

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Lotspeich Co. v. Neogard Corp.

416 So. 2d 1163 (Fla. 3d DCA 1982) · No. No. 81-882 · Decided June 15, 1982

SUMMARY

The Florida Third District Court of Appeal held that a trial court could not direct a verdict against a contribution claim based on displeasure with the terms of a good-faith settlement where the parties had agreed to its reasonableness. The court also held that the parties' pretrial stipulations were binding and that conflicting evidence supporting the contribution claim required submission to the jury. The judgment was reversed and the case remanded for a new trial.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Schwartz; Nesbitt; Ferguson
JURISDICTION	Florida
DECIDED	June 15, 1982
DOCKET	No. 81-882
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Lotspeich appealed after the trial court directed a verdict for the third-party defendant in an action for contribution between joint tort-feasors.
STANDARD OF REVIEW	Whether the evidence was sufficient to submit the issues to the jury and whether the trial court abused its discretion in refusing to reopen the case to admit the release document.
PRECEDENTIAL VALUE	Published opinion; precedential value under Florida appellate practice.
PARTIES	Lotspeich Company v. Neogard Corporation

TOPICS

- torts
- motion for directed verdict
- contracts
- evidence
- appellate procedure

PRACTICE AREAS

- torts
- contracts
- civil procedure
- evidence
- appellate procedure

QUESTIONS PRESENTED

1. Whether a trial court may direct a verdict against a third-party plaintiff in a contribution action based on the court's disapproval of the terms of a good-faith settlement when the parties agreed that the settlement was reasonable.
2. Whether the parties' stipulation that the settlement would not be an issue in the contribution action was binding on the court and precluded requiring testimony from the tort victim about the settlement.
3. Whether the evidence was sufficient to require submission of the contribution issues to the jury.
4. Whether refusing to reopen the case to admit the original release document constituted an abuse of discretion under the circumstances.

HOLDINGS

1. A trial court's personal dislike of the terms of a good-faith settlement cannot justify directing a verdict for the third-party defendant when the settlement's reasonableness was agreed to by all parties.
2. A stipulation that a settlement occurred, fixed damages at \$600,000, and would not be an issue in the contribution action was binding on the parties and the court and had to be strictly enforced.
3. Where evidence, even if conflicting or susceptible to different reasonable inferences, tends to prove the third-party plaintiff's case, the issues must be submitted to the jury rather than resolved by directed verdict.
4. On the facts presented, refusing to reopen the case to admit the original release document was an abuse of discretion.

KEY QUOTATIONS

"In an action for contribution against a joint tort-feasor the trial court's personal dislike for the terms of a good faith settlement between the tort victim and defendant/third-party plaintiff could be no basis for directing a verdict for the third-party defendant where the reasonableness of the settlement was agreed to by all the parties." (1164)

"Settlement agreements are highly favored in the law and will be upheld whenever possible because they are means of amicably resolving doubts and preventing lawsuits" (1165)

"Pretrial stipulations prescribing the issues on which a case is to be tried are binding upon the parties and the court, and should be strictly enforced." (1165)

"There is evidence, though conflicting, or susceptible to different reasonable inferences, tending to prove third-party plaintiff's case, therefore the issues should have been submitted to the jury." (1166)

FACTUAL BACKGROUND

The tort victim and the defendant/third-party plaintiff entered into a settlement fixing damages at \$600,000, with \$500,000 payable upon execution of release documents and \$100,000 payable after trial on the contribution claim so that the victim would remain available to testify. The parties stipulated on the record that the settlement had occurred, that its amount was reasonable, and that the settlement would not be an issue in the contribution action. The trial court nevertheless directed a verdict, apparently because it disapproved of the settlement terms

and because the release document had not been introduced. The record contained conflicting evidence and evidence susceptible to different reasonable inferences concerning the third-party plaintiff's contribution claim.

PROCEDURAL HISTORY

The trial court directed a verdict against the third-party plaintiff after expressing disapproval of the terms of a settlement between the tort victim and the defendant/third-party plaintiff. The court also refused to reopen the case to admit the original release document. The Third District Court of Appeal reversed and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded for a new trial, with the settlement stipulation enforced and the contribution issues submitted to the jury if supported by the evidence.

CASES CITED

- Pearson v. Ecological Science Corp., 522 F.2d 171 (5th Cir. 1975), reh'g denied, 525 F.2d 1407 (5th Cir. 1975), cert. denied in Skydell v. Ecological Science Corp., 425 U.S. 912 (1976)
- Coe v. Deiner, 159 So. 2d 269 (Fla. 2d DCA 1964)
- Russell v. Shelby Mutual Insurance Co., 128 So. 2d 161 (Fla. 3d DCA 1961), cert. disch., 137 So. 2d 219 (1962)
- Gunn Plumbing, Inc. v. Dania Bank, 252 So. 2d 1 (Fla. 1971)
- Hendricks v. Dailey, 208 So. 2d 101 (Fla. 1968)
- Dandashi v. Fine, 397 So. 2d 442 (Fla. 3d DCA 1981)
- Behar v. Root, 393 So. 2d 1169 (Fla. 3d DCA 1981)
- Laird v. Potter, 367 So. 2d 642 (Fla. 3d DCA 1979), cert. den., 378 So. 2d 347 (Fla. 1967)
- Bielely v. Bielely, 398 So. 2d 932 (Fla. 3d DCA 1981)
- Akins v. Taylor, 314 So. 2d 13 (Fla. 1st DCA 1975)
- Woods and G.E.I.C.O. v. Withrow, 413 So. 2d 1179 (Fla. 1982)

OPINION

PER CURIAM.

416 So.2d 1163 (1982) LOTSPEICH COMPANY, a Florida Corporation, Appellant, v. NEOGARD CORPORATION, Appellee. No. 81-882. District Court of Appeal of Florida, Third District. June 15, 1982. Rehearing Denied August 4, 1982. *1164 Wicker, Smith, Blomqvist, Davant, Tutan, O'Hara & McCoy and Richard A. Sherman, Miami, for appellant. Fowler, White, Burnett, Hurley, Banick & Strickroot and Michael J. Murphy, Miami, for appellee.

Before SCHWARTZ, NESBITT and FERGUSON, JJ. PER CURIAM. In an action for contribution against a joint tort-feasor the trial court's personal dislike for the terms of a good faith settlement between the tort victim and defendant/third-party plaintiff could be no basis for directing a verdict for the third-party defendant where the reasonableness of the settlement was agreed to by all the parties.[1] Settlement agreements are *1165 highly favored in the law and will be upheld whenever possible because they are means of amicably resolving doubts and preventing lawsuits, *Pearson v. Ecological Science Corp.*, 522 F.2d 171 (5th Cir.1975), reh. denied, 525 F.2d 1407 (5th Cir.1975), cert. denied in *Skydell v. Ecological Science Corp.*, 425 U.S. 912, 96 S.Ct.

1508, 47 L.Ed.2d 762 (1976); *Coe v. Deiner*, 159 So.2d 269 (Fla. 2d DCA 1964); *Russell v. Shelby Mutual Insurance Company*, 128 So.2d 161 (Fla. 3d DCA 1961), cert. disch., 137 So.2d 219 (1962), and should not be invalidated or, as here, collaterally defeated by the court, unless there is (1) failure of the agreement to satisfy required elements for a contract, (2) illegality, (3) fraud, (4) duress, (5) undue influence or, (6) mistake, 15 Am.Jur., *Compromise and Settlement*, § 27, none of which are alleged or shown to be present in this case.

Where the parties to the third-party litigation stipulated on the record that a settlement had been effected with the tort victim, fixing the amount of damages at \$600,000.00, and that the settlement would not be an issue in the third-party action for contribution, it was error to direct a verdict on grounds that the third-party plaintiff failed to produce the tort victim for testimony regarding the terms or effect of the settlement.[2] Pretrial stipulations prescribing the issues on which a case is to be tried are binding upon the parties and the court, and should be strictly enforced.

Gunn Plumbing, Inc. v. Dania Bank, 252 So.2d 1 (Fla. 1971).[3] Appellee asserts that the trial court can be affirmed for the reason that there was no evidence presented upon which a jury could have returned a verdict for the appellant. Upon examination of the record we must disagree. There is evidence, though conflicting, or susceptible to different reasonable inferences, tending to prove *1166 third-party plaintiff's case, therefore the issues should have been submitted to the jury.

Hendricks v. Dailey, 208 So.2d 101 (Fla. 1968); *Dandashi v. Fine*, 397 So.2d 442 (Fla. 3d DCA 1981); *Behar v. Root*, 393 So.2d 1169 (Fla. 3d DCA 1981); *Laird v. Potter*, 367 So.2d 642 (Fla. 3d DCA 1979), cert. den., 378 So.2d 347 (Fla. 1967). Reversed and remanded for a new trial. NOTES [1] The first \$500,000.00 of the settlement was payable upon execution of the release documents and the balance of \$100,000.00 was to be paid after trial on the third-party complaint for contribution, to insure that the tort victim, who was moving his residence to Georgia, would return to give testimony.

The court's displeasure with the agreement is expressed several places in the record: [at pre-trial conference] * * * * * The Court: You mean to say he has got a hundred thousand dollars riding on the truthfulness of his testimony? Mr. Reese [for appellant]: No, no. He is going to get the hundred thousand after this case is finished.

The Court: Regardless of what his testimony is? Mr. Reese: Regardless. Mr. Demahy [for appellant]: It was just to make him accessible, Judge. You can impeach him if he testifies differently. Mr. Reese: He has been deposed twice. He is not changing his testimony.

The Court: I think that is horrible. I really, really do. * * * * * The Court: If you have got a guy sitting with a hundred thousand dollars over his head to testify, my God, I'm about to weigh it and throw you out of here. I think it is terrible. I am opposed to the Mary Carter agreements. I am opposed to any of those little, cute agreements that we are going to hold a thousand dollars back depending on his testimony.

Mr. Reese: It is not depending on anybody's testimony. The Court:... Let us try the case. I do not know what I am going to do. I am mad, but that jury is sure going to know that you are going to pay him a hundred thousand dollars for being here today. That is the least thing I will do.

[2] The reason given on the record for directing a verdict is failure to introduce the release document as evidence a point which had not been raised by third-party defendant. The trial court denied a motion to re-open the case for the purpose of introducing the original release document, which on these facts, would be an abuse of discretion. *Bieley v. Bieley*, 398 So.2d 932 (Fla.

3d DCA 1981); *Akins v. Taylor*, 314 So.2d 13 (Fla. 1st DCA 1975). The proffered release shows that the injured plaintiff gave complete satisfaction to appellee as well as appellant as joint tortfeasors, giving appellant the right to contribution. *Woods and G.E.I.C.O. v. Withrow*, 413 So.2d 1179 (Fla. 1982); § 768.31, Fla. Stat. (1979). That the court's disrelish for the settlement and release terms was the real basis for entering judgment is evidenced by remarks made in response to the motion to re-open the case: The Court: Counsel, I already told you I do not take liking to that kind of release.

I thought it was bad to start with. So, if you are going to appeal to my equity, to reopen, have the man here. [3] Counsel for appellee made the following comments in opening statement to the jury, confirming the oral agreement as to the issues to be tried: Mr. Gaebe: David Frazier [victim] has been fully compensated for his injuries.

We have agreed that the payment was reasonable and we have agreed or conceded to the fact that David Frazier probably was injured or was injured as a result of the toxic fumes probably from our product... These are the issues you will be deciding: Are we negligent? Did we cause this accident?

To what extent?