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Summary of Canfora v. Coast Hotels & Casinos, Inc., 121 Nev. Adv. Op. 76

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Canfora v. Coast Hotels & Casinos, Inc., 121 Nev. Adv. Op. 76 (Oct. 20, 2005)[1]

CONTRACT LAW – SUBROGATION CLAUSES

Summary

The Canforas appealed the district court's order that they reimburse Coast Hotels in accordance with a subrogation clause and reimbursement agreement. The Canforas unsuccessfully argued that various contract and civil procedure principles precluded Coast Hotels from recovering its expenses.

Disposition/Outcome

Affirmed. The Nevada Supreme Court affirmed the district court's order adjudicating the subrogation lien of Coast Hotels, thereby allowing Coast Hotels to keep the $227,000 in medical expenses it had paid the Canforas and sought reimbursement for.

Factual & Procedural History

This case arises out of an accident that occurred on March 16, 1999, when the Canfora family, the appellants, stopped at a gas station in Las Vegas. The act of daughter Alexis sliding across the family car's cloth upholstered seats in order to exit the car created an electrostatic charge that sparked when she began refueling. During the ensuing struggle to extinguish the fire, Alexis and her parents Alex and Chris sustained various injuries.

Coast Hotels, the respondent, which at the time provided the Canforas's medical insurance via Alex Canfora's employment there, paid $227,000 of the family's medical expenses. The medical plan contained a subrogation clause allowing Coast Hotels to seek reimbursement should the Canforas receive benefits from a third party. Two months after the accident, Alex Canfora signed a reimbursement agreement stating that Alex understood the subrogation clause.

The Canforas filed a personal injury suit against several defendants and settled for $12 million. Coast Hotels subsequently sought reimbursement for the $227,000 it paid in medical expenses to the Canforas. The Canforas moved the Eight Judicial District Court, Clark County, to adjudicate Coast Hotel's lien rights. In 2003, the district court upheld the subrogation clause and reimbursement agreement and ordered that Coast Hotels receive the entire balance it had paid.

The Canforas timely appealed the district court's order, arguing that the subrogation agreement was ambiguous and that the district court erred by disallowing an offset of attorney fees and costs and by enforcing the subrogation agreement against a nonsignatory beneficiary (wife Chris Canfora). Coast Hotels claimed the appeal was moot.

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Discussion

1. Standard Of Review

The legal issues on appeal in this case were considered de novo.[2]

2. Mootness Of Appeal

The Nevada Supreme Court disagreed with Coast Hotels that the Canforas's appeal was moot. In *Wheeler Springs Plaza, LLC v. Beemon*,[3] the court held payments of judgments render appeals moot only when the payments are "intended to compromise or settle the matter."[4] Here, the Canforas did not intend to settle or compromise with Coast Hotels when they, in accordance with the district court's order, fully reimbursed the medical expenses Coast Hotels provided. Therefore, *Wheeler* had no application and the Canforas's right to appeal the district court's decision was preserved.

3. Unambiguity Of Contracts

The Nevada Supreme Court disagreed with the Canforas that the subrogation clause and reimbursement agreement were ambiguous. The court reiterated that when a contract is unambiguous, it "will be construed from the written language and enforced as written."[5] Here, because the contracts in question "could not [have been] more plain,"[6] the court held they should be enforced accordingly and subrogation should be given effect.

4. Offsetting Attorney Fees Re. Subrogation Clauses; Equity And Public Policy

The Nevada Supreme Court disagreed with the Canforas that the district court was wrong not to require Coast Hotels to pay some of the Canforas's attorney fees and costs. In *Breen v. Caesars Palace*,[7] the court created a formula to be applied only to workers' compensation cases by which an employer-subrogee's recovery is offset by an employee's litigation costs. The purpose of this formula is for employers and employees to share the litigation costs more equitably (as opposed to the employees paying all the costs).[8] *Breen* has been applied only to workers' compensation cases, and the court believed the district court was correct not to extend *Breen* to causes of action where the employee's injury was unrelated to the workplace, as in the instant case.

Bolstering this rational, the Nevada Supreme Court explained that Coast Hotels is entitled to full reimbursement under the equitable "make-whole" doctrine of insurance

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[2] Wheeler Springs Plaza, LLC v. Beemon, 119 Nev. 260, 71 P.3d 1258, 1260 (Nev. 2003).
[3] *Id.*
[4] *Id.* at 1261
[5] Ellison v. C.S.A.A., 797 P.2d 975, 977 (Nev. 1990).
[6] Canfora v. Coast Hotels & Casinos, Inc., 121 Nev. Adv. Op. 76, 6 (Oct. 20, 2005).
[7] 102 Nev. 79, 715 P.2d 1070 (Nev. 1986).
[8] *Id.* at 79-85, 715 P.2d at 1071-74.

law.[9] The doctrine, which is a default rule that is normally read into insurance contracts,[10] precludes subrogees from receiving full reimbursement when the insured party has not received compensation from a third party tortfeasor that covers his total loss. But where the insured party receives adequate damages, the insured is liable to the subrogee for full reimbursement.[11] Here, the record did not show that the settlement the Canforas received did not fully compensate them. Therefore, the Canforas's full compensation entitled Coast Hotels to full reimbursement.

The Nevada Supreme Court in the past has enjoined insurers from asserting subrogation liens if public policy so dictated (i.e. if the insured recovered less than full damages).[12] Because the Canforas presumably received full damages, public policy does not preclude Coast Hotels from asserting the subrogation agreement.

5. Nonsignatories To Insurance Plans

Finally, the Nevada Supreme Court disagreed with the Canforas that the district court erred in binding Alex Canfora's wife Chris to the insurance plan's terms because she was a nonsignatory (daughter Alexis is not a named party on appeal so is not addressed). Intended third-party beneficiaries are usually bound by terms of a contract whether or not they are signatories.[13] Whether someone is an intended third-party beneficiary depends on the parties' intent as "gleaned from reading the contract as a whole in light of the circumstances under which it was entered."[14] Here, Chris was listed as an intended beneficiary on the insurance plan, and Coast Hotels covered all her medical expenses from the instant accident. Therefore, Chris was an intended third-party beneficiary despite that she did not sign the insurance plan.

Conclusion

The court reaffirmed that *Wheeler* renders appeals moot only when payments of judgments are intended to compromise or settle the matter. The court reiterated that unambiguous contracts will be enforced as written. The court reaffirmed that *Breen* applies only to workers' compensation suits. The court explained that public policy and the equitable make-whole doctrine of insurance law precludes insurers from asserting subrogation liens when the insured has not recovered full damages. The court reaffirmed that contracts generally bind intended third party beneficiaries who are nonsignatories. Accordingly, appellants Canforas were allowed to bring this appeal, but respondent Coast Hotels was entitled to assert the subrogation clause in its medical insurance contract, and the contract applied to both Alex Canfora and his wife.

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[9] Barnes v. Indep. Auto. Dealers of Cal., 64 F.3d 1389, 1394 (9th Cir. 1995).
[10] Cagle v. Bruner, 112 F.3d 1510, 1520-21 (11th Cir. 1997).
[11] *Id.* at 1521; Guy v. Southeastern Iron Workers' Welfare Fund, 877 F.2d 37, 39 (11th Cir. 1989).
[12] *See* Maxwell v. Allstate Ins. Co.,102 Nev. 502, 505, 728 P.2d 812, 815 (Nev. 1986).
[13] County of Clark v. Bonanza No. 1, 96 Nev. 643, 648-49, 615 P.2d 939, 943 (Nev. 1980).
[14] Jones v. Aetna Cas. & Sur. Co., 33 Cal. Rptr. 2d 291, 296 (Ct. App. 1994).