter of law Homeowners could not prove Wenco was liable for any damages suffered by Diamond Ridge because there was no good faith allocation of the settlement.

On May 20, 1999, the court entered judgment of non-suit. On July 6, 1999, the Homeowners' motion for a new trial was denied.

DISCUSSION

We review de novo the trial court's grant of a non-suit. (Saunders v. Taylor (1996) 42 Cal.App.4th 1538, 1541-1542.) To sustain the grant of a non-suit, the plaintiff's evidence must be insufficient to permit a jury to find for the plaintiff as a matter of law. (Nally v. Grace Community Church (1988) 47 Cal.3d 278, 291.) In determining whether plaintiff's evidence is insufficient, we accept plaintiff's evidence as true, without weighing or judging credibility, and make every legitimate inference from that evidence. (Ibid.) "We will not sustain the judgment ' "unless interpreting the evidence most favorably to plaintiff's case and most strongly against the defendant and resolving all presumptions, inferences and doubts in favor of the plaintiff a judgment for the defendant is required as a matter of law." ' [Citation.]" (Ibid.)

A concurrent tortfeasor like Diamond Ridge may assign its claim for equitable indemnification against other concurrent tortfeasors. (Bush v. Superior Court (1992) 10 Cal.App.4th 1374, 1380.) In such an assignment, the assignee, in this case the Homeowners, do not sue in their own right but stand in the shoes of the assignor, Diamond Ridge. (Ibid.)

"The right to equitable indemnity stems from the principle that one who has been compelled to pay

damages which ought to have been paid by another wrongdoer may recover from that wrongdoer." (Bush v. Superior Court, supra, 10 Cal.App.4th at p. 1380.) In order to recover, the indemnitee (Homeowners as assignees of Diamond Ridge) must show fault on the part of the indemnitor (Wenco) and resulting damage to the Homeowners for which Wenco should be liable. (Gouvis Engineering v. Superior Court (1995) 37 Cal.App.4th 642, 647-648 (Gouvis).)

In this case, the court, following Dillingham, decided as a matter of law the Homeowners could not prove Diamond Ridge was damaged by Wenco because the good faith settlement between Diamond Ridge and Homeowners was not allocated to specific categories of damage. Unlike the trial court, we decline to follow Dillingham and we continue to follow Gouvis, notwithstanding the Dillingham court's criticism of this court's opinion in Gouvis. (Dillingham, supra, 64 Cal.App.4th at pp. 282-285.)

In Gouvis, we held the allocation of a good faith settlement is admissible in an action for indemnification, but has no precedential value. (Gouvis, supra, 37 Cal.App.4th at p. 651.) We reasoned as follows: "We conclude, however, that the allocation and indeed the valuation put on the settlement by the settling parties and approved by the trial judge as 'good faith' have no binding or res judicata effect as to [indemnitor] in terms of the subsequent indemnity action. In order for a prior judgment to be conclusive as to subsequent proceedings, the issue first decided must be identical to the one subsequently presented. [Citation.] In order that a party be bound by a prior adjudication, it must be shown that the prior procedure afforded a full and fair opportunity to litigate the issue. [Citation.] Res judicata principles should not apply where the 'scope of substantive inquiry and the potential for development of evidence are much more restricted than the corresponding opportunity afforded in a court of general jurisdiction . . . .' [Citation.]

"In this case it is true that [indemnitor] was a party to the litigation, and also that [indemnitor] was permitted to and did participate in the good faith hearing. As we have noted above, however, the procedures utilized at the hearing are those of motion practice (reliance upon affidavits) rather than the ordinary rules of evidence. Not only is the hearing abbreviated, but the objective of it is not precise or accurate determination of fact. As we stated in Regan Roofing, '. . . the inquiry at the good faith settlement stage is not the same as the inquiry at trial, where complete precision of allocation could presumably be achieved.' (Regan Roofing v. Superior Court (1994) 21 Cal.App.4th 1685, 1704.) Further, we note that the burdens of proof in the hearings are different. At the good faith hearing it was [indemnitor's] burden, as the party opposing the finding of good faith, to show lack thereof ([Code Civ. Proc.,] § 877.6, subd. (d)). At the trial of [indemnitee's] indemnity action against [indemnitor] the burden of proof will be upon [indemnitee] to prove the amount that has been paid by virtue of injury caused by [indemnitor's] fault. [Citation.]

"We therefore conclude that the determination of the value of settlement and whatever underlying allocations may be deemed to have been approved at the good faith hearing have no precedential value in terms of the subsequent action by [indemnitor] against [indemnitee] for indemnification." (Gouvis, supra, 37 Cal.App.4th at pp. 650-651.)

Because Gouvis holds that the parties in an indemnity action are not bound by the allocation made in a good faith settlement, there is no logical reason to impose a requirement that the parties make an allocation of their damages in a good faith settlement in order to proceed with an indemnity action. Homeowners should have the same opportunity to prove the amount Diamond Ridge paid by virtue of the defective windows, as they would have had if an allocation had been made in their good faith settlement.

DISPOSITION

The judgment is reversed. Respondent to pay costs on appeal.

WE CONCUR:

HUFFMAN, Acting P. J.

McDONALD, J.