

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Mark Shaffer, as Personal Representative of
the Estate of Susan Shaffer, Deceased,

PLAINTIFF,

v.

Ceres Environmental Services, Inc.,
Beaufort County, a political subdivision of
the State of South Carolina, Matt T. Dotson,
Tim Dotson, Buyers Products Company,
TruckPro, LLC and Tetra Tech, Inc.,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2017-CP-07-01739

**Order Granting Spencer A. Olson
Trucking, LLC's Motion for Summary
Judgment Against Ceres Environmental
Services, Inc and Beaufort County
Cross Claims**

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SC Court of Appeals

This matter is before the Court on the motion of Defendant Spencer A. Olson Trucking, LLC, for summary judgment pursuant to Rule 56, SCRCF. This motion was heard, and an order issued on December 2, 2021, granting summary judgment in favor of Spencer A. Olson against Ceres Environmental Services, Inc and Beaufort County Cross Claims. Ceres Environmental Services, Inc and Beaufort County timely filed motions to reconsider and the motion for rehearing was held February 11, 2022. Pursuant to Rule 56, SCRCF, and based on the following findings of fact and conclusions of law, Spencer A. Olson Trucking, LLC's Motion for Summary Judgment is hereby granted.

LEGAL STANDARD

The circuit court should grant a motion for summary judgment when the evidence shows "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCF; *Baird v. Charleston County*, S.E.2d

69 (1999); *Young v. South Carolina Dep't of Corrections*, 511 S.E.2d 413 (Ct. App. 1999); *Concord & Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC*, 819 S.E.2d 166, 170 (Ct. App. 2018), reh'g denied (Oct. 18, 2018). “In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Quail Hill, LLC v. County of Richland*, 692 S.E.2d 499, 505 (2010) (citation omitted).

FACTS

This action arises out of a fatal motor vehicle accident that occurred on May 3, 2017, on U.S. Highway 21 in Beaufort County, South Carolina, when a storm debris trailer separated from a truck driven by Ryan Stolz. (Third Amended Compl. ¶ 24). The storm debris trailer crossed the center line into oncoming traffic and struck a 2012 Honda operated by Susan Shaffer. Ms. Shaffer died from her injuries. *Id.*

The truck and storm debris trailer were owned by DEH Disaster Recovery, LLC (“DEH”) (Second Amended Compl. ¶ 22). By way of background, Ceres Environmental Services, Inc. (“Ceres”) contracted with Spencer A. Olson Trucking, LLC on August 17, 2013, to engage in storm debris cleanup in the wake of Hurricane Matthew. (Exhibit A). Spencer A. Olson Trucking, LLC, then subcontracted with DEH.

The Ceres contract with Spencer A. Olson Trucking, LLC, named “Ceres Environmental Master Subcontract Agreement” (“Ceres Agreement”), included an indemnification provision where Spencer A. Olson Trucking, LLC served as the indemnitor and Ceres, the indemnitee. (Exhibit A). Specifically, the Ceres Agreement states:

Subcontractor agrees, to the fullest extent permitted by law, to indemnify, defend, and hold harmless Contractor, the

Owner and the project architect and all the employees, agents and representative of each (collectively “Indemnitees”) from and against all liabilities ... **the indemnity obligation granted herein in favor of the Indemnitees shall include the sole and/or concurrent fault and negligence of any Indemnitee**

...
Exhibit A, ¶ 4.16 (emphasis added).

The Ceres Agreement also provides “[t]he rights of the parties under this services contract shall be construed in accordance with the law of the state in which the Project is located.” (Exhibit A, ¶ 15.5 (emphasis added)).

Following the accident, Susan Shaffer’s estate filed suit, and originally named Ceres, DEH, and Spencer A. Olson Trucking, LLC as Defendants (Compl.). In December 2020, an agreement was reached with three defendants, Ryan Colter Stolz, Spencer A. Olson Trucking, LLC and DEH Disaster (“Settling Defendants”). Specifically, Paragraph Three (3) of the order stated the Settling Defendants, “in exchange for a full Release and Dismissal of all claims against the Settling Defendants” accepted \$1,150,000.00. December 28, 2020, Order, Exhibit C. Paragraph Four (4) further states “[p]ayment is a full and final compromise and settlement for all claims against the Settling Defendants in exchange for the Settlement Agreement and Release agreed to . . .”

After the court approval of the Wrongful Death Settlement with Spencer A. Olson Trucking, LLC and DEH Disaster, Plaintiff filed a Third Amended Complaint against Beaufort County and Ceres for their sole negligence. (Third Amended Compl.). Nevertheless, via a third-party claim/crossclaim, Ceres now seeks legal and contractual indemnification from Spencer A. Olson Trucking, LLC (Defs. Ceres and Beaufort County’s Answer to Pl.’s Third Amended Compl. and Cross-cl.).

PROCEDURAL BACKGROUND

On August 24, 2017, the Plaintiff filed the Summons and Complaint alleging negligence on behalf of many defendants, including, DEH Disaster, Spencer A. Olson Trucking, LLC, Ceres Environmental, and Beaufort County. (Summons and Compl.).

On December 4, 2020, a Wrongful Death Settlement Hearing was heard before Judge Marvin Dukes. Plaintiff's Petition for approval of the Wrongful Death Settlement ("Plaintiff's Petition") noted Plaintiff had agreed to settle with Defendants DEH Disaster Recovery, LLC, Ryan Stoltz/The Estate of Ryan Stoltz, and Spencer A. Olson Trucking LLC. The Court granted the Plaintiff's Petition and approved the settlement. Exhibit C. The total settlement from the aforementioned defendants totaled One Million One Hundred Fifty Thousand Dollars (\$1,150,000.00).

Thereafter, on March 5, 2021, the Plaintiff filed a Third Amended Complaint against Ceres Environmental, Beaufort County, and others. Notably, the Third Amended Complaint, no longer listed Ryan Colter Stoltz, DEH Disaster Recovery, LLC, and Spencer A. Olson Trucking, LLC as Defendants. (Third Amended Compl.). Rather, the Third Amended Complaint alleges negligence only on the part of the Defendants named in the Third Amended Complaint.

On March 18, 2021, Defendants Ceres Environmental Services, Inc. and Beaufort County Answered Plaintiff's Third Amended Complaint and asserted crossclaims/ third-party claims against Ryan Colter Stoltz, DEH Disaster Recovery, LLC, Spencer A. Olson Trucking, LLC, and others. (Defs. Ceres and Beaufort County's Answer to Pl.'s Third Amended Compl.

and Cross-cl.). Specifically, Defendants Ceres and Beaufort County's Answer to the Third Amended Complaint alleges "Contractual and/or Equitable Indemnity" against defendants, including DEH Disaster and Spencer A. Olson Trucking, LLC. Further, the Answer to the Third Amended Complaint, alleges "Legal and Contractual Indemnity" against Defendant Spencer A. Olson Trucking, LLC.

DISCUSSION

The express language in the Ceres Agreement requires that the agreement is interpreted under the law of the state where the project occurred. (Exhibit A, ¶5.15). The project, cleanup efforts in the wake of Hurricane Matthew, occurred in Beaufort County, South Carolina, therefore, South Carolina Law applies.

In South Carolina, in certain construction contracts, an indemnitor cannot be required to indemnify an indemnitee's own negligence. Specifically, the South Carolina statute reads:

Notwithstanding any other provision of law, a promise or agreement in connection with ...repair or maintenance of a...highway, road...including moving, demolition and excavating, purporting to indemnify the promisee, its independent contractors, agents, employees, or indemnitees against liability for damages arising out of bodily injury or property damage proximately caused by or resulting from the sole negligence of the promisee, its independent contractors, agents, employees, or indemnitees is against public policy and unenforceable...

S.C. CODE ANN. §32-2-10 (1976) (emphasis added).

The contract in question falls within the terms of the statute and therefore the statute is applicable to the parties' contract.

In *D.R. Horton, Inc. v. Builders FirstSource—Southeast Group, LLC*, a contractor, D.R. Horton, attempted to have its subcontractor, Builders FirstSource (“BFS”) agree to indemnify D.R. Horton for DR Horton’s own negligence via an indemnification agreement. 810 S.E.2d 41, 45 (2018). The Court found that that specific provision was in violation of S.C. Code Ann. § 32-2-10 because “the indemnification clause is void as against public policy to the extent it purports to require BFS to indemnify D.R. Horton for damages caused by its negligence or the negligence of its subcontractors.” *Id.* Further, the Court stated “[a]n illegal contract is unenforceable.” *Id.* at 46 (quoting *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 64, 566 S.E.2d 863, 866 (Ct. App. 2002)). Thus, they could not require BFS to pay for damages caused by D.R. Horton’s negligence. *Id.*

Furthermore, “when an indemnity clause purports to relieve an indemnitee from the consequences of its own negligence, our case law requires strict construction of the clause.” *Concord & Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC*, 424 S.C. 639, 647, 819 S.E.2d 166, 170-71 (Ct. App. 2018), reh'g denied (Oct. 18, 2018); citing *Laurens Emergency Med. Specialists, PA v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 111, 584 S.E. 375, 378-79 (2003). “The basic rule is that a contract will not be construed to indemnify the indemnitee against losses resulting from its own negligent acts unless such intention is expressed in clear and unequivocal terms.” *Id.* at 171; citing *Fed. Pac. Elec. V. Carolina Prod. Enters.*, 298 S.C. 23, 26, 378 S.E. 56, 57 (Ct. App. 1989). The clear and unequivocal standard is to be applied “when an indemnitee seeks indemnification for its own concurrent negligence.” *Id.* at 172.

Similarly, to *D.R. Horton and Concord*, in this case, Ceres' attempts to have Spencer A. Olson Trucking, LLC indemnify its own, sole negligence; see, in relevant part: "[t]he indemnity obligation granted herein in favor of the Indemnitees shall include the sole and/or concurrent fault and negligence of any Indemnitee." (Exhibit A, ¶ 4.16). The indemnification provision creates an illegal contract per S.C. Code Ann. §32-2-10, thus, the entire provision is void and unenforceable because Ceres seeks to have its sole negligence indemnified by Spencer A. Olson Trucking, LLC. Therefore, the Indemnification provision in the Agreement is null and void as a whole as it is against public policy.

Moreover, there is no allegation in the Plaintiff's complaint to give rise to the act or any omission by Spencer A. Olson Trucking, LLC such that Spencer A. Olson Trucking, LLC has subjected any party to liability. (Third Amended Compl.). Plaintiff's Third Amended Complaint contains no allegations against Spencer A. Olson Trucking, LLC, rather, the Third Amended Complaint raises causes of action against Ceres and Beaufort County for their sole negligence.

Further evidencing Plaintiff's intent to allege the sole negligence of those defendants identified in the Third Amended Complaint, including Ceres and Beaufort County, Plaintiff released and forever discharged the claims against DEH, Ryan Colter Stolz, and Spencer A. Olson Trucking, LLC when it agreed to settle those claims. Specifically, the Court approved Plaintiff's Petition for an order approving the settlement of the Wrongful Death claims, and specifically included two paragraphs releasing Plaintiff's claims against the settling defendants. (Exhibit C, ¶¶ 3, 4). By the terms of the release the Plaintiff acknowledges that he has no

further claim against the Settling Defendants and in particular Spencer A. Olson Trucking, LLC.

Thus, Summary Judgment in favor of Spencer A. Olson Trucking, LLC should be granted because the indemnity provision in the Ceres Agreement is null and void under S.C. Code Ann. §32-2-10, and *D.R. Horton, Inc. v. Builders FirstSource—Southeast Group, LLC*, 810 S.E.2d 41, 45 (2018).

Therefore, as discussed above, it is:

ORDERED that the Defendant Spencer A. Olson Attorney's motion for summary judgment against Ceres Environmental Services, Inc. and Beaufort County cross claims is GRANTED.

IT IS SO ORDERED.

Robert J. Bonds

Walterboro, South Carolina



Beaufort Common Pleas

Case Caption: Mark Shaffer , plaintiff, et al VS DEH Disaster Relief LLC ,
defendant, et al
Case Number: 2017CP0701739
Type: Order/Summary Judgment

So Ordered

s/ Robert Bonds, 2770