9-19-2024

Hi-Tech Aggregate, LLC, v. Pavestone, LLC, 140 Nev. Adv. Op. 59, (Sept. 19, 2024)

Jacob M. Ginsburg

Hi-Tech Aggregate, LLC, v. Pavestone, LLC, 140 Nev. Adv. Op. 59, (Sept. 19, 2024)[1]

UNDER NRS 104.2315, THE PURCHASER OF GOODS FOR A PARTICULAR PURPOSE NEED NOT DEMONSTRATE THE ACTUAL KNOWLEDGE OF THAT PARTICULAR PURPOSE ON THE PART OF THE SELLER, BUT ONLY THAT THE SELLER HAD REASON TO KNOW OF THE PARTICULAR PURPOSE.

Summary

The Nevada Supreme Court established that, in order to demonstrate a breach of the implied warranty of fitness for a particular purpose, the purchaser is not required to show that the seller had actual knowledge of the particular purpose for which the goods were purchased but needs only to demonstrate that the seller had reason to know of the particular purpose. The Court affirmed the ruling of the lower court in favor of the plaintiff-purchaser Pavestone, LLC that defendant-seller Hi-Tech Aggregate, LLC breached the implied warranty of fitness for a particular purpose that was attached to its sale of aggregate to Pavestone. The Supreme Court also reiterated the appropriate application of the economic loss doctrine and reversed the lower court's decision allowing Pavestone's noncontractual products liability tort claim due to Pavestone's failure to sufficiently demonstrate damage to any property besides the defective property itself.

Background

In 2019, Pavestone, LLC purchased gravel and sand aggregate from Hi-Tech Aggregate, LLC for use in constructing pavers which comprise sidewalks and driveways. Pavestone would purchase the aggregate through phone calls to Hi-Tech, with Pavestone only specifying for "washed alluvial aggregate" from the bottom of a riverbed, and depending on Hi-Tech to supply appropriate product. Pavestone would send trucks to pick up each order, and at that time, tested for satisfactory particle size, but performed no other tests on any aspect of the aggregate.

In December of 2019, Pavestone fielded customer complaints describing a "crust" that had developed on the pavers and surrounding landscaping features, necessitating replacement by Pavestone. When the issue persisted, testing confirmed that the crust, known as efflorescence, was the result of the presence of sodium carbonate in the aggregate and its reaction to moisture. Pavestone did not test for the presence of sodium carbonate at the time of acceptance of the aggregate from Hi-Tech, because at the time, there was no custom within the industry to do so. Even if Pavestone attempted to test the aggregate at that time, a simple naked-eye examination would not have revealed its presence.

Pavestone initiated action against Hi-Tech, alleging a breach of the implied contractual warranty of fitness for a particular purpose by Hi-Tech, as well as a noncontractual products liability tort claim. At the conclusion of a bench trial, the district court found in favor of Pavestone on both claims. Hi-Tech appealed.

Discussion

Standard of Review

[1] By Jacob M. Ginsburg.

The Nevada Supreme Court reviews de novo the legal conclusions of a district court on appeal from a bench trial.[2] The district court's factual conclusions are not disturbed "unless they are clearly erroneous or not supported by substantial evidence."[3] The Court defines substantial evidence as such that "a reasonable mind might accept as adequate to support a conclusion."[4]

Hi-Tech's sale carried with it an implied warranty of fitness for a particular purpose

The Supreme Court rejected Hi-Tech's argument on appeal that, because Hi-Tech did not have actual knowledge of the particular purpose for which the aggregate would be used, no implied warranty of fitness for a particular purpose attached to its sale. NRS 104.2315, contained within Nevada's codification of the Uniform Commercial Code in NRS Chapter 104, outlines two prongs for application of the warranty—requiring that (1) "the seller at the time of contracting has reason to know any particular purpose for which the goods are required," and (2) "the buyer is relying on the seller's skill or judgment to select or furnish suitable goods."[5]

Regarding the first prong, the Court noted that comment 1 of UCC § 2-315, which corresponds with NRS 104.2315, stipulates that the warranty applies when the seller of goods "has reason to realize the purpose intended."[6] The Court expressly adopted this standard as the threshold for demonstrating a seller's knowledge of a particular purpose and thereby satisfying the first requirement.

Substantial evidence suggested that Hi-Tech had reason to know of the aggregate's intended purpose, most notably represented by the Hi-Tech owner and manager's testimony admitting his knowledge that Pavestone used the aggregate in pavers, and admitting his knowledge that pavers are used in constructing driveways. Accordingly, the Court, applying the standard of UCC § 2-315 comment 1, affirmed the district court's finding that Hi-Tech had sufficient knowledge of the aggregate's intended purpose for application of the warranty.

Regarding the second prong, the Court rejected Hi-Tech's contention that the district court incorrectly found that Pavestone had demonstrated reliance on Hi-Tech's skill or judgment and therefore failed to satisfy the second prong. To the contrary, the Court recognized that the only specifications communicated to Hi-Tech were related to particle size, that the orders were general and nonspecific, and that the order process was markedly informal. Distinguishing from *Mohasco Indus., Inc. v. Anderson Halverson Corp.*, in which the warranty did not apply where the purchaser communicated comprehensive specifications for a yarn purchase and the seller delivered goods in full compliance,[7] the Court found substantial evidence that Pavestone demonstrated the requisite buyer reliance to satisfy the second prong.

---

[2] Wells Fargo Bank, N.A. v. Radecki, 134 Nev. 619, 621, 426 P.3d 593, 596 (2018).
[3] Yount v. Criswell Radovan, LLC, 136 Nev. 409, 414, 469 P.3d 167, 171 (2020).
[4] Whitemaine v. Aniskovich, 124 Nev. 302,308, 183 P.3d 137, 141 (2008).
[5] NEV. REV. STAT. § 104.2315 (2023).
[6] Unif. Commercial Code § 2-315 cmt. 1 ("Under this section the buyer need not bring home to the seller actual knowledge of the particular purpose for which the goods are intended or of his reliance on the seller's skill and judgment, if the circumstances are such that the seller has reason to realize the purpose intended[.]").
[7] Mohasco Indus., Inc. v. Anderson Halverson Corp., 90 Nev. 114, 119, 520 P.2d 234, 236 (1974).

The Supreme Court rejected a final defense by Hi-Tech asserting that Pavestone could not satisfy the requirements of the warranty because it had not sufficiently inspected the goods. The Court once again relied upon the official commentary of the corresponding section of the UCC, which excuses purchasers from the duty of inspection "when there is a latent defect and a simple examination would not reveal [it]."[8] Because no participant in the industry traditionally tested for sodium carbonate in the course of purchasing aggregate, and because simple examination at the time of purchase by Pavestone would not have led to discovery of the sodium carbonate, Pavestone was accordingly excused for its failure to discover a latent defect.

The economic loss doctrine precludes Pavestone's noncontractual claims

The Supreme Court, conversely, accepted Hi-Tech's contention that the district court incorrectly interpreted the economic loss doctrine in permitting Pavestone's noncontractual tort claim. The Court emphasized that the doctrine precludes a products liability action that seeks recovery "without any claim of personal injury or damage to other property,"[9] and further articulated that damage caused by a component part to a product consisting of multiple component parts does not constitute "damage to other property" sufficient to support a tort claim.[10] Accordingly, the damage to the pavers, having been caused by a component part—the aggregate containing the sodium carbonate—constituted only economic loss, and Pavestone's noncontractual paver damage claim was improperly admitted by the district court.

The Court reversed the district court's decision to permit Pavestone's noncontractual claim related to alleged damage to surrounding landscaping features, which would have been permissible under economic loss doctrine as "damage to other property,"[11] because the claim was not supported by substantial evidence in the record by Pavestone.

Conclusion

The Supreme Court agreed with the lower court's findings that Hi-Tech had reason to be aware of the particular purpose of the aggregate it sold Pavestone, and that Pavestone relied upon Hi-Tech to provide a suitable aggregate for that purpose. Under NRS 104.2315, the purchaser of goods for a particular purpose need not demonstrate the actual knowledge of that particular purpose on the part of the seller, but only that the seller had reason to know of the particular purpose. Accordingly, the Supreme Court affirmed the lower court's ruling in favor of Pavestone that Hi-Tech breached its implied warranty of fitness for a particular purpose.

The Court, however, determined upon review of the record that Pavestone failed to establish the existence of damage to the surrounding landscaping or any other property outside of the pavers themselves. Not having demonstrated either the personal injury or the damage to other property required to support a noncontractual tort claim, the Court reversed the lower court's judgment on Pavestone's noncontractual products liability claim.

---

[8] Unif. Commercial Code § 2-316 cmt. 8.
[9] Calloway v. City of Reno, 116 Nev. 250, 257, 993 P.2d 1259, 1263 (2000).
[10] *Id.* at 262, 993 P.2d at 1267.
[11] *Id.*