SUPREME COURT OF COLORADO

Constable v. Northglenn, LLC

248 P.3d 714 (Colo. 2011) · No. 09SC1063 · Decided March 21, 2011

SUMMARY

The Supreme Court of Colorado held that a commercial lease's indemnity provision clearly and unequivocally required the tenant to indemnify the landlord for injuries caused by the landlord's own simple negligence. The court also held that indemnification for liability arising from breach of a nondelegable statutory duty does not itself delegate or eliminate that duty and therefore did not violate public policy. The court affirmed the court of appeals' judgment.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Coats
JURISDICTION	Colorado
DECIDED	March 21, 2011
DOCKET	09SC1063
DISPOSITION	affirmed
PROCEDURAL POSTURE	The petitioner sought review of the Colorado Court of Appeals' reversal of a district court order granting summary judgment in her favor on the enforceability of a lease indemnity provision.
STANDARD OF REVIEW	The court reviewed the legal determination concerning the enforceability and public-policy validity of the indemnity provision de novo; the case arose from summary judgment.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Colorado.
PARTIES	Carol Constable, f/k/a Carol Graham, d/b/a Flowers n' Roses v. Northglenn, LLC, Jaylon Inc.

TOPICS

contracts · contract interpretation · premises liability · landlord tenant · commercial litigation

PRACTICE AREAS

contracts · premises liability · landlord tenant · commercial litigation · real estate

QUESTIONS PRESENTED

1. Whether the lease's indemnity provision clearly and unequivocally required Constable to indemnify Northglenn for liability arising from Northglenn's own simple negligence.
2. Whether an indemnity agreement covering liability for breach of a nondelegable statutory duty violates public policy.
3. Whether the lease's allocation of responsibility for maintaining common areas rendered the indemnity provision unenforceable because Constable lacked exclusive control over those areas.

HOLDINGS

1. A commercial lease indemnity provision that broadly covers any and all liability and expressly excludes only the indemnitee's gross negligence and intentional torts clearly and unequivocally requires indemnity for the indemnitee's own simple negligence.
2. An agreement to indemnify a party for financial liability resulting from breach of a nondelegable duty does not itself delegate or relieve that party of the underlying duty and therefore does not violate public policy merely because the duty is nondelegable.
3. The lease did not purport to relieve Northglenn of its maintenance duty or prevent Constable from inspecting or arranging maintenance of the common areas; therefore, the maintenance provisions did not render the indemnity clause void as against public policy.

KEY QUOTATIONS

> *"An agreement to indemnify against liability for the breach of a duty is clearly not the equivalent of delegating that duty to another."* (718)

> *"An agreement to indemnify in no way purports to relieve the indemnitee of a duty owed to someone else, whether that duty is considered delegable or not."* (718)

FACTUAL BACKGROUND

Northglenn owned a shopping center in which Constable leased commercial space and operated a flower shop. After a woman slipped on ice in the shopping-center parking lot, Northglenn sought indemnity from Constable under a lease provision covering bodily injury and property damage occurring in the premises or elsewhere in the shopping center when connected to visits to Constable's shop or her business. The provision excluded Northglenn's gross negligence and intentional torts, while a separate lease provision required Northglenn to maintain common areas, including parking areas, in reasonably good order and condition.

PROCEDURAL HISTORY

Northglenn, the shopping-center owner, brought a third-party indemnity claim against Constable after a customer allegedly slipped on ice in the shopping-center parking lot. The district court granted Constable summary judgment under C.R.C.P. 56(h), ruling that the lease indemnity provision was unenforceable as against public policy. The court of appeals reversed, and the Colorado Supreme Court affirmed the appellate judgment.

DISPOSITION

affirmed

CASES CITED

- Alzado v. Blinder, Robinson & Co., 752 P.2d 544, 553 (Colo. 1988)
- Bohrer v. Church Mutual Insurance Co., 965 P.2d 1258, 1262 (Colo. 1998)
- Equitex, Inc. v. Ungar, 60 P.3d 746, 750 (Colo. App. 2002)
- Public Service Co. v. United Cable Television, Inc., 829 P.2d 1280, 1283-1285 (Colo. 1992)
- United States v. Seckinger, 397 U.S. 203, 211 (1970)
- Williams v. White Mountain Construction Co., 749 P.2d 423, 426 (Colo. 1988)
- Schneiker v. Gordon, 732 P.2d 603, 610 & n. 4 (Colo. 1987)
- Glaspell v. Ohio Edison Co., 29 Ohio St. 3d 44, 505 N.E.2d 264 (1987)
- Boulder Plaza Residential, LLC v. Summit Flooring, LLC, 198 P.3d 1217, 1221 (Colo. App. 2008)
- Heil Valley Ranch, Inc. v. Simkin, 784 P.2d 781, 785 (Colo. 1989)
- Chadwick v. Colt Ross Outfitters, Inc., 100 P.3d 465, 467-468 (Colo. 2004)
- Shelter Mutual Insurance Co. v. Mid-Century Insurance Co., 246 P.3d 651 (Colo. 2011)
- Country Mutual Insurance Co. v. Hertz Corp., 981 P.2d 1118, 1121 (Colo. App. 1999)
- Springer v. City and County of Denver, 13 P.3d 794, 804 (Colo. 2000)
- Pierson v. Black Canyon Aggregates, Inc., 48 P.3d 1215, 1219-1220 (Colo. 2002)