[Cite as *Brantley v. Cuyahoga Metro. Hous. Auth.*, 2004-Ohio-5486.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 83817

EARL BRANTLEY, JR., ET AL	:	
	:	
Plaintiffs-appellants	:	
	:	JOURNAL ENTRY
vs.	:	and
	:	OPINION
CUYAHOGA METROPOLITAN HOUSING	:	
AUTHORITY, ET AL	:	
	:	
Defendants-appellees	:	
	:	
DATE OF ANNOUNCEMENT OF DECISION	:	OCTOBER 14, 2004
CHARACTER OF PROCEEDING	:	Civil appeal from Cuyahoga
	:	County Court of Common Pleas
	:	Case No. CV-467870
JUDGMENT	:	AFFIRMED.
DATE OF JOURNALIZATION	:	

APPEARANCES:

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KENNETH A. ROCCO, J.:

{¶ 1} In this action to recover funds paid to their employers pursuant to agreements made while R.C. 4123.91 was in effect, plaintiffs-appellants Kenneth Johnson and Douglas Ilmon appeal from the trial court order that both granted summary judgment to defendants-appellees Yellow

Freight Systems, Inc. ("YFS") and United Parcel Service, Inc. ("UPS") and concomitantly denied appellants' motion for summary judgment.

{¶ 2} Johnson and Ilmon argue the evidence before the trial court demonstrated that, rather than the reverse, summary judgment in their favor was warranted. This court disagrees. Consequently, the trial court's order is affirmed.

{¶ 3} Johnson worked for YFS, a self-insured employer, for a number of years. In May, 1996 he was in an accident while on the job in Indiana, and thereafter instituted a workers' compensation claim for the injuries he received. Johnson already had three earlier claims for which YFS had paid him workers' compensation benefits. While continuing to issue benefits to Johnson, YFS disputed these claims; the matter eventually went to the Franklin County Court of Common Pleas.

{¶ 4} Johnson additionally filed a civil claim in Indiana against the tortfeasor of the accident. Pursuant to R.C. 4123.93 and 4123.931, YFS placed the parties on notice of its claim to subrogation. By this time, YFS had paid benefits on Johnson's behalf in the amount of $81,068.77.

{¶ 5} In January 1998, YFS and Johnson settled all of their disputed workers' compensation claims by way of a signed agreement. In pertinent part, the agreement stated:

{¶ 6} "***Claimant and Employer have agreed the sum of Fifty Thousand Dollars 00/100 ($50,000.00) is a fair, just, and reasonable settlement of any and all claims, debts, demands, actions, and causes of actions which the Claimant may have or which may arise in the future by reason of, or in any manner arising out of, the aforementioned [workers' compensation claims]***.

{¶ 7} "In consideration of the promise to pay him the sum***, Claimant hereby releases***the Employer***from any and all claims, debts, demands, actions and causes of actions whatsoever which he may now have or which he could hereinafter make,***arising from or out of

or in any way connected with [those claims]. *

{¶ 8} "It is further understood and agreed that this agreement shall be construed in accordance with the controlling and applicable laws of the State of Ohio in effect on the date this agreement is signed by the Claimant.***

{¶ 9} "The Claimant hereby understands, agrees and acknowledges that the Employer retains its right of subrogation under R.C. 4123.93 and R.C. 4123.931 against any and all sources of recovery. This settlement shall have no effect on the Employer's right of subrogation.***"

{¶ 10} (Emphasis added.)

{¶ 11} Subsequently, YFS joined with Johnson in a suit against the Indiana tortfeasor in federal court. The suit eventually was settled in 1999 for $250,000.00; out of this amount, YFS received a subrogation payment of $71,000.00, and Johnson received a payment of $179,000.00.

{¶ 12} Similarly, Ilmon worked for UPS, a self-insured employer. On January 4, 1996 Ilmon became involved in a motor vehicle accident while on the job. UPS paid workers' compensation benefits to him, and also notified him that pursuant to R.C. 4123.93 and 4123.931 it had subrogation rights; therefore, no settlement in any action against the other person involved in the accident could be final until UPS had notice and an opportunity to assert those rights.

{¶ 13} Ilmon subsequently pursued a civil action in Wayne County for the injuries he had received against the other motorist and the insurance carrier. On July 17, 1998 he entered into a settlement agreement with the defendants. The agreement stated that in consideration of Ilmon's receipt of $45,000 from them, they were released from any further liability.

{¶ 14} The agreement additionally stated in pertinent part that Ilmon "*declare[d*] and represent[ed he had] received monies from and/or [had] had expenses paid by [his] employer, United Parcel Service, and only by it, for [his] medical and/or hospital expenses, *who claim[ed] or who*

[had] obtained a subrogated interest in all or a portion of [his] claim alleged in the Complaint in this matter. [He] underst[ood] it [was his] *obligation to repay from the monies paid to [him] as recited in this* Release Of All Claims *to United Parcel Service for all claims by it.***"*

{¶ 15} Above his signature, Ilmon indicated he had "carefully read" the release and knew its contents, the release contained the "entire agreement," and its *terms were "contractual* and not mere recital." (Underline in original; italics added.)

{¶ 16} In August 1998, Ilmon and UPS settled the subrogated claim. UPS acknowledged in writing its receipt from Ilmon of $21,684.68 "in full satisfaction of the subrogation rights of United Parcel Service for medical expenses, compensation, compensation overpayment, and all other benefits paid to Douglas Ilmon or on his behalf by United Parcel service in [his] workers' compensation claim***." The amount "fully satisfied" its "subrogation interest in" the claim.

{¶ 17} In 2001, the Ohio Supreme Court declared R.C. 4123.931 unconstitutional. *Holeton v. Crouse Cartage Co.*, 92 Ohio St.3d 115, 2001-Ohio-109. Thus, employers that paid workers' compensation benefits no longer were permitted to have a subrogated interest in sums their employees received as damages resulting from work-related injuries caused by third parties.[1]

{¶ 18} The *Holeton* decision led to the instant action, in which appellants Johnson and Ilmon sought to recoup from appellees YFS and UPS[2] the money they had paid to their employers as subrogation. The complaint contained three counts: 1) unjust enrichment; 2) rescission of the settlements; and, 3) a declaration that appellees were not entitled to the money they had received

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[1]Just prior to oral argument in this case, the Supreme Court further declared R.C. 4121.93, the predecessor to R.C. 4121.931, also unconstitutional. *Modzelewski v. Yellow Freight Sys., Inc.*, 102 Ohio St.3d 192, 2004-Ohio-2365.

[2]Two other employees and their employers were named as plaintiffs and defendants in the action, but they later were dismissed; none of them is a party to this appeal.

from appellants.[3]

{¶ 19} Appellees eventually filed separate motions for summary judgment with respect to their employee's claims. The motions were supported by affidavits and copies of the documents relevant to the settlements reached in 1998.

{¶ 20} Appellants Johnson and Ilmon responded with separate "memoranda" in opposition, which they each combined with a cross-motion for summary judgment. With respect to their claims, appellants argued: 1) appellees had been unjustly enriched by collecting payments under an invalid statute; 2) the mutual misunderstanding between the parties that the statute was valid permitted rescission of any agreements made; 3) a controversy existed between the parties as to whether appellees were entitled to retain the subrogation payments made to them by appellants.

{¶ 21} Appellants attached their affidavits. Each indicated he had never intended to make any "concessions" with respect to appellees' subrogation claims when signing the 1998 agreements.

{¶ 22} The trial court ultimately issued an order that granted appellees' motion for summary judgment and denied appellants' cross-motions. In its opinion, the trial court held the parties' rights had "vested" by virtue of the written agreements prior to the Supreme Court's decision in *Holeton*; therefore, appellants were not entitled to recover the subrogated funds paid to appellees.

{¶ 23} Appellants challenge the trial court's decision with the following assignment of error:

{¶ 24} "The trial judge erred, as a matter of law, by granting summary judgment in favor of defendant-appellees [sic] and denying plaintiff-appellants' [sic] cross-motions for summary judgment."

{¶ 25} Appellants argue that, rather than the reverse, they deserved summary judgment on

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[3]The complaint also contained class action allegations which appellants ultimately abandoned.

their claims against appellees.

{¶ 26} First, citing the Ohio Supreme Court's more recent decision in *Santos v. Ohio Bur. of Workers' Comp.*, 101 Ohio St.3d 74, 2004-Ohio-28, appellants contend they are entitled under Count 1 of their complaint to rescission of the agreements they made with appellees. They assert *Santos* "confirmed that***principles of equity may be employed to secure a refund of claims paid under the unconstitutional subrogation statute."

{¶ 27} Appellants, however, misread the Supreme Court's decision; *Santos* concerned only the issue of the jurisdiction of the common pleas court over a claim against the state for restitution of monies "wrongfully withheld;" in deciding the action properly had been brought in the common pleas court, it rendered no opinion on the merits of such a claim against an employer. Hence, appellants' first contention is unpersuasive.

{¶ 28} Appellants additionally contend, pursuant to Counts 2 and 3 of their complaint, that appellees were unjustly enriched when they obtained money by way of an unconstitutional statute; therefore, a declaratory judgment in their favor was warranted. Appellants assert the trial court incorrectly concluded appellees had earned a "vested right" in the money they obtained from appellants prior to the decision in *Holeton*, and improperly relied upon *Clark v. Bureau of Workers' Comp.*, Franklin App. No. 02-AP-743, 2003-Ohio-2193, in reaching that conclusion. This court disagrees.

{¶ 29} *Clark* already has been considered by this court in *Payne v. Greater Cleveland R.T.A.*, Cuyahoga App. No. 83240, 2003-Ohio-6340. The appellate court in *Clark* acknowledged the general rule, viz., decisions of the Supreme Court apply retroactively; therefore, the general rule would dictate that the appellee return the money obtained from the appellant pursuant to a statute later declared unconstitutional. *Clark* held, however, the rule was inapplicable "in instances in which

contractual rights have arisen or a party has acquired vested rights under the prior law," and this court agreed with the Tenth Appellate District's analysis. *Payne*, supra at *P.3.

{¶ 30} In spite of appellants' argument to the contrary, this case presents a directly analogous set of facts as those presented in *Clark* and *Payne*, supra: in their workers' compensation and accident cases, they formed valid contracts. Appellees offered to settle any claims appellants had or might have raised against them for a certain amount of money.

{¶ 31} Johnson agreed in writing to accept the amount of $50,000 plus YFS' subrogation interest in the Indiana accident. In accepting, with UPS' consent, $45,000 from the Wayne County defendant, Ilmon contractually agreed in writing to pay from that amount to UPS its subrogation interest arising from the accident.

{¶ 32} Appellants' assertion that they "never agreed to waive [their] right to seek a refund" of the subrogation funds from appellees is untenable in view of the language set forth in the releases. Appellants reserved no such right; instead, each promised to hold their employers harmless, whatever additional or future liability the employers might incur, on claims that might arise from the accident.

{¶ 33} As this court observed in *Payne*, "once the[] [parties] settled the matter, contract rights vested" with the employers; consequently, *Holeton* remained inapplicable. See, also, *DeRolph v. State*, 78 Ohio St.3d 419, 420, 1997-Ohio-87; *State Bureau of Workers' Comp. v. Plumb*, Allen App. No. 1-03-27, 2003-Ohio-5290. The Supreme Court's opinion in *Modzelweski v. Yellow Freight Sys., Inc.*, 102 Ohio St.3d 192, 2004-Ohio-2365, since it, too, does not address the issue faced in *Payne* and *Clark*, cannot negate their resolution of it.

{¶ 34} For the foregoing reasons, the trial court properly concluded appellees were entitled to summary judgment with respect to all of appellants' claims against them.

{¶ 35} Appellants' assignment of error, accordingly, is overruled.

The trial court's order is affirmed.

It is ordered that appellees recover of appellants their costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KENNETH A. ROCCO

JUDGE

JAMES J. SWEENEY, P.J. and

DIANE KARPINSKI, J. CONCUR