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IN THE COURT OF APPEALS OF INDIANA

Red Spot Paint & Varnish Company,
Appellant-Defendant

v.

Columbia Street Partners, Inc. and Charles D. Storms,
Appellees-Plaintiffs.

October 31, 2022

Court of Appeals Case No. 21A-CC-1806

Appeal from the Vanderburgh Circuit Court

The Honorable Robert R. Aylsworth, Special Judge

Trial Court Cause No. 82C01-2010-CC-4333

Pyle, Judge.

Statement of the Case

[1] Red Spot Paint & Varnish Company ("Red Spot") appeals the trial court's order, in which the trial court granted partial summary judgment to Columbia

Street Partners, Inc. ("Columbia Street") and Charles D. Storms ("Storms") (collectively, "Columbia Street and Storms") on their joint summary judgment motion and denied summary judgment to Red Spot.[1] Red Spot argues that the trial court erred by granting Columbia Street and Storms' summary judgment motion and denying Red Spot's summary judgment motion. Concluding that the trial court erred, we reverse the trial court's entry of summary judgment in favor of Columbia Street and Storms and remand to the trial court with instructions to enter summary judgment in favor of Red Spot.

[2] We reverse and remand. [2]

Issue

Whether the trial court erred by granting Columbia Street and Storms' summary judgment motion and denying Red Spot's summary judgment motion.

Facts[3]

[3] This appeal involves the interpretation of a settlement agreement entered into in 2010 by the parties to this appeal, among others, following years of environmental litigation in state and federal court. The underlying litigation

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[1] When the trial court initially entered its summary judgment order, it did not enter it as a final judgment. The trial court later amended its order to enter it as a final judgment, and we now review that order.

[2] We held an oral argument in this appeal via Zoom on October 11, 2022. We thank all counsel for their able advocacy.

[3] We direct the parties' attention to Indiana Appellate Rule 46(A) regarding the proper content for the sections of an appellate brief, and we would remind the parties to include argument in the appropriate section.

was filed by 1100 West, LLC ("1100 West") against Red Spot and alleged that Red Spot, which was located on property immediately to the north of 1100 West's property, had caused environmental contamination of 1100 West's property in Vanderburgh County ("the Property"). Among the contaminants that 1100 West alleged that Red Spot had released into the soil and groundwater was trichloroethylene or TCE.

[4] Specifically, in 2003, 1100 West initially filed a lawsuit in state court and sought injunctive relief and damages. Then, in 2005, 1100 West filed a federal lawsuit, alleging a cause of action under the Resource Conservation and Recovery Act ("RCRA"). In 2006, 1100 West consolidated its state lawsuit into its federal lawsuit ("the 1100 West Consolidated Cause") and alleged its federal RCRA claim and added state claims for negligence, trespass, private nuisance, and a claim pursuant to the environmental legal action ("ELA") statute.[4] Red Spot filed a counterclaim seeking declaratory and injunctive relief and a claim under the ELA. At that time, Storms was the president of Red Spot.

[5] In April 2008, during the pendency of the litigation, Fujichem, Inc. ("Fujichem"), entered into a stock purchase agreement with the shareholders of Red Spot to purchase all of Red Spot's shares ("Stock Purchase Agreement"). Storms, who was the largest of the shareholders, was designated as the

[4] INDIANA CODE § 13-30-9-1 to -8 are the statutes that relate to an ELA lawsuit.

shareholder's agent for the sale. As part of that Stock Purchase Agreement, Storms and the other shareholders agreed to "be responsible for and bear the costs incurred by [Red Spot] in connection with . . . the remediation of [Red Spot's] Facilities in . . . Evansville, Indiana, in accordance with the provisions of, and limited to the funds deposited in, a separate escrow fund" and "the 1100 West Litigation, the maximum anticipated cost of which shall be deposited in a separate escrow fund[.]" (App. Vol. 2 at 83-84). In May 2008, Fujichem and Storms, as the shareholder's agent, entered into a "Litigation Escrow Agreement[,]" a "General Escrow[,]" and a "Remediation Escrow Agreement[.]" (App. Vol. 2 at 166-67).

[6] Later in 2008, 1100 West filed a motion for sanctions against Red Spot ("Sanctions Motion"). The motion included a request for a default judgment and the payment of attorney fees and expenses. In June 2009, the federal court granted 1100 West's sanctions motion ("Sanctions Order"). Specifically, the federal court entered default judgment against Red Spot, declaring it "liable for taking all necessary action to abate and otherwise respond to the aromatic contamination plume and the TCE/PCE contamination plume on plaintiff's 1100 West, LLC, property." (App. Vol. 3 at 143). The federal court awarded 1100 West attorney fees and costs dating back to May 2006.

[7] Thereafter, in August 2009, 1100 West served, but did not file, a proposed complaint upon Red Spot's representative and alleged a RICO cause of action against Red Spot's current and former officers, directors, employees, consultants, and agents ("RICO Complaint"). The following day, Fujichem

served, but did not file, a proposed complaint upon Storms, and its complaint alleged a cause of action against Red Spot's shareholders and sought recission of the stock purchase agreement and repayment of the funds that Fujichem had paid ("Recission Complaint").

[8] On April 21, 2010, Columbia Street, Storms, Red Spot, and Fujichem, entered into a settlement agreement ("the 2010 Fujichem Settlement Agreement") and other contemporaneous agreements, including a "Confidential Settlement Agreement and General Release" ("the 1100 West Settlement Agreement"), which was incorporated into the 2010 Fujichem Settlement Agreement. In the 2010 Fujichem Settlement Agreement, the parties were designated as follows: "Charles D. Storms ("Storms"); Charles D. Storms as the agent for the Shareholders ("Shareholders' Agent"); Columbia Street Holding Company, LLC ("Agent"); Columbia Street Settlement, LLC ("Settlement"); Columbia Street Partners, LLC ("Remediation"); Red Spot Paint & Varnish Co., Inc. ("Red Spot"); and Fujichem, Inc. ("Fujichem")[.]" (App. Vol. 2 at 165). In the "Recitals" section of the 2010 Fujichem Settlement Agreement, the parties set forth the procedural history and other facts that had led them to enter into that agreement and the contemporaneous agreements. (App. Vol. 2 at 165). Specifically, the parties indicated as follows:

> P. The Parties wish to adjust, compromise and settle all matters at issue between them with respect to any and all legal and equitable damages and remedies arising from or relating to all claims raised, or which could have been raised among the Parties, whether known or unknown, whether by complaint, affirmative defense, counterclaim, or otherwise in or with respect

> to claims for fraud, misrepresentation, or related to the use or exhaustion of any escrow funds from the Litigation Escrow Agreement or the General Escrow, or related in any way to the Recission Complaint, the RICO Complaint, the State Claim, the Federal Claim, the Consolidated Claims, the Counterclaims, the Administrative Action, the Special Use Action, the Sanctions Order, the Stock Purchase Agreement, the Litigation Escrow Agreement or the General Escrow ("Settled Claims") on the terms and conditions set forth in this Fujichem Settlement Agreement solely to avoid the uncertainty and expense of further litigation.

(App. Vol. 2 at 168-69).

[9] Section 7 of the 2010 Fujichem Settlement Agreement, which is the specific section at issue in this appeal, provides as follows:

> **7. <u>Assignment and Waiver of Rights to Contribution</u>**. Fujichem and Red Spot assign to [Columbia Street[5]] or its nominee any and all rights to claims against third parties relating to the Existing Contamination of the Conveyed Real Property (as those capitalized terms are defined in the 1100 West Settlement Agreement ("Contribution Claims"), and hereby waive any and all rights to any Contribution Claims. However, this assignment and waiver shall become null and void if [Columbia Street], Agent, Storms or Shareholders' Agent materially breach the 1100 West Settlement Agreement or this [2010 Fujichem Settlement] Agreement. To the extent that [Columbia Street] or its nominee or assignee, pursues any Contribution Claims, and any person therein asserts claims against Fujichem and/or Red Spot because of the contamination on the Conveyed Real Property, [Columbia

[5] The 2010 Fujichem Settlement Agreement refers to a party labeled "Remediation," and the agreement defined "Remediation" as referring to Columbia Street. (App. Vol. 2 at 165).

> Street] and Storms, will indemnify, defend, and hold Fujichem and Red Spot harmless in connection with any such Contribution Claim. Fujichem and Red Spot agree to cooperate in good faith in the pursuit of all such Contribution Claims.

(App. Vol. 2 at 173) (footnote added).

[10] The 1100 West Settlement Agreement[6] defined "Conveyed Real Property" as meaning "that portion of the 1100 West Real Property which portion is visually depicted on Exhibit B hereto which, generally, represents the northern two-thirds of the 1100 West Real Property, and is legally described on Exhibit C attached hereto including all improvements located thereon." (App. Vol. 2 at 190). Additionally, the 1100 West Settlement Agreement defined "Existing Contamination" to mean the following:

> TCE, PCE[,] and their degradation and by-products present within the soil, groundwater or otherwise beneath the soil surface in the plume identified as CVOC's in Figure 25 of the Connor Report at the Conveyed Real Property and/or the Adjacent Real Property, as of the effective date of this 1100 West Settlement Agreement. For avoidance of doubt, Existing Contamination does not include Aromatic Contamination.

(App. Vol. 2 at 191). As part of the 1100 West Settlement Agreement, 1100 West conveyed the Property to Columbia Street. Thereafter, 1100 West and

[6] The parties to the 1100 West Settlement Agreement included, among others, 1100 West, Red Spot, Fujichem, Storms, Shareholders' Agent, Agent, Remediation, and Settlement. Additionally, we note that Red Spot included redacted versions of these agreements and the stock purchase agreement in its Appellant's Appendix.

Red Spot filed a joint stipulation of dismissal to dismiss the 1100 West Consolidated Cause. In July 2010, the federal court granted the parties' motion and dismissed the cause with prejudice.

[11] In 2016, Columbia Street filed a lawsuit pursuant to the ELA statute ("the 2016 ELA Litigation")[7] against several parties who had previously owned and contributed to the contaminated property, including Honeywell International Inc. ("Honeywell"), which was the successor by merger to another company. Columbia Street sought "to recover costs . . . paid or incurred by [Columbia Street] to accomplish remedial activities with respect to hazardous substances of chlorinated solvents (CVOCs), primarily trichloroethylene, which over the years had been released in and migrated through the soil, subsoil and groundwater in the Property[.]" (App. Vol. 3 at 191). Columbia Street alleged that Honeywell's predecessor company had owned the Property from 1956 to 1969 and that, during that time, had used chlorinated solvents in its operations and had caused them to be release into the soil, subsoil, and groundwater. Columbia Street sought to recover four million dollars in remediation costs that it had expended from 2010 to 2016.

[12] Honeywell then filed a third-party complaint pursuant to the ELA statute against Red Spot ("the Third-Party Complaint"), thereby bringing Red Spot into the 2016 ELA Litigation. Honeywell raised a claim against Red Spot

[7] In their appellate briefs, the parties refer to this 2016 ELA Litigation as either the Honeywell Litigation or the Honeywell Lawsuit.

pursuant to the ELA statute and argued that, if Honeywell was determined to be liable to Columbia Street for remediation costs, then it was entitled to recover from Red Spot in proportion to Red Spot's culpability. Honeywell also sought a declaratory judgment on liability for any future remediation costs.

[13] Thereafter, in 2017, Red Spot notified Columbia Street and Storms that it was seeking indemnification from Columbia Street and Storms, pursuant to Section 7 of the 2010 Fujichem Settlement Agreement, for Red Spot being brought into the 2016 ELA Litigation by Honeywell's filing of the Third-Party Complaint against Red Spot. Columbia Street and Storms declined Red Spot's indemnity demand, informing Red Spot that Section 7 of the 2010 Fujichem Settlement Agreement was inapplicable because the 2016 ELA Litigation involved Columbia Street's own ELA claims and did not involve any of the Contribution Claims as defined in Section 7. Moreover, Columbia Street and Storms informed Red Spot that it should not incur any loss because, under the ELA, Honeywell's liability was several and not joint and several.

[14] In February 2020, the parties in the 2016 ELA Litigation, including Columbia Street, Honeywell, and Red Spot, filed a stipulation of dismissal. As part of this stipulated dismissal, Columbia Street's claims against Honeywell and the other parties in the 2016 ELA Litigation were dismissed with prejudice, and Honeywell's claims against Red Spot in the Third-Party Complaint were dismissed without prejudice. After the dismissal, Red Spot again notified Columbia Street and Storms that it was seeking indemnification pursuant to Section 7 of the 2010 Fujichem Settlement Agreement.

[15] In October 2020, Columbia Street and Storms filed the complaint at issue in this appeal against Red Spot. Columbia Street and Storms sought declaratory relief based on the interpretation of Section 7 of the 2010 Fujichem Settlement Agreement. Specifically, Columbia Street sought declaratory relief that it had no obligation to indemnify Red Spot for its costs and attorney fees incurred when Honeywell filed its Third-Party Complaint against Red Spot. Columbia Street and Storms stated that the indemnity provision in Section 7 was inapplicable because the 2016 ELA Litigation was based on Columbia Street's attempt to "recover the $4 million pollution remediation costs they had expended over the six years following the 2010 [Settlement Agreement] – **not** for or based on any Red Spot claims assigned in 2010[.]" (App. Vol. 2 at 13) (emphasis in original). Additionally, in its complaint, Columbia Street and Storms sought relief to recover attorney fees and costs incurred in this current litigation.

[16] Thereafter, Red Spot filed a counterclaim against Columbia Street and Storms. Red Spot's counterclaim was also based on the interpretation of Section 7 of the 2010 Fujichem Settlement Agreement. In Red Spot's counterclaim, it alleged that Columbia Street had sought "Contribution Claims" in its 2016 ELA Litigation, and it sought indemnity for the costs and fees incurred to defend itself against Honeywell's Third-Party Complaint in the 2016 ELA Litigation. (App. Vol. 2 at 51). According to Red Spot, it had incurred approximately $1.2 million in costs. Red Spot also asserted that Columbia Street and Storms had breached the 2010 Fujichem Settlement Agreement by failing to indemnify Red

Spot. Additionally, Red Spot sought relief to recover attorney fees and costs from this current litigation.

[17] Both parties filed motions for summary judgment on Columbia Street's complaint and Red Spot's counterclaim on the indemnity issue only. The parties' summary judgment motions sought to have the trial court interpret Section 7 of the 2010 Fujichem Settlement Agreement, which the parties agreed was unambiguous, and determine whether Columbia Street and Storms were required to indemnify Red Spot for its costs when it was made a party to the 2016 ELA Litigation by the Third-Party Complaint. Additionally, the parties sought to later recover, pursuant to Section 15 of the 2010 Fujichem Settlement Agreement, attorney fees and costs by the prevailing party to be determined in a future hearing during which evidence of the costs and fees could be presented.

[18] The trial court held a hearing on the parties' motions in May 2021. The parties agreed that Section 7 was unambiguous but disagreed as to the meaning of Contribution Claims. Columbia Street and Storms argued that the term Contribution Claims referred specifically to Red Spot's rights to their own claims against third parties that Red Spot had assigned to Columbia Street. Red Spot, on the other hand, argued that the term Contribution Claims referred to all claims that Columbia Street would bring against third parties related to the contamination of the Property.

[19] Subsequently, in July 2021, the trial court issued an order on the summary judgment motions on the disputed indemnity issue. The trial court, after

reviewing and interpreting Section 7 of the 2010 Fujichem Settlement Agreement, set forth its conclusions, in relevant part, as follows:

> 1. . . . [T]he court does not find an expansive order to be necessary for this court to rule on the parties' respective summary judgment motions at the trial court level, understanding because of the amount of money at issue here any order and judgment entered by this court is virtually certain to be appealed to the Indiana Court of Appeals where this court's ruling will be reviewed de novo.
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> 4. Columbia Street asserts that since it asserted only its own claims for remediation in the 2016 ELA litigation and did not pursue any assigned claims from Red Spot that [Columbia Street and Storms] have no duty to indemnify Red Spot for its litigation costs and fees in defending against the eventually dismissed third party claim in that action. Red Spot urges an expansive view of Section 7 to essentially cover all claims asserted by Columbia Street, and not only those assigned to it.
>
> 5. Although each side asserts wrongdoing by one another in the past, the court does not find this relevant or material to the court's decision in this matter, as the court finds Section 7 to be clear and unambiguous and supportive of [Columbia Street and Storms'] position that only assigned claims are covered by the indemnity language. If Red Spot in fact negotiated the unlimited indemnity, the language could easily have said so. All means all and nothing less than all. But by its express terms, Section 7 does not state that all is to be covered. To the contrary, the language "To the extent" is a limiting clause and not an expansive clause. Red Spot's argument that all claims asserted by Columbia Street give rise to the right of indemnity is simply not supported by Section 7 as written, and must be denied.

> 6. As such, the court must and does find there is no genuine issue of material fact in dispute and [Columbia Street and Storms] are entitled to a declaration and judgment that they have no obligation under Section 7 to indemnify Red Spot for its litigation expenses incurred in defending the third-party claim against it and arising from the 2016 ELA [Litigation] brought by Columbia Street to recover its remediation costs after the 2010 contract, and not based upon any assigned claims from Red Spot. Likewise, because of this, the court must and does find that Red Spot is not entitled to recover on its counterclaim for breach of contract and for indemnity from Columbia Street and Storms, the counterclaim is denied and Red Spot shall take nothing by way of this counterclaim.

(App. Vol. 2 at 11-12).[8]

[20] Red Spot now appeals.

Decision

[21] Red Spot argues that the trial court erred by granting Columbia Street's summary judgment motion and denying Red Spot's summary judgment motion. Our standard of review for summary judgment cases is well-settled. When we review a trial court's grant of a motion for summary judgment, our standard of review is the same as it is for the trial court. *Knighten v. E. Chi. Hous. Auth.,* 45 N.E.3d 788, 791 (Ind. 2015). Summary judgment is appropriate only where the moving party has shown that there is no genuine issue of

[8] In its order, the trial court also specifically "reserve[ed] jurisdiction to hear and determine any matters as yet unresolved in this matter." (App. Vol. 2 at 12) (emphasis added). Thus, the issue of attorney costs and fees for the prevailing party pursuant to the 2010 Settlement Agreement remains for determination by the trial court.

material fact and that it is entitled to judgment as a matter of law. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). If the moving party makes such a showing, the burden shifts to the non-moving party to demonstrate the existence of a genuine issue of material fact that precludes the entry of summary judgment in the movant's favor. *Justice v. Am. Fam. Mut. Ins. Co.*, 4 N.E.3d 1171, 1175 (Ind. 2014). "Like the trial court we construe all evidence and resolve all doubts in favor of the non-moving party, so as not improperly to deny [the non-movant] his day in court." *Id.* (cleaned up).

[22] Resolution of this summary judgment case on appeal involves the interpretation of a contract. More specifically, this Court is called upon to interpret Section 7 of the 2010 Fujichem Settlement Agreement. "Summary judgment is especially appropriate in the context of contract interpretation because the construction of a written contract is a question of law." *TW Gen. Contracting Servs., Inc. v. First Farmers Bank & Trust*, 904 N.E.2d 1285, 1287-88 (Ind. Ct. App. 2009) (citing *Colonial Penn Ins. Co v. Guzorek*, 690 N.E.2d 664, 667 (Ind. 1997)), *reh'g denied*. "The ultimate goal of any contract interpretation is to determine the intent of the parties when they made the agreement." *Citimortgage, Inc. v. Barabas*, 975 N.E.2d 805, 813 (Ind. 2012), *reh'g denied.* To do so, "we begin with the plain language of the contract, reading it in context and, whenever possible, construing it so as to render each word, phrase, and term meaningful, unambiguous, and harmonious with the whole." *Id.* A court should construe the language of a contract so as not to render any words, phrases, or terms

ineffective or meaningless. *Hammerstone v. Ind. Ins. Co.*, 986 N.E.2d 841, 846 (Ind. Ct. App. 2013).

[23] The relevant contract language in this appeal, Section 7 of the 2010 Fujichem Settlement Agreement, provides as follows:

> **7. <u>Assignment and Waiver of Rights to Contribution</u>**. Fujichem and Red Spot assign to [Columbia Street] or its nominee any and all rights to claims against third parties relating to the Existing Contamination of the Conveyed Real Property (as those capitalized terms are defined in the 1100 West Settlement Agreement ("Contribution Claims"), and hereby waive any and all rights to any Contribution Claims. However, this assignment and waiver shall become null and void if [Columbia Street], Agent, Storms or Shareholders' Agent materially breach the 1100 West Settlement Agreement or this [2010 Settlement] Agreement. To the extent that [Columbia Street] or its nominee or assignee, pursues any Contribution Claims, and any person therein asserts claims against Fujichem and/or Red Spot because of the contamination on the Conveyed Real Property, [Columbia Street] and Storms, will indemnify, defend, and hold Fujichem and Red Spot harmless in connection with any such Contribution Claim. Fujichem and Red Spot agree to cooperate in good faith in the pursuit of all such Contribution Claims.

(App. Vol. 2 at 173). As the parties did below, they agree that the language used Section 7 is unambiguous. The parties also agree that the gravamen of this appeal involves the meaning of the term Contribution Claims. However, they disagree as to the term's meaning.

[24] Red Spot contends that we should interpret the critical term at issue, Contribution Claims, as meaning "claims against third parties related to

Existing Contamination of the Conveyed Real Property (as those capitalized terms are defined in the 1100 West Settlement Agreement)." (Red Spot's Br. 13). Red Spot asserts that "[t]he 26 words immediately preceding 'Contribution Claims' are the only words that can sensibly define Contribution Claims throughout Section 7." (Red Spot's Br. 16) (upper case words modified to lower case). Red Spot contends that "[t]he plain and unambiguous definition of 'Contribution Claims'—'claims against third parties related to the Existing Contamination of the Conveyed Real Property'—is expressly stated in the [2010 Fujichem Settlement] [A]greement and is supported by the parties' evident intent at the time they entered into the agreement." (Red Spot's Br. 22).

[25] On the other hand, Columbia Street and Storms contend that Section 7 of the 2010 Fujichem Settlement Agreement defined the term Contribution Claims with the plain language used in that section as a whole and with due regard to the heading and all sentences in the section. Columbia Street and Storms engage in a grammatical dissection of each sentence in Section 7 and argue that, based on the plain language used, the term Contribution Claims refers specifically to Red Spot's rights to their own claims against third parties that Red Spot had assigned to Columbia Street and Storms. They, however, do not point to anything within the 2010 Fujichem Settlement Agreement that sets forth a specific list of such claims that Red Spot had assigned or that Red Spot's assigned claims were in anyway limited.

[26] Here, the question of whether Section 7 of the 2010 Fujichem Settlement Agreement requires Columbia Street and Storms to indemnify Red Spot must,

however, be considered in relation to the claim that precipitated this indemnity question—the 2016 ELA Litigation. Before we delve into the nature of that claim, we first note that "'[t]he legislature enacted the ELA statute to shift the financial burden of environmental remediation to the parties responsible for creating contaminations.'" *Elkhart Foundry & Mach. Co. v. City of Elkhart Redevelopment Comm'n for City of Elkhart*, 112 N.E.3d 1123, 1126 (Ind. Ct. App. 2018) (quoting *Cooper Indus., LLC v. City of S. Bend*, 899 N.E.2d 1274, 1284 (Ind. 2009)), *trans. denied*. The ELA statute provides as follows:

> A person may, regardless of whether the person caused or contributed to the release of a hazardous substance or petroleum into the surface or subsurface soil or groundwater that poses a risk to human health and the environment, bring an environmental legal action against a person that caused or contributed to the release to recover reasonable costs of a removal or remedial action involving the hazardous substances or petroleum.

I.C. § 13-30-9-2. Additionally, INDIANA CODE § 13-30-9-3 provides that "[i]n resolving an environmental legal action, a court shall allocate the costs of the removal or remedial action in proportion to the acts or omissions of each party, without regard to any theory of joint and several liability, using legal and equitable factors that the court determines are appropriate, including[,]" among other factors, "[t]he degree of care exercised by each party with respect to the release of the hazardous substance or petroleum caused or contributed to by each party." I.C. § 13-30-9-3(a).

[27] Columbia Street and Storms contend that they did not pursue any of Red Spot's assigned Contribution Claims in their 2016 ELA Litigation and that, instead, they pursued only their own statutory ELA claims against Honeywell and other third parties. They also assert that "an ELA claim is not a contribution claim under the law." (Columbia Street and Storms' Br. 14) (citing I.C. § 13-30-9-2). Red Spot, on the other hand, argues that "Columbia Street brought an ELA action against Honeywell to recover costs that Columbia Street had paid or incurred while remediating the Existing Contamination on the Conveyed Real Property" and that "the ELA was the avenue Columbia Street used to pursue its Contribution Claim against Honeywell." (Red Spot's Reply Br. 26). We agree with Red Spot.

[28] It is undisputed that prior to the entry of the 2010 Fujichem Settlement Agreement, the federal court, in its Sanctions Order, had determined that Red Spot was "liable for taking all necessary action to abate and otherwise respond to . . . the TCE/PCE contamination plume on plaintiff's 1100 West, LLC, property." (App. Vol. 3 at 143). However, as set forth in the Recitals in the 2010 Fujichem Settlement Agreement, the parties resolved their claims "related in any way" to the Sanctions Order and other claims as a means "to avoid the uncertainty and expense of further litigation." (App. Vol. 2 at 168-69??). Thus, prior to the parties' entry into the 2010 Fujichem Settlement Agreement, Red Spot was responsible for the remediation of the Property and any associated costs. Indeed, there is no dispute that, at the time the parties executed the 2010

Fujichem Settlement Agreement, the Property contained contamination that still needed to be remediated.

[29] Pursuant to Section 7 of the 2010 Fujichem Settlement Agreement, Red Spot assigned to Columbia Street "any and all rights to claims against third parties relating to the Existing Contamination of the Conveyed Real Property[.]" (App. Vol. 2 at 173). Section 7 referred to these claims as "Contribution Claims." (App. Vol. 2 at 173). The language of Section 7 did not define or limit the rights to claims that Red Spot was assigning or the extent of these Contribution Claims. The 1100 West Settlement Agreement, which was incorporated into the 2010 Fujichem Settlement Agreement and executed contemporaneously therewith, defined "Existing Contamination" to "mean TCE, PCE[,] and their degradation and by-products present within the soil, groundwater or otherwise beneath the soil surface in the plume identified as CVOC's . . . at the Conveyed Real Property. . . as of the effective date of this 1100 West Settlement Agreement." (App. Vol. 2 at 191).

[30] Columbia Street's ELA claim in the 2016 ELA Litigation related to contamination of the Property. More specifically, it related to the costs associated with the remediation of that contamination. Columbia Street's complaint in its 2016 ELA Litigation against Honeywell and the other parties sought recovery of remediation costs for the cleanup and remediation of chlorinated solvents or CVOCs, primarily trichloroethylene, from the soil and groundwater of the Property. As a result of Columbia Street pursuing its 2016

ELA Litigation against Honeywell, Honeywell then asserted a third-party claim against Red Spot seeking a contribution from Red Spot for any assigned cost that Honeywell might have to pay to Columbia Street for its remediation of the contamination on the Property. Under Section 7 of the 2010 Fujichem Settlement Agreement, Columbia Street and Storms agreed to indemnify Red Spot if Columbia Street "pursue[d] any Contribution Claims, and any person therein asserts claims against . . . Red Spot because of the contamination on the Conveyed Real Property[.]" (App. Vol 2 at 173).

[31] Accordingly, we conclude that the trial court erred by granting summary judgment to Columbia Street and Storms and by denying Red Spot's summary judgment motion on the indemnity issue. Therefore, we reverse the trial court's entry of summary judgment in favor of Columbia Street and Storms and remand to the trial court with instructions to enter summary judgment in favor of Red Spot.

[32] Reversed and remanded.

May, J., and Brown, J., concur.