

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

NEWPORT, SC.

SUPERIOR COURT

(FILED: August 25, 2016)

REBECCA MARIE LOUGEE, and :
LAURENCE W. LOUGEE, JR. :
Plaintiffs, :

V. :

C.A. No.: NC-2014-0198

BENCHMARK ASSISTED LIVING, LLC :
d.b.a. BENCHMARK SENIOR LIVING :
Defendant/Third-Party Plaintiff. :

V. :

DECASTRO LANDSCAPING, LLC :
Third-Party Defendant. :

DECISION

STONE, J. Before the Court is the Defendant/Third-Party Plaintiff Benchmark Assisted Living, LLC d.b.a. Benchmark Senior Living’s (Benchmark) motion for partial summary judgment on its Second Amended Third-Party Complaint’s count for contractual indemnity against DeCastro Landscaping, LLC (DeCastro). On May 2, 2016, the Court held a hearing on the motion and heard arguments from both parties. Jurisdiction in this Court is pursuant to G.L. 1956 § 8-2-14 and Rule 56 of the Rhode Island Superior Court Rules of Civil Procedure. For the reasons set forth herein, Benchmark’s motion for partial summary judgment is granted.

I

Facts and Travel

On October 15, 2012, DeCastro contracted with Benchmark to provide various winter services—namely, ice management and snow removal on the walkways and parking lot—at

Benchmark's Newport, Rhode Island facility (Blenheim).¹ The agreement stated that "ice management services will be initiated and completed at the judgment of DeCastro Landscaping, LLC." DeCastro Landscaping Proposal, 1 (incorporated by reference as Exhibit A to the October 15, 2012 Contract Services Agreement) (Proposal). Beyond that, the agreement supplied no limitation on when ice melt would be applied to the walkways.

In pertinent part, the contract between Benchmark and DeCastro further provided an indemnification clause. It stated as follows:

"Indemnification. To the maximum extent permitted by law, Contractor agrees to indemnify and save harmless Benchmark Community from all suits, actions, claims, demands, damages, losses, expenses and costs, including reasonable attorneys' fees and court costs, of every kind and description, at law and in equity, which Benchmark Community may incur or suffer resulting from, in connection with, or arising out of any of Contractor's acts, errors or omissions involving negligence or bad faith, or any breach of any contractual duty due to Benchmark Community by Contractor, its agents, servants, employees or sub consultants, or from the use or possession of any goods or services provided by Contractor or any of its agents, servants or employees pursuant to the Agreement." Additional Terms and Conditions, 1 (incorporated by reference as Exhibit B to the October 15, 2012 Contract Services Agreement).

This contract remained in full effect between the parties throughout the entirety of the underlying events.

On December 29, 2012, a winter storm passed through Newport, Rhode Island and left snow totals ranging from one to five inches in the area. As a result and pursuant to the contract, DeCastro performed plow, sanding, shoveling, and ice melt services at Blenheim on December

¹ Specifically, the contract detailed that DeCastro would provide snow plowing, snow blowing/hand shoveling, ice melt on the walkways, and both a sand/salt mix and "straight salt" application to vehicle accessible areas. See DeCastro Landscaping Proposal, 1 (incorporated by reference as Exhibit A to the October 15, 2012 Contract Services Agreement).

29, 2012. The following morning, on December 30, 2012 at roughly 9:45 a.m., DeCastro once again serviced Blenheim, but this time it did not perform any ice melt services to the walkways as evidenced by its own records. As set forth in the contract, ice melt was to “be initiated and completed at the judgment of DeCastro.” Proposal, 1.

Later that morning, at approximately 10:15 a.m., the Plaintiff in the underlying law suit, Rebecca Marie Lougee (Lougee), slipped and fell on ice on a Blenheim walkway. By all accounts, that fall took place within roughly a half hour or forty-five minutes of DeCastro having serviced the facility. Thereafter, Lougee filed suit against Benchmark alleging that it failed to properly maintain the walkway that she fell on at Blenheim.

On July 29, 2015, Benchmark filed its Second Amended Third-Party Complaint against DeCastro. Count II of the Second Amended Third-Party Complaint set forth a claim for contractual indemnification based on the October 15, 2012 contract between the parties. Benchmark alleges that its liability, if any, arises out of DeCastro’s acts, errors, or omissions in the execution of its contractual duties, which fall squarely within the indemnity provision of the October 15, 2012 agreement.

Based upon the foregoing, on February 4, 2016, Benchmark made a motion for partial summary judgment in this Court relating to its contractual indemnity claim against DeCastro. DeCastro filed an objection to that motion on February 26, 2016, to which Benchmark filed a reply memorandum on March 21, 2016. The Court then held a hearing and heard argument from both parties on May 2, 2016. At the close of the hearing, the Court indicated that it was granting Benchmark’s motion and that it would further issue a written decision on the matter. Herein, and for the reasoning set forth in further detail below, decision is rendered in favor of

Benchmark on Count II of the Second Amended Third-Party Complaint for contractual indemnity.

II

Standard of Review

In analyzing a motion for summary judgment, this Court must “review the pleadings, affidavits, admissions, answers to interrogatories, and other appropriate evidence in the light most favorable to the nonmoving party.” Aetna Cas. & Sur. Co. v. Vierra, 619 A.2d 436, 437 (R.I. 1993). After that review, if the Court determines “that there is no genuine issue of material fact to be decided and that the moving party is entitled to judgment as a matter of law, [it will] . . . grant [] summary judgment.” Peerless Ins. Co. v. Luppe, 118 A.3d 500, 505 (R.I. 2015) (internal quotation marks omitted); see also Shine v. Moreau, 119 A.3d 1, 8 (R.I. 2015). Throughout this process, the Court is cognizant of the fact that “[s]ummary judgment is an extreme remedy that should be applied cautiously.” Ferris Ave. Realty, LLC v. Huhtamaki, Inc., 110 A.3d 267, 279 (R.I. 2015) (internal quotation marks omitted).

It is the party opposing summary judgment that “bears the burden of proving, by competent evidence, the existence of facts in dispute.” Jessup & Conroy, P.C. v. Seguin, 46 A.3d 835, 838 (R.I. 2012) (internal quotation marks omitted); see also Higgins v. R.I. Hosp., 35 A.3d 919, 922 (R.I. 2012). That party must, “by affidavits or otherwise . . . set forth specific facts showing that there is a genuine issue of material fact . . .” Jessup & Conroy, P.C., 46 A.3d at 839 (emphasis in original) (internal quotation marks omitted); see also Bourg v. Bristol Boat Co., 705 A.2d 969, 971 (R.I. 1998).

III

Analysis

In support of its motion, Benchmark argues that the plain language of the October 15, 2012 contract entitles it to partial summary judgment on its count for contractual indemnification. See JPL Livery Servs., Inc. v. R.I. Dep't of Admin., 88 A.3d 1134, 1142 (R.I. 2014) (“[I]n situations in which the language of a contractual agreement is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids.”). Benchmark asks the Court to read the indemnification clause pursuant to its “plain and unambiguous” meaning and grant summary judgment in its favor. Id.

In its objection, DeCastro primarily advanced two arguments: 1) that it fulfilled its contractual duties; or 2) that the accident was due to Benchmark’s failure to discover and treat potentially hazardous conditions. In support of the former, DeCastro claims that it was only required to apply ice management services once at the end of the storm and that it did so on December 29, 2012. It argues that any further service would have required notice that the previous services were inadequate or that additional treatment was necessary.

In furtherance of its latter contention, DeCastro argued that Benchmark’s employees had a duty to inspect Blenheim to ensure that there were no slippery areas. That argument is founded on Benchmark’s deponent’s statements that Benchmark employees regularly conducted those activities and the fact that Benchmark stored a shovel and bucket of ice melt near all exits. DeCastro insists that either ground is sufficient to defeat Benchmark’s instant motion for partial summary judgment.

In response, Benchmark maintained that the contract between the parties did not supply any limit on the scope of the ice management services that DeCastro would provide. Benchmark noted that while the “snow blowing/hand shoveling” segment of the contract limited service to “once at the end of storm, [and the] main entrance to be kept accessible throughout,” the “ice melt walkways” provision contained no such limitation. See Proposal, 1. Rather, that portion of the contract simply provided that services would be “initiated and completed at the judgment of DeCastro.” Id.

Furthermore, Benchmark notes that even accepting DeCastro’s argument about notification as true, it is moot because DeCastro serviced Blenheim on the morning in question and chose not to perform the ice management services. Had it performed the services—as required by the contract—Lougee’s fall would not have occurred and Benchmark would not be entangled in the present litigation. Therefore, it posits that it is entitled to indemnification pursuant to the similarly entitled provision of the October 2012 contract.

In its papers, Benchmark addresses the alleged duty that it had to maintain the premises by stressing that—were that duty to exist—this action ultimately stems from a breach of DeCastro’s contractual duty. The contract provided that DeCastro would indemnify Benchmark from “all suits . . . , expenses and costs, including reasonable attorneys’ fees and court costs . . . in connection with, or arising out of any of [DeCastro’s] acts, errors or omissions involving negligence or bad faith, or any breach of any contractual duty due to Benchmark” Additional Terms and Conditions, 1 (emphasis supplied).

“The law in Rhode Island is well settled; ‘indemnity provisions are valid if sufficiently specific, but are to be ‘strictly construed against the party alleging a contractual right of indemnification.’” Sangermano v. Roger Williams Realty Corp., 22 A.3d 376, 377 (R.I. 2011)

(quoting Sansone v. Morton Mach. Works, Inc., 957 A.2d 386, 393 (R.I. 2008)). This strict construction rule prohibits the Court from “draw[ing] inferences from words of general import found in the apparently all-inclusive and catchall language of a general indemnity provision.” Dower v. Dower’s Inc., 100 R.I. 510, 513, 217 A.2d 437, 438 (1966).

The Court remains keenly aware of this standard. However, the contract at question in this case dealt with a limited array of services, and the harm allegedly suffered by Lougee arose directly out of DeCastro’s failure to provide one of those services. It is undisputed that DeCastro arrived at Blenheim on the morning of the incident and chose not to perform ice management services. Accordingly, the Court is presented with a concrete issue directly arising out of the limited language contained in the contract. Contra Dower, 100 R.I. at 513, 217 A.2d at 438 (noting that generalized language in an indemnity provision shall be construed against the party seeking indemnification).

As a result, the Court finds no trouble adhering to the standard acknowledged by our High Court in Sangermano by noting that this contract’s terms are “sufficiently specific” and relate only to the limited universe of services that DeCastro and Benchmark collectively negotiated into existence. 22 A.3d at 377. The indemnity clause’s protections only arise if DeCastro failed to uphold its end of the bargain as set forth in the October 2012 agreement. An indemnity clause that is sufficiently specific is enforceable against the parties. See Dower, 100 R.I. at 513, 217 A.2d at 438. The clause at issue in this case is sufficiently limited by its own terms and the terms of the contract to allow the Court to enforce it against DeCastro.

IV

Conclusion

After reviewing the materials and arguments submitted by both parties in the light most favorable to DeCastro, this Court grants Benchmark's motion for partial summary judgment on the ground that there are no genuine issues of material fact remaining because, as a matter of law, DeCastro is obligated to indemnify Benchmark against any suit arising out of its failure to perform its contractual duties. As a result, Benchmark is entitled to judgment as a matter of law on its count for contractual indemnification. Counsel shall confer and prepare an appropriate order for entry.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

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DATE DECISION FILED: August 25, 2016

JUSTICE/MAGISTRATE: Stone, J.

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