SUPREME COURT OF NEW HAMPSHIRE

Gray v. Leisure Life Industries

165 N.H. 324 (2013) · Decided October 1, 2013

SUMMARY

The New Hampshire Supreme Court considered whether a manufacturer was required to indemnify a retailer that settled claims brought by an injured consumer. The court held that common-law indemnity was unavailable because the retailer’s settlement did not extinguish the manufacturer’s potential liability to the plaintiffs. The court also reversed the award of attorney’s fees and costs and did not reach the successor-liability issue.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Bassett, J.; Dalianis, C.J.; Conboy, J.; Lynn, J.
JURISDICTION	New Hampshire
DECIDED	October 1, 2013
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendants appealed orders denying their motion for summary judgment, granting the plaintiffs' cross-motion for final judgment on indemnity, awarding indemnity damages and attorney's fees and costs, and denying summary judgment on successor liability.
STANDARD OF REVIEW	Summary judgment rulings are reviewed by considering the evidence in the light most favorable to the nonmoving party and determining whether a genuine issue of material fact exists and whether the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published New Hampshire Supreme Court opinion
PARTIES	Leisure Life Industries a/k/a Leisure Life Industries, Inc. a/k/a Leisure Life Industries, LLC, Knothe Apparel Group, Inc. v. JoAnne Gray, Jeffrey Gray, Jeffrey J. Gray, Jonathan Gray

TOPICS

remedies · torts · summary judgment · appellate procedure · damages

PRACTICE AREAS

torts remedies civil procedure appellate procedure

QUESTIONS PRESENTED

1. Whether Orvis's settlement with the plaintiffs, which released Orvis but did not extinguish the defendants' potential liability, supported a claim for noncontractual indemnity against the defendants.
2. Whether the plaintiffs were entitled to recover Orvis's attorney's fees and costs incurred in defending the underlying action.
3. Whether the trial court erred in ruling on successor liability.

HOLDINGS

1. A party seeking noncontractual indemnity must first extinguish the alleged indemnitor's liability to the underlying plaintiff through a settlement or satisfaction of judgment. Because Orvis's settlement released only Orvis and left the defendants potentially liable, the plaintiffs, as Orvis's assignees, could not recover indemnity.
2. The plaintiffs were not entitled to recover Orvis's attorney's fees and costs because the trial court's fee award was premised on the existence of an indemnity obligation, and no indemnity obligation existed.
3. The court did not reach the defendants' successor-liability argument because reversal of the indemnity judgment made resolution of that issue unnecessary.

KEY QUOTATIONS

> *"A person who, in whole or in part, has discharged a duty which is owed by him but which as between himself and another should have been discharged by the other, is entitled to indemnity from the other, unless the payor is barred by the wrongful nature of his conduct."* (at 329)

> *"Thus, unless otherwise provided by contract, in order to seek indemnity, "an indemnitee must extinguish the liability of the indemnitor... either by a settlement with the plaintiff that by its terms or by application of law discharges the indemnitor from liability or by satisfaction of judgment that by operation of law discharges the indemnitor from liability.""* (at 329-330)

> *"No case has permitted noncontractual indemnity against a person still liable to the plaintiff."* (at 330)

FACTUAL BACKGROUND

On December 3, 1996, Jeffrey Gray purchased a robe from Orvis for JoAnne Gray; Orvis had purchased it from Leisure Life. On January 9, 2005, the robe caught fire while JoAnne Gray was adding firewood to a wood stove, causing severe burns and extensive injuries. Orvis later settled the claims against it for $1 million and assigned its indemnity rights to the plaintiffs, but the settlement did not release the defendants, who remained potentially liable on direct-liability and strict-liability theories and proceeded to trial.

PROCEDURAL HISTORY

The plaintiffs sued the defendants and other parties after JoAnne Gray was severely burned when a robe manufactured by Leisure Life caught fire. Orvis, a retailer and co-defendant, asserted third-party indemnity and contribution claims against the defendants and later settled with the plaintiffs, assigning its indemnity rights to them. After a jury found for the defendants on the underlying liability claims, the trial court nevertheless entered judgment for the plaintiffs on indemnity and awarded $1 million plus $298,811.73 in attorney's fees and costs. The Supreme Court of New Hampshire reversed the indemnity and fee awards and did not reach successor liability.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The trial court's indemnity judgment and award of attorney's fees and costs are reversed; the defendants were entitled to judgment as a matter of law on the indemnity claim. The court did not address successor liability.

CASES CITED

- Coco v. Jaskunas, 159 N.H. 515, 518-519 (2009)
- Hamilton v. Volkswagen of America, 125 N.H. 561, 563-564 (1984)
- Greenland v. Ford Motor Co., 115 N.H. 564, 571 (1975)
- Morrissette v. Sears, Roebuck & Co., 114 N.H. 384, 387 (1974)
- Jaswell Drill Corp. v. General Motors Corp., 129 N.H. 341, 346 (1987)
- Kessler v. Gleich, 161 N.H. 104, 108 (2010)
- Pulte v. Parex, 942 A.2d 722, 730-731 (Md. 2008)
- Prince v. Pacific Gas & Electric Co., 202 P.3d 1115, 1120, 1124 (Cal. 2009)
- District of Columbia v. Washington Hospital Center, 722 A.2d 332, 339, 341-342 (D.C. 1998)
- Oates v. Diamond Shamrock Corp., 503 N.E.2d 58, 59 (Mass. App. Ct. 1987)
- Stanley v. Kelley, 90 N.H. 210, 214 (1939)
- McCullough v. Company, 90 N.H. 409, 412 (1939)
- Gagne v. Greenhouses, 99 N.H. 292, 293-294 (1954)
- AVCP Regional Housing Authority v. R.A. Vranckaert, 47 P.3d 650, 658 (Alaska 2002)
- DeBenedetto v. CLD Consulting Engineers, 153 N.H. 793, 798 (2006)
- Ocasio v. Federal Express Corp., 162 N.H. 436, 446 (2011)
- United States Brass Corp. v. Dormont Manufacturing Co., 242 Fed. Appx. 575, 579 (10th Cir. 2007)