# STATE OF MICHIGAN

# COURT OF APPEALS

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CHRYSLER CORP,

Intervening Plaintiff-Appellant,

and

BRIGITTE LOVE,

Plaintiff,

v

WEL-TEK INTERNATIONAL,

Defendant-Appellee,

and

EDGAR J. BRADBURY,

Defendant.

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UNPUBLISHED
August 16, 2002

No. 233584
Wayne Circuit Court
LC No. 97-732115-NI

Before: Murray, P.J., and Fitzgerald and O'Connell, JJ.

PER CURIAM.

Intervening plaintiff Chrysler Corporation appeals as of right the circuit court's order of dismissal and order denying plaintiff's motion to modify the court's previous order granting summary disposition to defendant Wel-Tek International pursuant to MCR 2.116(C)(10) in this contract action. For the reasons stated below, we affirm the circuit court's decision because it reached the correct result albeit for the wrong reason.

This case arose out of a services contract consisting of annual purchase orders between the parties that called for Wel-Tek to provide Chrysler with engineering services and personnel. On January 20, 1995, Wel-Tek employee and individual defendant Edgar Bradbury test drove one of Chrysler's cars pursuant to the parties' contract. Bradbury struck another driver, plaintiff Brigitte Love, injuring her. Bradbury disappeared soon after the accident and was never heard from again. Following the accident, Love sued Bradbury, Chrysler, and Wel-Tek in two separate lawsuits.

The parties agree on appeal that they had orally agreed to extend the 1994 purchase order contract through the time of the accident until they approved and issued the 1995 purchase order. It is undisputed that the 1994 purchase order did not incorporate an indemnity insurance provision. While the 1995 purchase order stated an effective date of January 1, 1995 on the second page, the parties did not approve the 1995 purchase order and Wel-Tek did not issue it until March 10, 1995, the date that appears on the face of the order. In addition, the 1995 purchase order incorporated a separate insurance agreement indemnifying Chrysler "against all claims, liabilities, losses, damages and settlement expenses . . . for injury or death to any person and damage . . . allegedly or actually resulting from or arising out of any act, omission or negligent work of Seller or its employees . . . ."

In Love's 1995 suit against Bradbury and Chrysler, Chrysler filed a third-party complaint against Wel-Tek for indemnification. In Love's separate 1997 suit against Bradbury and Wel-Tek, Chrysler intervened as plaintiff against Wel-Tek. While Chrysler settled with Love for $325,000, Wel-Tek paid Love only $50,000. In this appeal, Chrysler claims that the indemnity provision of the 1995 purchase order contract required Wel-Tek to reimburse Chrysler for its $325,000 settlement with Love.

In the court below, Wel-Tek argued that the "loss-in-progress" or "known-risk" doctrine precluded insurance coverage of Bradbury's accident because the 1995 purchase order with the indemnity provision was not approved and issued until March 10, 1995, almost two months after the accident occurred. Thus, Wel-Tek argued, Chrysler could not obtain indemnity insurance for an accident that Chrysler knew had occurred before the purchase order contract was approved and issued. The circuit court agreed, holding that although the parties had a contract in force at the time of the accident, the loss-in-progress doctrine precluded coverage because the purchase order with the indemnification provision was issued after the accident.

The circuit court's order of dismissal was based on its previous order granting summary disposition to Wel-Tek. This Court reviews decisions on motions for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests whether there is factual support for a claim and is reviewed to determine whether the affidavits, pleadings, depositions, or any other documentary evidence establish a genuine issue of material fact to warrant a trial. *Spiek, supra* at 337, citing *Singerman v Municipal Bureau, Inc*, 455 Mich 135, 138; 565 NW2d 383 (1997). This Court will give the nonmoving party the benefit of all reasonable inferences when determining whether summary disposition is appropriate. *Betrand v Alan Ford, Inc*, 449 Mich 606, 615; 537 NW2d 185 (1995). Furthermore, "[s]ummary judgment practice originally was designed for actions arising out of contract." *Durant v Stahlin*, 374 Mich 82, 85 n 2; 130 NW2d 910 (1964).

We disagree with the circuit court's reasoning but reach the same result in this case. See *Norris v State Farm Fire & Casualty Co*, 229 Mich App 231, 240; 581 NW2d 746 (1998). While it is unclear whether the loss-in-progress doctrine exists in Michigan, see *American Bumper and Mfg Co v Hartford Fire Ins Co*, 452 Mich 440, 459 n 19; 550 NW2d 475 (1996); *South Macomb Disposal Authority v American Ins Co*, 225 Mich App 635, 695; 572 NW2d 686 (1997), after remand 239 Mich App 344, after second remand 243 Mich App 647 (2000), the doctrine does not apply in this case because the contract in force at the time of the accident clearly did not include an indemnity insurance provision. A review of the record reveals that the parties had orally agreed to extend the 1994 purchase order into 1995. See *Giordano v*

*Markovitz*, 209 Mich App 676, 679; 531 NW2d 815 (1995) (partially performed oral contract satisfies Statute of Frauds). Thus, the 1994 purchase order governed the date of the accident at issue. Fatal to Chrysler's case is the fact that the 1994 purchase order did not incorporate an indemnity provision at all, precluding as a matter of law Wel-Tek's duty to indemnify.[1] The 1995 purchase order contract was the first one to include an indemnity provision, but the parties agree that they did not approve and issue that contract until two months after the accident. We must enforce the parties' contractual intent indicated by the plain language of the properly formed 1994 contract in force at the time of the accident. See *id*.; *Rasheed v Chrysler Corp*, 445 Mich 109, 127 n 28; 517 NW2d 19 (1994).

Because the circuit court found that the loss-in-progress doctrine precluded coverage and dismissed this case for lack of a material factual issue, we affirm that decision as the correct result albeit for the wrong reason. *Spiek*, *supra* at 337; see also *Norris*, *supra* at 240.

Affirmed.

/s/ Christopher M. Murray
/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell

[1] At oral argument, Chrysler Corporation argued that the 1994 Agreement contained an indemnity clause. This argument was not raised below. Therefore, we consider the issue waived.