SUPREME COURT OF ILLINOIS

Dubina v. Mesirow Realty Development, Inc., 197 Ill. 2d 185

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

SUMMARY

The Supreme Court of Illinois held that settlement agreements conditioned on plaintiffs' assignment of claims against a nonsettling tortfeasor to settling defendants did not satisfy the good-faith requirement of the Joint Tortfeasor Contribution Act. The arrangements deprived the nonsettling defendant of the statutory setoff, undermined equitable allocation of damages, and allowed settling defendants to pursue contribution indirectly. The court affirmed the appellate court's reversal of the circuit court's good-faith finding and reinstatement of the nonsettling defendant's contribution claims.

CASE DETAILS

COURT	Supreme Court of Illinois
WRITING FOR THE COURT	Justice Thomas; Chief Justice Harrison; Justice Freeman; Justice Kilbride
JURISDICTION	Illinois
DECIDED	July 26, 2001
DOCKET	No. 88623
DISPOSITION	affirmed
PROCEDURAL POSTURE	Settling defendants appealed the appellate court's reversal of the circuit court's finding that settlement agreements satisfied the good-faith requirement of the Joint Tortfeasor Contribution Act. The Illinois Supreme Court granted leave to appeal.
STANDARD OF REVIEW	A trial court's determination that a settlement was made in good faith is reviewed for abuse of discretion, although a settlement that conflicts with the Contribution Act or its underlying policies cannot satisfy the statutory good-faith requirement.
PRECEDENTIAL VALUE	Published Illinois Supreme Court opinion; precedential.
PARTIES	Mesirow Realty Development, Inc., CCL of Chicago, Inc., Creative Construction, Ltd., Economy Mechanical Industries, Inc., K&S Automatic Sprinklers, Inc., Fireman's Fund Insurance Company v. Litgen Concrete Cutting and Coring Company, Inc.

TOPICS

civil procedure · appellate procedure · standard of review · torts · construction law

PRACTICE AREAS

civil procedure · torts · construction law · appellate procedure

QUESTIONS PRESENTED

1. Whether settlement agreements that condition settlement on assignments of the plaintiffs' claims against a nonsettling tortfeasor to settling defendants satisfy the Joint Tortfeasor Contribution Act's good-faith requirement.
2. Whether the settlement-and-assignment arrangements improperly deprived Litgen of its statutory setoff and allowed settling defendants to recover contribution indirectly.
3. Whether the agreements should be treated as valid loan-receipt agreements under In re Guardianship of Babb because they predated that decision.
4. Whether Economy Mechanical Industries, Inc.'s settlement could independently be found to have been made in good faith because EMI did not personally receive an assignment.

HOLDINGS

1. Settlement agreements that condition settlement on assignments of claims against a nonsettling tortfeasor to settling defendants do not satisfy the good-faith requirement when, considered as a whole, they conflict with the terms and policies of the Joint Tortfeasor Contribution Act.
2. The agreements violated the Contribution Act because allocating $4.5 million to settlement and an additional $4.5 million to assignments could limit Litgen's setoff to $4.5 million even though the settling defendants paid $9 million in total consideration.
3. The assignments improperly allowed settling defendants to pursue contribution from Litgen indirectly by suing in the guise of the assigned plaintiffs.
4. The settlement-and-assignment agreements were not loan-receipt agreements because they contained no loan or repayment obligation.
5. EMI's settlement could not be separately found to have been made in good faith because EMI's contribution was part of a common, intermingled settlement fund used for both settlement payments and assignments.

KEY QUOTATIONS

> *"For these reasons, we find that the settlement agreements at issue in this case violate both the terms of, and the policies underlying, the Act. 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."* (842-843)

> *"Here, the plaintiffs assigned their causes of action to the settling defendants, thereby allowing the settling defendants, in the guise of plaintiffs, to indirectly recover contribution from Litgen."* (843)

FACTUAL BACKGROUND

A fire during extensive renovation destroyed a building housing Chicago art galleries and damaged numerous works of art. The resulting litigation involved 35 actions and 112 plaintiffs against the building owner, general contractor, and subcontractors, including Litgen. The plaintiffs settled with all defendants except Litgen and Gelick Foran through agreements requiring approximately $4.5 million in settlement payments and an additional, equal amount for assignments of the plaintiffs' claims against the nonsettling defendants to settling defendants. The assignments were conditions of settlement, and the settling defendants later pursued the assigned claims against Litgen.

PROCEDURAL HISTORY

After a fire-loss action involving numerous plaintiffs and defendants, the circuit court approved 29 settlement agreements as being made in good faith and dismissed the plaintiffs' claims against the settling defendants and the contribution claims among the defendants. The appellate court reversed, holding that the settlement-and-assignment arrangements violated the Contribution Act and improperly dismissed Litgen's contribution claims. The Supreme Court affirmed the appellate court and remanded for further proceedings.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The appellate court's reversal of the circuit court's good-faith finding and dismissal of Litgen's contribution claims was affirmed, and the cause was remanded for further proceedings.

CASES CITED

- Dubina v. Mesirow Realty Development, Inc., 178 Ill. 2d 496, 227 Ill. Dec. 389, 687 N.E.2d 871 (1997)
- Dubina v. Mesirow Realty Development, Inc., 308 Ill. App. 3d 348, 241 Ill. Dec. 681, 719 N.E.2d 1084 (1999)
- Dubina v. Mesirow Realty Development, Inc., 283 Ill. App. 3d 36, 218 Ill. Dec. 551, 669 N.E.2d 694 (1996)
- In re Guardianship of Babb, 162 Ill. 2d 153, 205 Ill. Dec. 78, 642 N.E.2d 1195 (1994)
- Solimini v. Thomas, 293 Ill. App. 3d 430, 227 Ill. Dec. 875, 688 N.E.2d 356 (1997)
- Wilson v. Hoffman Group, Inc., 131 Ill. 2d 308, 137 Ill. Dec. 579, 546 N.E.2d 524 (1989)
- Pasquale v. Speed Products Engineering, 166 Ill. 2d 337, 211 Ill. Dec. 314, 654 N.E.2d 1365 (1995)
- Grunloh v. Effingham Equity, Inc., 174 Ill. App. 3d 508, 124 Ill. Dec. 140, 528 N.E.2d 1031 (1988)

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