ILLINOIS SUPREME COURT

Dubina v. Mesirow Realty Development, Inc., 197 Ill. 2d 120

756 N.E.2d 836 (2001) · No. 88623 · Decided July 26, 2001

SUMMARY

The Illinois Supreme Court held that settlements under the Joint Tortfeasor Contribution Act were not made in good faith where settling defendants received assignments of the plaintiffs' claims against a nonsettling tortfeasor. The assignments deprived the nonsettling defendant of the full potential setoff, permitted the settling defendants to pursue contribution indirectly, and conflicted with the Act's policies. The court affirmed the appellate court's reversal of the trial court's good-faith finding and reinstatement of the nonsettling defendant's contribution claims.

CASE DETAILS

COURT	Illinois Supreme Court
WRITING FOR THE COURT	Justice Thomas
JURISDICTION	Illinois
DECIDED	July 26, 2001
DOCKET	88623
DISPOSITION	affirmed
PROCEDURAL POSTURE	Settling defendants appealed the Illinois Appellate Court's reversal of a circuit-court finding that settlement agreements satisfied the good-faith requirement of the Joint Tortfeasor Contribution Act. The Illinois Supreme Court granted leave to appeal and reviewed the appellate judgment.
STANDARD OF REVIEW	A trial court's determination that a settlement was made in good faith under the Joint Tortfeasor Contribution Act is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Illinois Supreme Court opinion; binding statewide precedent.
PARTIES	Mesirow Realty Development, Inc., K&S Automatic Sprinklers, Economy Mechanical Industries, Inc., CCL of Chicago, Inc., Creative Construction, Ltd., Fireman's Fund Insurance Company v. Litgen Concrete Cutting and Coring Company, Inc.

TOPICS

torts | civil procedure | statutory interpretation | construction law | appellate procedure

PRACTICE AREAS

torts | civil procedure | construction law | statutory interpretation | appellate procedure

QUESTIONS PRESENTED

1. Whether settlement agreements conditioned on plaintiffs' assignment of their causes of action against nonsettling tortfeasors satisfy the good-faith requirement of the Joint Tortfeasor Contribution Act.
2. Whether the settlement-and-assignment transactions improperly deprive the nonsettling tortfeasor of its statutory setoff.
3. Whether the assignments allow settling tortfeasors to recover contribution indirectly in violation of the Act.
4. Whether the agreements should be treated as loan-receipt agreements that were valid because they preceded the Illinois Supreme Court's decision in In re Guardianship of Babb.
5. Whether the settling defendant that did not individually receive an assignment could receive a separate good-faith finding when all defendants' contributions were placed into an intermingled settlement fund.

HOLDINGS

1. Settlement agreements that condition settlement on assignments of the plaintiffs' claims against nonsettling tortfeasors must be evaluated as a single transaction, and the agreements at issue were not made in good faith because they conflicted with the terms and policies of the Joint Tortfeasor Contribution Act.
2. The agreements violated the Act by allocating \$4.5 million to the settlement and another \$4.5 million to the assignments, thereby potentially limiting Litgen's setoff to less than the total consideration actually paid.
3. The agreements violated the Act because they allowed settling defendants, acting as assignees of the plaintiffs' claims, to pursue Litgen indirectly for amounts that the settling defendants could not recover directly as contribution.
4. The agreements were not loan-receipt agreements because they contained no loan or repayment obligation.
5. EMI was not entitled to a separate good-faith finding because its contribution was intermingled with the common fund used to finance both the settlement and the assignments.

KEY QUOTATIONS

> *"Upon review and considering the totality of the circumstances, we affirm the appellate court's finding that the settlement agreements and assignments are contrary to the terms of, and the policies underlying, the Act."* (at 120)

> *“The settlement agreements and assignments also violate the Act because they allow the settling defendants to accomplish indirectly that which they could not do directly–recover contribution from Litgen.”* (at 120)

> *“Because the settlement agreements violate both the terms of and the policies underlying the Act, the settlement agreements do not satisfy the good-faith requirement of the Act.”* (at 120)

FACTUAL BACKGROUND

A fire in April 1989 destroyed a building containing Chicago art galleries during extensive renovation, damaging numerous works of art. Gallery owners, artists, and insurers filed 35 actions involving 112 plaintiffs against the building owner, managers, general contractors, and subcontractors, including Litgen. The plaintiffs settled with all defendants except Litgen and Gelick Foran through 29 agreements requiring approximately $4.5 million in settlement payments and an additional $4.5 million for assignments of the plaintiffs' claims against Litgen and Gelick Foran. The assignments also required plaintiffs to cooperate in litigation brought by the settling defendants.

PROCEDURAL HISTORY

After a fire-damage action involving numerous plaintiffs and defendants, the plaintiffs settled with all defendants except Litgen and Gelick Foran. The settlement agreements required plaintiffs to assign their claims against the nonsettling defendants to settling defendants and others. The circuit court found the agreements were made in good faith and dismissed related contribution claims. The appellate court reversed; after an earlier jurisdictional appeal resolved in Dubina I, the appellate court again reversed on remand, and the Illinois Supreme Court affirmed.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The case was remanded for further proceedings consistent with reversal of the circuit court's good-faith finding and reinstatement of Litgen's contribution claims.

CASES CITED

- Dubina v. Mesirow Realty Development, Inc., 178 Ill. 2d 496 (1997)
- Dubina v. Mesirow Realty Development, Inc., 283 Ill. App. 3d 36 (1996)
- In re Guardianship of Babb, 162 Ill. 2d 153 (1994)
- Solimini v. Thomas, 293 Ill. App. 3d 430, 437 (1997)
- Wilson v. Hoffman Group, Inc., 131 Ill. 2d 308, 318-19 (1989)
- Warsing v. Material Handling Services, Inc., 271 Ill. App. 3d 556, 560 (2d Dist. 1995)
- Alvarez v. Fred Hintze Construction, 247 Ill. App. 3d 811, 816 (3d Dist. 1993)
- Bunge Corp. v. Northern Trust Co., 252 Ill. App. 3d 485, 505 (4th Dist. 1993)

- Higginbottom v. Pillsbury Co., 232 Ill. App. 3d 240, 249 (5th Dist. 1992)
- Pasquale v. Speed Products Engineering, 166 Ill. 2d 337, 368 (1995)
- Grunloh v. Effingham Equity, Inc., 174 Ill. App. 3d 508, 518 (1988)

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