



Fourth Ocean Putnam Corporation v. Interstate Wrecking Company

495 NY2d 1 (1985)

Case Brief Summary

Brief Fact Summary

A property owner claimed to be the third-party beneficiary of a contract between a wrecking company, as promisor, and a municipality, as promisee.

The property owner brought suit against the wrecking company, seeking damages for its failure to completely follow all the terms of the contract that it had executed with the municipality, which caused the diminishment of the value of its property.

Facts

Plaintiff, Fourth Ocean Putnam Corporation, owned a seaside hotel (known as the Atlantic Beach Hotel) in the Village of Atlantic Beach, (Town of Hempstead, Nassau County, Long Island) New York.

The Hotel sustained a serious fire, and was severely damaged in 1977. Due to the damage, and plaintiff's inability to repair the same, the Hotel quickly became a public nuisance and fire hazard, in a very high traffic location, along the beach, in this very affluent community. After numerous community complaints, the Village of Atlantic Beach, obtained a court order compelling Fourth Ocean to remove the dilapidated and dangerous structure.

Fourth Ocean, which was pursuing plans to redevelop the site, failed to comply with the court order in a timely manner, so the village next entered into a demolition contract, with the defendant, Interstate Wrecking Company, to perform the work of demolition and removal of the building.

The contract called for between the Village and Interstate, required the demolition company to demolish and remove buildings and boardwalk and stated that as demolition progressed, that all materials and debris were to be removed from the premises and that the lot. The contract further required that after demolition was completed, the site was further to be compacted and graded to "grade level" with dirt, and that all walls and foundations must be removed one foot below the elevation of the existing grade of the sidewalk adjacent to it, with the slab being crushed for drainage and all large pieces removed.

The demolition was concluded by Interstate in July 1978, at a cost of \$86,373.63, which the Village paid, and then later recovered from plaintiff, Fourth Ocean, pursuant to its previous court order against plaintiff.

When plaintiff, Fourth Ocean, began to redevelop the property four years later in 1982, it discovered that the defendant, Interstate Wrecking Company, had not demolished the hotel in conformity with its contract with the village.

Fourth Ocean alleged that it was a third-party beneficiary of the demolition contract with the Village, and sued defendant, Interstate Wrecking Company, on the grounds that it had not complied with the terms of the contract calling for it to remove and regrade the property after demolition (thereby making Fourth Oceans efforts to develop the property with new buildings more expensive).

Issue:

Was plaintiff, Fourth Ocean Corporation, an intentional third party beneficiary of the contract between the Village of Atlantic Beach and defendant, Interstate Wrecking Company, that could thereby enforce the breach provisions of the contract from which it would benefit?

Holding and Rule

No. Plaintiff, Fourth Ocean Corporation was an incidental third party beneficiary and not an intentional third party beneficiary.

Synopsis of Rule of Law

The Court held that an incidental beneficiary is one who is not an intended beneficiary. It further state that essential to status as an intended beneficiary is either that "performance of the promise will satisfy an obligation of the promisee to pay money to the beneficiary" or that "the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance", and that among the circumstances to be considered is whether manifestation of the intention of the promisor and promisee is "sufficient, in a contractual setting, to make reliance by the beneficiary both reasonable and probable".

Accordingly, the court found Fourth Ocean to be an incidental and not an intentional third party beneficiary, with no subsequent rights under the contract.

Discussion:

The Court found that plaintiff was an incidental beneficiary not an intentional third party beneficiary, because the contract was made for the purpose of protecting the public at large from a fire hazard and a public nuisance, not for the benefit of the plaintiff so that he could redevelop the property. Nowhere was plaintiff, Fourth Ocean ever mentioned in the contract, or considered by the parties as its beneficiary.

Fourth Ocean's argument that because the demolition work was performed to satisfy its obligation, and because it paid the Village for the cost of the demolition, that the contracting parties must have intended it to benefit from it, was not persuasive by the court.

The court found that the work was not undertaken to benefit Fourth Ocean, but, rather, to remedy Fourth Ocean's default to protect the public against a public nuisance. As such, the court found Fourth Ocean to be an incidental third party beneficiary who had no privity of contract.