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12-10-2012

Summary of United Rentals Highway v. Wells Cargo, 128 Nev. Adv. Op. 59

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Nevada Law Journal

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Recommended Citation

Sakai, Joseph, "Summary of United Rentals Highway v. Wells Cargo, 128 Nev. Adv. Op. 59" (2012). *Nevada Supreme Court Summaries*. 140.

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CONTRACT LAW- INDEMNITY PROVISIONS

Summary

An appeal regarding contract language's effect on an indemnitor's duty to indemnify and defend an indemnitee in a personal injury action where the language provides that indemnification will occur "to the extent" that any injury or damage is "caused" by the indemnitor.

Disposition

The contractual indemnity language imposed a causal limitation on United Rentals' duty to indemnify. Therefore, United Rentals did not have a duty to indemnify or defend Wells Cargo because the jury found that United Rentals did not proximately cause the underlying accident.

Factual and Procedural History

Wells Cargo, upon entering into a contract with Howard Hughes Corporation² as a general contractor for a road improvement project, contracted United Rentals to assist with traffic control. The contract between United Rentals and Wells Cargo included this indemnity provision:

The Subcontractor . . . shall indemnify, defend and hold the General Contractor [and] Owner . . . harmless from and against all claims . . . pertaining to the performance of the Subcontract and involving personal injury . . . to the extent caused in whole or in part by the negligent acts or omissions or other fault of the Subcontractor This indemnification agreement is binding on the Subcontractor . . . regardless of whether any or all of the persons and entities indemnified hereunder are responsible in part for the claims, damages, losses or expenses for which the Subcontractor . . . is obligated to provide indemnification.

Antonette Koderer was driving her motorcycle when she hit an unmarked bump in the road, crashed and sustained serious injuries. She filed a complaint against Howard Hughes Corporation and Wells Cargo, later amending her complaint to include United Rentals, alleging negligence in not marking the bump as dangerous, failing to provide appropriate warning of its presence, and/or failing to remove the hazardous condition that caused her injuries.

Wells Cargo tendered its defense to United Rentals and an insurance carrier for United Rentals, both of which went unanswered. Wells Cargo then cross-claimed United Rentals for contribution, equitable indemnity, express or contractual indemnity, and breach of contract; United Rentals denied liability in their answer.

The district court ordered United Rentals to indemnify Wells Cargo unless Wells Cargo or Howard Hughes Corporation was determined to be solely negligent. The court held United

¹ By Joseph Sakai

² Not party to appeal.

Rentals to be obligated to defend and hold harmless Wells Cargo, for the entirety of the suit, irrespective of a determination of liability because the obligation is not outcome determinative.

Wells Cargo, Howard Hughes Corporation and co-defendant the Nevada Department of Transportation reached a settlement agreement with Kodera for \$1,000,000. United Rentals succeeded at jury trial against Kodera where they were found to be negligent, but not a proximate cause of her injuries. Wells Cargo used this jury finding when filing for indemnification, asserting the jury's determination of United Rentals' negligence showed Wells Cargo was not solely negligent. United Rentals again opposed, stating that indemnification was contingent on them being the cause of Kodera's damages, which was negated by the jury's verdict.

The district court held Wells Cargo only needed to show potential liability when it tendered its defense to United Rentals, and because it did, their tendered defense was done seasonably and United Rentals had an obligation to indemnify regardless of outcome. The district court concluded United Rentals showed no evidence suggesting a lack of potential liability and granted the motion to enforce indemnification on behalf of Wells Cargo. The district court also awarded Wells Cargo an amended judgment for \$1,000,000 plus interest for the settlement and \$424,782.87 in attorney fees. United Rentals appealed.

Discussion

Justice Hardesty wrote the opinion of the court, with Justices Saitta and Pickering concurring. This court views interpretation of an indemnity clause within a contract as a question of law, and subjects it to de novo review.³ Also, this court subjects the challenge of a grant of summary judgment to de novo review, without deference to the district court's findings.⁴ The court does not generally subject contractual duties to indemnify to equitable considerations, but enforces it "in accordance with the terms of the contracting parties' agreement."⁵

I. United Rentals' duty to indemnify Wells Cargo is limited to the extent United Rentals caused the damages

The Court focused on the language in the contract that stated United Rentals shall indemnify "to the extent caused in whole or in part by the negligent acts or omissions or other fault of [United Rentals]." United Rentals argued, and the Court agreed, that a plain reading of the contract placed an obligation on United Rentals to indemnify to the extent that it caused the underlying accident and related damages. The Court used their conclusion in *Reyburn* to hold that United Rentals' duty to indemnify is limited to the extent they actually caused the injury.⁶ In *Reyburn*, the Court held that because an indemnity provision did not explicitly indemnify the indemnitee against its own negligence there must be a showing of negligence on the indemnitor's part prior to triggering the duty to indemnify, and the indemnitee will be indemnified only for the indemnitor's negligence.⁷ The court construed this portion of the clause strictly to be consistent

³ *Reyburn Lawn v. Plaster Development Co.*, 127 Nev. ___, ___, 255 P.3d 268, 274 (2011).

⁴ *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 268, 274 (2011).

⁵ *Reyburn*, 127 Nev. at ___, 255 P.3d at 274 (quoting *Prince v. Pacific Gas & Elec. Co.*, 202 P.3d 1115, 1120 (Cal. 2009)).

⁶ 255 P.3d at 275.

⁷ *Id.*

with its refusal to increase legal obligations of parties where the parties intentionally limited them.⁸

The court then looked to other jurisdictions that have held limiting a duty to indemnify “to the extent” injury was “caused” by the indemnitor required a finding of degree of fault on the part of the indemnitor. The Supreme Court of Pennsylvania concluded, in construing an entire indemnity provision, that the “language . . . easily read to only indemnify [the indemnitees] for that portion of damages caused by the negligence of the [indemnitor].”⁹ The court also looked to cases interpreting similar indemnification language in Arizona¹⁰ and Minnesota.¹¹

This Court, consistent with other jurisdictions, held that “to the extent caused” language is strictly construed as limiting an indemnitor’s liability to cover the indemnitee’s losses only to the extent the injuries were caused by the indemnitor. Justice Hardesty concluded that the indemnification provision at issue limited United Rental’s duty to indemnify only to the extent that it caused Kodera’s accident. He went on to hold that United Rentals was zero percent liable because of the jury’s finding that United Rentals was not the proximate cause of Kodera’s accident, entitling Wells Cargo to zero indemnification.

II. The district court erred in determining that United Rentals was required to defend Wells Cargo and further erred in awarding Wells Cargo attorney fees

The Court held that United Rentals’ duty to defend was subject to the same “to the extent caused” limitation as their duty to indemnify. The Court agreed with United Rentals who argued that, “[t]o hold otherwise would force [it] to incur attorney[] fees in defense of claims it may not have caused, which is contrary to the express language.”

The duty to defend is broader than the duty to indemnify because it covers both claims under which the indemnitor is, and could be, found liable.¹² The Court held that this broad duty to defend, which connotes an obligation of active responsibility,¹³ was not limitless. A duty to defend in an indemnification provision is subject to strict construction of the contract language.¹⁴ The Court came to this conclusion through *Reyburn* where it held, “unless specifically otherwise stated in the indemnity clause, and indemnitor’s duty to defend an indemnitee is limited to those claims directly attributed to the indemnitor’s scope of work and does not include defending against claims arising from . . . the indemnitee’s own negligence.”¹⁵

Justice Hardesty reiterated that the Court would not “attempt to increase the legal obligations of the parties where the parties intentionally limited such obligations.”¹⁶ The Court

⁸ *Griffin v. Old Republic Ins. Co.*, 122 Nev. 479, 483, 133 P.3d 251, 254 (2006) (citing *Senteney v. Fire Ins. Exchange*, 101 Nev. 654, 656, 707 P.2d 1149, 1150-51 (1985)).

⁹ *Greer v. City of Philadelphia*, 795 A.2d, 376, 381 (Pa. 2002).

¹⁰ *MT Builders v. Fisher Roofing*, 197 P.3d 758, 764 (“[I]ndemnitor’s obligation only covers the indemnitee’s losses to the extent caused by the indemnitor . . .”).

¹¹ *Braegelmann v. Horizon Development Co.*, 371 N.W.2d 644, 645-46 (Minn. Ct. App. 1985) (“[T]o the extent caused’ language suggest[ed] a ‘comparative negligence’ construction under which each party [was] accountable ‘to the extent’ their negligence contribute[d] to the injury.”)

¹² *Reyburn Lawn v. Plaster Development Co.*, 127 Nev. __, __, 255 P.3d 268, 274 (2011) (quoting *United Nat’l Ins. Co. v. Frontier Ins. Co.*, 120 Nev. 678, 686, 99 P.3d 1153, 1158 (2004)).

¹³ *Crawford v. Weather Shield Mfg. Inc.*, 187 P.3d 424, 431 (Cal. 2008) (discussed with approval in *Reyburn*, 127 Nev. at __, 255 P.3d at 277-78).

¹⁴ *Prince v. Pacific Gas & Elec. Co.*, 202 P.3d 1115, 1120 (Cal. 2009).

¹⁵ *Reyburn*, 255 P.3d at 277.

¹⁶ *Griffin v. Old Republic Ins. Co.*, 122 Nev. 479, 483, 133 P.3d 251, 254 (2006).

found no language in the contract directing United Rentals to defend Wells Cargo in claims where Wells Cargo's own negligence is asserted. The Court, in strictly construing the existing contractual language, held that United Rentals' duty to defend was limited "to the extent" that United Rentals "caused" Koder's accident. It followed then that because the jury found United Rentals was not the proximate cause of Koder's accident, they had no duty to defend. Further, the plain language placing no duty to defend on United Rentals meant the district court erred in awarding Wells Cargo defense costs and attorney fees.¹⁷

Conclusion

The Court reversed the decision of the district court, holding that the "to the extent caused" language in the indemnification provision, strictly construed, placed duties to indemnify and defend on United Rentals only to the extent that it caused Koder's injuries. The Court used the jury's determination that United Rentals' negligence was not the proximate cause of Koder's injuries to conclude that it owed no duty to indemnify or defend to Wells Cargo.

¹⁷ *Reyburn*, 255 P.3d at 279.