

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40590
Summary Calendar

TED KINSEY and KATHRYN KINSEY,

Plaintiffs,

versus

FARMLAND INDUSTRIES, INC.,

Defendant, Third-Party Plaintiff-Appellant,

versus

BAYOU SALES CONTRACTORS, INC.,

Third-Party Defendant-Appellee.

Appeals from the United States District Court for the
Western District of Louisiana
(1:92-CV-1279)

(December 14, 1994)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

ROBERT M. PARKER, Circuit Judge*:

Farmland Industries, Inc. ("Farmland") appeals the district court's summary judgment order finding Bayou Sale Contractors, Inc. ("Bayou") not obligated to indemnify Farmland for its defense costs

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession."

Pursuant to that Rule, the Court has determined that this opinion should not be published.

in this personal injury suit brought by a Bayou employee injured while working on a construction project at Farmland's Pollock, Louisiana plant. We AFFIRM.

FACTS AND PROCEDURAL HISTORY

On January 28, 1988, Farmland and Bayou entered into an indemnity agreement in conjunction with a construction project at Farmland's Pollock plant. The agreement stated that it was applicable to "any contract construction or maintenance work being done in [Farmland's] plant as designated by [Farmland's] employees."¹

After the 1988 construction project was complete, Bayou and Farmland did not again participate together in a construction project until June 1991, when Bayou was the successful bidder for the construction of a flaring system at Farmland's Pollock plant. While negotiating the 1991 flaring system construction project, the representatives of Farmland and Bayou noted that because Bayou had worked for Farmland before, Farmland was already in possession of Bayou's certificates of insurance. However, the existence or

¹ Section one of the agreement stated in pertinent part:

In the event you or any of your employees...suffer injury or death, or [property damage]...on or about our premises while so engaged or present on our premises in connection therewith, you agree to indemnify and hold harmless Farmland Industries, Inc., its officers, agents, and employees, and any other corporation on its behalf, liable from any loss, cost, or damage, including reasonable attorneys' fees incurred on account of such injury, death, or property damage, whether or not such casualty results from or is contributed to by negligence of Farmland Industries, Inc., or its employees.

applicability of the 1988 indemnity agreement was not discussed.

On July 12, 1991, Ted Kinsey ("Kinsey"), an employee of Bayou, was injured at Farmland's Pollock plant when the scaffold board upon which he was standing while welding collapsed. He filed a worker's compensation claim which was accepted by Travelers Insurance Company, the worker's compensation insurer of Bayou, and paid.

On July 8, 1992, the Kinseys filed suit against Farmland seeking damages for personal injury and loss of consortium. Farmland filed a third-party demand against Bayou for defense costs and indemnification pursuant to the 1988 indemnity agreement. On August 13, 1993, Farmland filed a Motion for Summary Judgment on the Issue of Indemnity. The district court entered a memorandum order denying Farmland's motion for summary judgment and finding, *sua sponte*, that Bayou was not obligated to indemnify Farmland for its losses because the 1988 indemnity agreement applied only to work being done at Farmland's Pollock plant during the 1988 construction project between Farmland and Bayou.

DISCUSSION

Farmland contends that the district court's interpretation of the language in the 1988 indemnity agreement is erroneous in light of the entire contract, and because it conflicts with the parties' intentions at the time they negotiated the agreement. Farmland argues that the language "any contract construction or maintenance work being done in [Farmland's] plant as designated by [Farmland's] employees" is not limited to work being done during the 1988

construction project, but applies to any work being done on Farmland's premises at any time. Because the indemnity agreement was neither rescinded nor novated prior to the 1991 flaring system construction project and Kinsey's accident, it applies to this case.

The interpretation of an indemnity agreement, like any other contract, is reviewed *de novo*. *Old Republic Ins. Co. v. Comprehensive Health Care Associates, Inc.*, 2 F.3d 105, 107 (5th Cir. 1993). Our review of the district court's summary judgment order is not limited to the court's conclusions. *Id.* As this is a diversity case, Louisiana contract law applies. Under Louisiana law, a contract for indemnity "forms the law between the parties and must be interpreted according to its own terms and conditions." *Abbott v. Equity Group, Inc.*, 2 F.3d 613, 627 (5th Cir. 1993), *cert. denied*, ___U.S.___, 114 S.Ct. 1219, 127 L.Ed.2d 565 (1994) (quoting *Commercial Union Ins. Co. v. Melikyan*, 430 So.2d 1217, 1221 (La. App. 1st Cir. 1983)). As stated in *Texaco, Inc. v. Newton and Rosa Smith Charitable Trust*, 471 So.2d 877, 881 (La. App. 2d Cir. 1985), *writ denied*, 475 So.2d 1104 (La. 1985):

As a general rule, where the words of a contract are clear, explicit and lead to no absurd consequences, the meaning and intent of the parties must be sought within the four corners of the instrument and cannot be explained or contradicted by parole evidence.

We agree with the district court's interpretation of the 1988 indemnity agreement between Farmland and Bayou. The contract, signed by both parties in 1988, clearly states that it applies for the "purpose of any contract construction or maintenance work being

done in our plant." Stated in this manner, the language's plain meaning is that the indemnity agreement applies to "contract construction" or "maintenance work" currently involved in the project negotiated in 1988. Use of the present tense cannot be interpreted to include any or all unanticipated future projects on Farmland's Pollock plant. Such an interpretation would extend the contract beyond its four corners.

Having found that the language of the indemnity agreement clearly limits its application to the 1988 construction project between Farmland and Bayou, we find it unnecessary to address the issue of revocation or novation. Because the indemnity agreement was limited to the 1988 construction project, it was no longer in effect at the time Farmland and Bayou negotiated the flaring system construction project in 1991.

CONCLUSION

For the reasons articulated above, the judgment of the district court is AFFIRMED.