

Nationwide Beats Construction Defect Suit At 11th Circ.

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Summary

The Eleventh Circuit held that an Alabama district court wrongly applied federal rather than Alabama state laws when determining privity in a suit between a homeowner and contractor, freeing Nationwide Mutual Fire Insurance Co. from defending the contractor's allegedly botched work.

Body

The Eleventh Circuit held that an Alabama district court wrongly applied federal rather than Alabama state laws when determining privity in a suit between a homeowner and contractor, freeing Nationwide Mutual Fire Insurance Co. from defending the contractor's allegedly botched work.

In an opinion published Friday, a three-judge panel said that the lower court relied on the incorrect legal standard in denying Nationwide's motion in limine in a suit asking it to defend a contractor's construction defect. The panel reversed the district court's order, vacated its judgment, and remanded the case back to the court.

The panel said that the lower court erred in applying federal rules instead of Alabama's rules to determine the issue of privity, established in a prior federal judgment, between a home builder and a homeowner.

"When determining the preclusive effect of an earlier judgment rendered by a federal court exercising diversity jurisdiction, federal common law adopts the rules of issue preclusion applied by the state in which the rendering court sits. In this case, the district court was required to apply Alabama's rules of issue preclusion," the panel said.

In August 2004, Ronald Sellers hired Gardner Builders Inc. to build his home. Gardner hired a subcontractor, Steve Durham, to do the house's footing work. Durham was insured under a Nationwide contractors policy. After moving in, Sellers sued Gardner and Durham for construction defects in Alabama state court in 2008.

Gardner filed a cross-complaint a year later alleging that Durham was liable for Seller's damages. Sellers agreed to release claims against Gardner in exchange for \$100,000 in October 2011, and Gardner assigned Sellers his claims against Durham.

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The following month, Sellers filed an amended complaint against Durham.

While the state court case was pending, Nationwide sued Durham and Sellers in Alabama federal court, arguing that it did not need to defend Durham for Sellers' claims in the state court, claiming that Sellers' damages happened before its policy period. The district court ruled in Nationwide's favor in August 2012.

In October 2013 the state court entered a judgment of \$250,000 against Durham. In May 2015, Sellers sued Nationwide, asking for it to pay for the judgment on Durham's behalf. Nationwide opposed, filing a motion in limine and arguing that the issue had already been decided by the 2012 federal judgment that Seller's damages, due to Durham's faulty work, happened before its policy period.

Nationwide asserted that though the homebuilder, Gardner, was not involved in the 2012 federal judgment, Gardner's assigning its claims to Seller established "complete privity" between them. The court denied Nationwide's bid in February 2019, finding no privity existed between Sellers and Gardner, and ruled against Nationwide in the amount of \$250,000. Nationwide then appealed.

In Friday's order, the panel said that the district court improperly relied on deferral rules and failed to determine the "preclusive effect" of that 2012 federal judgment based on the Alabama rules. The application of privity for "non party issue preclusion" under Alabama state rules "are not substantively the same as" the federal rules, the panel said.

"Although not a party to the prior suit, under Alabama law, a person in privity with a party to the previous litigation may be precluded from relitigating the same issue," the panel said.

The panel said that Alabama state law "follows an expansive definition of privity," which includes "an identity of interest" in the litigation. In contrast, under the federal common law, rules of nonparty preclusion privity cannot be based solely on an identity of interest, the circuit judges said.

Representatives for parties could not be immediately reached for comment.

U.S. Circuit Judges Charles R. Wilson, Barbara Lagoa and Robert L. Anderson III sat on the panel for the Eleventh Circuit.

Nationwide is represented by Kile T. Turner of Norman Wood Kendrick & Turner.

Sellers is represented by Harry Arthur Edge III and David Horsley of Arthur Edge III PC.

The case is Ronald Sellers v. Nationwide Mutual Fire Ins., et al, case number 18-15276, in the U.S. Court of Appeals for the Eleventh Circuit.

--Editing by Rebecca Flanagan.