

Docket No. 87189-Agenda 13-January 2000.

JAMES P. GUERINO *et al.* v. DEPOT PLACE PARTNERSHIP (The Concrete Doctor, Inc., Appellee, v. Levy Shackleford *et al.*, Appellants).

Opinion filed May 18, 2000.

JUSTICE HEIPLE delivered the opinion of the court:

In this complicated multiparty litigation, fourth-party defendant Semmerling Fence and Supply, Inc. (Semmerling), claims that fourth-party plaintiff, The Concrete Doctor, Inc. (Concrete Doctor), cannot state a cause of action for contribution under section 2 of the Joint Tortfeasor Contribution Act (the Act) (740 ILCS 100/2 (West 1996)) against Semmerling and other fourth-party defendants because Concrete Doctor's tort liability was extinguished, leaving only contractual liability as a basis for the action. In addition, fourth-party defendants Levy Shackleford, individually and doing business as Durabilt Fence Company (Shackleford); David Barton, individually and doing business as David Barton Fence Company (Barton); James Raupp (Raupp); and Waste Management of Illinois, Inc. (Waste Management), challenge the good faith of a settlement agreement between plaintiffs James and Katrina Guerino, defendant and third-party plaintiff Depot Place Partnership (Depot Place), and third-party defendant and fourth-party plaintiff Concrete Doctor. Because we agree with Semmerling that Concrete Doctor cannot state a claim for contribution against fourth-party defendants under the Act as a matter of law, we need not consider the good faith of the settlement agreement.

BACKGROUND

On March 23, 1993, plaintiffs filed an action in negligence against Depot Place. The complaint alleged that on April 5, 1991, James Guerino, an employee of Concrete Doctor, was injured by a falling I-beam, an integral part of a mechanical gate located on premises owned by Depot Place and leased to Concrete Doctor. Depot Place filed a third-party complaint against Concrete Doctor on February 5, 1996, seeking recovery on theories of liability under the Contribution Act, breach of contractual duties to inspect and maintain the premises under the lease, and indemnification based on an express indemnity provision in the lease agreement. Depot Place subsequently amended its third-party complaint to add contribution claims against Shackleford, Barton, Raupp, Waste Management and Semmerling. Depot Place alleged that each of the additional third-party defendants had some connection to the design, fabrication, construction, installation or maintenance of the allegedly defective mechanical gate.

All third-party defendants filed motions to dismiss Depot Place's claims as time-barred under the two-year statute of limitations for contribution actions. 735 ILCS 5/13-204(b) (West 1996). The trial court granted the motions to dismiss with regard to the contribution actions, but refused to dismiss Depot Place's third-party action against Concrete Doctor for breach of contract and indemnification, which was subject to a 10-year statute of limitations. The appellate court affirmed the trial court's dismissal of the third-party contribution claims. *Guerino v. Depot Place Partnership*, 292 Ill. App. 3d 1122 (1997) (unpublished order under Supreme Court Rule 23).

On April 18, 1997, Concrete Doctor filed a fourth-party complaint for contribution against Shackleford, Barton, Raupp, Waste Management and Semmerling (collectively, fourth-party defendants) pursuant to section 2 of the Contribution Act (740 ILCS 100/2 (West 1996)). Shortly afterward, on June 11, 1997, plaintiffs, Depot Place and Concrete Doctor reached a settlement

