

SUPREME COURT OF THE STATE OF MONTANA

Ohio Farmers Insurance Co. v. JEM Contracting, Inc.

386 Mont. 49 (2016) · No. DA 16-0181 · Decided December 27, 2016

SUMMARY

The Montana Supreme Court affirmed an order granting Ohio Farmers Insurance Company partial summary judgment on the pleadings in its action seeking indemnification for attorney fees and costs incurred in prior litigation. The court held that the indemnity agreements permitted Ohio Farmers to seek indemnification for lawful and recoverable expenses within the agreements' specified categories. It left issues concerning the amount of damages and whether particular expenses related to non-indemnifiable conduct for the trier of fact.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Justice James Jeremiah Shea; James Jeremiah Shea; Mike McGrath; Michael E. Wheat; Beth Baker; Laurie McKinnon
JURISDICTION	Montana
DECIDED	December 27, 2016
DOCKET	DA 16-0181
DISPOSITION	affirmed
PROCEDURAL POSTURE	JEM Contracting, Inc. and the Schwichtenbergs appealed the Yellowstone County District Court's order granting Ohio Farmers Insurance Company's motion for partial judgment on the pleadings.
STANDARD OF REVIEW	The Montana Supreme Court reviewed judgment on the pleadings and contract construction de novo for correctness. Judgment on the pleadings is proper when no material issue of fact remains and the movant is entitled to judgment as a matter of law; well-pleaded allegations of the nonmovant are accepted as true, and the motion must be denied if a defense that could defeat the claim is raised.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	JEM Contracting, Inc., John Schwichtenberg, Eileen Schwichtenberg v. Ohio Farmers Insurance Company

TOPICS

indemnity

construction law

insurance

motion for judgment on the pleadings

contract interpretation

PRACTICE AREAS

construction law

insurance

contract law

civil procedure

appellate procedure

commercial litigation

QUESTIONS PRESENTED

1. Whether the District Court erred in granting Ohio Farmers partial judgment on the pleadings regarding its right to seek indemnification under the indemnity agreements.
2. Whether the indemnity agreements were unlawful under Montana law because they could require indemnification for Ohio Farmers' own fraud, willful injury, or violation of law.
3. Whether the indemnity agreements were ambiguous regarding indemnification for Ohio Farmers' own negligence.

HOLDINGS

1. The indemnity agreements permit Ohio Farmers to seek indemnification from JEM for lawful and recoverable expenses falling within the agreements' enumerated categories.
2. The indemnity agreements did not violate Montana law because they did not provide carte blanche indemnification for Ohio Farmers' fraud, willful injury, or violation of law.
3. The Court did not decide whether the indemnity agreements permit indemnification for Ohio Farmers' own negligence.

KEY QUOTATIONS

“In interpreting an indemnity agreement, as with any other contract, a court’s job “is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted.”” (¶ 9)

“Therefore, the District Court correctly granted partial summary judgment on the pleadings to OFIC on the limited issue of whether OFIC may seek indemnification from JEM pursuant to the indemnification agreements.” (¶ 12)

FACTUAL BACKGROUND

Ohio Farmers issued surety bonds for two construction projects undertaken by JEM Contracting, and JEM and the Schwichtenbergs executed indemnity agreements requiring indemnification for specified losses and expenses. After subcontractor Hollow Contracting disputed payment and sued JEM and Ohio Farmers, Ohio Farmers incurred attorney fees and costs in that litigation. Ohio Farmers then sought indemnification for those expenses under the agreements, while JEM argued that the agreements could not cover expenses associated with Ohio Farmers' own unlawful or negligent conduct.

PROCEDURAL HISTORY

Ohio Farmers filed an action seeking indemnification for attorney fees and costs incurred in earlier litigation brought by Hollow Contracting. The District Court granted Ohio Farmers partial judgment on the pleadings, concluding that the indemnity agreements established liability for appropriate, lawful, recoverable expenses while reserving the amount and nature of damages for the trier of fact. The Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Firelight Meadows, LLC v. 3 Rivers Tel. Coop., Inc., 2008 MT 202, ¶¶ 9, 11-12, 344 Mont. 117, 186 P.3d 869
- Johnston v. Centennial Log Homes & Furnishings, Inc., 2013 MT 179, ¶ 25, 370 Mont. 529, 305 P.3d 781
- Clayton v. Atl. Richfield Co., 221 Mont. 166, 169-70, 717 P.2d 558, 560 (1986)
- Christian v. Atl. Richfield Co., 2015 MT 255, ¶ 45, 380 Mont. 495, 358 P.3d 131
- Saucier v. McDonald's Rests. of Mont., Inc., 2008 MT 63, ¶ 60, 342 Mont. 29, 179 P.3d 481