Opinion issued August 17, 2017.

In The

Court of Appeals

For The

First District of Texas

NO. 01-16-00528-CV

IE MILLER SERVICES, INC., N/K/A TFORCE ENERGY SERVICES, INC., Appellant

V.

ENSIGN US SOUTHERN DRILLING LLC, Appellee

On Appeal from the 11th District Court
Harris County, Texas
Trial Court Case No. 2015-04194

MEMORANDUM OPINION

IE Miller Services, Inc. n/k/a TForce Energy Services, Inc. is appealing the trial court's denial of its summary judgment motion and the granting of Ensign US Southern Drilling LLC's summary judgment motion. In two issues, IE Miller argues

that (1) the trial court erred in granting Ensign Drilling's motion for summary judgment and denying IE Miller's motion for summary judgment because the contract demonstrated a clear intent of the parties to execute mutual indemnification/defense provisions which extended to Rowan Drilling Company, LLC as a subsidiary of Rowan Companies, Inc., and then to Ensign Drilling, and (2) the trial court erred in granting Ensign Drilling's motion for summary judgment because the course of dealing between the parties created a fact issue as to the existence of an implied contract to extend the contract's terms.

We affirm the trial court's judgment.

Background

In 2009, IE Miller Services, Inc. n/k/a TForce Energy Services, Inc. (IE Miller) and Rowan Companies, Inc. (Rowan) entered into a Master Services Agreement wherein IE Miller agreed to provide labor, goods, and/or services to Rowan.

The MSA defines "Rowan" as "Rowan Companies, Inc." The term "Rowan Group" includes Rowan, its "parent, subsidiaries and affiliated companies," the employees of these companies, as well as various other related persons and entities.[1] Similarly, the MSA defines "Contractor" as "IE Miller Services, Inc." and

[1] Specifically, section 6(b)(1) states in relevant part that "ROWAN GROUP" "shall mean: (i) Rowan, [and] (ii) Rowan's parent, subsidiaries and affiliated companies . . . ."

"Contractor Group" as IE Miller, its "parent, subsidiaries and affiliated companies," the employees of these companies, as well as various other related persons and entities.

The indemnification provisions, which are set forth in section 6 of the MSA, require Rowan to defend and indemnify Contractor Group and IE Miller to defend and indemnify Rowan Group. Specifically, section 6(a) states:

> [I]t is the intent of the parties that, with respect to the types of CLAIMS identified in subparagraph 6(d) below, *Rowan* shall fully release, defend and indemnify CONTRACTOR GROUP for all such CLAIMS made by any member of ROWAN GROUP against any member of CONTRACTOR GROUP.

(emphasis added). Subparagraph 6(d) states in part that "*Rowan* agrees to be fully responsible for and to fully indemnify, release, hold harmless and defend CONTRACTOR GROUP" for various types of claims, regardless of whether Contractor Group was at fault. (emphasis added). Section 6(a) also states with respect to IE Miller's obligations that:

> [I]t is the intent of the parties that, with respect to the types of CLAIMS identified in subparagraph 6(c) below, *Contractor [IE Miller]* shall fully release, defend and indemnify ROWAN GROUP for all such CLAIMS made by any member of CONTRACTOR GROUP against any member of ROWAN GROUP.

(emphasis added). Subparagraph 6(c) states in part that "*Contractor [IE Miller]* agrees to be fully responsible for and to fully indemnify, release, hold harmless and

defend ROWAN GROUP" for various types of claims, regardless of whether Rowan Group was at fault. (emphasis added).

In 2011, Rowan sold 100% of the membership interests in Rowan Drilling Company, LLC[2] (Rowan Drilling) to Ensign United States Drilling (S.W.), Inc. (Ensign U.S.). After the transaction closed, Rowan Drilling's name was changed to Ensign US Southern Drilling LLC (Ensign Drilling).

Ensign Drilling hired IE Miller to move a drilling rig in 2012. An Ensign Drilling employee who was injured during the move filed a personal injury suit against IE Miller in Oklahoma state court. While the Oklahoma suit was pending, IE Miller filed a declaratory judgment action against Ensign Drilling seeking declarations that: (1) the MSA covered the rig move and the personal injury claims asserted against IE Miller in the Oklahoma suit; (2) Ensign Drilling owed IE Miller the cost of defense in the Oklahoma suit pursuant to the MSA; and (3) Ensign Drilling was required by the MSA to indemnify IE Miller for any judgment or settlement IE Miller might owe as a result of the Oklahoma suit. After a $9.7 million judgment was entered against IE Miller in the Oklahoma suit, IE Miller amended its petition and asserted claims against Ensign Drilling for breach of contract and breach

[2] Rowan Drilling Company, LLC was one of Rowan's subsidiary corporations when the MSA was executed in 2009, and it was converted into a limited liability company before Rowan sold the subsidiary's membership interests to Ensign United States Drilling (S.W.), Inc. in 2011.

of implied contract, based on Ensign Drilling's refusal to indemnify and defend IE Miller with respect to the Oklahoma suit.

Ensign Drilling moved for traditional and no-evidence summary judgment on IE Miller's breach of contract and breach of implied contract claims, and IE Miller's request for declaratory relief. IE Miller also moved for traditional summary judgment on all three of its claims. The trial court granted Ensign Drilling's summary judgment motion and entered a take-nothing judgment against IE Miller. This appeal followed.

MSA's Indemnification Obligations

IE Miller argues that the trial court erred in granting Ensign Drilling's motion for summary judgment and denying IE Miller's motion for summary judgment because the MSA demonstrated a clear intent of the parties to execute mutual indemnification/defense provisions which extended to Rowan Drilling as a subsidiary of Rowan, and then to Ensign Drilling, as Rowan Drilling's successor. IE Miller further contends that the trial court erred in granting Ensign Drilling's motion for summary judgment because the course of dealing between IE Miller and Rowan and Rowan Drilling created a fact issue as to the existence of an implied contract to extend the MSA's terms after Rowan sold its membership interest in the subsidiary.

A. Standard of Review

We review de novo the trial court's ruling on a motion for summary judgment. *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009). When both sides move for summary judgment, and the trial court grants one motion and denies the other, we consider both sides' summary judgment evidence, determine all questions presented, and render the judgment the trial court should have rendered. *Id*.

The summary judgment motions require us to interpret the MSA's indemnity provisions. In construing a written contract, the primary concern is to ascertain and give effect to the parties' intentions as expressed in the document. *Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am.*, 341 S.W.3d 323, 333 (Tex. 2011); *Frost Nat'l Bank v. L & F Distribs., Ltd.*, 165 S.W.3d 310, 311–12 (Tex. 2005). The contract's language is considered as a whole, attempting to give effect to all of its provisions so that none are rendered meaningless. *See Italian Cowboy Partners*, 341 S.W.3d at 333. We may not rewrite the contract or add to its language under the guise of interpretation. *Am. Mfrs. Mut. Ins. Co. v. Schaefer*, 124 S.W.3d 154, 162 (Tex. 2003). Rather, we must enforce the contract as written. *See Lopez v. Munoz, Hockema & Reed, L.L.P.*, 22 S.W.3d 857, 862 (Tex. 2000). Similarly, "[w]e cannot interpret a contract to ignore clearly defined terms." *FPL Energy, LLC v. TXU Portfolio Mgmt. Co., L.P.*, 426 S.W.3d 59, 64 (Tex. 2014) (citing *Frost Nat'l Bank*,

165 S.W.3d at 313). If, after applying the pertinent contract construction rules, the contract can be given a certain or definite legal meaning or interpretation, then it is not ambiguous, and we will construe the contract as a matter of law. *Frost Nat'l Bank*, 165 S.W.3d at 312.

B. Analysis

IE Miller argues that, when viewed in its entirety, the MSA unambiguously reflects that the parties intended for Rowan's indemnification obligations to extend to its subsidiaries, including Rowan Drilling, and those obligations extended to Ensign Drilling either as an ongoing subsidiary of Rowan, or as Rowan Drilling's successor.

The MSA, however, expressly defines "Rowan" as Rowan Drilling's parent company, "Rowan Companies, Inc." and it requires "Rowan" to indemnify IE Miller and other members of the Contractor Group. The MSA also requires "Contractor," which is expressly defined as IE Miller, to indemnify Rowan and other members of the Rowan Group. There is no provision in the MSA expressly requiring Rowan Drilling to defend and indemnify IE Miller. Thus, the plain language of the MSA demonstrates that Rowan Drilling has no obligation to indemnify IE Miller.

The fact that the parties expressly identified Rowan's and IE Miller's indemnification obligations in the MSA and chose not to include any such language imposing indemnification obligations on Rowan Drilling, or any other entity,

indicates the parties' intent to impose such obligations upon Rowan and IE Miller exclusively. *See Melvin Green, Inc. v. Questor Drilling Corp.*, 946 S.W.2d 907, 911 (Tex. App.—Amarillo 1997, no writ) (explaining maxim of *expressio unius est exclusio alterius*, IE, naming of one implies exclusion of others, and applying it to contract's indemnification provision). Furthermore, IE Miller's alternative interpretation effectively expands the meaning of the term "Rowan," as used in the indemnification provisions, to mean "Rowan Companies, Inc." *and* its subsidiary, Rowan Drilling. Such an interpretation directly conflicts with the MSA's definition of "Rowan" as the parent company only. *See FPL Energy*, 426 S.W.3d at 64 ("We cannot interpret a contract to ignore clearly defined terms."). Were we to adopt such an interpretation, we would be impermissibly rewriting the contract and redefining previously agreed upon terms. *See Schaefer*, 124 S.W.3d at 162; *see also DBHL, Inc. v. Moen Inc.*, 312 S.W.3d 631, 635 (Tex. App.—Houston [1st Dist.] 2009, pet. denied) ("Courts may not expand the parties' rights or responsibilities beyond the limits defined in an indemnity contract.").

Further, the indemnification clause contains two separately defined terms, Rowan and Rowan Group. Only one of these terms, Rowan Group, is defined to include the subsidiary, Rowan Drilling. IE Miller's interpretation of the contract would mean that the two terms have the same meaning and that the indemnity obligation of "Rowan" extends to the entities in "Rowan Group," despite their

different definitions. Such an interpretation would mean that there is no difference between the two terms and one of the terms is, effectively, without meaning and superfluous to the contract. This would violate the fundamental rule that all terms in a contract are to be given meaning and purpose whenever possible. *See Italian Cowboy Partners*, 341 S.W.3d at 333. In this case, the two terms have different meanings and they convey separate obligations.

IE Miller also argues that Ensign Drilling's interpretation that "Rowan" means only Rowan and not Rowan Drilling, is unreasonable given the reciprocal nature of the indemnification obligations, because such an interpretation confers benefits upon Rowan Drilling without imposing any obligations upon the company. Rowan Drilling, however, is not the only entity that benefits under the MSA, but is not burdened with indemnification obligations. The MSA also bestows similar benefits upon IE Miller's subsidiaries, without imposing any indemnification obligations upon these same entities. This is consistent with IE Miller's and Rowan's intent, as expressed by the plain language of the MSA, to each bear the burden of the defense and indemnification obligations themselves, rather than pass such obligations onto another party.

After applying the pertinent contract construction rules, we conclude that the MSA's indemnification obligations are subject to only one reasonable interpretation, IE, that Rowan Drilling has no obligation to defend and indemnify IE Miller under

the terms of the MSA. We hold that Rowan Drilling has no obligation to indemnify IE Miller under the unambiguous terms of the MSA and because Rowan Drilling has no obligation to indemnify IE Miller, neither does Rowan Drilling's successor, Ensign Drilling.

IE Miller also argues that the trial court erred in granting Ensign Drilling's motion for summary judgment because the course of dealing between IE Miller and Rowan and Rowan Drilling created a fact issue as to the existence of an implied contract to extend the MSA's terms after Rowan sold its membership interest in Rowan Drilling. IE Miller further argues that "[b]y forming an implied extension of an existing contract, *the parties[] measure their obligations by the original written contract*." Because the original contract, i.e., the MSA, did not obligate Rowan Drilling to indemnify IE Miller, neither would an extension of that same agreement.

We overrule IE Miller's issues.

Conclusion

We affirm the trial court's judgment.

Russell Lloyd
Justice

Panel consists of Justices Jennings, Massengale and Lloyd.