



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-20-00146-CV

The Most Reverend Wm. Michael **MULVEY**, S.T.L., D.D. Bishop of Corpus Christi,
Appellant

v.

BAY, LTD.,
Appellee

From the 79th Judicial District Court, Jim Wells County, Texas
Trial Court No. 12-09-51494-CV
Honorable Richard C. Terrell, Judge Presiding

Opinion by: Rebeca C. Martinez, Chief Justice

Sitting: Rebeca C. Martinez, Chief Justice
Luz Elena D. Chapa, Justice
Lori I. Valenzuela, Justice

Delivered and Filed: July 14, 2021

REVERSED AND RENDERED

The Most Reverend Wm. Michael Mulvey, S.T.L., D.D. Bishop of Corpus Christi (the “Diocese”) appeals from a final judgment in favor of Bay, Ltd. (“Bay”) after a jury trial. Bay also filed a cross-appeal against the Diocese. The Diocese raises three issues on appeal. In its third issue, which is dispositive of this appeal, the Diocese argues the trial court erred in failing to apply a settlement credit to the damages awarded to Bay at trial. We sustain the Diocese’s third issue, and reverse and render judgment that Bay take nothing on its claim.

BACKGROUND

The Fitzsimmons family donated a 978.6-acre tract of land in Jim Wells County (the “Ranch”) to the Diocese for the benefit of the St. Elizabeth of Hungary parish and school in Alice, Texas. The donation was intended to permit the Diocese to raise funds from hunting and deer leases. Effective November 11, 2010, the Diocese entered into a Hunting and Grazing Lease Agreement with Michael Mendieta, who was employed at Bay as the division manager for trucking and materials. The agreement granted Mendieta a 15-year lease with an option to extend it for two additional five-year terms. The agreement provided for a base rent that would increase over time and required Mendieta to make certain improvements at the Ranch at his sole expense. Upon termination of the lease, the Diocese would retain ownership of any improvements.

After the execution of the lease, Mendieta began to make improvements to the Ranch. Edward Martin, Bay’s president and chief executive officer, discovered that Mendieta may have been using Bay’s materials, equipment, and labor to make improvements to the Ranch. According to Martin, Mendieta admitted to such conduct, and Martin subsequently terminated him. In November 2011, Bay sent the Diocese a letter advising that it was going to file a lien based upon the alleged use of its labor, equipment, and materials on the Ranch. Bay attached an affidavit of lien asserting a value of \$557,748.00 for its materials, labor, and equipment used at the Ranch, and it subsequently placed a lien on the Ranch. In December 2011, the Diocese sent a formal notice that Mendieta cure the lien because the lease agreement prohibited Mendieta from allowing a lien to be placed on the premises. In August 2012, the Diocese sent a final notice to Mendieta stating that the lien had not been cured and that it would enforce its rights under the lease and seek Mendieta’s removal if the lien was not cured in 30 days. The lien was not cured as directed.

In September 2012, Bay filed suit against the Diocese and Mendieta, asserting numerous causes of action including: a request for judicial foreclosure of a statutory and constitutional lien;

creation of a constructive trust; a claim for money had and received; equitable claims of quantum meruit, quasi contract, assumpsit, detrimental reliance, promissory estoppel, and unjust enrichment; a claim for violation of the Texas Theft Liability Act; conversion; common law fraud and fraud by non-disclosure; breach of contract; a request for declaratory relief; negligent misrepresentation; negligence and gross negligence. The Diocese answered and asserted a counterclaim against Bay and a cross-claim against Mendieta. On June 17, 2013, the Diocese terminated its lease with Mendieta, pursuant to a breach of two provisions of Section V of the Lease: (1) subsection (s) which prohibits Mendieta from engaging in “[c]onduct on the premises that conflict with the moral or religious teachings of the Catholic Church;” and (2) subsection (5) which prohibits a lien from being placed on the premises.

In July 2013, the Diocese filed a no-evidence motion for summary judgment on all of Bay’s claims, and the trial court granted the motion in its entirety. The Diocese then filed a notice of nonsuit without prejudice of its cross-claim against Mendieta and counterclaim against Bay and requested that Bay’s remaining claims against Mendieta be severed. Bay then filed a motion for rehearing of the Diocese’s no-evidence motion for summary judgment. The trial court granted the motion for rehearing as to the unjust enrichment and declaratory relief claim, but denied the motion as to the other claims.

In September 2014, Bay amended its petition to add defendants Rodney L. Serpa and Serpa Fabrication, Inc., alleging that they conspired with Mendieta to use Bay’s equipment, materials, and labor to make improvements to the Ranch. Bay filed a separate suit against Mendieta in Nueces County. In the Nueces County suit, the parties ultimately entered into a settlement agreement that called for the entry of an agreed final judgment for \$1.9 million in Bay’s favor and required Mendieta to make monthly payments in satisfaction of the judgment. The agreement also required Bay and Mendieta to file nonsuits against one another in the Jim Wells County suit.

Pursuant to the settlement agreement, Mendieta and Bay filed nonsuits on their competing claims in the Jim Wells County suit. Bay also filed a nonsuit on its claims against Serpa and Serpa Fabrication, Inc.

In August 2019, the parties proceeded to trial on the only claims remaining in the case— Bay’s unjust enrichment claim and request for declaratory relief. After a charge conference, the trial court submitted three questions to the jury on: (1) Bay’s unjust enrichment claim; (2) Bay’s damages on the unjust enrichment claim; and (3) the amount of Bay’s attorney’s fees, if any. At the close of trial, the jury found in favor of Bay on its unjust enrichment claim, specifically finding that “the Diocese held benefits or property that were provided to the [Ranch] that in equity and good conscience belong . . . to Bay, Ltd.” and awarded Bay \$458,426.14 in damages for “the reasonable value of such property or benefits that the Diocese holds that in equity and good conscience belongs to Bay, Ltd.” However, the jury did not award Bay attorney’s fees.

Bay then filed a motion for judgment on the verdict combined with a motion to disregard the jury’s attorney’s fees finding and to award prejudgment interest. The Diocese filed a response to the motion and requested the trial court hold a hearing and apply the one-satisfaction rule to assess a settlement credit against the jury’s damages award. The proposed settlement credit would account for the settlement agreement between Mendieta and Bay in the Nueces County suit. Bay filed a response to the Diocese’s motion. Thereafter, the trial court held a hearing and granted Bay’s motion for a judgment on the jury’s verdict, denied Bay’s request to disregard the jury’s negative finding on its request for attorney’s fees, granted Bay’s request for prejudgment interest, and denied the Diocese’s request for a settlement credit under the one-satisfaction rule. The trial court signed a final judgment consistent with these rulings, and both parties filed motions for new trial, which were denied by operation of law. The Diocese timely filed this appeal, and Bay timely filed its cross appeal.

SETTLEMENT CREDIT

In its third issue, the Diocese argues that the trial court erred in failing to apply the one-satisfaction rule and award it, a nonsettling defendant, a settlement credit based on the settlement in the Nueces County suit between Bay and Mendieta. Bay responds that the one-satisfaction rule does not apply because payments made pursuant to the settlement in the Nueces County suit were allocated to damages arising from a different injury and Bay was unlikely to recover its judgment against Mendieta.

A. *Applicable Law*

The one-satisfaction rule is a common law rule providing that “a plaintiff is entitled to only one recovery for any damages suffered.” *Sky View at Las Palmas, LLC v. Mendez*, 555 S.W.3d 101, 106 (Tex. 2018) (citation omitted). This is true even though “more than one wrongdoer contributed to bring about his injuries.” *Id.* at 107 (citation omitted). The “fundamental consideration in applying the one-satisfaction rule is whether the plaintiff has suffered a single, indivisible injury—not the causes of action the plaintiff asserts.” *Id.* Thus, the one-satisfaction rule “applies both when the defendants commit the same act as well as when defendants commit technically differing acts which result in a single injury.” *Id.* (citation omitted).

A nonsettling defendant seeking a settlement credit under the one-satisfaction rule has the burden to prove its right to such a credit. *Id.* at 107. A nonsettling defendant meets this burden by introducing into the record either the settlement agreement or some other evidence of the settlement amount. *Id.* “Once the nonsettling defendant demonstrates a right to a settlement credit, the burden shifts to the plaintiff to show that certain amounts should not be credited because of the settlement agreement’s allocation.” *Id.* (citing *Utts v. Short*, 81 S.W.3d 822, 828 (Tex. 2002)). The plaintiff can rebut this presumption that the nonsettling defendant is entitled to a settlement

credit by presenting evidence showing that the settlement proceeds would not amount to a double recovery. *Id.*

“[A] nonsettling party should not be penalized for events over which it has no control.” *Utts*, 81 S.W.3d at 829 (citing *Mobil Oil Corp. v. Ellender*, 968 S.W.2d 917, 927 (Tex. 1998)). Thus, this burden-shifting framework, based on the presumption that the nonsettling defendant is entitled to a settlement credit after it introduces evidence of the plaintiff’s settlement, is appropriate because the plaintiff is “in the best position” to demonstrate why rendering judgment based on the jury’s damages award would not amount to the plaintiff’s double recovery. *Id.* If the plaintiff fails to satisfy this burden, then the defendant is entitled to a credit equal to the entire settlement amount. *Id.*; *Ellender*, 968 S.W.2d at 928. We review the trial court’s application of the one-satisfaction rule de novo. *See Sky View*, 555 S.W.3d at 108.

B. Analysis

The Diocese argues that the trial court erred in failing to apply the one-satisfaction rule and denying it a settlement credit for the settlement Bay entered into with Mendiotta. Specifically, the Diocese asserts that Bay did not meet its burden to show what portion of its settlement with Mendiotta was for injuries not attributable to Mendiotta’s use of Bay’s services, materials, equipment, and/or supplies to improve the property relating to Bay’s unjust enrichment claim against the Diocese. Bay responds that the Diocese is not entitled to a settlement credit because the money Bay had received from the settlement, at the time the Diocese requested the trial court apply the one-satisfaction rule to assess a settlement credit, was related to satisfying damages arising from an injury unrelated to the unjust enrichment claim against the Diocese. Bay also responds that it is unlikely to recover the remainder of the judgment against Mendiotta.

The only claim litigated at trial in Jim Wells County was Bay’s unjust enrichment claim against the Diocese, which concerned improvements made by Bay’s former employee, Mendiotta,

to the Ranch. The jury found in favor of Bay on its unjust enrichment claim and awarded Bay \$458,426.14 in damages and no attorney's fees. In addition to the cause litigated at trial, Bay had previously sued Mendieta in a separate lawsuit in Nueces County, and the parties ultimately entered into a settlement agreement. In the settlement agreement, Bay and Mendieta agreed that a final judgment for \$1.9 million would be entered in Bay's favor against Mendieta and that Mendieta and Bay would file nonsuits against one another in the Jim Wells County suit. The final judgment rendered in the Nueces County suit as part of Bay's settlement with Mendieta references various injuries, one of which was Bay's injury arising from the work Mendieta performed using Bay's services, materials, equipment, and/or supplies without payment or other consideration to Bay to improve the Ranch. The final judgment for \$1.9 million only allocates a specific damages amount (\$175,000) to one particular injury, unrelated to Bay's lawsuit against the Diocese.¹ With its motion to apply the one-satisfaction rule, the Diocese provided a copy of the settlement agreement, the agreed judgment, and Bay's and Mendieta's notices of nonsuit.

The Diocese satisfied its burden and successfully raised a presumption that it was entitled to a settlement credit upon introducing the settlement agreement and agreed judgment from the Nueces County suit. *See Ellender*, 968 S.W.2d at 927. The burden then shifted to Bay to rebut the presumption that the Diocese was entitled to a settlement credit by showing that the settlement proceeds were allocated to an injury or damages different from the one for which it recovered against the Diocese. *See Utts*, 81 S.W.3d at 829; *First Title Co. of Waco v. Garrett*, 860 S.W.2d 74, 78 (Tex. 1993). It was Bay's burden, at this point, to demonstrate why receiving the full jury

¹ "With respect to services, materials, equipment, and/or supplies provided to 4768 FM 624, Robstown, Texas 78380, Mendieta breached a special trust or fiduciary relationship and was unjustly enriched in . . . an amount that is at least \$175,000."

award in the Jim Wells County suit would not amount to a double recovery or windfall. *See Utts*, 81 S.W.3d at 829; *First Title*, 860 S.W.2d at 78.

In its response to the Diocese's request, Bay conceded in its written response that its unjust enrichment claim against the Diocese addressed one of Bay's injuries related to the \$1.9 million settlement between Bay and Mendieta. However, Bay argued the injury related to the unjust enrichment claim is only one of twenty-three injuries described in the Nueces County final judgment against Mendieta. Bay asserted that \$175,000 out of the \$1.9 million settlement was allocated to a constructive trust and constitutional lien granted against property owned by Mendieta and used as his homestead, and not the property in dispute in the Jim Wells County trial. While Bay provided that \$175,000 is allocated to a separate injury, distinct from the one the jury awarded Bay damages for at trial, it failed to allocate how the remaining \$1,725,000 is allocated—including what portion of the remaining \$1,725,000 is related to the unjust enrichment injury litigated in the Jim Wells County trial. Without allocation of the remaining \$1,725,000, Bay failed to rebut the presumption that the Diocese is entitled to the settlement credit in that amount. *See Sky View*, 555 S.W.3d at 111–12 (holding plaintiff failed to rebut the presumption that nonsettling defendant was entitled to a settlement credit equal to the total settlement amount because he failed to offer evidence allocating the settlement amounts); *see also Elness Swenson Graham Architects, Inc. v. RLJ II-C Austin Air, LP*, 520 S.W.3d 145, 164–65 (Tex. App.—Austin 2017, pet. denied) (en banc) (holding trial court properly applied the one-satisfaction rule by crediting the total of two settlement amounts of \$1,170,000 to the jury's awards of damages because plaintiff failed to apportion damages to each defendant after nonsettling defendant met its burden to provide evidence of the settlement agreements and amounts).

Bay also argues that it met its burden to show that its judgment against the Diocese would not result in a double recovery because at the time the Diocese requested a settlement credit, Bay

had not received any payments from its settlement with Mendietta related to the unjust enrichment injury litigated at the Jim Wells County trial. Bay contends it had only received \$15,000 in payments made by Mendietta to satisfy the constructive trust and constitutional lien against Mendietta's homestead related to the segregated \$175,000 portion of the final judgment. Bay further asserts that it is unlikely to recover the remainder of its judgment against Mendietta from the settlement agreement. In other words, Bay argues that the Diocese has failed to show that Bay received—or is likely to receive—the settlement funds that the Diocese claims credit for.

Although Bay argues it is *unlikely* to receive the remainder of the judgment under the terms of the settlement agreement it entered into with Mendietta, it fails to show how rendering judgment based on the jury's damages award from the Jim Wells County trial *would not* amount to its double recovery. *See Sky View*, 555 S.W.3d at 108 (stating plaintiff is in the best position to demonstrate why rendering judgment based on the jury's damages award “would not” amount to plaintiff's double recovery). Here, Bay voluntarily settled with Mendietta in a separate case in Nueces County and released its claims in exchange for agreed future payments. It then obtained a judgment pursuant to this settlement agreement for the same injury as claimed against the Diocese. At the time of Bay's response to the Diocese's motion to apply a settlement credit, Mendietta had paid \$15,000 towards the \$1.9 million settlement, in compliance with the settlement agreement. Although Bay complains Mendietta may not continue to pay or complete all of the requisite payments under the settlement agreement and his payments may not even cover annual interest expenses, the Diocese cannot be penalized for events it has no control over, and Bay has failed to present evidence showing, as a certainty, that it will not collect settlement proceeds from Mendietta related to the injury litigated at the Jim Wells County trial. *See Sky View*, 555 S.W.3d at 108 (stating that the nonsettling defendant “should not be penalized for events over which it has no control.”); *see also Nat'l Oil Well Varco, L.P. v. Sadagopan*, No. H-16-2261, 2018 WL 5778250,

at *3 (S.D. Tex. Oct. 13, 2018) (holding plaintiff did not meet its burden to rebut presumption that nonsettling defendants were entitled to a credit for the entire settlement amount when plaintiff entered into a settlement agreement that called for a series of future payments that had not yet been collected).

Further, because the judgments were obtained in separate cases, if the Diocese were to satisfy its judgment from the Jim Wells County trial, the judgment against Mendieta in Nueces County would be unaffected. Therefore, if we did not apply a settlement credit, there would remain the possibility that Bay could recover twice for the same injury and there is no certainty that it will “satisfy only one judgment.” *See Daryapayma v. Park*, No. 02-15-00159-CV, 2016 WL 6519117, at *2 (Tex. App.—Fort Worth Nov. 3, 2016, no pet.) (mem. op.) (stating that an unsatisfied judgment recovered against one tortfeasor will not operate as a bar to an action against another tortfeasor, “provided however, the plaintiff may finally satisfy only one judgment.”). Bay has the burden to show that rendering judgment against the Diocese “would not amount to the plaintiff’s double recovery,” and it has not met this burden by showing only an unlikelihood of complete satisfaction from Mendieta. *See Sky View*, 555 S.W.3d at 108; *Utts*, 81 S.W.3d at 829.²

² Bay relies on *Daryapayma v. Park* and *Ally v. Bank and Trust of Bryan/College Station* in support of its argument that it should be able to satisfy its judgment from the Jim Wells County trial. *See Daryapayma*, 2016 WL 6519117, at *2; *Ally v. Bank & Tr. of Bryan/College Station*, No. 10-11-00080-CV, 2012 WL 662324, at *11 (Tex. App.—Waco Feb. 29, 2012, no pet.) (mem. op.). However, these cases are inapposite because they involve multiple judgments in the same case, where satisfaction of one judgment would then affect the other judgment. *See Daryapayma*, 2016 WL 6519117, at *2–3 (holding that prior default judgments, in which no actual payment had been paid, did not prevent a judgment at trial against other defendants in the same case); *Ally*, 2012 WL 662324, at *11 & n.9 (holding that summary judgment order against appellant did not give appellee double recovery because no payment had been made on agreed judgment against co-defendant in same case and noting that agreed judgment merged with summary judgment, so there was only one judgment and not two distinct judgments, as argued). Bay also relies on *Krobar Drobar Drilling, L.L.C. v. Ormiston*, which is also inapposite because its reasoning relies on the election-of-remedies doctrine rather than the one-satisfaction rule, which is not argued in this appeal. *See Krobar Drobar Drilling, L.L.C. v. Ormiston*, 426 S.W.3d 107, 113–15 (Tex. App.—Houston [1st Dist.] 2012, pet. denied) (holding that the election-of-remedies doctrine did not apply because it is the obtaining of a judgment on one theory or state of facts that precludes the ability to pursue other inconsistent remedies); *see also Sadagopan*, 2018 WL 5778250, at *3 (distinguishing *Krobar Drobar Drilling*, 426 S.W.3d at 112 because “it did not involve a settlement credit,” but “whether the plaintiff could pursue a separate action against a tortfeasor following an unsuccessful effort to collect on a judgment”).

Therefore, the Diocese is entitled to a credit of the total remaining \$1,725,000. *See Elness*, 520 S.W.3d at 164–65 (holding trial court properly applied the one-satisfaction rule in crediting the total of two settlement amounts of \$1,170,000 to the jury’s award of damages because plaintiff failed to apportion damages to each defendant after nonsettling defendant met its burden to provide evidence of the settlement agreements and amounts); *see also Sky View*, 555 S.W.3d at 108 (“If the plaintiff fails to satisfy this burden, then the defendant is entitled to a credit equal to the entire settlement amount.”). Because this credit exceeds the \$458,426.14 awarded by the jury, Bay must take nothing on its unjust enrichment claim. *See Galle, Inc. v. Pool*, 262 S.W.3d 564, 574 (Tex. App.—Austin 2008, pet. denied) (holding that plaintiff take nothing on breach-of-contract theory after applying one-satisfaction rule and finding that nonsettling defendant was entitled to an entire settlement amount, which exceeded plaintiff’s damages award). Therefore, we sustain the Diocese’s third issue, reverse the trial court’s judgment, and render judgment that Bay take nothing.

In light of our disposition of the Diocese’s third issue, we need not address its first and second issues and Bay’s issue on cross-appeal.³ *See* TEX. R. APP. P. 47.1 (requiring appellate courts to address all issues raised and necessary to the appeal’s disposition).

CONCLUSION

We reverse the trial court’s judgment and render judgment that Bay take nothing.

Rebeca C. Martinez, Chief Justice

³ The Diocese’s first and second issues challenge the trial court’s jury charge, and Bay’s issue on cross-appeal challenges the jury’s negative finding on attorney’s fees. *See Elness*, 520 S.W.3d at 169–71 (holding that RLJ was not entitled to attorney’s fees from Elness because, although RLJ was awarded damages by the jury, it did not actually recover damages due to the application of the settlement credits and was thus not a “prevailing party.”).