2011 IL App (1st) 083127 & 090096-U

Third Division
September 28, 2011

Nos. 1-08-3127 & 1-09-0096 (Consolidated)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

METALMASTER ROOFMASTER, INC.,	)	Appeal from the
	)	Circuit Court of
Third-Party Defendant-Appellant,	)	Cook County.
	)	
v.	)	
	)	
THE BOARD OF DIRECTORS OF ONE RIVER PLACE CONDOMINIUM ASSOCIATION and ONE RIVER PLACE CONDOMINIUM ASSOCIATION,	)	
	)	
Plaintiffs-Appellees,	)	05 L 010919
	)	
and	)	
	)	
ALL BUILDING RESTORATION & MASONRY INC., BEST BUILT FABRICATING CO., BRENNAN'S ENVIRONMENTAL REMEDIATION, INC., DEMOS PAINTING AND DECORATING, INC., and SOFTER LITE WINDOW CO.,	)	Honorable
	)	Allen S. Goldberg,
Third-Party Defendants-Appellees.	)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Steele and Justice Quinn concurred in the judgment.

ORDER

HELD: A party who objects to a settlement other parties reached in a case cannot show that the settling parties acted in bad faith when they failed to allocate the settlement to each of the various claims involved unless the objecting party shows how an allocation could affect the liability or recovery of the nonsettling party.

¶ 1 Condominium owners sued the condominium developer, named Chicago Larrabee, LLC (CLL), and CLL sued its general contractor and a number of its subcontractors. The owners settled all their claims against CLL, and CLL settled its claims against all parties except its general contractor and one of its subcontractors, Metalmaster Roofmaster, Inc. The trial court found that all settling parties reached their settlement in good faith. The owners and some of the subcontractors sought, and received, a finding of immediate appealability. Metalmaster now appeals.

¶ 2 On appeal, Metalmaster argues that the court should not have found that the parties settled in good faith because the owners did not allocate the settlement among the several counts of the complaint, and CLL did not allocate the subcontractors' settlements between the negligence and contract counts brought against each subcontractor. Metalmaster, however, failed to show what effect, if any, allocation would have on its liability. We find that Metalmaster failed to meet its burden of showing that the appellees reached the settlement in bad faith. Accordingly, we affirm the trial court's judgment.

¶ 3 BACKGROUND

¶ 4 In 2005, the owners of condominiums in One River Place, through their condominium association, sued the building manager, CLL, and several individuals

(collectively, the direct defendants), in a ten-count complaint. The complaint included claims for breach of contract, breach of warranty, negligence and fraud, all based on allegations of numerous defects in the construction that the contractors and CLL allegedly hid from the owners. CLL filed a third-party complaint and named as defendants, the architect, the general contractor, and a number of subcontractors. The complaint included separate counts for contribution and for contractual indemnity for most of the subcontractors, with both kinds of claims based on the construction defects alleged in the owners' complaint against the developer.

¶ 5 All of the parties met to discuss settlement. The owners agreed to accept a payment of $2.7 million from the direct defendants, and in exchange the owners surrendered all claims against both the direct defendants and the third-party defendants. CLL, in turn, agreed to dismiss its claims against all but two of the third-party defendants, in exchange for varying payments totaling $1 million. The agreements left unresolved only CLL's claims against the general contractor, named RJ Group, Ltd., and Metalmaster Roofmaster, Inc.

¶ 6 The settling parties all moved for good faith findings. Metalmaster opposed the motions and sought an evidentiary hearing on the allegations that the settling parties settled in good faith. On April 18, 2008, the trial court entered an order dismissing the owners' complaint against the direct defendants, finding that the parties to that settlement settled in good faith. In a separate order on the same date, the court also found that the settling third-party defendants settled with CLL in good faith.

¶ 7 Some of the settling third-party defendants asked the court to make the finding of

good faith appealable, so that those parties would not need to wait for the end of the litigation involving RJ Group and Metalmaster to know whether the finding of good faith would withstand an appeal. The owners joined in the motion. On October 6, 2008, the trial court found no just reason to delay enforcement or appeal from the April 18, 2008, orders, insofar as those orders settled the rights of the owners; All Building Restoration & Masonry, Inc., who allegedly worked on the building's facade; Brennan's Environmental Remediation, Inc., who allegedly removed paint from concrete and brick surfaces in the building; Demos Painting & Decorating, who allegedly painted much of the building; and Softer Lite Window Co., who allegedly installed the windows. Metalmaster filed a notice of appeal, and this court gave that appeal docket number 1-08-3127. Best Built Fabricating Co., who allegedly worked on the building's structure and balconies, later filed its own motion for a finding of appealability, and the court granted that motion in an order dated December10, 2008. Metalmaster also appealed from the ruling that Best Built settled the claim in good faith. This court gave that appeal docket number 1-09-0096, and we consolidated the appeals.

¶ 8 ANALYSIS

¶ 9 Record on Appeal

¶ 10 The record on appeal does not include CLL's third-party complaint against the third-party defendants, including All Building, Brennan's, Demos, Softer Lite, and Best Built. Metalmaster attempted to cure this defect by appending to its brief a document entitled "First Amended Third-Party Complaint of Chicago Larrabee, LLC." However, "the record on appeal cannot be supplemented by attaching documents to a brief or including them in an

appendix." *McCarty v. Weatherford*, 362 Ill. App. 3d 308, 311 (2005). The six appellees, in their briefs, said that if Metalmaster had moved to supplement the record, the appellees would have stipulated to the addition to the record of the appended document. But we will not *sua sponte* amend the record under Supreme Court Rule 329 (Ill. S. Ct. R. 329 (eff. Jan. 1, 2006)). See *McCarty*, 362 Ill. App. 3d at 313. Because Metalmaster never moved to supplement the record on appeal under Rule 329, we disregard the document included in the appendix to Metalmaster's brief. The answers filed by some of the third-party defendants allow us to infer the causes of action CLL asserted in its third-party complaint, but we do not have a record of CLL's specific allegations against the third-party defendants.

¶ 11 Jurisdiction

¶ 12 Supreme Court Rule 304(a) (Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010)) gives this court jurisdiction to review judgments that finally dispose of the rights of some of the parties in a case involving more than two parties only if the trial court enters a finding of no just cause to delay enforcement or appeal from the final disposition of those parties' rights. The rule restricts our jurisdiction to those parts of the order subject to the finding of no cause to delay appeal. *Paul H. Schwendener, Inc. v. Jupiter Electric Co.*, 358 Ill. App. 3d 65, 82 (2005); *Ransburg v. Haase*, 224 Ill. App. 3d 681, 684 (1992). Thus, we review only the findings that the owners, All Building, Brennan's, Demos, Softer Lite, and Best Built, the six appellees, settled the claims involving them in good faith. We lack jurisdiction to consider the good faith of the parties to the other parts of the settlements.

¶ 13 Good Faith Finding

¶ 14 We review for abuse of discretion the trial court's finding that the parties settled their dispute in good faith. *Johnson v. United Airlines*, 203 Ill. 2d 121, 135 (2003). The *Johnson* court explained why an evidentiary hearing is not required before a good faith finding:

> "Courts have repeatedly and consistently held that a separate evidentiary hearing is not required and that a trial court need not decide the merits of the tort case or rule on the relative liabilities of the parties before making a good-faith determination. [Citations.] A court is capable of ruling on 'good faith' without a precise determination of the overall damages suffered by the plaintiff and the settling tortfeasor's proportionate liability." *Johnson*, 203 Ill. 2d at 139.

¶ 15 Once the parties to a settlement agreement present to the court a binding agreement, supported by consideration, the court should presume that the parties acted in good faith. *Johnson*, 203 Ill. 2d at 131. The burden then shifts to the party opposing the settlement to show that the settling parties did not act in good faith. *Cellini v. Village of Gurnee*, 403 Ill. App. 3d 26, 36-37 (2010). The parties have not settled a case in good faith if they engage in wrongful conduct, collusion, or fraud, and they have not settled in good faith if the settlement conflicts with the terms of the Contribution Act (Act) (740 ILCS 100/1 *et seq.* (West 2008)), or with the policies underlying that Act. *Pierre Condominium Ass'n v. Lincoln Park West Associates, LLC*, 378 Ill. App. 3d 770, 779 (2007).

¶ 16 The settling parties here presented an enforceable settlement agreement. Thus, the burden shifted to Metalmaster to show that the parties did not act in good faith. Metalmaster admits it has no evidence that the parties engaged in fraud, collusion, or any other wrongful

conduct. It argues only that the settlements conflict with the policies underlying the Act because the parties did not allocate the settlement amounts to the several claims the owners raised and to the separate counts CLL raised against each of the third-party defendants.

¶ 17 Third-Party Defendants

¶ 18 CLL raised both negligence and contract claims against each subcontractor. The settlement shows the amount each settling third-party defendant paid, and Metalmaster's own description of the work performed by each party indicates the kind of work each settling third-party defendant allegedly performed incorrectly. Thus, the settlement allows the court to infer the kind of work performed and the basis for each third-party defendant's alleged liability to CLL. The settlement, however, does not allocate the third-party defendants' payments between the negligence and the contract counts.

¶ 19 In support of its argument that the Act requires such allocation, Metalmaster cites *Cianci v. Safeco Insurance Co. of Illinois*, 356 Ill. App. 3d 767, 780-82 (2005). In *Cianci*, the court emphasized that the settling parties needed to allocate their settlement to the various claims raised, because allocation to some of the claims would permit the nonsettling defendant to set off the settlement amounts against the nonsettling defendant's liability, and allocation to other claims would not permit any setoff. Here, on the other hand, Metalmaster offers no reason to suggest that the court should set off the amount CLL recovered from the settling third-party defendants involved in this appeal against Metalmaster's liability. CLL ostensibly seeks to recover from Metalmaster for amounts paid for repair of roofing defects.

The settling third-party defendants involved in this appeal worked on the building's facade, its paint, its windows, its structure and its balconies, but not on its roof. Even if Metalmaster could claim some set off, it has offered no reason to suggest that the set off would depend in any way on whether CLL recovered in negligence or in contract from the settling third-party defendant. Because Metalmaster has not explained how an allocation between the individual claims or the alternative theories of recovery might affect its liability, it has presented no grounds for finding that All Building, Brennan's, Demos, Softer Lite or Best Built settled in bad faith. Thus, Metalmaster failed to meet its burden of showing that the five settling third-party defendants settled in bad faith, and therefore we affirm the judgment dismissing the claims against those third-party defendants.

¶ 20 Owners

¶ 21 Metalmaster also argues that the owners must not have settled in good faith because they did not allocate the settlement to the several counts of the complaint they brought against the direct defendants. For this argument, Metalmaster relies on *Muirfield Village - Vernon Hills, LLC v. K. Reinke Jr. & Co.*, 349 Ill. App. 3d 178 (2004). In *Muirfield*, the court explained our supreme court's holding in *Hall v. Archer-Daniels-Midland Co.*, 122 Ill. 2d 448 (1988), as follows:

> "*Hall* had a single plaintiff in contribution who paid the injured party in settlement of two claims, one for compensation, and the other for punitive damages. *Hall*, 122 Ill. 2d at 450. *** [T]he court noted that the Act did not expressly require that a plaintiff allocate the

> settlement proceeds between alternative theories of recovery. *Hall*, 122 Ill. 2d at 459. The court held that the failure to allocate the settlement monies would be examined for good faith; if the settlement was made in good faith and not unfairly to pass on punitive damages to a defendant for which the plaintiff would not otherwise be able to obtain contribution, then the failure to allocate the monies would not bar the contribution claim. *Hall*, 122 Ill. 2d at 460. *** While there is no express requirement in the Act to allocate settlement proceeds to different claims, there is an express requirement for plaintiffs in contribution to allocate the settlement to the injured party between the various plaintiffs in contribution." *Muirfield*, 349 Ill. App. 3d at 190-91.

¶ 22 Here, as in *Hall*, only one third-party plaintiff, CLL, has sued for contribution. As the court held in *Hall*, the Act does not require the plaintiffs, the owners, to allocate the settlement between their various theories of recovery. The trial court may find that the parties settled in good faith if the circumstances do not show an improper intent to shift onto the nonsettling defendant an inapplicable portion of the total expended for the settlement. Metalmaster has not shown how the settlement between CLL and the owners can make Metalmaster liable for any amount in excess of its liability for negligence in the work it performed on the building's roof and its contractual liability for any warranty if made for the quality of its work on that roof. Because Metalmaster has failed to meet its burden of

showing that the owners settled in bad faith, we affirm the judgment dismissing the owners' claims against the direct defendants.

¶ 23 CONCLUSION

¶ 24 The appellees met their burden of showing that they entered into an enforceable settlement agreement. Metalmaster failed to meet its burden of showing that the parties had a duty to allocate their payments to various counts brought against them, and Metalmaster failed to show that the parties made no such allocation in order to make Metalmaster liable for a disproportionate share of the total liability. Accordingly, we affirm the judgment dismissing the owners' claims against the direct defendants and we affirm the judgment dismissing CLL's claims against All Building, Brennan's, Demos, Softer Lite and Best Built.

¶ 25 Affirmed.