

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 SUB-DIVISION OF THE)
 STATE OF SOUTH CAROLINA, MATT)
 T. DOTSON, TIM TOD DOTSON,)
 BUYERS PRODUCTS CO., TRUCKPRO,)
 LLC, AND TETRA TECH, INC.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2017-CP-07-01739

**ORDER GRANTING
 DEH DISASTER RECOVERY, LLC
 AND RYAN COLTER STOLTZ'S
 MOTION FOR SUMMARY
 JUDGMENT AS TO CLAIMS BY
 CERES ENVIRONMENTAL
 SERVICES, INC. AND BEAUFORT
 COUNTY**

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 SC Court of Appeals

This matter came before the court on the Motion for Summary Judgment by DEH Disaster Recovery, LLC ("DEH") and Ryan Colter Stoltz ("Stoltz") as to the cross claims by Ceres Environmental Services, Inc. ("Ceres") and Beaufort County ("Beaufort") on October 28, 2021. An Order Granting the Motion was filed on December 2, 2021. Ceres Environmental Services, Inc. and Beaufort County filed a Motion to Alter, Amend, and/or for Rehearing and Reconsideration of the Order Granting Summary Judgment in favor of Defendants DEH and Stoltz on December 10, 2021. A hearing on this Motion was held on February 11, 2022. After careful consideration of the Motions, Memorandum, Exhibits, Pleadings and arguments of counsel at the hearings, I find that there is no genuine issue as to any material fact and that these Defendants are entitled to judgment as a matter of law pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. I therefore, Grant the Motion for Summary Judgment and Deny the Motion to Alter, Amend, and/or for Rehearing and Reconsideration.

FACTS

In order to cleanup storm debris as a result of Hurricane Matthew, Beaufort County contracted with Ceres Environmental Services, Inc. to serve as the general contractor for the work. Ceres subcontracted work to Spencer A. Olson Trucking, LLC. Spencer A. Olson Trucking, LLC subcontracted work to DEH Disaster Recovery, LLC and Ryan Colter Stoltz was an employee of DEH. The deceased, Susan Shaffer, was killed when a trailer being towed by Ryan Stoltz came loose from the tow vehicle and impacted with the car driven by Mrs. Shaffer.

Mrs. Shaffer's Estate made claims against various parties and subsequently settled all claims against DEH Disaster Recovery, LLC and Ryan Colter Stoltz. The settlement was approved by the Court and a full release was given. Thus, the Plaintiff is pursuing no claims against DEH Disaster Recovery or Stoltz. In the Third Amended Complaint, the Plaintiff makes no allegations against DEH Disaster Recovery or Stoltz, and specifically asserts allegations only against the Defendants identified in the above caption, which includes Ceres Environmental Services, Inc. and Beaufort County, regarding their own actions or inactions. There are no allegations that any remaining Defendant, which includes Ceres Environmental Services, Inc. and Beaufort County, is vicariously liable for anything concerning DEH Disaster Recovery and/or Stoltz. The only reason that DEH Disaster Recovery and Stoltz remain parties in this matter is due to the indemnity claims asserted by Beaufort County and Ceres Environmental Services, Inc.

SUMMARY JUDGMENT STANDARD

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that 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. "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). Further, "when the evidence is susceptible of only one reasonable interpretation, summary judgment may be granted." *Bell v. Progressive Direct Ins. Co.*, 407 S.C. 565, 576, 757 S.E.2d 399, 404 (2014) (citing *Brooks v. Northwood Little League, Inc.*, 327 S.C. 400, 403, 489 S.E.2d 647, 648 (Ct. App.1997)).

CONCLUSIONS OF LAW

Ceres Environmental Services, Inc. and Beaufort County have asserted one cause of action against DEH Disaster Recovery and Ryan Stoltz. It is for contractual indemnity and/or equitable indemnity.

Regarding the contractual indemnity claim, there is no disagreement that there is no contract signed by DEH Disaster Recovery and/or Ryan Stoltz with Ceres Environmental Services and/or Beaufort County. The only contract signed by DEH Disaster Recovery is with the party it contracted with, Spencer A. Olson Trucking, LLC. In that contract, there is no provision whereby DEH Disaster Recovery agreed to indemnify Ceres Environmental Services and/or Beaufort County. "Contractual indemnity involves a transfer of risk for consideration, and the contract itself establishes the relationship between the parties." *Rock Hill Tel. Co. v. Globe Commc'ns, Inc.*, 363 S.C. 385, 389, 611 S.E.2d 235, 237 (2005) (emphasis added). In this case, there is no evidence of consideration for an agreement to indemnify and there is no contract to determine the indemnity terms. With no contract, there can be no contractual indemnity claim.

Ceres Environmental Services, Inc. and Beaufort County argue that DEH Disaster Recovery is bound by the indemnity provision that is contained in the Ceres Master Subcontract

Agreement with Spencer A. Olson Trucking, LLC. To assert this position, Ceres Environmental Services, Inc. and Beaufort County reference the Subcontractor Contract between DEH Disaster Recovery and Spencer A. Olson Trucking, LLC and the “Attachment A for Prices”. The document that is presumably the “Attachment A for Prices”, concerns information on pricing for loads hauled under the contract. It is identified as an Addendum to the Ceres Master Subcontract Agreement. Neither it nor the Subcontractor Agreement between DEH Disaster Recovery and Spencer A. Olson Trucking, LLC says anything about DEH Disaster Recovery agreeing to be bound by the entire Ceres Master Subcontract Agreement. It says nothing about indemnity. The Attachment A itself is not signed by DEH Disaster Recovery but by Spencer A. Olson Trucking, LLC and Ceres. While the Ceres Master Subcontract Agreement places requirements upon Spencer A. Olson Trucking, LLC in its dealings with its subcontractors, it does not attempt to create contractual obligations for entities that are not parties to the contract. Nor could it legally. Thus, the mention of an Addendum regarding pricing for loads does not establish an agreement to be bound by terms that are not specified and does not create a contract for indemnification between DEH Disaster Recovery and Ceres Environmental Services, Inc. and Beaufort County. There is no evidence that Stoltz was involved in any of the above, thus, there is no contractual indemnity as to Stoltz either. I therefore find that there is no contract between DEH Disaster Recovery and Ryan Stoltz and Ceres Environmental Services, Inc. and Beaufort County nor is there a contractual agreement for DEH Disaster Recovery and Ryan Stoltz to indemnify Ceres Environmental Services, Inc. and Beaufort County.

While I find that no contract existed between DEH Disaster Recovery and Stoltz and Ceres Environmental Services, Inc. and Beaufort County which created contractual indemnity, if there were to be a determination that a contract existed, I incorporate the language from my

Order Granting Summary Judgment to Spencer A. Olson Trucking, LLC as to SC Code Section 32-2-10 as if repeated verbatim and attach that Order as a part of this Order.

Regarding the equitable indemnity claim, there is no special relationship between Ceres Environmental Services and Beaufort County and with DEH Disaster Recovery or Ryan Stoltz. Beaufort County contracted with Ceres Environmental Services, Inc. to serve as the general contractor for the work. Ceres subcontracted work to Spencer A. Olson Trucking, LLC. Spencer A. Olson Trucking subcontracted work to DEH Disaster Recovery. Ryan Colter Stoltz was an employee of DEH Disaster Recovery only. Per the case of Rock Hill Telephone Company, Inc. vs. Globe Communications, Inc., 363 S.C. 385, 611 S.E.2d 235 (2005), a special relationship does not exist, thus equitable indemnity cannot be sought from DEH Disaster Recovery, LLC and Ryan Colter Stoltz. The Rock Hill Telephone Company case is directly on point with this case but it only had a principle, a general contractor and a subcontractor involved. The principle could not pursue equitable indemnity from the subcontractor due to the lack of a special relationship. In our present case, Beaufort County would be considered the principle, Ceres would be the general contractor, Spencer Olson Trucking would be the subcontractor, and DEH Disaster Recovery would be even more removed due to it being a subcontractor to the subcontractor. And, of course, Stoltz only had a relationship with DEH Disaster Recovery. Thus, the equitable indemnity claim fails.

To the extent that Ceres Environmental Services and Beaufort County assert that a special relationship exists due to a contract between the parties, I find that no such special relationship exists based upon the prior determination that no contract existed between these parties.

Finally, and perhaps most important, the Third Amended Complaint of the Plaintiff

specifically sets forth allegations regarding the sole actions of Ceres Environmental Services, Inc. and Beaufort County (as well as other parties not affiliated with Ryan Colter Stoltz or DEH Disaster Recovery, LLC). It does not make any allegations against Ryan Colter Stoltz or DEH Disaster Recovery, LLC. Therefore, Ceres Environmental Services, Inc. and Beaufort County are not defending themselves in the Third Amended Complaint based upon any action or inaction by Ryan Colter Stoltz and DEH Disaster Recovery, LLC. They are only defending themselves as to allegations regarding their own actions or inactions. For that, they not entitled to seek indemnity.

After careful review and consideration, DEH Disaster Recovery, LLC and Ryan Coulter Stoltz' Motion for Summary Judgment as to the claims by Ceres Environmental Services, Inc. and Beaufort County, is hereby GRANTED and Ceres Environmental Services, Inc. and Beaufort County's Motion to Alter, Amend, and/or for Rehearing and Reconsideration of the Order Granting Summary Judgment in favor of Defendants DEH and Stoltz is hereby DENIED.

AND IT IS SO ORDERED.

The Honorable Robert J. Bonds
Presiding Judge, Fourteenth Judicial Circuit

Beaufort, South Carolina

March _____, 2022



Beaufort Common Pleas

Case Caption: Mark Shaffer , plaintiff, et al VS DEH Disaster Relief LLC ,
defendant, et al
Case Number: 2017CP0701739
Type: Order/Form 4

So Ordered

s/ Robert Bonds, 2770

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