

State of Minnesota
In Court of Appeals

VIRGIL DYKES AND CONNIE DYKES, d/b/a DYKES FARMS,
Appellants,

vs.

SUKUP MANUFACTURING COMPANY,
*Defendant & Third Party Plaintiff-
 Respondent.*

vs.

SUPERIOR, INC.,
Third Party Defendant, Respondent.

APPELLANTS' REPLY BRIEF

WILL MAHLER LAW FIRM
 William D. Mahler, Esq. (#66539)
 202 Ironwood Square
 300 Third Avenue S.E.
 Rochester, Minnesota 55904
 (507) 282-7070

*Attorney for Appellants
 Virgil and Connie Dykes
 d/b/a Dykes Farms*

ERSTAD & RIEMER, P.A.
 Leon Erstad (#27534)
 Patrick Reilly (#90451)
 8009 34th Avenue South, Suite 200
 Minneapolis, Minnesota 55425
 (952) 896-3700

*Attorneys for Respondent
 Sukup Manufacturing Co.*

VOGEL LAW FIRM
 Robert Manly (#0289681)
 215 30th Street North
 P.O. Box 1077
 Moorhead, Minnesota 56561
 (218) 236-6462

*Attorneys for Respondent
 Superior, Inc.*

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

ARGUMENT 1

 A. FACTUAL ERRORS IN RESPONDENTS’ BRIEFS 1

 B. DISPUTED FACT ISSUES PRECLUDE SUMMARY JUDGMENT 2

 C. THE DYKES/SUPERIOR SETTLEMENT AGREEMENT WAS NOT A
 GENERAL RELEASE 3

 D. THE DISMISSAL WITH PREJUDICE OF THE SUPERIOR LAWSUIT DOES
 NOT BAR THE PRESENT ACTION 6

CONCLUSION 7

TABLE OF AUTHORITIES

Cases

<u>Blackburn, Nickels & Smith, Inc. v. Erickson</u> , 366 N.W.2d 640 (Minn.Ct.App.1985) <i>rev. denied</i> June 4, 1985	3
<u>Couillard v. Charles T. Miller Hospital, Inc.</u> , 92 N.W.2d 96, 103 (Minn.1958)	2
<u>Hentschel v. Smith</u> , 153 N.W.2D 199 (Minn. 1967)	6
<u>In re Bush's Estate</u> , 224 N.W.2d 489 (Minn.1974).....	6
<u>Ittel v. Pietig</u> , 705 N.W.2d 203 (Minn.Ct.App.2005), <i>rev denied</i> Jan. 17, 2006	2
<u>Noreen v. Park Constr. Co.</u> , 96 N.W.2d 33 (Minn. 1959)	3
<u>West American Ins. Co. v. Ford Motor Co.</u> , 759 F.Supp. 547 (D.Minn.1991)	3, 4

I.
ARGUMENT

A. FACTUAL ERRORS IN RESPONDENTS' BRIEFS

Sukup's characterization of the Guscette letter as placing all the blame on Superior is incorrect.¹ (Sukup Brief, p. 3-5). Guscette points to the fact that the Sukup equipment could not function properly without a surge tank. The Sukup equipment is not manufactured, advertised or sold with a surge tank. This is evidence of a design flaw. Sukup failed to recommend a surge tank when Dykes first contacted it about the damaged corn problem. It also apparently failed to train its dealers (ie: Superior) about the need to install surge tanks.

Sukup's representation that the damage to Dykes' corn was only \$4,260.47 is very misleading. (Sukup Brief, p. 3). Total damages caused by the defective equipment totaled \$2,559,247.00. (RA-63-70).

The statement by Sukup that "during that lawsuit, the Dykes engaged in discovery regarding the relative merits of claims against Sukup Manufacturing Company or Superior, Inc. They sought information on the potential culpability of Sukup Manufacturing" (Sukup brief, p. 5) is a flat mis-statement as even a cursory review of the discovery served by Dykes in that case reveals. (RA-6). It should be noted that Superior never responded to any of these discovery requests, in any event. (RA-75).

¹ The Guscette letter was simply filed with the Trial Court by Sukup in support of its Motion for Summary Judgment. There is nothing in the record that Guscette was designated as Plaintiffs' "expert" or was even used by Dykes.

Both Sukup (p. 13) and Superior (p. 8) wrongly characterize the Dykes as being dissatisfied with their settlement with Superior, now have “second thoughts” about the settlement and that they weren’t “emotionally capable of fully comprehending” the consequences of the settlement.² The Dykes’ specific goal in settling with Superior was to have the mechanic’s lien discharged and the defective equipment removed from their property. They accomplished that goal. Dykes made no “unilateral mistake” by not expressly reserving a right to sue Sukup, rather it was Superior who apparently made a unilateral mistake by not insisting on a *Pierringer* release or an absolute general release of all known and unknown parties and for all known and unknown damages.

B. DISPUTED FACT ISSUES PRECLUDE SUMMARY JUDGMENT

The two disputed issues regarding the Dykes/Superior settlement agreement are whether 1) the Dykes intended to release Superior and “all other known and unknown persons, companies or corporations” and whether 2) the Dykes were fully compensated in the settlement.³

A settlement agreement is contractual in nature. Ittel v. Pietig, 705 N.W.2d 203, 207 (Minn.Ct.App.2005), *rev. denied* Jan. 17, 2006. Whether the terms of a contract are

² The point the Dykes made in their initial brief was that at the time of the settlement with Superior, they were desperately trying to save their cropping enterprise by attempting to get financing and by selling off assets. Getting the mechanics lien suit dismissed (which also named Appellant’s local bank) and the lien discharged was thought by Appellants to be a first step in regaining credit. These acts of mitigation were required of the Dykes. At that point they were not mentally or financially prepared to launch off on an expensive products liability claim against Sukup.

³ Couillard v. Charles T. Miller Hospital, Inc., 92 N.W.2d 96, 103 (Minn.1958) (“The intent of the parties and the question of actual compensation are questions for the jury.”)

ambiguous is a question of law to be decided by the Court. Noreen v. Park Constr. Co., 96 N.W.2d 33 (Minn. 1959). If no ambiguity exists, interpretation of the contract and its legal effect are questions for the Court, but where the language is ambiguous, resort may be had to extrinsic evidence and construction then becomes a question of fact for the jury, unless the evidence is conclusive. Blackburn, Nickels & Smith, Inc. v. Erickson, 366 N.W.2d 640 (Minn.Ct.App.1985) *rev. denied* June 4, 1985.

A plain reading of the settlement agreement reveals no ambiguity. Nothing in the language of the settlement indicates any intent by Dykes to release any party other than Superior.

If, as Respondents claim, this was a general release, despite the absence of release language that typically would be used, then the settlement agreement is ambiguous, requiring a jury to resolve the issue.

With regard to adequacy of compensation, the Trial Court noted the factual discrepancies between the two parties' positions. A jury is required to determine if the Dykes were fully compensated in the Superior settlement.

C. THE DYKES/SUPERIOR SETTLEMENT AGREEMENT WAS NOT A GENERAL RELEASE

Respondent's position is premised entirely on the erroneous belief that the mediated settlement agreement was a general release that was unqualified and absolute. A general release contains language similar to what was held to be a general release in West American Ins. Co. v. Ford Motor Co., 759 F.Supp. 547 (D.Minn.1991) cited by Respondent. In that case, the settlement agreement signed by the Plaintiff released all

claims against the Defendant “and all other persons, firms and corporations liable, or, whom might claim to be liable, for injuries relating to the accident.” Id. at 549. The release further stated:

Undersigned hereby declares that the terms of this settlement have been completely read and are fully understood and voluntarily accepted for the purpose of making a full and final compromise adjustment and settlement of any and all claims disputed or otherwise, on account of the injuries and damages above mentioned, and for the express purpose of precluding forever any further or additional claims arising out of the aforesaid accident.

Id.

The Plaintiff in that case argued that, despite the unqualified and absolute release of “all other persons”, she did not intend to release the manufacturer of the vehicle that caused the accident. The Federal District Court judge rejected this position by holding that the plain language in the settlement agreement could not be ignored. The Court also noted that the Plaintiff had been fully compensated for her injuries, therefore there was nothing inequitable about enforcing the agreement.

In the present case, there is absolutely nothing in the settlement agreement which even remotely suggests that the Appellants intended to release ““all other persons, firms and corporations.” The only entity that Appellants released was Superior, Inc., therefore the settlement agreement was not an absolute and general release. In West American, supra, it was noted that State Farm has a stated policy in protecting the interests of its insured to require general releases. A State Farm Bodily Injury Superintendent testified:

“It is the standard and absolute policy of State Farm in the settlement of bodily injury claims against its insureds to obtain releases that protect the insureds from potential claims for contribution by other potential

tortfeasors.... State Farm requires that the adverse parties execute general releases of all claims against State Farm's insureds and all other persons, firms and corporations. By using a general release, State Farm's insured is also protected from potential contribution claims because the release acts to release all of the adverse parties' claims.

Id. at 552.

Superior now complains that it must defend against a contribution claim brought by Sukup. It could have avoided this predicament by insisting on a general release or a *Pierringer* release⁴ in the Dykes/Superior settlement agreement. Its failure to do so certainly is not the fault of the Dykes.

It is significant that Respondents failed to address in their briefs the issue of whether Appellants were fully compensated in the settlement with Superior. They also failed to address this issue in the Trial Court. The reason is clear. No good faith argument can be made to support the claim that the Appellants were fully compensated. The evidence regarding damages presented to the Trial Court by Appellants was undisputed, unrebutted and clearly articulated which established that Appellants had sustained very substantial damage for which they have not been compensated. It was a clear abuse of discretion for the Trial Court to rule otherwise.

⁴ Respondents apparently believe a *Pierringer* release is designed to only benefit a Plaintiff. The only benefit to a plaintiff is that its use may induce a defendant to settle in order to remove any further exposure. The benefit to a defendant is far greater. It eliminates any further exposure on the direct claim as well as on any indemnity or contribution claim brought by a co-tortfeasor.

D. THE DISMISSAL WITH PREJUDICE OF THE SUPERIOR LAWSUIT DOES NOT BAR THE PRESENT ACTION

Respondent's argument regarding the dismissal of the lawsuit between Dykes and Superior misses the mark. Dykes make no claim that they may pursue any claim against Superior, nor do they seek to vacate the order of dismissal. By the same token, Superior may not bring any direct claim against Dykes.

The dismissal of the Superior lawsuit with prejudice on the merits resulting in a consent judgment extinguished all claims either party had against each other relating to the sale and installation of the equipment. In re Bush's Estate, 224 N.W.2d 489, 500 (Minn.1974) (A judgment based on settlement agreement is a final judgment on the merits, but only with respect to those issues and claims actually settled.) Hentschel v. Smith, 153 N.W.2D 199, 206 (Minn. 1967) (the doctrine of res judicata applies only to parties and their privies (citations omitted). The relationship between joint tortfeasors is not such as to make the one not sued a party by either privity or representation.)

Because Sukup was not a party to the lawsuit that was dismissed, it necessarily follows that the consent judgment dismissing that action with prejudice has no bearing on the Dykes' different, independent and direct claims against Sukup alleging fraud, breach of warranty and negligence. If the settlement agreement with Superior does not bar a claim against Sukup, then a dismissal of the first lawsuit logically would not bar a subsequent suit against a different tortfeasor alleging different causes of action.

II.

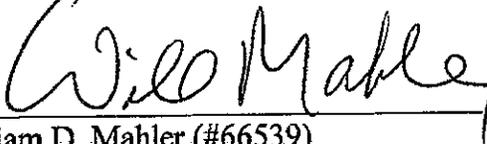
CONCLUSION

The settlement agreement with Superior was not a general release and did not release any party but Superior. In addition, Dykes were not fully compensated. The dismissal of the lawsuit brought by Superior does not bar the present action.

Appellants respectfully request that the Trial Court's grant of Summary Judgment be reversed.

Dated: June 9, 2008

WILL MAHLER LAW FIRM

By: 

William D. Mahler (#66539)
300 Third Avenue SE
Suite 202
Rochester MN 55904
(507) 282-7070

Attorney for Appellants