

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

R&C HEAVY MECHANICAL, INC.,)
a Pennsylvania Corporation,)
)
Plaintiff/Third Party Defendant,)
)
v.) C.A. No. 01L-10-062 WCC
)
PARKWAY GRAVEL INC., a)
Delaware Corporation, NEW CASTLE)
HOT MIX, INC., a Delaware)
Corporation, and CONTRACTORS)
MATERIALS, L.L.C., a Limited)
Liability Company,)
)
Defendants/Third Party Plaintiffs,)
)
v.)
)
ELWYN TINKER,)
)
a Third Party Defendant.)

Submitted: November 15, 2002

Decided: February 28, 2003

**Upon Consideration of Plaintiff/Third Party
Defendant's Motion in Limine.**

DENIED.

ORDER

B. Wilson Redfearn, Esquire, Wilmington, Delaware. Attorney for Defendants/Third Party Plaintiffs.

Mark L. Reardon, Esquire, Wilmington, Delaware. Attorney for Plaintiff/Third Party Defendant R & C Heavy Mechanical, Inc.

CARPENTER, J.

This 28th day of February, 2003, after consideration of R & C Heavy Mechanical, Inc.'s ("R&C") Motion in Limine, it appears that:

1. This case was initiated by R&C as a Statement of Claim for Mechanics Lien, following work performed by R&C without payment by New Castle Hot Mix, Inc. ("NCHM"). Subsequently, NCHM counterclaimed for \$209,000.00, primarily related to damage of a 50,000 pound metal drum that rolled off the back of a flatbed trailer. The drum was owned by NCHM and insured by Liberty Mutual Insurance Company ("Liberty") up to a limitation of \$100,000.00. Liberty subsequently paid this amount to NCHM.

2. The parties have agreed to settle all claims, other than the subrogated claim of Liberty, whereby Liberty as subrogor, is pursuing recovery of the \$209,000.00 property loss claim, with the stipulated understanding that the maximum potential actual recovery would equal the \$100,000.00 paid under the policy.

3. NCHM claims that Liberty, as subrogee, together with NCHM as the insured/subrogor are legally entitled to recover the full extent of NCHM's losses and is pursuing a claim for the entire \$209,000.00 value of the damaged drum, deducting NCHM's percentage of fault from the total loss. R&C's motion in limine seeks to limit NCHM's potential recovery by deducting NCHM's percentage of

fault from only its subrogated claim of \$100,000.00 rather than the total property loss. Therefore, the issue before the Court is whether the parties damage calculation should be performed from the subrogation amount of \$100,000.00 or from the potential overall loss of \$209,000.00.

4. Delaware law recognizes the validity of a release in conjunction with the termination of litigation.¹ When interpreting the coverage of a release, the court must look to the language in the release to ascertain the intent of the parties as to its scope and effect.² Where the language of the release is clear and unambiguous, it will not lightly be set aside³, however, where “the language of the release is ambiguous, it must be construed most strongly against the party who drafted it.”⁴

5. The language in the release that is relevant to this inquiry states:

WHEREAS, it was understood that the release would not include a subrogated claim which the defendants’ insurance company, Liberty Mutual Insurance Company, was entitled to pursue as the result of a payment in the amount of \$100,000.00, which it made to one or more

¹ *Adams v. Jankouskas*, 452 A.2d 148, 155-56 (Del. 1982) (citing *Chakov v. Outboard Marine Corp.*, 429 A.2d 984 (Del. 1981)).

² *Id.* at 156 (citing *Raughley v. Delaware Coach Co.*, 91 A.2d 245 (Del. 1952)); *see also Fox v. Christina Square Assoc., L.P.*, 1994 WL 146023, at *5 (Del. Super. Ct.).

³ *Adams*, 452 A.2d at 156 (citing *Hob Tea Room v. Miller*, 89 A.2d 851 (Del. 1952)).

⁴ *Id.* (citations omitted).

of the defendants because of the damage to the drum; and

WHEREAS, it is the mutual desire of the parties and Liberty Mutual Insurance Company, to let the original parties proceed with their settlement, including the execution of a mutual release, excepting the claim in the amount of \$100,000.00 for damages to the drum; and

WHEREAS, the parties are agreed that defendants' insurance carrier, Liberty Mutual Insurance Company, may continue to go forward with its claim for the damages to the drum, and that R&C has a right to assert any position and/or defense to that claim, as if no release had been signed.

NOW THEREFORE, with the understanding as heretofore expressed, the plaintiff and the defendants hereby enter into this Special Release and agree as follows:

1. In consideration of these mutual promises and covenants, . . . plaintiff and defendants hereby mutually agree to release each other . . . provided, however, that as stated aforesaid, defendants are not releasing that portion of the counterclaim which relates to the subrogation claim which is now being asserted in their name by the Liberty Mutual Insurance Company.

The Court believes a fair reading of these provisions of the release reflects Liberty Mutual's right to fully pursue the counterclaim filed by NCHM up to the extent of the damage amount they paid NCHM. To construe these provisions as argued by the plaintiff would cause an unintended benefit to the plaintiff for damages found to be caused by their actions. There is nothing to suggest that the parties believed, intended or agreed that the right to pursue the total potential claim had been limited in any way. The release simply made clear that any recovery would be limited to the \$100,000.00. In fact the release specifically allows Liberty to "go forward with its claim for the damages to the drum . . . as if no release had been signed." The Court finds this language supports the defendant's contentions.

6. The only logical reading of the release is that the parties intended the jury or the Court to decide the total amount of the counter-claim, reduce the recovery based upon the percentage of each parties' liability, and then, if appropriate, award an amount up to \$100,000.00 for these damages. Liberty, by its actions, has waived its right to recover beyond the \$100,000.00, but nothing more. The Plaintiff's arguments are nothing more than the creative thoughts of a crafty attorney attempting to limit the liability of his clients. While not an unreasonable goal, the arguments are not supported by the facts of the case or the obvious intention of the parties and would result in an unintended windfall to his client in

spite of their alleged negligent conduct.

7. For the above stated reasons the motion in limine is **DENIED**.

IT IS SO ORDERED.

Judge William C. Carpenter, Jr.

Original to Prothonotary