

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60245

Summary Calendar

HENRY RINK, Individually and as Next Friend
of Rachel Rink and Rico Rink, ET AL.,

Plaintiffs,

versus

BCK ENGINEERING, INC., ET AL.,

Defendants,

BCK ENGINEERING, INC. & BCK OPERATIONS, INC.,

Defendants-Appellants,

versus

WALTER INTERNATIONAL, INC., WALTER INTERNATIONAL EQUATORIAL GUINEA,
INC. and WALTER OIL & GAS CORPORATION.

Defendant-Third Party
Plaintiffs-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(93-CV-238)

(September 14, 1994)

Before KING, GARWOOD, and HIGGINBOTHAM, Circuit Judges.

PER CURIAM:*

*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."

BCKK appeals the district court's grant of summary judgment in favor of Walter and denial of BCKK's motion for summary judgment. Because the district court correctly interpreted the indemnification provision at issue, we affirm.

I.

Walter International, Inc. and Walter International Equatorial Guinea, Inc. (collectively "Walter") hired BCKK Operations, Inc. ("BCKK") to operate its gas processing plant on the Isla de Bioko in Equatorial Guinea. Walter also hired B & I Welding Services & Consultants, Inc. ("B & I") to perform welding and fabrication services at the plant site. On May 10, 1992, Henry Rink, an employee of B & I, suffered injuries while operating a crane on the plant site.

On June 5, 1992, a Termination Agreement was executed between Walter and BCKK terminating BCKK's services as plant operator. Included in the Termination Agreement was an indemnification provision which reads as follows:

2.1 Release and Indemnity by Company. The Company [Walter] hereby releases and discharges Operator [BCKK] from all further obligations of Operator under the Contract as of midnight on Saturday June 6, 1992, Isla de Bioko time, and Company shall defend, indemnify and hold Operator harmless from and against all claims, liabilities, damages, and expenses, including without limitation, attorneys' fees and other costs of defense or as a result of operations at the Plant after midnight, Saturday, June 6, 1992, Isla de Bioko time, including, but not limited to:

* * *

Pursuant to that Rule, the Court has determined that this opinion should not be published.

d. All injuries to, death or illnesses of third parties
. . . .

Rink filed suit against numerous parties, including BCKK and Walter. BCKK seeks indemnification from Walter and claims that the Termination Agreement obligates Walter to indemnify BCKK for claims arising both before and after June 6, 1992. Conversely, Walter claims it is not obligated to indemnify BCKK for BCKK's obligations and legal expenses incurred pursuant to the Rink litigation since Rink was injured prior to June 6, 1992.

II.

In interpreting the indemnification provision, we note that the parties concede that Texas law is applicable. Under Texas law, interpretation of a contract is a matter of law, Phillips v. Union Bankers Ins. Co., 812 S.W.2d 616, 618 (Tex. App.--Dallas 1991, no writ), and indemnity agreements are strictly construed against the indemnitee. Safeco Ins. Co. of America v. Gaubert, 829 S.W.2d 274, 281 (Tex. App.--Dallas 1992, writ denied). Whether a contract is ambiguous is also an issue to be decided by the court. Shelton v. Exxon Corp., 921 F.2d 595, 602 (5th Cir. 1991). A contract is ambiguous only if it is susceptible of at least two reasonable interpretations. Palmer v. Liles, 677 S.W.2d 661, 666 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.).

BCKK maintains that the district court erred in its interpretation of the indemnification provision, or, in the alternative, that the provision is ambiguous which raises fact issues that are more properly decided by a jury. BCKK focuses on the part of the provision which provides that Walter shall indemnify and hold BCKK "harmless from and against all claims . . . or as a result of operations at the Plant after midnight, Saturday, June 6, 1992" BCKK argues by interpreting the "or" as an "and,"¹ the indemnification provision clearly provides

¹ BCKK states that Texas courts have sanctioned such construction. See Aerospatiale Helicopter Corp. v. Universal Health Services, Inc., 778 S.W.2d 492, 504-05 (Tex. App.--Dallas 1989, writ denied), cert. denied, 498 U.S. 854 (1990); Young v. Rudd, 226 S.W.2d 469, 474-75 (Tex. Civ. App.--Texarkana 1950, writ ref'd n.r.e.).

that it should be indemnified against all claims, including those arising as a result of operations at the plant after June 6, 1992.

BCCK's argument is without merit and requires this Court to ignore the plain meaning of the indemnification provision. The purpose of the agreement was to terminate the relationship of the parties as of June 6, 1992, and the language of the agreement centers around BCCK's liabilities and obligations following June 6. Only by a tortured reading of the provision is BCCK able to argue that it should be indemnified for its liabilities and expenses in the Rink litigation. This interpretation is contrary to law because it violates the rule that indemnification agreements are to be strictly construed against the indemnitee and that contracts should be interpreted so that no provision in the agreement is rendered meaningless. Had Walter meant to indemnify BCCK against all claims, it presumably would have said so. BCCK's interpretation renders meaningless the language limiting operation of the provision to after June 6, 1992. Since BCCK presents no reasonable alternative interpretation, the clause is not ambiguous, and Walter is not obligated to indemnify BCCK for obligations BCCK incurred in connection with the Rink litigation.

AFFIRMED.