SUPREME COURT OF NEW HAMPSHIRE

Stateline Steel Erectors, Inc. v. Shields

150 N.H. 332 (2003) · Decided December 9, 2003

SUMMARY

The New Hampshire Supreme Court held that an insured's claims against an insurance agent for negligent failure to procure adequate coverage could be assigned to contractors under a settlement agreement accompanied by a covenant not to execute. The court concluded that Stateline suffered legally cognizable harm despite not having paid the excess stipulated judgment and that the agreement was a covenant not to sue or execute, rather than a release. The court reversed the grant of summary judgment and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Brock, C.J.; Broderick, J.; Nadeau, J.; Dalianis, J.; Duggan, J.
JURISDICTION	New Hampshire
DECIDED	December 9, 2003
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Stateline appealed the superior court's order granting the defendants summary judgment on negligence and breach of contract claims brought in Stateline's name.
STANDARD OF REVIEW	The court reviewed the summary-judgment record and reasonable inferences in the light most favorable to the nonmoving party, affirmed only if there was no genuine issue of material fact and the moving party was entitled to judgment as a matter of law, and reviewed the trial court's application of law to facts de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Stateline Steel Erectors, Inc. v. William Shields, Shoff-Darby Insurance Agency, Inc.

TOPICS

insurance coverage · assignment and delegation · breach of contract · contract interpretation · appellate procedure

PRACTICE AREAS

insurance | contracts | torts | construction law | appellate procedure

QUESTIONS PRESENTED

1. Whether an insured's claims against an allegedly negligent insurance agent may be assigned when the insured has entered a settlement agreement containing a covenant not to execute or sue on an excess judgment.
2. Whether Stateline suffered legally cognizable damages even though the stipulated excess judgment was never collected from Stateline.
3. Whether the settlement agreement constituted a release that extinguished Stateline's claims rather than a covenant not to sue or execute.
4. Whether summary judgment was proper on the negligence and breach of contract claims.

HOLDINGS

1. An insured's claims against an allegedly negligent insurance agent may be assigned to others when the assignment is accompanied by a covenant not to execute or sue on an excess judgment; the settlement arrangement does not, by itself, extinguish the assigned claims.
2. Stateline may have suffered legally cognizable damages even though it did not pay the stipulated excess judgment out of its own funds.
3. The settlement agreement was a covenant not to sue or execute, not a full release, and therefore did not extinguish Stateline's claims.

KEY QUOTATIONS

> *"In our view, the benefits of such settlement agreements outweigh the risks."* (336)

> *"That Stateline never had to pay the stipulated judgment out of its own pocket is immaterial."* (336)

> *"When Stateline assigned these claims to the contractors, the contractors obtained the right to pursue them."* (337)

> *"We believe that requiring the contractors, the assignees, to prove their assigned claims "in. full reduces the risk of collusion, and justifies giving effect to the assignment.""* (338)

> *"According to the plain meaning of its terms, the agreement was a covenant not to sue or execute the judgment against Stateline, not a release."* (339)

FACTUAL BACKGROUND

Stateline, a steel erection contractor whose contracts routinely required indemnification of subcontractors, sought insurance services from Shields and Shoff-Darby in 1995. The policy obtained from Liberty Mutual excluded coverage for claims arising from Stateline's indemnity contracts and provided only $100,000 of relevant coverage. After a Stateline employee was seriously injured and the project contractors sought indemnification for their defense and settlement costs, Stateline entered a settlement stipulating to a substantial judgment, assigning its claims concerning the insurance services to the contractors, and agreeing that the contractors would seek satisfaction through the insurer and the assigned claims rather than against Stateline. The contractors then sued the insurance defendants in Stateline's name.

PROCEDURAL HISTORY

Stateline obtained insurance through Shields and Shoff-Darby, later entered a settlement agreement with contractors seeking indemnification for an injured employee's claims, and assigned to those contractors its claims concerning the allegedly inadequate insurance coverage. The contractors brought negligence and breach of contract claims against the defendants in Stateline's name. The Superior Court granted summary judgment for the defendants on the ground that Stateline suffered no loss because the settlement protected it from liability for the excess judgment. The Supreme Court of New Hampshire reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded for further proceedings on the assigned negligence and breach of contract claims. The contractors must prove the essential elements of those claims, including that Stateline's damages exceeded its insurance coverage; the settlement agreements are not conclusive on that issue, and the defendants may assert fraud or collusion defenses.

CASES CITED

- Sintros v. Hamon, 148 N.H. 478, 480 (2002)
- McLellan v. Atchison Ins. Agency Inc., 912 P.2d 559, 565 (Haw. Ct. App. 1996)
- Lageman v. Frank H. Furman, Inc., 697 So. 2d 981, 983 (Fla. Dist. Ct. App. 1997)
- Campione v. Wilson, 661 N.E.2d 658, 659-63 (Mass. 1996)
- Red Giant Oil Co. v. Lawlor, 528 N.W.2d 524, 534 (Iowa 1995)
- Freeman v. Schmidt Real Estate & Ins., 755 F.2d 135, 136-30 (8th Cir. 1985)
- Kobbeman v. Oleson, 574 N.W.2d 633, 636-37 (S.D. 1998)
- Tip’s Package Store, Inc. v. Commer. Ins. Manag., 86 S.W.3d 543, 548, 553-55 (Tenn. Ct. App. 2001)
- Steinmetz v. Hall-Conway-Jackson, Inc., 741 P.2d 1054, 1056-57 (Wash. Ct. App. 1987)
- Oregon Mutual Ins. Co. v. Gibson, 746 P.2d 245, 247 (Or. Ct. App. 1987)
- YYY Corp. v. Gazda, 145 N.H. 53, 61 (2000)
- Dumas v. State Mutual Auto Insurance Co., 111 N.H. 43, 44-46 (1971)
- Allstate Insurance Co. v. Reserve Insurance Co., 116 N.H. 806, 807-08 (1976)
- Lawyers Title Ins. Corp. v. Groff, 148 N.H. 333, 336-37 (2002)