STATE OF MICHIGAN

COURT OF APPEALS

CRAIG LINDSAY and PAULETTE LINDSAY,,

Plaintiffs,

v

CITY OF DETROIT, BEST AMERICAN INDUSTRIAL SERVICES,

Defendant/Third-Party Plaintiffs/ Appellants,

and

EAGLE MECHANICAL COMPANY,

Defendant,

v

BEN WASHINGTON & SONS PLUMBING & HEATING, INC.,

Third-Party Defendant/Appellee.

UNPUBLISHED
June 27, 1997

No. 183512
Wayne Circuit Court
LC No. 93-332211-NO

ON REHEARING

Before: Young, P.J., and Taylor and R. C. Livo*, JJ.

PER CURIAM.

The trial court granted summary disposition of the claims of Best American Industrial Services and the City of Detroit for indemnification and breach of contract against Ben Washington & Sons Plumbing & Heating, Inc. In an opinion issued on January 17, 1997, we reversed with respect to both counts. Ben Washington filed a timely motion for rehearing, which we granted in an order issued on April 23, 1997. Upon further review, we affirm in part and reverse in part.

In our initial opinion we held that summary disposition of the indemnification claim had been improperly granted. In its motion for rehearing Ben Washington argues that our holding was contrary to *MSI Construction Managers v Corvo Iron Works*, 208 Mich App 340; 527 NW2d 79 (1995), and failed to consider the fact that a jury verdict against Best had already been reduced by the amount of Craig Lindsay's comparative negligence. To its credit, Best has acknowledged that our holding vis-a-vis the indemnification claim is in conflict with *MSI*, which we are bound to follow pursuant to Administrative Order No. 1996-4. It also is the case that our initial opinion neglected to consider the adjusted jury verdict that had been entered. In light of the adjusted jury verdict, Best now argues that it is only entitled to a percentage of the costs and fees it incurred in Lindsay's lawsuit against it. Upon further review, we affirm the trial court's order granting summary disposition of the indemnification claim. We remand to the trial court so that it may determine in the first instance whether Best is contractually entitled to reimbursement for any of the costs and fees it incurred in defending against Lindsay's lawsuit.

After further review, we are satisfied that our initial reversal of the breach of contract claim was proper.

Affirmed in part and reversed in part. Remanded for further proceedings consistent with this Court's opinion. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Robert P. Young
/s/ Clifford W. Taylor
/s/ Robert C. Livo