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STATE OF MINNESOTA

DISTRICT COUR.

COUNTY OF RAMSEY

FILED
Court Administrator

SECOND JUDICIAL DISTRICT

JUN 29 2006

ASBESTOS

SGM
Deputy

COURT FILE NO. C8-05-50034

Zoe Strand and James W. Strand,

Plaintiffs,

vs.

ORDER AND MEMORANDUM

Allied Insulation Supply Co., et al,

Defendants,

and

General Pipe Covering, Inc.,

Defendant and Third-Party Plaintiff,

v.

Quality Insulation, Inc., et al,

Third-Party Defendants.

The above-entitled came on for hearing before the undersigned pursuant to Third-Party Defendants', Quality Insulation, Inc. and Econ Insulation, Inc., Motion for Summary Judgment.

Mr. Paul Dorsow, Esq., appeared on behalf of Third-Party Defendant Quality Insulation, Inc. Ms. Susan Hanson, Esq., appeared on behalf of Third-Party Defendant Econ Insulation, Inc. Mr. Byron Peterson, Esq., appeared on behalf of Defendant and Third-Party Plaintiff General Pipe Covering, Inc.

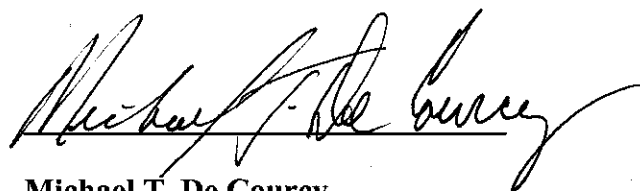
Based on the memorandum of law, arguments of counsel, and the files records and proceedings herein, the Court makes the following:

ORDER

1. Third-Party Defendants', Quality Insulation, Inc. and Econ Insulation, Inc., Motion for Summary Judgment is hereby granted.
2. The Third-Party Complaint of General Pipe Covering, Inc., is hereby dismissed with prejudice.
3. Attached memorandum is made a part of this Order and shall constitute the Court's Findings for all relevant purposes.

BY THE COURT:

DATED: 6/29/06



Michael T. De Courcy

DISTRICT COURT JUDGE

MEMORANDUM

The Plaintiffs initiated a lawsuit against Defendant General Pipe Covering, Inc., (General Pipe) and other Defendants seeking an award of money damages for injuries allegedly sustained as a result of exposure to asbestos containing products manufactured, supplied, or installed at Plaintiff's workplace of Defendants'. On or about May 5, 2005, General Pipe, by Third-Party Complaint, asserted a claim for contribution against Econ Insulation, Inc., (Econ) and Quality Insulation, Inc., (Quality). Plaintiffs did not pursue direct claims against Econ or Quality. On June 21, 2005, Econ filed its Answer to the Third-Party Complaint, and joined in Quality's Motion to Sever them from the pending trial. Trial was scheduled to commence on July 11, 2005. On June 28, 2005, this Court granted the motion to sever Quality and Econ from the trial. Neither Econ nor Quality had the opportunity to conduct any discovery due to the lack of time between the service of the Third-Party Complaint and trial.

Shortly before commencement of trial, on or about July 6, 2005, General Pipe negotiated a settlement with the Plaintiffs. Counsel for General Pipe notified counsel for the Third-Party Defendants, by mail, that he had settled the matter with Plaintiffs on a "Naig/Pierringer basis." In his correspondence, he informed counsel he had settled not only for General Pipe, but also on behalf of their clients. (Affidavit of Susan Hansen, Appendix 7). Counsel for the Third-Party Defendants immediately advised Defendant General Pipe's counsel that he had no authority to bind them to any settlement. (Id., Appendix 8).

On July 21, 2005, Plaintiffs executed a "NAIG/PIERRINGER RELEASE AND SETTLEMENT AGREEMENT" which attempts to release General Pipe and Third-Party Defendants. (Affidavit of Susan Hansen, Appendix 9). This document was executed without the approval or consent of Third-Party Defendants, nor were they signatories on the Naig/Pierringer release and settlement agreement. The Third-Party Defendants did not participate in the settlement negotiations between Plaintiffs and General Pipe. They had nothing to do with the

drafting or execution of the Naig/Pierringer release and settlement agreement, which was drafted by counsel for General Pipe. The Naig/Pierringer release document states in part:

It is not the intent of this release to revoke any Third-Party Claims that have been asserted by General Pipe Covering, Inc./John B Plut Company in the above-entitled action. Those claims are reserved to General Pipe Covering, Inv./John B. Plut Company. (Id at 3).

The document further states:

...said claims and causes of action being specifically reserved and retained against other parties; said settlement agreement only releases, and only intends to release, all claims against Releasees. (Id at 3).

Under the Terms of the Naig/Pierringer release document:

Releasees are discharged from their liability, if any, for contribution on indemnity with respect to the claim of damage in excess of \$50,000 to the extent of that percentage of the Releasees' total claim for damages against Releasees...which shall hereafter, by further trial or other disposition...be determined to be the percentage of causal fault for product liability, negligence, or any other liability for which Releasees are found liable. (Id at 4).

Lastly, the release document acknowledges the intent of the parties :

...that this instrument also be construed in accord with the principles set forth in Pierringer v. Hoger, 21 Wis.2d 182, 124 N.W.2d 106 (Wis. 1963) and Frey v. Snelgrove, 269 N.W.2d 918 (Minn. 1978) as well as the other cases discussed herein. (Id at 5).

After the release was executed by Plaintiffs and General Pipe, this Court entered an Order of Judgment of Dismissal against Defendant General Pipe Covering, Inc./John B. Plut Company 'with prejudice' "pursuant to a Naig/Pierringer Release". (Order August 1, 2005).

Defendant and Third-Party Plaintiff, General Pipe, now seeks to pursue their Third-Party Complaint against Third-Party Defendants for contribution. Third-Party Defendants seek an Order of this Court granting Summary Judgment and dismissing General Pipe's Third-Party Complaint. The Third-Party Defendants argue the Third-Party Complaint for contribution was extinguished as a result of the Naig/Pierringer release entered into and executed by Plaintiffs and Defendant, General Pipe.

Summary judgment is appropriate only where the pleadings and other evidentiary submissions show there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Offerdahl v. University of Minn. Hosps. & Clinics, 426 N.W.2d 425, 427 (Minn. 1988). Any doubt regarding the existence of a genuine issue of fact must be resolved in favor of the non-moving party. See 2 D. Herr & R. Haydock, Minnesota Practice, §56.03, 19 (3d ed. 1998). Yet, the non-moving party may not rest on the pleadings alone to defeat a motion for summary judgment, see id., but instead must set forth specific facts, by affidavit or otherwise, which show the existence of a genuine issue for trial. Thiel v. Stich, 425 N.W.2d 580, 583 (Minn. 1988).

This case, once again, involves a Defendant Third-Party Plaintiff, attempting to pursue a contribution claim against Third-Party Defendants after the Plaintiff executed a Pierringer release in exchange for settlement with Defendant Third-Party Plaintiff. The Court of Appeals dealt directly with this question in Bunce v. A.P.I. et al, 696 N.W.2d 852 (Minn. App. 2005). In that case, the Defendant Third-Party Plaintiff A.P.I., entered into a “modified” Pierringer release with Plaintiff wherein A.P.I. specifically reserved their contribution claims against the Third-Party Defendants. As in this case, Third-Party Defendants were not signatories to the Pierringer release. The Court of Appeals in Bunce rejected A.P.I.’s attempt to “modify” the Pierringer release to preserve its contribution claim.

It is well established that the Pierringer release is based in the concept that a settling Defendant will not pay more than its fair share of any verdict which may be reached in the future. The Court of Appeals held in Bunce that because a Pierringer release assures that a settling defendant will never pay more than his fair share, “any claims that respondent has for contribution or indemnity will never accrue or mature.” (Id. at 856). The Court of Appeals in Bunce held:

...A Pierringer release cuts off the non-settling Defendant's cross-claims for contribution as a matter of law. (*Id* at 856). See Alumax Mill Products, Inc. v. Congress Financial Corp., 912 F.2d 996 (8th Cir. 1990).

The Defendant Third-Party Plaintiff, in the case presently before the Court, has devised a new scheme for circumventing the Pierringer release and the Bunce decision. Here, the Defendant Third-Party Plaintiff sues other parties, and then, without their permission and against their express refusal, settles with Plaintiff on behalf of the Third-Party Defendants.

The Defendant Third-Party Plaintiff names the Third-Party Defendants in his Pierringer release and then executes the release. The Third-Party Defendants chose not to participate in settlement discussions between Plaintiff and Defendant Third-Party Plaintiff. Thus, it is Defendant Third-Party Plaintiff's position it paid not only their share, but also the fair share owed by non-participating parties.

The Court of Appeals in Bunce pointed out that Pierringer law has been accepted by both defendants and plaintiffs for decades. The Court rejected "end around" attempts to negate the spirit of the Pierringer release. (*Id* at 856).

The Court stated:

We simply conclude that respondent and Bunce cannot for their own self-interest, re-write Pierringer/Frey law and make appellants, non signatories to the A.P.I./Bunce release, bound by it. (*Id* at 857)

As in Bunce, the Defendant Third-Party Plaintiffs specifically labeled this release as a Pierringer/Naig release and state their intentions that the release was to be construed with the principles set forth in Pierringer v. Hoger, 124 N.W.2d 106 (Wis. 1963).

In this case, General Pipe is not only trying to re-write Pierringer law, they also seem to be attempting to forge new theories in contract law. General Pipe believes it can bind non-consenting parties, which it sued, to a settlement they negotiate with another party. Evidently,

General Pipe is attempting to say that even though they settled the case for an amount they negotiated, the amount paid was in excess of their fair share. The fact they feel they paid too much does not authorize them to re-write Pierringer law and bind third parties to contracts without their consent.

Plaintiff could have filed a direct claim against any of the Third-Party Defendants, however, they chose not to pursue such claims. If Plaintiffs chose to limit this claim against a few Defendants, then those Defendants who settle are bound by the doctrine established by the Pierringer release and the ruling in the Bunce case. Defendants cannot add parties by Third-Party complaints and then include them in a Pierringer release without their consent in an attempt to pursue a contribution claim. General Pipe's argument is that this settlement with Plaintiffs benefited the Third-Party Defendants and they suffer no prejudice. This argument is based on the premise that the potential liability of the Third-Party Defendants is "capped" at the amount negotiated with Plaintiff. Defense counsel is attempting use the Pierringer release to protect himself while attempting to recover funds from third parties. This attempt to re-write the law involving Pierringer releases was soundly rejected by the Court of Appeals in Bunce. Settling Defendants will need to devise another method to recover in contribution claims. This Court is confident another theory will be devised without reinventing a "modified" Pierringer release.

The Motion of Third-Party Defendants for Summary Judgment should be and hereby is granted in all respects.

MTD