DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2010

GRAYROBINSON, P.A. and **FLORIDA INSURANCE GUARANTY ASSOCIATION, INCORPORATED,**
Appellants,

v.

FIRELINE RESTORATION, INC. and **WORKS R US, LLC,**
Appellees.

Nos. 4D09-2102 and 4D09-2116

[July 21, 2010]

WARNER, J.

The Florida Insurance Guaranty Association ("FIGA") appeals an order allowing appellee, Works R Us, to garnish certain funds which FIGA paid into the trust account of the GrayRobinson law firm in settlement of an appraisal award in favor of Del Mar Condominiums. Works R Us claimed a right to funds held by FIGA, because it was a judgment creditor of Fireline, a contractor on the Del Mar project. We reverse because there are genuine issues of material fact as to whether the GrayRobinson funds are payable to Fireline.

In 2004 Hurricane Frances damaged the property of the Del Mar Condominium Association. Del Mar hired Fireline Restoration Inc., as its general contractor to make repairs. Subsequently, when Fireline wasn't paid, Fireline sued Del Mar for breach of contract and recorded liens against Del Mar. Del Mar in turn filed a third party complaint against its insurer, Southern Family. During the pendency of this litigation, Southern Family was declared insolvent. FIGA was substituted in the suit and became obligated to pay covered claims. Subsequent to the appearance of FIGA in the litigation, Del Mar entered into a settlement agreement with Fireline whereby Del Mar agreed to make certain payments to Fireline and to cooperate to maximize the recovery from FIGA on the claim. Del Mar agreed that it would receive $2.1 million from FIGA, and any recovery above that amount would be paid to Fireline. Fireline voluntarily dismissed Del Mar with prejudice on October 17, 2006, and recorded satisfaction of liens.

In the insurance litigation, FIGA requested an appraisal pursuant to the insurance policy provisions. An umpire made a substantial appraisal award. After deduction of amounts FIGA had already paid to Del Mar or its contractors, FIGA owed Del Mar $2,832,765. In the meantime, another contractor, JMC Marketing, filed a garnishment action against FIGA, alleging that Fireline owed JMC money. It alleged that Fireline was entitled to part of the money paid on the appraisal award. Del Mar and FIGA both agreed that Fireline was entitled to part of the proceeds and consented to a garnishment judgment in favor of JMC in the amount of $105,533. FIGA issued Del Mar a check made out to both Del Mar and Fireline in the amount of $2,727,231, but Del Mar did not accept it as it claimed it was entitled to additional compensation. FIGA objected and claimed that it actually owed less to Del Mar.

Ultimately, FIGA took the position that Del Mar was owed only what the appraisal had awarded. The trial court granted a summary judgment agreeing with FIGA's position. It then required FIGA to issue a new check in the amount of $2,016,382 to Del Mar and to issue a second check in the amount of $710,849 made payable to the GrayRobinson Trust Account (FIGA's law firm). From the money in the trust account, GrayRobinson was directed to pay the appraiser and other costs of the appraisal proceeding, and then to deposit $505,449 with the clerk of the circuit court. Parties who might be entitled to a portion of those proceeds could file a claim with the court within thirty days. Those parties included creditors of Fireline, including Works R Us. Both Del Mar and FIGA were listed as potential claimants to the fund. Should no one file a claim to any of the proceeds, the court would order the money paid to Del Mar. Following FIGA's compliance with the order by depositing in funds, judgment would be entered in favor of FIGA relieving it of further liability in the matter. The court also retained jurisdiction over the deposited funds as well as matters not disposed of by the order. Thus, the order was not a final appealable order.

Shortly after the entry of this order, Works R Us obtained a money judgment against Fireline for unpaid work. Works R Us immediately issued a writ of garnishment on FIGA and GrayRobinson. In addition, it filed a claim to the monies in the Del Mar litigation as required by the summary judgment order. At that time, GrayRobinson had not as yet deposited money with the clerk. Correcting some errors, the court entered an amended order in the Del Mar suit. After the amended order was entered, FIGA paid the monies to Del Mar, and GrayRobinson deposited the remaining funds with the clerk. Works R Us intervened in the Del Mar litigation and convinced the trial court that the funds should not be deposited with the clerk. The funds eventually were returned to

GrayRobinson. A copy of this second amended order in the Del Mar litigation is not part of the record in this case.

Works R Us filed a motion for summary judgment in the garnishment litigation arguing that it is entitled to part of the funds held by GrayRobinson. It maintained that FIGA acknowledged that Fireline was entitled to monies from the Del Mar appraisal, as FIGA had paid monies to JMC Contracting. During the hearing, however, counsel for Works R Us admitted that in the Del Mar litigation other creditors had filed claims to the monies in possession of GrayRobinson. In ruling in favor of Works R Us, the court found that FIGA had repeatedly acknowledged that Fireline was entitled to a portion of the proceeds. Further, Del Mar had unequivocally stated that it had been paid all it was due from the appraisal award and that the remaining sums from the appraisal award were due to Fireline pursuant to its settlement agreement with Fireline. The court entered summary judgment in favor of Works R Us on its garnishment claim, requiring that GrayRobinson pay to Works R Us the sum of $281,795 from the settlement proceeds. GrayRobinson and FIGA appeal this judgment.

The standard of review of a summary judgment is de novo. *See Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000). Summary judgment is appropriate only where no genuine issues of material fact remain and the moving party is entitled to judgment as a matter of law. *Id.* "[T]he burden of proving the absence of a genuine issue of material fact is upon the moving party. Until it is determined that the movant has successfully met this burden, the opposing party is under no obligation to show that issues do remain to be tried." *Holl v. Talcott*, 191 So. 2d 40, 43 (Fla. 1966).

Garnishment is a statutory remedy which is limited to the scope and authority of the statute. *See Seaboard Sur. Co. v. Acme Wellpoint Corp.*, 156 So. 2d 688, 689 (Fla. 2d DCA 1963). In *Reaves v. Domestic Finance Co.*, 113 Fla. 672, 152 So. 718, 720 (1934), the court set the limits of the garnishee's liability:

> [T]he plaintiff's claim against the garnishee can rise no higher than the claim of the defendant against him. In other words, when the writ of garnishment is served, the plaintiff takes the place of the defendant and becomes substituted for him in the action against the garnishee.*** The garnishee's liability to the defendant is the measure of his liability to the garnishing creditor and can never be for any greater.

Applying those principles to the facts of this case, the court ordered payment of Works R Us from the settlement funds held by GrayRobinson. Works R Us has no greater right than Fireline has to recover funds from FIGA or GrayRobinson. Therefore, we must examine Fireline's claim to those funds.

The funds held by GrayRobinson have been paid in accordance with a court order in the Del Mar litigation with specific directions. Fireline and various creditors of Fireline, as well as Del Mar and FIGA itself, were allowed thirty days to file claims against those funds. Any claims filed beyond that time were deemed barred and waived. Any unclaimed funds would be returned to Del Mar. The record on summary judgment in this proceeding does not reveal whether Fireline filed a claim to the deposited funds. If it did not, then according to the judgment, its claim to them would be barred. In that case, owing no debt to Fireline, GrayRobinson would owe no monies to Works R Us.

In addition, in order to be subjected to garnishment the obligation from the garnishee to the primary debtor must not be contingent or uncertain. *See Suncoast Autobuilders, Inc. v. Britt*, 696 So. 2d 840 (Fla. 2d DCA 1997). The court in the Del Mar litigation specifically retained jurisdiction over the deposited funds. It could determine the priority of claims or otherwise determine the ownership of those funds. Until those determinations were made, the funds held by GrayRobinson were not due to Fireline. At the time of the issuance of the writ of garnishment, they were within the jurisdiction of the Del Mar court, payable at its direction and in accordance with the summary judgment entered in that case. Thus, any obligation to pay Fireline would be contingent and unliquidated. Because Works R Us admitted that several claims to the fund by other creditors have been filed, the amount of the fund, if any, which is payable to Fireline is uncertain. Under those circumstances neither GrayRobinson nor FIGA is presently indebted to Fireline. Thus, the court erred in entering judgment for Works R Us.

Works R Us is not without a remedy. It has filed a claim in the Del Mar litigation as allowed by the trial court. It may recover some or all of the amount of its judgment against Fireline in that action. And, should the court determine that Fireline[1] is entitled to any of those funds, those funds may be garnished at that time.

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[1] If funds were to be payable to Del Mar, then under its agreement with Fireline, Fireline would be entitled to those funds as well.

Reversed with directions to dissolve the writ of garnishment.

TAYLOR and MAY, JJ., concur.

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Consolidated appeals from the Circuit Court for the Nineteenth Judicial Circuit, Indian River County; Paul B. Kanarek, Judge; L.T. Case No. 07-1177 CA 03.

Philip E. Ward, Jeffrey T. Kuntz, Roland E. Schwartz and Evan D. Appell of GrayRobinson, P.A., Fort Lauderdale, for appellants.

Fred L. Kretschmer, Jr. of Brennan & Kretschmer, P.A., Vero Beach, for appellees.

Not final until disposition of timely filed motion for rehearing.