

FILED: February 12, 2003

IN THE COURT OF APPEALS OF THE STATE OF OREGON

MOORE EXCAVATING, INC.,
an Oregon corporation,

Appellant,

v.

CONSOLIDATED SUPPLY CO.,
an Oregon corporation,

Respondent.

9906-05896; A112636

Appeal from Circuit Court, Multnomah County.

Thomas M. Christ, Judge pro tempore.

Argued and submitted May 23, 2002.

Thomas W. Brown argued the cause for appellant. With him on the briefs were Christine Coers-Mitchell and Cosgrave, Vergeer & Kester LLP.

Thomas W. Sondag argued the cause for respondent. With him on the brief was Lane Powell Spears Lubersky LLP.

Before Haselton, Presiding Judge, and Linder and Wollheim, Judges.

LINDER, J.

Affirmed.

LINDER, J.

Plaintiff Moore Excavating, Inc., brought this action seeking common-law indemnity and damages for negligence from defendant Consolidated Supply Co. The trial court granted defendant's motion for summary judgment on both claims and entered judgment for defendant. Plaintiff's appeal requires us to resolve two unrelated issues. The first is whether the discharge element of the claim for common-law indemnity can be satisfied based on plaintiff's settlement of a claim with a third party on which defendant is also liable when the settlement did not legally extinguish defendant's liability on the claim. The second issue is whether the terms of the contract between plaintiff and defendant create the kind of special relationship that can be a basis for a duty on defendant's part to further plaintiff's economic interests. For the following reasons, we agree with the trial court's resolution of both issues and affirm.

On review of a grant of summary judgment, we view the facts and all reasonable inferences that may be drawn from them in the light most favorable to the nonmoving party--in this case, plaintiff. ORCP 47 C; [*Robinson v. Lamb's Wilsonville Thriftway*](#), 332 Or 453, 455, 31 P3d 421 (2001). Because it had the burden of proving all the elements of its claims at trial, plaintiff was required to produce evidence to

