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When A Contract Designates A Third Person To Certify Performance Under A Contract, That Third Person's Decision Is Conclusive In the Absence Of Fraud Or Mistake

Three neighboring property owners in San Juan Capistrano incurred varying damages due to a mudslide. Coral Farms, L.P.; Paul and Susan Mikos; and Thomas and Sonya Mahony own the three neighboring properties. In the first lawsuit, the property owners sued and countersued each other for negligence and other claims related to water drainage. In October of 2013, the parties eventually settled and the owners agreed to each perform mitigation and repair work on their own property. The agreement was memorialized in a settlement agreement (Settlement Agreement) which provided that "[u]pon completion of the work, each party shall obtain a written report by the design engineer or geologist that the work performed is in substantial compliance with the Parties' plan…and will provide a copy to all other Parties within 30 days of completion." In 2014, each of the three property owners obtained engineer reports from different engineering companies that their mitigation/repair work was "in substantial compliance" with the approved plan.

In October 2017, Coral Farms and the Mikoses (collectively "Coral Farms") filed suit against the Mahonys for breach of the Settlement Agreement claiming that the mitigation/repair work performed by the Mahonys was "dramatically and substantively different" than what was required under the Settlement Agreement. At trial, the Mahonys' civil engineer testified that the completed repairs on the Mahonys' property were "in substantial compliance" with the agreed upon mitigation/repair plans. The trial court found no breach of the Settlement Agreement because, as drafted, the Settlement Agreement allowed each party's engineer to decide whether that party had substantially complied with its own plan. Further, the Settlement Agreement required each party to deliver its' engineer's certificate to the other parties, which the Mahonys did. The trial court found in favor of the Mahonys and Coral Farms appealed.

The Fourth Appellate District agreed with the trial court's interpretation of the Settlement Agreement stating, "courts are not in the business of rewriting ill-advised contract provisions. Plaintiffs are stuck with the contract they signed." Pursuant to the plain language of the contract, Coral Farms expressly agreed to accept the written report that the Mahonys had performed the required repairs in substantial compliance with the agreed upon plan. Thus, absent a finding of bad faith, fraud, or gross negligence, Coral Farms could not dispute the engineer's certificate presented by the Mahonys.

Coral Farms, L.P., et al. v. Mahony (2021) 63 Cal.App.5th 719.

NOTE:
This case affirm that when there is a valid written contract, courts generally enforce its terms, regardless of their advisability. It is not enough to argue that the contract operates harshly or inequitably. If parties intend different results than as written in the contract, then they should negotiate or draft different terms.

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