

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001064-MR

WILSON EQUIPMENT COMPANY, LLC

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE PAMELA R. GOODWINE, JUDGE
ACTION NO. 15-CI-04085

MOTORISTS MUTUAL INSURANCE COMPANY

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * ** * **

BEFORE: ACREE, KRAMER, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Wilson Equipment Company, LLC (Wilson Equipment) brings this appeal from a June 8, 2017, order of the Fayette Circuit Court granting Motorists Mutual Insurance Company's (Motorists Mutual) motion for summary judgment against Wilson Equipment and dismissing Wilson Equipment's third-party complaint against Motorists Mutual. We reverse and remand.

On November 11, 2014, Stanley Pipeline rented an asphalt milling machine from Wilson Equipment. The Rental Contract between Stanley Pipeline

and Wilson Equipment was signed by a Stanley Pipeline employee, Jason Craft. The Rental Contract included an indemnification provision. The indemnification provision essentially provided that Stanley Pipeline would indemnify Wilson Equipment against all claims arising from the lease or use of leased equipment and that Stanley Pipeline would obtain a general liability insurance policy in the amount of \$500,000 with Wilson Equipment as an additional insured. Stanley Pipeline secured a commercial policy of insurance with Motorists Mutual in the amount of \$500,000. The commercial insurance policy defined an additional insured as any person “from whom you lease equipment,” and with whom you have a contractual agreement requiring you to add such person as an additional insured. On November 12, 2014, Stanley Pipeline’s employee, Craft, was operating the equipment rented from Wilson Equipment and was seriously injured.

Craft subsequently filed a complaint against the manufacturer of the asphalt milling equipment, Roadhog, Inc.,¹ and against Wilson Equipment, the lessor of the equipment. As to Wilson Equipment, Craft alleged that Wilson Equipment knew or should have known that the asphalt milling machine was defective and unreasonably dangerous. Craft also alleged that Wilson Equipment breached a duty to exercise ordinary and/or reasonable care in the inspection, distribution, and rental of the milling machine to prevent foreseeable injury. And,

¹ Roadhog, Inc., is not a party to this appeal.

Craft claimed that Wilson failed to instruct him concerning the use of the machine and hazards relating thereto. Craft additionally maintained that Wilson Equipment breached its duty to warn him of the dangerous condition of the milling machine. Craft asserted that he used the equipment in a manner consistent with its intended use, and it was foreseeable by Wilson Equipment that injury would occur. Craft also alleged that Wilson Equipment breached implied and/or express warranties of fitness and merchantability. Finally, Craft asserted that Wilson Equipment's conduct was grossly negligent, reckless, willful, wanton, and undertaken intentionally or with reckless disregard for the safety and interests of Craft.

Wilson Equipment filed an answer and subsequently filed a third-party complaint against Motorists Mutual. In the third-party complaint, Wilson Equipment alleged that Stanley Pipeline was contractually obligated to indemnify Wilson Equipment and to obtain a liability insurance policy in the amount of \$500,000 with Wilson Equipment listed as an additional insured. Wilson Equipment maintained that Stanley Pipeline obtained such a liability insurance policy from Motorists Mutual and that Wilson Equipment was an additional insured thereunder as required by the indemnification provision of the Rental Contract.

Motorists Mutual filed a motion for summary judgment alleging that Stanley Pipeline owed no contractual duty to indemnify Wilson Equipment; thus,

Wilson Equipment was not an additional insured under the commercial insurance policy. Conversely, Wilson Equipment filed a motion for summary judgment arguing that Stanley Pipeline had a duty to indemnify it under the Rental Contract and to obtain liability insurance in the amount of \$500,000 listing Wilson Equipment as an additional insured. Wilson Equipment maintained that Stanley Pipeline obtained the commercial insurance policy from Motorists Mutual pursuant to the Rental Contract and that Wilson Equipment qualified as an additional insured.

By order entered June 8, 2017, the circuit court denied Wilson Equipment's motion for summary judgment but granted Motorists Mutual's motion for summary judgment. Therein, the circuit court determined that Stanley Pipeline did not owe Wilson Equipment a contractual duty to indemnify Wilson Equipment against Craft's claims under the indemnification provision of the Rental Contract. The circuit court interpreted the Rental Contract's indemnification provision to be inapplicable because Stanley Pipeline would not have agreed to indemnify against Wilson Equipment's conduct that purportedly occurred prior to execution of the Rental Contract. As the indemnification provision was inapplicable, the circuit court reasoned that Stanley Pipeline owed no contractual duty to indemnify Wilson Equipment and, thus, neither did Motorists Mutual. The circuit court, therefore,

dismissed Wilson Equipment's third-party complaint against Motorists Mutual.²

This appeal follows.

Wilson Equipment contends that the circuit court erred by granting summary judgment in favor of Motorists Mutual. Wilson Equipment argues that the Rental Contract contained an indemnification provision that required Stanley Pipeline to hold Wilson Equipment harmless for any liability arising from the leasing of equipment. According to Wilson Equipment, the indemnification provision also required Stanley Pipeline to secure a general liability insurance policy in the amount of \$500,000 and to ensure that Wilson Equipment was an additional insured. Wilson Equipment maintains that the circuit court improperly interpreted the indemnification provision as being inapplicable to Craft's claims against Wilson Equipment. Wilson Equipment argues that the circuit court's interpretation of the indemnification provision contradicts the provision's plain language as set out in the agreement.

Summary judgment is proper where there exists no material issue of fact and movant is entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure 56.03. The interpretation of a contract presents an issue of law for the court, which requires our review to proceed *de novo*. *Cinelli v. Ward*, 997 S.W.2d 474 (Ky. App. 1998). And, this Court is to "interpret the contract's terms

² The June 8, 2017, order included complete Kentucky Rules of Civil Procedure 54.02 language and represented a final and appealable order.

by assigning language its ordinary meaning.” *Hazard Coal Corp. v. Knight*, 325 S.W.3d 290, 298 (Ky. 2010). Absent an ambiguity, a contract is simply enforced according to its plain terms. *Id.*

The resolution of this appeal in part centers upon the validity and interpretation of the indemnification provision contained in the Rental Contract between Wilson Equipment and Stanley Pipeline. The relevant language of the Rental Contract’s indemnification provision reads, as follows:

8. LESSEE will indemnify, hold harmless and defend LESSOR, its officers, directors, and employees against all actions, claims, damages, demands, suits, and other claims, . . . howsoever arising or incurred, because of the Equipment, or the storage, use of operation thereof, and shall assume all risks associated therewith. LESSEE, at its own expense, shall secure the following insurance which shall list LESSOR as an additional insured thereon, as follows:

a. General Liability insurance in the amount of no less than \$500,000 which lists LESSOR as an additional insured[.]

Rental Contract at 2.

Under the indemnification provision, Stanley Pipeline agreed to indemnify and defend Wilson Equipment against “all” actions and claims “howsoever arising” due to the leased equipment or use of the leased equipment. The indemnification provision further required Stanley Pipeline to secure a general liability insurance policy in the amount of \$500,000 and to ensure that Wilson

Equipment was listed as an additional insured. While broad in its reach, we think the indemnification provision's language is clear and unambiguous. Any action or claim against Wilson Equipment arising or incurred from its lease of equipment to Stanley Pipeline triggers the indemnification provision. Once the indemnification provision is triggered, Stanley Pipeline must hold Wilson Equipment harmless from all liability connected to its lease of the equipment, including Wilson Equipment's conduct or inaction in regard to the equipment.

This type of indemnification agreement, one that indemnifies against the indemnitee's own conduct, is generally not prohibited by public policy so long as each party possesses relatively equal bargaining power. *Speedway Superamerica, LLC v. Erwin*, 250 S.W.3d 339 (Ky. App. 2008). Wilson Equipment and Stanley Pipeline are both corporations. The two had done business together for almost thirty years, and the Rental Contract containing the indemnification provision had been utilized for some ten years.³ The rental agreement plainly states that Stanley Pipeline assumed "all risks" associated with the rental and use of the equipment. There is nothing in the record before this

³ At oral argument, counsel for Motorists Mutual Insurance Company argued that these facts had not been established in the record below. However, Bill Harp, President of Stanley Pipeline testified at his deposition that Stanley Pipeline and Wilson Equipment Company, LLC, had been doing business since the late 1980's. In its reply to Motorists Mutual's motion for summary judgment, Wilson Equipment argued these very facts before the trial court which stand unrefuted in the record on appeal.

Court that establishes that Wilson Equipment and Stanley Pipeline were not of equal bargaining power in entering into the Rental Contract.

Accordingly, we conclude that the Rental Contract's indemnification provision is valid and unequivocal. Under its clear terms, the indemnification provision was triggered by Craft's claims against Wilson Equipment. Once the indemnification provision was triggered, Stanley Pipeline became contractually bound to hold Wilson Equipment harmless for any liability resulting from Craft's claims.

Wilson Equipment also asserts that it was an additional insured under the commercial insurance policy issued by Motorists Mutual to Stanley Pipeline. As an additional insured, Wilson Equipment believes it is entitled to coverage under the policy. Motorists Mutual argues that the "additional insured" issue under the policy was not addressed by the court below in granting summary judgment.

However, the circuit court granted summary judgment dismissing Wilson Equipment's entire third-party complaint against Motorists Mutual, with prejudice. The summary judgment gives no reason or explanation for the dismissal, other than to state that Motorists Mutual had no duty to defend or indemnify Wilson Equipment in this case.⁴ Our courts speak only through their

⁴ At the conclusion of the hearing on the cross-motions for summary judgment, the court directed counsel for Motorists Mutual to draft the final order. The Summary Judgment Order on appeal reflects that it was prepared by counsel for Motorists Mutual.

written orders entered on the official record. *Midland Guardian Acceptance Corp. of Cincinnati, Ohio v. Britt*, 439 S.W.2d 313 (Ky. 1968). Thus, based upon our *de novo* review of this case, we are duty bound to address the additional insured issue under the Motorists Mutual policy.

Having determined that the indemnification provision in the Rental Contract between Stanley Pipeline and Wilson Equipment is valid, we must now determine whether Wilson Equipment is an additional insured under Stanley Pipeline's insurance policy issued by Motorists Mutual. The relevant provisions to this case are set out in Paragraph VIII of the policy as follows:

**VIII. ADDITIONAL INSURED – LESSOR OF
LEASED EQUIPMENT – AUTOMATIC STATUS
WHEN REQUIRED IN LEASE AGREEMENT
WITH YOU**

This coverage modifies insurance provided under the Commercial General Liability Coverage Form.

- A. Who is An Insured (Section II) is amended to include as an additional insured any person or organization from whom you lease equipment when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an insured only with respect to their liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part by your maintenance, operation or use of equipment leased to you by such person or organization.

The interpretation of an insurance contract is a question of law for the court and our review proceeds *de novo*. *Kemper Nat'l Ins. Cos. v. Heaven Hill Distilleries, Inc.*, 82 S.W.3d 869 (Ky. 2002). In analyzing the terms of an insurance contract, we afford words their ordinary meaning and a court cannot create an ambiguity in the contract terms to extend coverage to an insured. *Bituminous Cas. Corp. v. Kenway Contracting, Inc.*, 240 S.W.3d 633 (Ky. 2007).

In this case, the sole issue regarding the insurance policy is whether Wilson Equipment is an additional insured and entitled to coverage under the policy. The policy plainly and succinctly states that an additional insured is “any person or organization from whom you lease equipment when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy.” Given that the policy was a condition in the Rental Contract and was obtained by Stanley Pipeline to comply with the written terms of that agreement, we must conclude as a matter of law that Wilson Equipment is an additional insured under the Motorists Mutual policy and must be afforded coverage. The underlying injury arising from the use of the equipment which forms the genesis of this action clearly triggers the coverage contemplated under the Rental Contract, as provided for in the policy. To avoid coverage by way of semantical gymnastics would undermine the purpose

and intent of the insurance coverage as clearly contemplated by the Rental Contract.

This Opinion does not address the liability of Wilson Equipment based upon the allegations asserted by Craft in the Complaint. We view any remaining contentions of error as moot or without merit.

For the foregoing reasons, the Summary Judgment Order and Order of Dismissal with Prejudice entered by the Fayette Circuit Court is reversed and remanded for proceedings consistent with this Opinion.

ALL CONCUR.

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