

August 18, 2020

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FIFE PORTAL, LLC, a Washington limited liability company; FIFE PORTAL 140 OWNERS ASSOCIATION, LLC, a Washington limited liability company,

Respondents,

v.

ERIC L. KOTULAN and JANE DOE KOTULAN, husband and wife, and the marital community comprised thereof; JOSH KOTULAN and JANE ROE KOTULAN, husband and wife, and the marital community comprised thereof; RICH HALL and JANE DOE HALL, husband and wife, and the marital community comprised thereof; SEAN GAY and JANE DOE GAY, husband and wife, and the marital community comprised thereof; ROGELIO GOMEZ and JANE DOE GOMEZ, husband and wife, and the marital community comprised thereof; BRADLEY WILLIAMS and JANE DOE WILLIAMS, husband and wife, and the marital community comprised thereof; ISAAC BLACKWOOD and JANE DOE BLACKWOOD, husband and wife, and the marital community comprised thereof; GARY TURNER and JANE DOE TURNER, husband and wife, and the marital community comprised thereof; and JOHN ROE 1-10 and JANE ROE 1-10, husbands and wives, and the marital communities comprised thereof,

Appellants.

No. 53444-4-II

UNPUBLISHED OPINION

MAXA, J. – Fife Portal, LLC and Fife Portal 140 Owners Association, LLC (collectively, Fife Portal) filed a lawsuit against Eric Kotulan and other employees of Pacific Utility

Contractors, Inc. (collectively, the Employees) to recover for property damage Pacific caused to Fife Portal while installing underground conduit for CenturyLink, Inc. The Employees appeal the trial court's denial of their summary judgment motion, which asserted that res judicata precluded Fife Portal's lawsuit. We remand for the trial court to dismiss Fife Portal's lawsuit against the Employees.

In a prior lawsuit, Fife Portal sued Pacific and CenturyLink to recover the same damages sought from the Employees. In a partial summary judgment ruling and an evidentiary ruling at trial, the trial court determined that Fife Portal could not present evidence regarding certain damages claims. The court also entered judgment as matter of law in favor of CenturyLink. The trial court had found Pacific liable as a matter of law on summary judgment, and after trial a jury awarded Fife Portal damages against Pacific.

The trial court entered a final judgment against Pacific for the amount of the awarded damages, treble damages, interest, and attorney fees. Fife Portal appealed the trial court's rulings regarding the damages evidence and the dismissal of CenturyLink ("*Fife Portal I*"). At that point, Pacific went out of business. Because its judgment against Pacific had not been paid, Fife Portal filed a separate lawsuit against the Employees. The Employees filed a summary judgment motion, arguing that res judicata and collateral estoppel precluded Fife Portal's second lawsuit. The trial court denied the motion and then stayed the action pending resolution of the *Fife Portal I* appeal.

However, Pacific later paid the judgment in favor of Fife Portal in full and the trial court in *Fife Portal I* entered a satisfaction of judgment. Fife Portal now concedes that it cannot recover the judgment amount from the Employees.

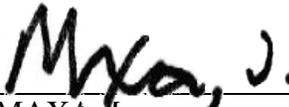
Fife Portal's concession is based on the general rule that one liable person's payment of a judgment eliminates any other person's liability for the amount paid because a plaintiff generally can only have one satisfaction of a judgment. *See Marshall v. Estate of Chapman*, 31 Wn.2d 137, 145-46, 195 P.2d 656 (1948); *see also* RESTATEMENT (SECOND) OF JUDGMENTS § 50(2) (AM. LAW INST. 1982); RESTATEMENT (SECOND) OF TORTS § 885(3) (AM. LAW INST. 1965). "A payment by one person liable for a loss reduces pro tanto the amount that the injured person is entitled to receive from other persons liable for the loss." RESTATEMENT (SECOND) OF JUDGMENTS § 50(2) cmt. c.

In addition, on August 11, 2020 this court issued an opinion in *Fife Portal I* affirming the trial court's rulings in that case regarding the damages evidence. *Fife Portal, LLC v. CenturyLink, Inc.*, No. 52415-5-II, slip op. (Wash. Ct. App. Aug. 11, 2020) (unpublished), <http://www.courts.wa.gov/opinions/pdf/D2%2052415-5-II%20Unpublished%20Opinion.pdf>. Fife Portal conceded in its brief and at oral argument that if the damages evidence rulings were affirmed, its lawsuit against the Employees must be dismissed.

Fife Portal's concession is based on the general rule that if an injured party sues only the employer on a respondeat superior theory and the employer prevails in a judgment on the merits, the doctrine of res judicata precludes filing or maintaining the same claim against the employee. *Ensley v. Pitcher*, 152 Wn. App. 891, 902-07, 222 P.3d 99 (2009); *see also* RESTATEMENT (SECOND) OF JUDGMENTS § 51(1) (AM. LAW INST. 1982). And a judgment affirmed on appeal retains its res judicata effect. *See Crosby v. County of Spokane*, 137 Wn.2d 296, 313, 971 P.2d 32 (1999) (stating that rulings on appeal can defeat res judicata).

We accept Fife Portal's concessions because Pacific paid the judgment in *Fife Portal I* in full and Pacific prevailed on appeal on the two damages evidence issues. Accordingly, we remand for the trial court to dismiss Fife Portal's lawsuit against the Employees.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.



MAXA, J.

We concur:



IFE, C.J.



SIDDOWAY, J.¹

¹ The Honorable Laurel Siddoway is a Court of Appeals, Division Three, judge sitting in Division Two under CAR 21(a).