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FRYMIRE ENGINEERING COMPANY, INC. v. JOMAR INTERNATIONAL, LTD.

The Texas courts have long been known to apply the doctrine of subrogation liberally. In the recent case *Frymire v. Jomar*, the Texas Supreme Court was asked to decide whether the doctrine of equitable subrogation applies to a subcontractor seeking to recoup contractual payments from an alleged third-party tortfeasor. In the decision, delivered by the Justice Willett, the Texas Supreme Court relied on a century of precedent in holding that it did.

FACTS OF THE CASE

The owner of the Renaissance Hotel in Dallas hired Price Woods, Inc. ("Price Woods") as general contractor for a remodeling project. Price Woods then subcontracted the HVAC and sheet metal work to Frymire Engineering, Inc. ("Frymire"). As part of its contract with Price Woods, Frymire agreed to pay for any damages caused to Price Woods or the hotel owner arising out of Frymire's performance of the work and also agreed to obtain liability insurance to cover this indemnity obligation. Frymire complied with the agreement and purchased a general liability policy from Liberty Mutual Insurance Co. ("Liberty Mutual").

As part of the project, Frymire installed an "Add-A-Valve," which was manufactured by Jomar International, Ltd. and Mixer S.R.L. (together, "Jomar"), to a chilled water line. The water line later ruptured at the site of the valve, resulting in extensive water damage to the hotel. The hotel owner sought indemnification from Frymire according to the terms of the contract. Liberty Mutual paid the owner \$458,496 on behalf of Frymire, and the parties signed an agreement releasing Frymire and Liberty Mutual from all claims or actions arising from the incident.

Nearly two years after signing the release, Frymire, by and through Liberty Mutual (together, "Frymire"), sued the manufacturers of the valve to recoup the indemnification payment. Frymire alleged that the damages arose from Jomar's negligence, product liability, and breach of warranty.

Jomar subsequently filed both Traditional and No-Evidence Motions for Summary Judgment, and the trial court granted both motions without explanation. The Court of Appeals affirmed, holding that Frymire lacked standing to assert its claims because it failed to establish a right to equitable subrogation. Because the Court based its holding solely on standing, it did not ever address whether the summary judgment was appropriate under any of Jomar's other arguments.

EQUITABLE SUBROGATION

The doctrine of equitable subrogation allows a party who would otherwise lack standing to step into the shoes of, and pursue the claims belonging to, a party with standing. See *Mid-Continent Ins. Co. v. Liberty Mut. Ins. Co.*, 236 S.W.3d 765, 774 (Tex. 2007). Equitable subrogation applies "in every instance in which one person, not acting voluntarily, has paid a debt for which another was primarily liable and which in equity should have been paid by the latter." *Id.* Thus, a party seeking equitable subrogation must show it involuntarily paid a debt primarily owed by another in a situation that favors equitable relief. *Id.*

In order to establish standing, a party seeking recovery under equitable subrogation will have to show:

- (1) it has paid a debt that another party was primarily responsible for;
- (2) the payment has been made involuntarily; and
- (3) the party primarily responsible for the debt would be unjustly enriched if the party that paid was not able to pursue their claim.

THE SUPREME COURT'S DECISION

In their decision, the Supreme Court first addressed the issue of what constitutes a debt owed by another. Frymire argued that the debt paid was potentially owed in tort by Jomar to the hotel for the water damage caused by Jomar's faulty valve. Jomar countered that the debt in question was a contractual debt and Frymire covered the damage according to the terms of a contract that Jomar was not a party to and to which Jomar did not have notice.

The Supreme Court acknowledged Jomar's argument that Frymire's contractual payment fulfilled a debt owed by Frymire to the hotel, but stated that the satisfaction of this contractual debt does not foreclose the existence and satisfaction of another debt owed by Jomar to the hotel. The opinion pointed out that in response to the summary judgment motion filed by Jomar, Frymire had presented an expert report asserting that a properly designed valve would not have failed under the circumstances. Viewing this evidence in the light most favorable to Frymire and disregarding any contrary inferences, the Supreme Court concluded that Frymire satisfied its summary judgment burden to provide some evidence that a design defect in Jomar's "Add-A-Valve" primarily caused the rupture, and therefore, that Jomar is primarily responsible for the resulting damage.

The Supreme Court then turned to the issue of whether Frymire made the payment involuntarily. The Supreme Court said, "A payment is voluntary when the payor acts without any assignment or agreement for subrogation, without being under any legal obligation to make payment, and without being compelled to do so for the preservation of any rights or property," and also noted that the, "Texas courts are liberal in their determinations that payments were made involuntarily."

Frymire argued that it was legally obligated by its contract with Price Woods to pay the hotel for the water damage; therefore, the indemnity payment made to the hotel owner was involuntary. Jomar responded that Frymire voluntarily entered the contract and voluntarily satisfied the hotel owner's demands for payment. The Supreme Court considered the arguments and stated:

"When the water line ruptured, the hotel owner made a claim on Frymire for indemnification under the contract. In this case, no legal duty obligated Frymire to confer a benefit on Jomar. Frymire paid the hotel owner to satisfy contractual indemnity obligations owed to Price Woods. Frymire's decision to contract with Price Woods was voluntary; its duty to honor that contract was not. Having acted to satisfy a legal obligation and to protect its interests under the contract (and its reputation in the marketplace), Frymire involuntarily extinguished a debt primarily owed by Jomar to the hotel owner."

After holding that Frymire had met its burden in proving the first two elements of subrogation, the Supreme Court turned to the issue of unjust enrichment. Frymire argued that Jomar would be unjustly enriched if it was allowed to escape responsibility for the damage caused by its faulty product. Jomar claimed that Frymire acted on its own account to satisfy contractual and potential tort liability for the actions of its own workers. Jomar said that the hypothetical tort claims against Jomar should not be relied upon for determining unjust enrichment.

The Supreme Court concluded that because Frymire had produced some evidence of the alleged tort liability on the part of Jomar, they could conclude that Jomar would be unjustly enriched were Frymire not permitted to pursue its claims due to lack of standing.

The Supreme Court held that Frymire had established all of the elements under the doctrine of equitable subrogation. They reversed the Court of Appeal's judgment and remanded the case for further proceedings.

WHAT DOES THIS MEAN?

The *Frymire* decision is important since indemnity clauses have become so prevalent in today's business world. Many clients today require a contractor to provide some sort of indemnification as a condition to awarding any contract to complete work.

The Supreme Court's decision shows their commitment to their traditionally liberal application of the doctrine of subrogation by applying that doctrine to a subcontractor seeking recovery from an alleged third party tortfeasor. Based on the Supreme Court's decision in *Frymire*, contractors who have entered into an indemnity agreement and are forced by the terms of the agreement to indemnify a client for damages can now rest assured that they have not waived their right to bring suit for recovery against a third party who may be primarily liable.

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