

Case No. A08-583
STATE OF MINNESOTA
IN COURT OF APPEALS

Virgil Dykes and Connie Dykes, d/b/a Dykes Farms,

Appellants

vs.

Sukup Manufacturing Company,

Defendant and Third-Party Plaintiff and Respondent

vs.

Superior, Inc.,

Third-Party Defendant and Respondent.

BRIEF OF RESPONDENT, SUPERIOR, INC.

William D. Mahler, No. 66539
202 Ironwood Square
300 3rd Avenue Southeast
Rochester, Minnesota 55904
Telephone: (507) 282-7070
Attorneys for Appellants

Leon Erstad, No. 27534
Patrick Reilly, No. 90451
8009 34th Avenue South, Suite 200
Minneapolis, Minnesota 55425
Telephone: (952) 896-3700
Attorneys for Respondent,
Sukup Manufacturing Co.

Robert G. Manly, No. 0289681
215 30th Street North
P.O. Box 1077
Moorhead, Minnesota 56561-1077
Telephone: (218) 236-6462
Attorneys for Respondent,
Superior, Inc.

TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	ii
Statement of the Issue	1
Statement of the Case.....	1
Statement of the Facts	2
Law and Argument.....	3
I. The Trial Court Correctly Determined the Dykes’ Dismissal of Its Previous Claims Against Superior Barred Its Subsequent Action Against Sukup	3
Conclusion.....	10

TABLE OF AUTHORITIES

Page

Statutes:

Cases:

Barilla v. Clapshaw, 237 N.W.2d 830 (Minn. 1976)9

Couillard v. Charles T. Miller Hospital, Inc., 92 N.W.2d 96 (Minn. 1958)6, 7

Driessen v. Moening, 208 Minn. 356, 294 N.W.206 (1940)4

Frey v. Snelgrove, 269 N.W.2d 918 (Minn.1978)1, 7, 10

Gronquist v. Olson, 64 N.W.2d 159 (Minn. 1954)1, 4, 5

Klimek v. State Farm Mut. Auto. Ins. Agency, 348 N.W.2d 103
(Minn.App.1984).....5

Luxenburg v. Can-Tex Ind., 257 N.W. 2d 804 (Minn. 1977).....1, 4, 6, 7

Onvoy, Inc. v. SHAL, LLC, 669 N.W.2d 344 (Minn. 2003).....10

Pellet v. Sonotone Corp., 26 Cal. 2nd 705, 160 P.2d 783, 160 A.L.R. 8635

Phillips v. Artez, 215 Minn. 325, 10 N.W.2d 226 (1943)4

Reedon of Faribault, Inc. v. Fidelity and Guar. Ins. Underwriters, Inc., 9
418 N.W.2d 488 (Minn.1988).....9

Smith v. Mann, 184 Minn. 485, 239 N.W.223 (1931).....4

Spitzmueller v. Burlington Northern Railroad Company,
740 F.Supp. 671 (D.Minn.1990)9

Thompson v. Brule, 37 F.3d 1297 (8th Cir. 1994).....9

Other Authorities:

40 Dunnell Minnesota Digest Release, Section 3.01 Negligence or Tort Claims4

STATEMENT OF THE ISSUE

I. Whether the trial court erred as a matter of law in holding that the Dykes' release of Superior, Inc., precluded its action against Sukup Manufacturing Company.

Apposite cases: Gronquist v. Olson, 64 N.W.2d 159 (Minn. 1954)
 Luxenburg v. Can-Tex Ind., 257 N.W. 2d 804 (Minn. 1977)
 Frey v. Snelgrove, 269 N.W.2d 918 (Minn.1978)

STATEMENT OF THE CASE

Appellants, Virgil Dykes and Connie Dykes, d/b/a Dykes Farms ("the Dykes"), brought this action against Sukup Manufacturing Company ("Sukup") by a Summons and Complaint dated August 24, 2006. (A-17). The Complaint against Sukup arises out of the Dykes' August 19, 2002, purchase of a grain moving system manufactured by Sukup and installed by Respondent/Third-Party Defendant Superior, Inc. ("Superior). (A-17). The Dykes' Complaint against Sukup requested damages in excess of \$50,000.00 due to the alleged failure of the Sukup equipment to operate as represented. (A-17, ¶ VIII).

However, the Dykes' had previously been involved with litigation arising out of the same grain moving system. Superior had previously filed a mechanics lien against the Dykes and filed suit against them for an unpaid balance on the system. (A-7). The Dykes counterclaimed against Superior and asserted that the grain moving system had damaged their corn in an amount greater than \$50,000.00. (A-7).

Superior and the Dykes submitted the dispute to mediation on August 27, 2003, and reached a "Mediated Agreement." (A-77-79). The Mediated Agreement provided that Superior remove the Sukup equipment and re-install other equipment previously

removed from the site. (A-77). The Mediated Agreement also provided that the Dykes would be returned two checks that had been held by Superior. Finally, and most importantly, the Mediated Agreement provided that Superior would remove its lien and dismiss its Complaint, and the Dykes would “dismiss their answer and counter complaint.” (A-77). The Mediated Agreement failed to contain any language indicating that the Dykes intended to preserve a cause of action against the manufacturer or any other party. (A-77).

Nearly three years after reaching the Mediated Agreement and subsequently dismissing their claim for damages against Superior caused by the grain moving equipment, the Dykes brought this action against Sukup. Through a Third-Party Complaint dated November 13, 2007 - over four years after reaching its settlement with the Dykes - Superior was brought into this action. (A-38-41). Sukup’s Third-Party Complaint requested contribution and/or indemnity contingent upon a finding of liability against Sukup. (A-41).

Sukup moved for summary judgment, arguing that the 2003 Mediated Agreement and subsequent dismissal of its 2003 Counterclaim precluded bringing its subsequent action. (A-7). Sukup’s motion was granted, and this appeal followed.

STATEMENT OF THE FACTS

For purposes of this appeal, Superior respectfully submits that the facts pertinent to this appeal are narrow and undisputed. In their brief, the Dykes argue that material

facts *are* in dispute, precluding entry of summary judgment. The Dykes provide a comprehensive statement of facts, based largely on the Affidavit of Virgil Dykes.

However, the essential facts in this case are: 1) The Dykes made a previous claim against Superior in separate litigation for damages caused by the allegedly defective grain handling system; 2) This claim was dismissed as part of a mediated agreement; 3) The mediated agreement failed to contain a reservation of other claims (no “Pierringer” release); 4) The Dykes brought an action against Sukup in 2006 seeking damages caused by the same grain handling system. As demonstrated below, these facts present a sufficient basis for the district court’s summary judgment dismissing the Dykes’ claims.

LAW AND ARGUMENT

I. THE TRIAL COURT CORRECTLY DETERMINED THE DYKES’ DISMISSAL OF ITS PREVIOUS CLAIMS AGAINST SUPERIOR BARRED ITS SUBSEQUENT ACTION AGAINST SUKUP.

The Dykes contend that Sukup’s summary judgment motion should not have been granted because the Mediated Agreement was not accompanied by “full compensation.” The Dykes also allege that, by entering into the 2003 Agreement dismissing its claims against Superior, they somehow did not intend to release *all* tortfeasors - while simultaneously providing an Affidavit from their previous attorney indicating that Sukup’s potential liability was never discussed. (A-75-76). Curiously, while the Dykes’ Complaint against Sukup acknowledges Superior’s installation of the grain handling system, it fails to make any mention of its previous litigation with Superior and labels

Superior's owner, Clair [sic] Rauser, as "Defendant's (Sukup's) agent." (A-13, ¶ 5). From the beginning of this action, the Dykes have desperately attempted to infuse its case with unnecessary complexity in order to avoid being subject to one of the law's most rudimentary axioms: the dismissal of claims with prejudice against one tortfeasor prohibits a plaintiff from bringing claims against an alleged joint tortfeasor out of the same cause of action.

Minnesota law is well-established that the dismissal of all claims on their merits and with prejudice against one tortfeasor prohibits a plaintiff from bringing a subsequent cause of action. See, i.e., 40 Dunnell Minnesota Digest Release, Section 3.01 Negligence or Tort Claims (citing Phillips v. Artez, 215 Minn. 325, 10 N.W.2d 226 (1943); Driessen v. Moening, 208 Minn. 356, 294 N.W.206 (1940); Smith v. Mann, 184 Minn. 485, 239 N.W.223 (1931)). The rationale underlying this rule is the equitable principle that one should not be doubly compensated for an injury. Luxenburg v. Can-Tex Ind., 257 N.W. 2d 804, 807 (Minn. 1977).

The Dykes contend that in order to determine whether a release of one tortfeasor will operate to release the remaining tortfeasors, the determining factors are the intention of the parties in the release and whether the injured party has received full compensation for their injury. The Dykes cite Gronquist v. Olson, 64 N.W.2d 159 (Minn. 1954), in support of this assertion. However, the precise issue before the Gronquist court was whether a settlement, post verdict, which called itself a covenant not to sue, was in fact a

release of joint tortfeasors. The Gronquist court made the distinction between a release, which may extinguish a right to action, and a covenant not to sue, which merely releases the party to the agreement and not the other tortfeasors. Id. at 163-4. The Court held that the document was merely a covenant not to sue and not a release.

The Gronquist court distinguished between a covenant not to sue and a release: “A release may, dependent upon its terms, have the effect of extinguishing a right of action, and if so, it may be pleaded as a defense to any suit on the action.” Id. (citing Pellet v. Sonotone Corp., 26 Cal. 2nd 705, 160 P.2d 783, 160 A.L.R. 863). The Mediated Agreement does not speak in terms of promises not to sue - it provides for a dismissal of a prayer for relief requesting damages in excess of \$50,000.00 caused by the allegedly faulty grain handler. The Mediated Agreement operated as a general release and was properly found by the trial court to be a general release barring the subsequent action against Sukup.

The trial court’s Memorandum also analyzed Gronquist and likewise distinguished its facts from those presented by the Dykes. (A-8). The district court properly held that when liability may be apportioned between joint tortfeasors, the release of one joint tortfeasor releases all. Id. (citing Klimek v. State Farm Mut. Auto. Ins. Agency, 348 N.W.2d 103 (Minn.App.1984)).

The Mediated Agreement included a release of claims. The Dykes' Counterclaim in the action brought against Superior claimed that damages exceeded \$50,000.00. The Dykes requested substantial damages and then subsequently compromised this claim by dismissing the Counterclaim. They cannot now re-open litigation to increase their recovery on a claim they had already voluntarily settled. The claim against Sukup was correctly dismissed.

The Dykes cite Couillard v. Charles T. Miller Hospital, Inc., 92 N.W.2d 96 (Minn. 1958), involving an injury settlement and release with the driver responsible for a vehicle accident, while at the same time maintaining a medical malpractice suit against the treating physicians. This case is also distinguishable. Unlike the Dykes' claim, the plaintiff's claim in Couillard did not involve an unqualified dismissal. In fact, the Court emphasized that a release will dismiss all claims when it acts as "an unqualified or absolute release." Id. at 427.

Likewise, in Luxenburg v. Can-Tex Ind., 257 N.W. 2d 804, 807 (Minn. 1977), another case cited by the Dykes, the Court held that a release will dismiss all claims when it acts as "an unqualified or absolute release." The Dykes undoubtedly cite Luxenburg because the Court allowed the plaintiff's claims against the other parties to continue despite the release of a joint tortfeasor. Again, however, the facts are easily distinguishable: In Luxenburg, the settlement agreement was read into the record in open court on the morning of trial and with all parties necessary for a full and complete

adjudication participating in the action. *Id.* at 806. In contrast, Sukup was not a party to the original litigation involving Superior, was not even contemplated as a party by the Dykes' counsel, and the dismissal of the Dykes' claims against Superior was full and final per the terms of the Mediated Agreement.

The Couillard and Luxenburg decisions are clear that the intent and compensation of the settling party becomes moot when the release is unqualified or absolute. The Mediated Agreement is unqualified and absolute. It is not a *Pierringer* release preserving claims. The Dykes' failure to join Sukup to its original action against Superior, and its further failure to preserve any additional claims through a *Pierringer* release, ultimately require dismissal of their action and affirmance of the district court's decision.

The standard practice in negotiating settlements is to include a *Pierringer* release to avoid the general rule that the release of one tortfeasor releases all. Prior to Minnesota's recognition of the *Pierringer* release, the release of one joint tortfeasor released all other joint tortfeasors. Frey v. Snelgrove, 269 N.W.2d 918, 921 (Minn.1978). But in Frey, the Minnesota Supreme Court approved the use of the *Pierringer* release as a means to release settling defendants and reserve the plaintiff's causes of action against any remaining defendants. *Id.* at 921. The supreme court's approval of the *Pierringer* release promoted settlements by ensuring the settling plaintiff that in releasing one tortfeasor, he would not release all tortfeasors.

The unqualified and absolute nature of the Mediated Agreement signed by the Dykes in this case is clear from its terms. The Mediated Agreement is not a *Pierringer* release, which would have referenced and reserved their right to bring additional claims against other joint tortfeasors. Instead, the Dykes entered into an unqualified and absolute release of all claims on the merits and with prejudice - there is no mention or inclusion of a *Pierringer* release in the settlement and one cannot be inferred. The Dykes, in the Mediated Agreement, specifically agreed that "Virgil L. Dykes and Constance E. Dykes will dismiss their Answer and Counterclaim." The Counterclaim specifically alleged that the Sukup grain moving system installed by Superior caused damages to their corn, which exceeded \$50,000.00.

The Dykes, based on their claim against Sukup, are now contending that they are dissatisfied with the Mediated Settlement. At the time of the settlement, a year had passed since their claim arose. They were aware of all physical damage allegedly caused by the pneumatic grain system; they were represented by counsel; and they obtained valuable consideration for their agreement to dismiss all claims relating to the grain moving system. At the time of settlement, the Dykes knew that Sukup was the manufacturer of the product; they had been in direct contact with and made numerous complaints to Sukup (See Complaint (against Sukup) ¶ VII, A-14); and they included in their Counterclaim a request for damages resulting from the performance of the Sukup machinery. Mere displeasure with a settlement agreement is not grounds to reopen a

released claim. When the parties to a contract of release knowingly and voluntarily, with advice of counsel, agree to release all injuries, both known and unknown, they effectively assume the risk of mistake as to the nature and extent of the injuries. Barilla v. Clapshaw, 237 N.W.2d 830 (Minn. 1976). The Dykes failed to reserve any future courses of action in reaching the Mediated Settlement, and that failure cannot now be remedied.

The Dykes argue that Superior should have been the one to include *Pierringer* language in the Mediated Settlement in order to “properly protect itself when settling with the Dykes.” However, the Dykes, as possible plaintiffs, were required to preserve their right to subsequent litigation by including a *Pierringer* release. In Thompson v. Brule, 37 F.3d 1297 (8th Cir. 1994), the Eighth Circuit Court of Appeals stated that “the so-called *Pierringer* release allows a plaintiff to ‘release a settling defendant and to discharge a part of the plaintiff’s cause of action while reserving the balance of the cause of action against the nonsettling defendants.’” Id. at 1300 (quoting Reedon of Faribault, Inc. v. Fidelity and Guar. Ins. Underwriters, Inc., 418 N.W.2d 488, 490 (Minn.1988) (emphasis added)). Superior cannot now be held responsible for the Dykes’ failure to include a *Pierringer* release in the Mediated Agreement. Unilateral mistake is not grounds for invalidating a release under Minnesota law unless the party who obtained the release wrongfully concealed the facts of the release or induced the mistake in some other manner. Spitzmueller v. Burlington Northern Railroad Company, 740 F.Supp. 671

(D.Minn.1990). The Dykes have not, and simply cannot, claim that their unilateral mistake provides them refuge on appeal.

Finally, the strong policy interest favoring mediated settlements would be undermined if the Dykes' lawsuit is allowed to continue, with Superior once again faced with the specter of liability nearly five years after reaching a mediated agreement. In Onvoy, Inc. v. SHAL, LLC, 669 N.W.2d 344, 361 (Minn. 2003), Justice James H. Gilbert's concurrence states that courts are "officially advocating the use of arbitration and mediation in court cases," and that mediation and arbitration "has not only continually been favored by both Congress and the Minnesota legislature for a number of years, but the Minnesota courts also adopted rules of practice to institutionalize ADR within the judiciary." Superior and the Dykes were able to reach a mediated settlement that satisfied both sides and was approved by the court. An adverse decision could call into question the finality of mediated settlements and also allow a broad exception to Frey v. Snelgrove and its progeny, which have clearly defined the requirements of a valid *Pierringer* release.

CONCLUSION

For the above-named reasons, Superior respectfully requests that the judgment of the trial court be affirmed.

Respectfully submitted this 2nd day of June, 2008.

BY:  _____

Robert G. Manly

MN Attorney ID No. 0289681

VOGEL LAW FIRM

215 30th Street North

P.O. Box 1077

Moorhead, Minnesota 56561-1077

(218) 236-6462

ATTORNEYS FOR RESPONDENT,
SUPERIOR, INC.