

MICHIGAN COURT OF APPEALS

Redfern v. R. E. Dailey & Co., 146 Mich. App. 8

379 N.W.2d 451 (1985) · No. 73542 · Decided October 7, 1985

SUMMARY

The Michigan Court of Appeals addressed whether a construction-related contractual indemnity agreement required Midwest Mechanical Contractors to indemnify Union Carbide for liability arising from an employee's death during warranty repair work. The court held that the agreement was not void on its face under Michigan's prohibition against indemnification for an indemnitee's sole negligence, particularly because Union Carbide was found not negligent. The court affirmed Union Carbide's right to indemnification and attorney fees but remanded for findings concerning the reasonableness of the fees.

CASE DETAILS

COURT	Michigan Court of Appeals
WRITING FOR THE COURT	Wahls, P.J.; J. H. Gillis, J.; S. Everett, J.
JURISDICTION	Michigan
DECIDED	October 7, 1985
DOCKET	73542
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Midwest Mechanical Contractors, Inc. appealed as of right from a judgment notwithstanding the verdict awarding Union Carbide contractual indemnity and attorney fees.
STANDARD OF REVIEW	The court reviewed the denial of summary judgment for legal error, factual findings under the clearly erroneous standard, and the attorney-fee award for abuse of discretion.
PRECEDENTIAL VALUE	Published Michigan Court of Appeals opinion
PARTIES	Midwest Mechanical Contractors, Inc. v. Union Carbide Corporation

TOPICS

- construction law
- contracts
- remedies
- damages

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the indemnity agreement was void in its entirety under MCL 691.991 because it could be construed to indemnify Union Carbide for its sole negligence.
2. Whether Union Carbide was entitled to contractual indemnification where it was found not negligent and its liability arose from settlement rather than a finding or admission of negligence.
3. Whether the indemnity agreement authorized Union Carbide to recover attorney fees and expenses incurred in defending the underlying wrongful-death action.
4. Whether the attorney-fee award required remand because the trial court failed to make findings regarding reasonableness and awarded an incorrect total.

HOLDINGS

1. The indemnity agreement was not void on its face. Although Michigan law invalidates indemnification for an indemnitee's sole negligence in covered construction agreements, the agreement could be applied consistently with public policy where Union Carbide was found not negligent and indemnification was sought for liability connected with the work.
2. Union Carbide was entitled to contractual indemnification because its liability for Redfern's death fell within the express terms of the indemnity agreement and the trial court found that Union Carbide was not negligent.
3. The indemnity agreement's coverage of 'all claims, liabilities, losses, damages and expenses of every character whatsoever' included attorney fees and expenses incurred by Union Carbide in defending the underlying action.
4. The attorney-fee award could not be reviewed because the trial court failed to make findings of fact and conclusions of law concerning the reasonableness of the fees; the matter had to be remanded for further proceedings.

KEY QUOTATIONS

“An indemnity provision which would be invalid if applied to indemnify a person from liability for his wilful and wanton wrongdoing may, nevertheless, be validly applied to indemnify him from liability for his negligent acts.” (146 Mich. App. at 16)

“We will not construe the agreement so as to make it illegal if such construction can be reasonably avoided.” (146 Mich. App. at 17)

“Although we have construed the parties' indemnity agreement to include attorney fees, we will stop short of a construction condoning unreasonable attorney fees.” (146 Mich. App. at 22)

FACTUAL BACKGROUND

Midwest installed a UNOX wastewater-treatment system at the Wyandotte Waste Water Treatment Facility and was responsible under its contract with Union Carbide for warranty repair work. Roy Redfern, a Midwest employee and supervisor, was seriously injured while attempting to retrieve a broken agitator component during warranty repairs and died 39 days later. Redfern's widow settled the wrongful-death claim for \$311,500, with Union Carbide contributing \$141,500 and Midwest contributing \$70,000; the remaining \$71,500 became the subject of Union Carbide's indemnity action. The trial court found Union Carbide was not negligent and held Midwest responsible under the indemnity agreement.

PROCEDURAL HISTORY

After Union Carbide contributed \$141,500 to settle the wrongful-death action, it pursued third-party contractual indemnity against Midwest for \$71,500 of that contribution. Following a bench trial, the trial court initially entered judgment of no cause of action for Midwest, finding that Redfern alone was negligent and that his negligence could not be imputed to Midwest. The trial court later granted Union Carbide judgment notwithstanding the verdict, concluding that Redfern's negligence could be imputed to Midwest through respondeat superior, and awarded indemnity and attorney fees. The Michigan Court of Appeals affirmed Union Carbide's right to indemnification and its entitlement to attorney fees, but remanded for findings concerning the reasonableness of the fees and correction of the maximum award amount.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings and findings of fact and conclusions of law concerning the reasonableness of Union Carbide's attorney fees and expenses. The total expenses award, after reasonable attorney fees are determined, may not exceed \$70,246.98. The court retained jurisdiction.

CASES CITED

- Tope v. Waterford Hills Road Racing Corp., 81 Mich. App. 591, 265 N.W.2d 761 (1978)
- Harbensi v. Upper Peninsula Power Co., 118 Mich. App. 440, 325 N.W.2d 785 (1982)
- Giguere v. Detroit Edison Co., 114 Mich. App. 452, 319 N.W.2d 334 (1982)
- Hayes v. General Motors Corp., 106 Mich. App. 188, 308 N.W.2d 452 (1981)
- Robinson v. A. Z. Shmina & Sons Co., 96 Mich. App. 644, 293 N.W.2d 661 (1980)
- Ford v. Clark Equipment Co., 87 Mich. App. 270, 274 N.W.2d 33 (1978)
- Robertson v. Swindell-Dressler Co., 82 Mich. App. 382, 267 N.W.2d 131 (1978)
- Klann v. Hess Cartage Co., 50 Mich. App. 703, 214 N.W.2d 63 (1973)
- Roland v. Kenzie, 11 Mich. App. 604, 162 N.W.2d 97 (1968)
- Millen v. Potter, 190 Mich. 262, 157 N.W. 101 (1916)
- Parliament Construction Co. v. Beer Precast Concrete, Ltd., 114 Mich. App. 607, 319 N.W.2d 374 (1982)
- Nanasi v. General Motors Corp., 56 Mich. App. 652, 224 N.W.2d 914 (1974)

- Peoples v. Detroit, 99 Mich. App. 285, 297 N.W.2d 839 (1980)
- Paquin v. Harnischfeger Corp., 113 Mich. App. 43, 317 N.W.2d 279 (1982)
- Smith v. O'Harrow Construction Co., 95 Mich. App. 341, 290 N.W.2d 141 (1980)
- Burdo v. Ford Motor Co., 588 F. Supp. 1319 (E.D. Mich. 1984)
- Hartmen v. Century Truss Co., 132 Mich. App. 661, 347 N.W.2d 777 (1984)
- Superior Products Co. v. Merucci Bros., Inc., 107 Mich. App. 153, 309 N.W.2d 188 (1981)
- Butt v. DAIIE, 129 Mich. App. 211, 341 N.W.2d 474 (1983)
- Sturgis Savings & Loan Ass'n v. Italian Village, Inc., 81 Mich. App. 577, 265 N.W.2d 755 (1978)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/michigan-michigan-court-of-appeals/1985/redfern-v-r-e-dailey-and-co-146-mich-app-8-q117tae0>