



State v. Echeverri

Court of Appeal of Florida, Third District

July 14, 1999, Opinion Filed

CASE NO. 98-1095

Reporter

736 So. 2d 791 *; 1999 Fla. App. LEXIS 9295 **

THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, Appellant, vs. OSCAR ECHEVERRI, as Personal Representative of the Estate of CARLOS A. ECHEVERRI, deceased, for the use and benefit of said Estate and for the use and benefit of OSCAR ECHEVERRI, the surviving father and MARIA VICTORIA MARQUEZ, the surviving mother, CAPELETTI BROTHERS, INC., MARKS BROTHERS COMPANY and BEISWENGER, HOCH & ASSOCIATES, Appellees.

Subsequent History: [**1] Released for Publication August 18, 1999.

Petition for Review Dismissed August 25, 1999, Reported at: [1999 Fla. LEXIS 1529](#).

Prior History: An Appeal from the Circuit Court for Dade County, Amy Steele Donner, Judge. LOWER TRIBUNAL NOS. 96-10435, 97-6884.

Disposition: Affirmed in part, dismissed in part.

Case Summary

Procedural Posture

Appellant sought review of a judgment from the Circuit Court for Dade County (Florida) dismissing appellant's cross-claim because the statute of repose, [Fla. Stat. Ann. § 95.11\(3\)\(c\)](#) (1995), barred his claims, and holding that those defendants would not be on the verdict form as Fabre parties for apportionment of damages.

Overview

Plaintiffs, deceased's parents, sued appellant government for a wrongful death from an accident on a state road exit ramp. Appellant asserted cross-claims for indemnity, and for joint-tortfeasor-like contribution from the general contractor and the designer-architect by alleging they negligently

performed their respective work on the project. Construction on the ramp began in the early 1960's and ended in 1966. The trial judge dismissed those parties because appellant's claims were barred by the statute of repose [*Fla. Stat. Ann. § 95.11\(3\)\(c\)*](#) (1995). The trial judge held that those parties would not appear on the verdict form as Fabre parties for apportionment of damages. Appellant challenged the order, and the court affirmed the judgment finding [*§ 95.11\(3\)\(c\)*](#) clearly applied to those parties because they were involved in the planning and construction of the exit ramp. The court dismissed appellant's appeal of the Fabre ruling because his appeal was improperly taken from an interlocutory order, which was not subject to review. [*Fla. R. App. P. 9.130*](#). The court also flatly rejected appellant's contention that the statute was unconstitutional.

Outcome

The judgment dismissing the general contractor and the designer-architect was affirmed because the statute of repose clearly applied to those parties and barred appellant's claims. The court rejected the assertion the statute was unconstitutional and dismissed appellant's challenge that those parties would not be on the verdict form as Fabre parties for damages because the order was not appealable.

LexisNexis® Headnotes

Business & Corporate Compliance > ... > Real Property Law > Construction Law > Design Professionals

Torts > Procedural Matters > Statute of Repose > General Overview

[HNI\[↓\]](#) **Construction Law, Design Professionals**

See [*Fla. Stat. Ann. § 95.11\(3\)\(c\)*](#) (1995).

Governments > Legislation > Statute of Limitations > General Overview

Torts > Procedural Matters > Statute of Repose > Professional Malpractice

Governments > Legislation > Interpretation

[HN2\[↓\]](#) **Legislation, Statute of Limitations**

In interpreting statutes a court will reject contentions that are contrary to the plain language of a statute which is clear.

Counsel: Andrew J. Anthony and Bradley A. Silverman, for appellant.

Manuel R. Morales, Jr., for appellee Echeverri; Parenti, Falk, Waas, Hernandez & Cortina and Gail Leverett Parenti for Capeletti Brothers; Norman Malinski for Beiswenger, Hoch & Associates.

Judges: Before SCHWARTZ, C.J., and COPE and GREEN, JJ.


Opinion by: SCHWARTZ

Opinion

[*791] SCHWARTZ, Chief Judge.

In 1996, Echeverri sued the Department of Transportation, Capeletti Brothers, Inc., and Beiswenger, Hoch & Assocs. for a wrongful death sustained in a 1995 accident on a state road exit ramp allegedly negligently maintained by the D.O.T. Construction on the roadway had begun in the early 1960's and was completed in 1966. The D.O.T. asserted cross-claims for indemnity, and for joint-tortfeasor-type contribution against Capeletti, the general contractor, and Beiswenger, the designer-architect, based on claims they negligently performed their respective work on the project. The trial judge dismissed [**2] the complaint as to those defendants and, in the orders now under review, the cross-claims [*792] with prejudice on the ground that they were barred by the statute of

repose contained in [section 95.11\(3\)\(c\), Florida Statutes](#) (1995). It provides:

[HNI](#) An action founded on the design, planning, or construction of an improvement to real property, with the time running from the date of actual possession by the owner, . . . or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest. . . . **In any event, the action must be commenced within 15 years after the date of actual possession by the owner, the date of the issuance of a certificate of occupancy . . . or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest.**

[§ 95.11\(3\)\(c\), Fla. Stat.](#) (1995)(emphasis added).

The trial court also ruled that Capeletti and Beiswenger would not appear on the verdict form as *Fabre* parties [**3] for any apportionment of damages in the ensuing trial which would thus involve the D.O.T. as the sole defendant. The D.O.T. now seeks review of these rulings.

The D.O.T. argues that its cross-claims were improperly dismissed under the statute because, it says, the statute does not apply to actions for indemnity¹ and contribution, as opposed to an initial claim for damages. Even assuming the very arguable question that the point was properly preserved below, [HN2](#)^[↑] we reject the contention as contrary to the plain language of the statute which clearly applies to *all* actions "founded on the design, planning, or construction of an improvement to real property." The appellant's alternate contention that, if applicable, the statute of repose is unconstitutional, is likewise without merit. See [Sabal Chase Homeowners Ass'n, Inc. v. Walt Disney World Co.](#), 726 So. 2d 796 (Fla. 3d DCA 1999); [American Liberty Ins. Co. v. West & Conyers, Architects & Engineers](#), 491 So. 2d 573 (Fla. 2d DCA 1986).

[**4] Insofar as the appellant challenges the *Fabre* ruling below, we dismiss the appeal as unauthorizedly taken from an interlocutory order which is not subject to review under any of the provisions of [Florida Rule of Appellate Procedure 9.130](#). See [Stufflebean v. Ohio Cas. Ins. Co.](#), 645 So. 2d 136 (Fla. 4th DCA 1994); [R D & G Leasing](#),

[Inc. v. Stebnicki](#), 626 So. 2d 1002 (Fla. 3d DCA 1993).

Affirmed in part, dismissed in part.

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¹ We note that, in any case, a claim for indemnity does not lie under these circumstances as a matter of law. See [Houdaille Industries, Inc. v. Edwards](#), 374 So. 2d 490 (Fla. 1970); 12 Fla. Jur.2d Contribution § 34 (1998).