

IN THE SUPREME COURT OF THE STATE OF NEVADA

NORTHWEST PARTNERS, L.P., A
NEVADA LIMITED PARTNERSHIP,
Appellant,
vs.
PICERNE CONSTRUCTION
CORPORATION, AN ARIZONA
CORPORATION,
Respondent.

No. 41751

FILED

DEC 07 2005

JANETT M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment in a contractual indemnity case. Second Judicial District Court, Washoe County; James W. Hardesty, Judge.

Appellant Northwest Partners, L.P. (Northwest), entered into a written contract with respondent Picerne Construction Corporation (Picerne) for the construction of a Reno apartment complex. Article 3.18.1 of the contract provided that Picerne, the general contractor, would indemnify Northwest, the owner/developer, from claims, damages, and losses "arising out of or resulting from performance of the Work . . . to the extent caused in whole or in part by [Picerne's] negligent acts or omissions." However, Article 3.18.3 qualified Article 3.18.1, stating that Picerne's indemnification obligations would "not extend to the liability of the Architect . . . arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications." Picerne completed the apartment complex according to the architect's plans and specifications.

In June 1999, a child fell from a third-story window of the complex. The window measured approximately four feet wide, six feet high, just under one foot off of the floor, and opened from the bottom, at the sill. The child's parents filed a suit alleging negligence, among other causes of action, against several parties, including Northwest and Picerne. Northwest asserted a cross-claim for contractual indemnity against Picerne. Eventually, the plaintiffs settled with all defendants in good faith, and Picerne moved for summary judgment on Northwest's cross-claim.

The district court granted Picerne's motion for summary judgment for several reasons. First, the court found that Article 3.18.3 did not require Picerne to indemnify Northwest for design defects. Second, the district court found that the window's alleged defect was not so glaringly dangerous as to put Picerne on notice that it would be negligent if it continued to build them. Finally, the district court concluded that, under Article 3.18.1, Northwest had failed to present any evidence that Picerne's conduct fell below a reasonable standard of care regarding any alleged negligent acts or omissions, noting that nothing in the record indicated that Picerne had maintained the windows or had a duty to warn the tenant of a faulty window.

This court reviews a summary judgment de novo.¹ Summary judgment is appropriate when, after viewing the record in the light most favorable to the non-moving party, there remain no issues of material

¹Medallion Dev. v. Converse Consultants, 113 Nev. 27, 31, 930 P.2d 115, 118 (1997); Tore, Ltd. v. Church, 105 Nev. 183, 185, 772 P.2d 1281, 1282 (1989).

fact.² “[T]he essential question on appeal is whether genuine issues of material fact were created by pleadings and proof offered.”³ In the absence of ambiguity, issues of contractual construction present questions of law for the courts and are suitable for determination by summary judgment.⁴

Northwest argues that the district court erred in granting Picerne summary judgment because, under Article 3.18.1, Picerne was independently negligent in following the architect’s “obviously” defective plans and that there remain issues of fact. Northwest also argues that Article 3.18.3 does not preclude indemnity in this action. We disagree.

Here, the record reflects that Picerne relied on the architect’s drawings and plans in constructing the building, did not deviate from them unless authorized, and was not involved in the architectural design. The district court determined that the alleged defect, if any, was a design defect. Article 3.18.3 circumscribes the effect of Article 3.18.1 with respect to design defects. Per Article 3.18.3, Picerne need not indemnify Northwest for any alleged negligence arising from a design defect. We

²Medallion, 113 Nev. at 31, 930 P.2d at 118; Butler v. Bogdanovich, 101 Nev. 449, 451, 705 P.2d 662, 663 (1985).

³Yeager v. Harrah’s Club, Inc., 111 Nev. 830, 833, 897 P.2d 1093, 1094 (1995) (citing Copeland v. Desert Inn Hotel, 99 Nev. 823, 827, 673 P.2d 490, 492 (1983)).

⁴Ellison v. C.S.A.A., 106 Nev. 601, 603, 797 P.2d 975, 977 (1990).

conclude that the district court did not err in granting summary judgment.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶

Becker, C.J.
Becker

Rose, J.
Rose

Maupin, J.
Maupin

Gibbons, J.
Gibbons

Douglas, J.
Douglas

Parraguirre, J.
Parraguirre

cc: Second Judicial District Court Dept. 9, District Judge
Hamilton & McMahon
Lemons Grundy & Eisenberg
Washoe District Court Clerk

⁵We have considered Northwest's judicial estoppel argument but conclude that it is without merit. We do not reach Picerne's argument regarding the permissibility of indemnification for claims involving punitive damages.

⁶The Honorable James W. Hardesty, Justice, voluntarily recused himself from participation in the decision of this matter.