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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-Respondent,

vs.

Superior, Inc.,

Third-Party Defendant-Respondent.

RESPONDENT SUKUP MANUFACTURING COMPANY'S BRIEF AND APPENDIX

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STATEMENT OF THE ISSUES

1. When parties settle a lawsuit in which claims were brought against one tortfeasor and identified against a non-party joint tortfeasor, does a general release and dismissal with prejudice and on the merits preclude the releasor from pursuing the joint tortfeasor, when the settlement record showed no intention to preserve the claim?

   The trial judge concluded that the record of the settlement contained no contemporaneous expression of intent to preserve claims against a known joint tortfeasor, and the unconditional release of all claims with prejudice and on the merits was a general release of all joint tortfeasors. The settlement agreement precluded the bringing of Appellant's action. Respondents contend that the trial court's ruling was correct.

   AUTHORITY

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

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

   Klemek v. State Farm Mutual Auto Insurance Agency, 348 N.W.2d 103 (Minn. Ap. 1984)

2. When a party releases all claims and files with the court a Stipulation of Dismissal, using the phrase "dismissed with prejudice and on the merits," which is widely accepted as signifying claims preclusion and termination of the entire cause of action, did the trial court correctly conclude that the settlement was an unqualified and absolute release, made with no manifestation of any intention to preserve claims against joint tortfeasors, thereby extinguishing the entire cause of action?

   The trial judge concluded that the Appellants' dismissal of all claims with prejudice was a settlement of the entire cause of action and precluded Plaintiffs from subsequently pursuing potential claims against a joint tortfeasor. Respondents contend that the trial court's ruling was correct.

   AUTHORITY

   Butkovich v. O'Leary, 303 Minn. 535, 536, 225 N.W.2d, 847, 848 (1975).

   Mattsen v. Packman, 358 N.W.2d 48, 49 (Minn. 1984).

STATEMENT OF THE FACTS

Appellants omitted from their Statement of the Facts the key facts upon which Respondent sought summary judgment. Those facts are set forth as follows:

In October of 2002, within a few weeks of the installation of the Sukup Cyclone Pneumatic system on their farm by Third-Party Defendant Superior, Inc., the Dykes were unhappy with the operation of the system and refused to pay any of the $32,000 bill from Superior, Inc. See Respondent's Appendix 17 (hereinafter "RA") Superior, Inc., brought suit for payment, and the Dykes asserted a Counterclaim alleging that the system had caused damage to their corn, exceeding $50,000.00. (RA-3) The mechanic's lien action by Superior, Inc., and the Counterclaim by the Dykes proceeded with discovery. The Dykes sought discovery on the Sukup Cyclone Pneumatic Grain Moving System, including problems with the system, the identity of individuals who had installed the system, and all other lawsuits regarding the Sukup Cyclone Pneumatic Grain Moving System. (RA-8) By Request for Admissions, the Dykes sought to establish that the "Sukup Cyclone Pneumatic Grain Moving System caused damage to Defendant Dykes' corn." (RA-11)

During the course of that litigation the Dykes retained their own expert, Raymond Guscette of Grain Vacs Inc., to investigate the cause of the damage to their grain. (RA-12) Mr. Guscette inspected the installation at Plaintiffs' farm, noting that the pneumatic system was manufactured by Sukup Manufacturing and installed by Superior. Mr. Guscette stated he had over 20 years experience with pneumatic grain systems. He concluded that the grain damage had been caused because of improper installation. (RA-12-13) The installation was

done exclusively by Superior, Inc. Mr. Guscette did not find any fault with the pneumatic grain moving system as manufactured by Sukup Manufacturing. The Dykes received this report on or about August 11, 2003. (RA-12)

In September of 2003, the Dykes agreed to mediate the case with A. M. Keith, as mediator. See Appellants' Appendix 77 (hereinafter "A") Each side was represented by counsel at the mediation. (A-77) This was almost one year after the Dykes had stopped using the pneumatic grain moving equipment. (RA-18) Their attorney calculated that the damage to their corn, which had been sold between November 2002 and June 2003, caused them to receive $4,260.47 less than they would have been paid if the corn had not been damaged. (RA-19)

A mediated settlement was reached. The terms of the settlement were that Superior would remove the equipment, restore the Dykes' grain storage equipment to its original status, and dismiss the mechanic's lien action. In exchange, the Dykes would dismiss their Counterclaim. (A-77) Superior, Inc., agreed to remove the entire system and restore the prior equipment without cost to the Dykes, and take no payment for any of the work or labor it had expended. The Dykes delayed execution of the dismissal of the case with prejudice until they were satisfied that all of the equipment had been removed and Superior, Inc., had restored their property to its pre-installation condition. (RA-14) The parties, through counsel, then executed and filed with the Court a Stipulation for Dismissal with Prejudice which stated:

> "The above-entitled action is hereby dismissed with prejudice and on its merits . . ."

(RA-16)

Superior, Inc., thereafter installed the Sukup Cyclone Pneumatic Grain Moving System which had been at the Dykes farm on another farm, where it has operated without problems since its installation. (RA-21-22)

ARGUMENT

I. THE DISTRICT COURT PROPERLY GRANTED SUMMARY JUDGMENT BECAUSE THERE ARE NO GENUINE ISSUES OF MATERIAL FACT.

Respondent sought summary judgment from the district court solely on the basis of facts contained in the documents produced by Appellants in discovery. Appellants submitted, in opposition to the motion, self-serving statements of the Dykes and their previous counsel regarding their subjective -- but silent at the time of settlement -- intent or motivation. Respondents contended these were not relevant because contemporary statements cannot create a fact dispute when the relevant facts are based upon what actually happened during the settlement itself Those facts were not disputed.

Respondent's contention is that when the Dykes settled their suit against Superior, Inc., for all damages arising out of the installation and use of the Sukup Cyclone Pneumatic Grain Moving System, they settled the entire cause of action, not merely claims against one party. 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. Their own expert inspected the equipment and the installation. He issued his report shortly before the mediation, concluding that all of the fault lay with the installer, Superior, Inc. They then negotiated a settlement which relieved them of any obligation to pay for any of the equipment or labor and restored their storage equipment to its original condition. In exchange, they agreed to dismiss the case "with prejudice and on its merits."

Respondents contended, and the trial court agreed, that the question of the legal effect of the release and dismissal should be decided based on the conduct of the Dykes and their counsel as contained within the documents and records created in 2003, at the time of the settlement. Subjective intent of the Appellants, asserted in Affidavits in opposition to the motion for summary judgment, cannot create a fact issue which do not otherwise exist. *Banbury v. Omnitrition*, 533 N.W.2d 876 (Minn. Ap. 1995), 881. They are not relevant to the question of whether the 2003 settlement documents manifested any intention to preserve claims against joint tortfeasors.

Respondents sought summary judgment based on the record created in 2003. The trial court agreed. The court found that the assertion of claims for damages in excess of $50,000, the investigation of the merits of the claim regarding Sukup Manufacturing in the course of discovery, the negotiated settlement giving benefits to each party, and the dismissal of the case with prejudice, were the relevant facts upon which to decide the legal issues. Appellants' attempt to create a factual dispute sufficient to avoid summary judgment by arguing subjective intent and their current view of the inadequacy of the compensation they agreed to accept in 2003 does not alter the record of what happened in 2003. These Affidavits did not create a relevant factual dispute. The trial court properly based its summary judgment on the relevant facts and the applicable law.

Appellants have attempted to turn this case into a dispute over whether there are factual disputes which should preclude summary judgment. Other than the procedural absurdity of submitting factual disputes regarding the scope of a release to a jury before

dealing with the merits of the facts of the case, the issues regarding the legal effect of the Appellants' settlement of the earlier case are proper issues for the Court to decide.

II. A GENERAL RELEASE CONTAINING NO MANIFESTATION OF ANY INTENTION TO PRESERVE CLAIMS AGAINST JOINT TORTFEASORS CONSTITUTES AN UNQUALIFIED AND ABSOLUTE RELEASE OF ALL JOINT TORTFEASORS AND PRECLUDES SUBSEQUENT SUITS ARISING OUT OF THE SAME CAUSE OF ACTION.

Appellants argue that the law in Minnesota regarding releases is that a general release does not affect claims against joint tortfeasors unless a plaintiff was fully compensated and subjectively intended to release everyone.

Respondent contends, and the trial court concluded, that Minnesota law continues to adhere to the fundamental proposition that a general release and dismissal of all claims with prejudice and on the merits precludes subsequent lawsuits against joint tortfeasors arising out of the same cause of action. If the record of the settlement manifests an intention to preserve claims against joint tortfeasors, a plaintiff may proceed with claims against other parties.

Gronquist v. Olson, 64 N.W.2d 159 (Minn. 1954), the only case relied upon by Appellants for the proposition that the release of one tortfeasor will not release remaining tortfeasors unless plaintiffs intended to release all other tortfeasors, (Appellant's Brief at 10 - 11) is the same case relied upon by the trial court in concluding that the release in this case did not reserve any rights to proceed against other potential joint tortfeasors. (Order, A-8).

The specific 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 court

held it was not. Since there had already been a verdict in the case, and the exact amount of damages had been determined, the court did hold that the plaintiff could not settle with a covenant not to sue against one of the joint tortfeasors and then recover from another joint tortfeasor the full amount of the judgment, thereby awarding a plaintiff compensation in excess of the total amount of his damages. The Supreme Court explicitly stated in that case, even though the statement was not the holding of the case, that:

> 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. (Citing *Pellett v. Sonotone Corp.*, 26 Cal. 2nd 705, 160 P.2d 783, 160 Alr 863). However, it is a well-established rule that a covenant not to sue does not constitute a satisfaction but merely an agreement not to enforce an existing cause of action against the party to the agreement, and although it may operate as a release between the parties, it will not release a claim against other joint tort-feasors not joined in the agreement. (Citations omitted) It may be difficult at times to determine whether an agreement falls within one category or the other. Whether an agreement and settlement with one joint tort-feasor constitutes full satisfaction or full reparation so as to release the other or others is to be determined from the facts of the particular situation. If the parties have expressed an intention, by use of consistent provisions in the stipulation or agreement, not to bring an action against one of the joint tort-feasors and not to discharge others, the agreement will be construed as a covenant not to sue.

The trial court in this case looked at the record of the settlement in 2003, applied the principles set forth in *Gronquist*, and concluded that the parties did not express any intention to preserve claims against Sukup Manufacturing as a joint tortfeasor or any manifestation that they were settling the case with the understanding that an injured party would be seeking additional compensation from a non-settling party. (A-7-9) Based on the facts contained in the record of what occurred in 2003, the judge concluded that the settlement agreement and dismissal did not contain the necessary manifestations of an intention to bring claims against

others or seek additional compensation to convert the general release into a partial settlement agreement. As such, it extinguished the cause of action and was precluded Appellants' subsequent lawsuit. (A-9)

After the court in *Gronquist* concluded that the record of the settlement in that case left no doubt that it was the intention of the settling parties to preserve plaintiff's claims against non-settling parties, the court went on to articulate why a partial settlement with one joint tortfeasor should not extinguish claims against other tortfeasors. Appellant quotes extensively from this section of the court's decision (Appellant's Brief 17-18), but ignores the Court's earlier conclusion that the initial inquiry must be as to whether there was an agreement to enter into a partial settlement. In the present case, it is that initial inquiry which the trial judge conducted. He concluded there was no evidence in 2003 that the parties intended to do anything other than settle the entire case. (A-8-9)

Couillard v. Charles D. Miller Hospital, 253 Minn. 418, 92 N.W.2d 96, another case relied upon by Appellant (Appellant's Brief, 13 - 14), addressed the question of whether claims against subsequent tortfeasors were discharged by the release of joint tortfeasors. In that case the plaintiff was injured when she was a passenger on a bus. She also claimed that the physicians treating her for those injuries committed medical malpractice. During the trial of the negligence action against the bus company, after the trial court had ruled that the treatment by the doctors constituted a separate cause of action, plaintiff settled with the bus company and entered into a general release. The law in Minnesota at the time was that a general release of one responsible for the original injury bars an action by the injured person

against a physician for the negligent treatment of the injury. *Id.* at 422. The Minnesota Supreme Court held that the general release of claims arising from one cause of action (the bus accident) would not operate as a bar to the plaintiff's claims for medical malpractice. Contrary to Appellant's argument, (Appellant's Brief, p. 14) what the Supreme Court overruled in *Couillard* were the previous cases which had tied the two different causes of action together, not the general principle that a general release of one tortfeasor releases all joint tortfeasors. The Supreme Court allowed the plaintiffs to proceed with the medical malpractice actions even though the claims for the automobile accident had been released. Once again, the Supreme Court re-stated:

> Regardless of what form that release may take, as long as it does not constitute an accord and satisfaction or an unqualified or absolute release, and there is no manifestation of any intention to the contrary in the agreement, the injured party shall not be denied his right to pursue the remaining wrongdoers until he has received full satisfaction. (emphasis added)

Id. at 427.

The trial court in the present case found, and the evidence was uncontradicted, that the original settlement agreement and release executed by the Appellants contained no manifestation of any intention to pursue other wrongdoers. (A-8-9) Nothing was ever expressed at the time of the settlement showing an agreement of the settling parties that Appellants were preserving claims against the joint tortfeasor, Sukup Manufacturing or that Appellants expressed an intention to take less than adequate compensation because they intended to pursue another party.

Similarly, in *Luxenburg v. Can-Tex Ind.*, 257 N.W.2d 804 (Minn. 1977), another case primarily relied on by the Appellants (Appellant's Brief, p. 14 & 15), the precise issue before the court was whether a party which had settled contract and tort claims against a city could pursue tort claims against other parties, when the settlement document explicitly reserved the plaintiff's right to proceed against the remaining defendants. *Luxenburg* at 806. Under those circumstances, the court allowed the claims against the other parties to proceed. In doing so, however, the court stated:

> If we apply that rule, then, where one joint tortfeasor is released, regardless of what form that release may take, as long as it does not constitute an accord and satisfaction or an unqualified or absolute release, and there is no manifestation of any intention to the contrary in the agreement, the injured party shall not be denied his right to pursue the remaining wrongdoers until he has received full satisfaction. (emphasis added)

In the unpublished decision of *Market America Corp. v. Reinert*, cited by Plaintiffs in their Memorandum, page 12, the court found that neither party evidenced an intent to release the non-settling party. The court went on to quote the same language from *Gronquist*, stating that as long as the release is not an unqualified or absolute release, a plaintiff would have the right to pursue remaining tortfeasors.

In *Frey v. Snelgrove*, 269 N.W.2d 918 (Minn. 1978), the Minnesota Supreme Court, in reviewing the issue of whether parties could intentionally settle claims against one joint tortfeasor while specifically reserving claims against other joint tortfeasors restated, "The general rule of law is that a release of one joint tortfeasor releases all others. E.g., *Gronquist v. Olson*, 242 Minn. 119, 64 N.W.2d 159 (1954)." *Id.* at 921.

In *Klemek v. State Farm Mutual Auto Insurance Agency*, 348 N.W.2d 103 (Minn. Ap. 1984), the court stated that the general rule of law in Minnesota was:

> Ordinarily, in Minnesota, liability apportioned between joint tortfeasors is joint and several, and the release of one tortfeasor releases all.

(Citing *Gronquist v. Olson*, 242 Minn. 119, 64 N.W.2d 159 (1954))

The rule of law in Minnesota remains that an unqualified general release of one of several joint tortfeasors, when there is no manifestation in the settlement document of any intention to preserve claims against others, is a release of all joint tortfeasors. General releases have presumptive validity. *West American Ins. Co. v. Ford Motor Co.*, 759 F. Supp. 547, (D. Minn. 1991) at 551. Public policy favors finality of litigation with releases. *Drake v. Ryan*, 514 N.W.2d 785 (1994), at 789.

The unqualified and absolute nature of the release signed by Appellants in this case is not in dispute. Appellants expressed no intent to enter into a *Pierringer* release or any other form of partial settlement. Before releasing their claims, Appellants had hired an expert to explore the merits of claims against both Sukup Manufacturing and Superior, Inc. They had been informed that the principal target defendant, if not only target, was Superior, Inc. They had engaged in discovery regarding the Sukup Pneumatic Cyclone Grain System. They then elected to settle the case and dismiss all claims. The Mediated Agreement specifically provided that "Virgil L. Dykes and Constance E. Dykes will dismiss their Answer and Counterclaim." (A-77) That Counterclaim specifically alleged that the grain moving system installed by Superior caused damages to their corn which exceeded $50,000. (RA-3) There is nothing in the settlement record to indicate any manifestation to preserve

claims against others. There was likewise no expression of their willingness to accept less than acceptable compensation from one party because of a intention to pursue claims against another party. Appellants agreed to an unqualified and absolute release of all claims. They also agreed to dismiss all claims with prejudice and on the merits.

Though Appellants may now contend that they are unsatisfied with the settlement, they agreed to that settlement in 2003, more than a year after their claim arose, when they were fully aware of all physical damage caused by the pneumatic grain system. They were represented by counsel. They obtained valuable consideration for their agreement to dismiss all claims relating to the grain moving system. Furthermore, Appellants had explored a liability claim against Sukup Manufacturing. Their own expert had opined that all of the fault for their damages lay with Superior, Inc., the installer. Knowing this, Appellants never expressed any intention to pursue any claims against Sukup Manufacturing when they settled with Superior, Inc. They knew what they needed to know to either pursue Sukup Manufacturing as the manufacturer of the product or specifically preserve their claims against Sukup when settling with Superior. Having second thoughts about their earlier settlement some four years later does not alter the fact that they fully and completely released all claims, expressed no manifestation to preserve claims against Sukup, did not record in their settlement documents that they were not fully compensated, and dismissed all claims with prejudice and on the merits when they settled the case.

Appellants complain that they were under stress at the time of the settlement and were not emotionally capable of fully comprehending the consequences of their settlement.

(Appellants Brief at 15). The law provides an adequate remedy for this, which Appellants have chosen not to pursue. A party can seek to set aside a release if there was a mistake or incompetency. *Butkovich v. O'Leary*, 303 Minn. 535, 536, 225 N.W.2d, 847, 848 (1975), *Doud v. Minneapolis Street Railway Company*, 107 N.W.2d 521 (1961), *Carlson v. Elwell*, 151 N.W.2d 188 (1915).

The trial court properly ruled that in the absence of any such contemporaneous evidence, Appellants were precluded from bringing the present action. The judgment of the trial court should be affirmed.

III. WHEN APPELLANTS AGREED TO A DISMISSAL "WITH PREJUDICE AND ON THE MERITS" OF A LAWSUIT, LANGUAGE WHICH SIGNIFIES EXTINGUISHMENT OF THE ENTIRE CAUSE OF ACTION, THEY CANNOT PURSUE CLAIMS AGAINST A JOINT TORTFEASOR.

The trial court found that Appellants, when they settled the first case, expressed no manifestation of any intent to preserve claims against any other joint tortfeasor (A-8). The language utilized in the settlement documents unequivocally expressed an intention to settle the entire cause of action. Appellants chose, with advice of counsel, to dismiss their claims "with prejudice and on the merits." (RA-16)

The phrases "dismissed with prejudice" and "on the merits" both have well-recognized legal import. These terms are used to show an resolution of a cause of action in its entirety, concludes the rights of the parties, completely terminates the action, and precludes any additional litigation of the same cause of action. These phrases are used to announce that the matter has been resolved to the same extent as if the action had been tried to final adjudication.

A dismissal with prejudice signifies that it is a final determination on the merits that cannot be set aside absent fraud, collusion, or mistake. *Butkovich v. O'Leary*, 303 Minn. 535, 536, 225 N.W.2d, 847, 848 (1975). When a dismissal with prejudice is entered with the consent of the parties, neither party may pursue further litigation of the action. *In re Application of Schaefer*, 287 Minn. 490, 493, 178 N.W.2d 907, 909 (1970). It is well understood that a settlement agreement which includes a dismissal with prejudice and on the merits is the same as a final judgment on the merits. *Goldberger v. Kaplan, Strandgis, Kaplan PA*, 534 N.W.2d 734, 736 (Minn. Ct. App. 1995).

In a personal injury action, when parties stipulate in writing that the action "shall be, and is hereby dismissed with prejudice", such a dismissal is binding upon the parties and stands as a bar to the bringing of another action on the same cause, even though the formality of discharging the action is not entered of record. *Favorite v. Minneapolis Street Railway Company*, 91 N.W. 2d 459 (Minn. 1958). Where a party to an action consents to a dismissal "with prejudice" the dismissal concludes the rights which he asserted or could have asserted to the same extent they would have been concluded if the action had been prosecuted to final adjudication. *Horne v. Woolever*, 163 NE. 2d 378, Ohio 1959.

The phrase "on the merits" has a similar, claim preclusive meaning. A judgment "on the merits," even when made by way of a settlement agreement, constitutes an absolute bar to a second suit for the same cause of action. It is conclusive between parties and privies, not only as to every matter which was actually litigated, but also as to every matter which might have been litigated therein. *Mattsen v. Packman*, 358 N.W.2d 48, 49 (Minn. 1984).

Adjudications "on the merits" have full claim preclusive effects on the entire cause of action. *In re Estate of Handy*, 672 N.W.2d 214 (Minn. Ap. 2003)

The Plaintiffs agreed to dismiss their claims and accepted the filing with the court of the dismissal of the entire action "with prejudice and on the merits." There was no language in any of these documents which would suggest anything other than an absolute and unconditional release. The trial court properly looked to see if there was a "manifestation of any intention to the contrary in the agreement." The trial court found none. That finding is unambiguously supported by all of the language in the settlement documents.

Appellants' contention that they still intended to seek substantial damages from Sukup Manufacturing, after settling with the very party their own expert contended was responsible for all of their damages flies in the face of logic and common sense. If they were not satisfied with the compensation from the target defendant, and they already had a lawsuit in place which could easily have been expanded to include an identified joint tortfeasor, one would expect that they would have made sure the settlement documents explicitly reflected their desire to pursue others for additional damages. Instead, Appellants chose to use language demonstrating a complete settlement of the case. The trial court properly evaluated the Appellants' conduct at the time of the original settlement.

The burden rests on the releasor to establish that general language of the release was not meant to be general particularly where the words are of a general effect. *Mt. Read Terminal, Inc. v. LeChase Const. Corp.*, 58 A.D.2d 1034, 396 N.Y.S.2d 959 (4th Dep't 1977). This burden cannot be met by self-serving Affidavits created after the summary

judgment motion has been filed. *Banbury, Id.*, at 881. The trial court properly looked at the record at the time of the actual settlement. His finding that there was nothing to suggest anything other than a full, general release of the entire cause of action is fully supported. It should be affirmed.

CONCLUSION

The Judgment of the trial court should be affirmed. The trial judge properly reviewed the record of the settlement at the time the Appellants released and dismissed their prior lawsuit. The trial court concluded that the record contained no manifestation of any intention to preserve claims against other tortfeasors. The trial court also concluded that at the time of the settlement Plaintiffs created no record indicating they were accepting less than full compensation for their lawsuit and were intending to pursue claims for damages against others. The trial court concluded that the Appellants, in their first lawsuit, entered into an unqualified and absolute release of all claims. Applying the law of Minnesota, the court properly concluded that the settlement and release of the prior lawsuit in 2003 extinguished the entire cause of action and precluded the Appellants from bringing the present action.

The judgment of the trial court should be affirmed.

ERSTAD & RIEMER, P.A.

Dated: May 30, 2008

By: _____

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