

COURT OF APPEALS OF TEXAS, SECOND DISTRICT, FORT WORTH

Tetra Tech, Inc. v. NSAA Investments Group, LLC

Tetra Tech, Inc. v. NSAA Investments Group, LLC · No. No. 02-15-00297-CV · Decided June 16, 2016

SUMMARY

The Texas Court of Appeals considered whether an indemnity provision in a construction-related commercial contract required NSAA Investments Group, LLC to reimburse Tetra Tech, Inc. for attorney's fees, expenses, and costs incurred in responding to subpoenas and preparing for an employee's deposition. The court held that the provision did not cover the claimed attorney's fees and that Tetra Tech failed to provide evidence supporting its claimed expenses and costs, affirming summary judgment for NSAA.

CASE DETAILS

COURT	Court of Appeals of Texas, Second District, Fort Worth
WRITING FOR THE COURT	Bonnie Sudderth; Gardner; Gabriel
JURISDICTION	Texas
DECIDED	June 16, 2016
DOCKET	No. 02-15-00297-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Tetra Tech appealed from a summary judgment granted to NSAA and the denial of Tetra Tech's competing summary-judgment motion in Tetra Tech's breach-of-contract action seeking indemnification for attorney's fees, expenses, and costs incurred in responding to subpoenas and a deposition notice.
STANDARD OF REVIEW	The court reviewed the summary judgment de novo, considering both parties' summary-judgment evidence and rendering the judgment the trial court should have rendered. Summary judgment is proper when the movant conclusively establishes that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law; questions of law, including contract interpretation when the contract is unambiguous, are appropriate for summary judgment.
PRECEDENTIAL VALUE	Memorandum opinion; the source identifies the opinion as published, but it does not state a separate precedential designation.
PARTIES	Tetra Tech, Inc. v. NSAA Investments Group, LLC

TOPICS

contract interpretation

construction law

commercial litigation

standard of review

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the indemnity provision required NSAA to indemnify Tetra Tech for attorney's fees incurred in responding to subpoenas and preparing for and attending an out-of-state deposition related to NSAA's lawsuit against One World.
2. Whether Tetra Tech established its entitlement to indemnification for expenses and costs related to the subpoenas and deposition.

HOLDINGS

1. The indemnity provision did not require NSAA to indemnify Tetra Tech for the attorney's fees claimed. The subpoenas and deposition notice were discovery tools, not claims, damages, losses, liabilities, suits, or causes of action, and Tetra Tech's attorneys performed compliance-related work rather than defending against a claim.
2. Even assuming the indemnity provision could cover expenses and costs related to the subpoenas or deposition, Tetra Tech was not entitled to summary judgment because it offered no evidence establishing the amount of those expenses or costs.

KEY QUOTATIONS

“Rather, they are simply discovery tools used to support an assertion of the right to a legal remedy.” (6-8)

“The services Flowers described that related to the subpoena and deposition included: responding to the document and deposition subpoena; reviewing pleadings, motions, and other documents filed in the NSAA-One World lawsuit, including documents that Tetra Tech produced; corresponding with NSAA’s and One World’s attorneys; conducting legal research and developing strategy; and “coordinating, preparing for, attending and subsequently reviewing the deposition of Tetra Tech employee, Angela Halverson[,] which occurred in Seattle[,] Washington.”” (13)

“The record is simply silent as to what those expenses amounted to, assuming that any such expenses were actually incurred.” (14)

FACTUAL BACKGROUND

NSAA entered a construction loan agreement with One World Bank, and NSAA, Tetra Tech, One World, and the general contractor executed a Funds Control & Inspection Services Agreement with Performance Guarantee. The agreement appointed Tetra Tech as One World's agent for disbursing construction-loan funds and included an indemnity clause covering specified claims, losses, legal fees, expenses, and costs. After NSAA sued One World, it subpoenaed Tetra Tech's records and noticed the deposition of Tetra Tech employee Angela Halverson. Tetra

Tech sought indemnification for attorney's fees, expenses, and costs incurred in complying with those discovery requests, but the court concluded that the agreement did not support the attorney's-fee claim and that Tetra Tech offered no proof of the amount of expenses or costs.

PROCEDURAL HISTORY

After NSAA sued One World Bank and sought Tetra Tech's records and the deposition of a Tetra Tech employee, Tetra Tech demanded indemnification under the parties' construction-related agreement. NSAA refused, and Tetra Tech sued NSAA for breach of contract. The parties filed cross-motions for summary judgment; the trial court granted NSAA's motion and denied Tetra Tech's motion. The court of appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding, 289 S.W.3d 844, 848 (Tex. 2009)
- City of Houston v. Clear Creek Basin Auth., 589 S.W.2d 671, 678 (Tex. 1979)
- Travelers Ins. Co. v. Joachim, 315 S.W.3d 860, 862 (Tex. 2010)
- Rhone-Poulenc, Inc. v. Steel, 997 S.W.2d 217, 222 (Tex. 1999)
- Havlen v. McDougall, 22 S.W.3d 343, 345 (Tex. 2000)
- G & H Towing Co. v. Magee, 347 S.W.3d 293, 296-97 (Tex. 2011)
- Myrad Props., Inc. v. LaSalle Bank Nat'l Ass'n, 300 S.W.3d 746, 753 (Tex. 2009)
- Assoc. Indem. Corp. v. CAT Contracting, Inc., 964 S.W.2d 276, 284 (Tex. 1998)
- Sun Oil Co. v. Madeley, 626 S.W.2d 726, 731 (Tex. 1981)
- Classic C Homes, Inc. v. Homeowners Mgmt. Enters., Inc., No. 02-14-00243-CV, 2015 WL 5461517, at *3 (Tex. App.—Fort Worth Sept. 17, 2015, no pet.) (mem. op.)
- Frost Nat'l Bank v. L & F Distrib., Ltd., 165 S.W.3d 310, 312 (Tex. 2005)
- Reilly v. Rangers Mgmt., Inc., 727 S.W.2d 527, 530 (Tex. 1987)
- Hilco Elec. Coop., Inc. v. Midlothian Butane Gas Co., 111 S.W.3d 75, 81 (Tex. 2003)
- Cleveland v. United States, 329 U.S. 14, 18, 67 S. Ct. 13, 15 (1946)
- Clark v. Cotten Schmidt, L.L.P., 327 S.W.3d 765, 772 (Tex. App.—Fort Worth 2010, no pet.)
- Pavecon, Inc. v. R-Com, Inc., 159 S.W.3d 219, 222 (Tex. App.—Fort Worth 2005, no pet.)
- Lane v. Travelers Indem. Co., 391 S.W.2d 399, 402 (Tex. 1965)

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