Third District Court of Appeal

State of Florida

Opinion filed June 24, 2020.
Not final until disposition of timely filed motion for rehearing.

Nos. 3D19-2054; 3D19-2053;
3D19-2051; 3D19-2048;
3D19-2046; 3D19-2044
Lower Tribunal No. 16-18468

Allied Tube and Conduit Corporation, et al.,
Appellants,

vs.

Latitude on the River Condominium Association, Inc.,
Appellee.

Appeals from a Non-Final Order from the Circuit Court for Miami-Dade County, Jennifer D. Bailey, Judge.

Shook, Hardy & Bacon LLP, Daniel B. Rogers and Eric S. Boos, for appellants Allied Tube & Conduit Corporation; Atkore International, Inc.; and Tyco Fire Products, L.P.; Bilzin Sumberg Baena Price & Axelrod, LLP, and Kelly R. Melchiondo; Jeffrey J. Lauderdale (Wickliffe, OH), for appellants The Lubrizol Corporation and Lubrizol Advanced Materials, Inc.; Lee, Hernandez, Landrum & Carlson, APC, Robert A. Carlson and Courtney Willoughby, for appellant Suffolk Construction Company, Inc.; Rennert Vogel Mandler & Rodriguez, P.A., and Jill Nexon Berman, for appellant Miami Riverfront Partners, LLC; Rumberger, Kirk & Caldwell, P.A., and Scott M. Sarason, for appellant Georg Fischer Harvel, LLC; Cole, Scott & Kissane, P.A., and Therese A. Savona (Orlando), for appellant Summers Fire Sprinklers, Inc.

Colson Hicks Eidson, P.A., Wm. Allen Bonner and Patrick S. Montoya, for appellee.

Before SALTER, LOGUE and GORDO, JJ.

GORDO, J.

Allied Tube and Conduit Corporation, Atkore International, Inc., Tyco Fire Products, L.P., Miami Riverfront Partners, LLC, Suffolk Construction Company, Inc., Summers Fire Sprinklers, Inc., Georg Fischer Harvel, LLC, The Lubrizol Corporation and Lubrizol Advanced Materials, Inc., appeal the trial court's non-final order on class certification permitting Latitude on the River Condominium Association to bring claims on behalf of the association members for damages related to the removal and replacement of the building's defective fire-sprinkler system.

Latitude sought to certify a class pursuant to Florida Rule of Civil Procedure 1.221. The trial court held a certification hearing, reviewed the parties' submissions and heard argument regarding the appropriateness of certification. Based on the evidence, affidavits and proffers presented, the court found that Latitude met its threshold burden for class certification under Rule 1.221 because the claims related to matters of common interest affecting the association members in a similar way.

We review the trial court's grant of class certification for an abuse of discretion. Sosa v. Safeway Premium Fin. Co., 73 So. 3d 91, 102 (Fla. 2011). See Biza, Corp. v. Galway Bay Mobile Homeowners Ass'n, Inc., No. 3D18-0631, 2019 WL 6884518, at *3 (Fla. 3d DCA Dec. 18, 2019).

Rule 1.221 expressly authorizes condominium associations to "institute, maintain, settle, or appeal actions or hearings in its name on behalf of all association members concerning matters of common interest to the members." Fla. R. Civ. P. 1.221. "[A]s to controversies affecting the matters of common interest . . ., the condominium association, without more, should be construed to represent the class composed of its members as a matter of law." Biza, 2019 WL 6884518, at *4 (quoting The Florida Bar, 353 So. 2d 95, 97 (Fla. 1977)). "[T]he common interest provision of the rule has been interpreted to permit a class action by the association for a construction defect located physically within a unit, rather than in the common elements, if the defect is prevalent throughout the building." Seawatch at Marathon Condo. Ass'n, Inc. v. Charley Toppino & Sons, Inc., 610 So. 2d 470, 473 (Fla. 3d DCA 1992) (citing Alan Becker & Robert Manne, Construction Litigation, in Florida Condominium Law & Practice § 15.3, at 715–16 (The Florida Bar CLE 1987)). We, therefore, cannot say the trial court abused its discretion in finding that damages resulting from the replacement of the fire-sprinkler system throughout the building were a matter of common interest for purposes of certification at this stage of the litigation.

Affirmed.