STATE OF MICHIGAN

COURT OF APPEALS

CYNTHIA BIANGA-GULICK, Personal Representative of the Estate of GERALD BIANGA,

Plaintiff,

v

PIPE SYSTEMS, INC.,

Defendant-Cross Plaintiff-Appellant,

and

DELTA CONTRACTORS, LTD.,

Defendant-Cross Defendant-Appellee,

and

C. N. FLAGG & COMPANY, INC., a/k/a C. N. FLAGG POWER, INC., and JOY ENVIRONMENTAL TECHNOLOGIES, INC.,

Defendants.

UNPUBLISHED
December 30, 1997

No. 198818
Oakland Circuit Court
LC No. 94-487587 NO

Before: Griffin, P.J., and Markman and Whitbeck, JJ.

MEMORANDUM.

Cross-plaintiff Pipe Systems, Inc. (Pipe Systems), appeals by right the order of the Oakland Circuit Court, denying its motion for summary disposition on its cross-complaint for indemnification against cross-defendant Delta Contractors, Ltd (Delta). The trial court held that an indemnification agreement is unenforceable because the activity involved was "inherently dangerous." We decide this appeal without oral argument pursuant to MCR 7.214(E).

Under a contract with the United States Air Force for demolition of a structure at an air base in Ohio, Pipe Systems, as general contractor, subcontracted the entire work to Delta. Both parties are Michigan corporations. The contract specified that it would be governed by the law of Michigan. This choice of law contractual provision, given such a substantial relationship between the parties and the State of Michigan, and the lack of any apparent strong policy interest of Ohio in having its law apply, is valid. *Chrysler Corp v Skyline Industrial Services, Inc*, 448 Mich 113, 126, 132-133; 528 NW2d 698 (1995).

Gerald Bianga, an employee of another subcontractor used by Delta, died as the result of a fall in the course of the work. After part of the super-structure had been removed, decedent and others next resolved to remove a metal stairway and attached catwalk. They attached cables from the stairway to an overhead crane, then removed or cut the bolts holding the stairway to the main part of the structure. The workers failed to use safety lines and, when after the last bolt was cut, the stairway twisted on the supporting cables and decedent fell from the stairway to the ground, sustaining fatal injuries.

The trial court agreed with Delta that, under Michigan law, indemnification for inherently dangerous activity is not permitted. This is incorrect. The correct rule is that because inherently dangerous activity involves "active negligence" it precludes common law or *implied* contractual indemnification. *Oberle v Hawthorne Metal Products Co*, 192 Mich App 265, 270-271; 480 NW2d 330 (1991). The inherently dangerous activity doctrine precludes delegating liability, see *McDonough v General Motors Corp*, 388 Mich 430, 437; 201 NW2d 609 (1972) (Black and Swainson, JJ.). The doctrine does *not* preclude express contractual indemnification for the liability which might be thus established. Accordingly, if an express contractual provision provides for indemnification for injuries caused by an inherently dangerous activity, such indemnification may be awarded. See *Oberle, supra* at 267, 271-272 (remanding for trial court to determine whether express contractual provision provided indemnification for injury found to have occurred in an inherently dangerous activity.)[1]

Here, the contract in question requires Delta to indemnify Pipe Systems for "any and all . . . injuries to persons including death." Thus, the indemnification sought by the cross-complaint is well within the scope of the indemnification clause. As the contract includes an express provision for indemnification that covers the tragic incident underlying this case, Pipe Systems' motion for summary disposition should have been granted.

Reversed and remanded to the Oakland Circuit Court for further proceedings consistent with this opinion. Cross-plaintiff Pipe Systems, being the prevailing party, may tax costs pursuant to MCR 7.219. We do not retain jurisdiction.

/s/ Richard Allen Griffin
/s/ Stephen J. Markman
/s/ William C. Whitbeck

[1] Unlike this case, *McDonough* involved a suit by a decedent's survivor against General Motors, essentially one of its plants that it subcontracted to another party. *Id*. at 436 (Black and Swainson, JJ.) *McDonough* holds that a general contractor cannot escape initial liability to a person injured from an

inherently dangerous activity, not that the contractor is unable to obtain indemnification from another party. In practical terms, this could, for example, require a general contractor to bear a loss where the subcontractor became insolvent.