Indemnity allowed in slip-and-fall suit

Description

An assisted living center being sued over a slip-and-fall accident on an icy walkway was entitled to contractual indemnity based on an indemnification clause in its winter-services contract with a landscaping company, a Superior Court judge has determined.
The plaintiff, Rebecca Marie Lougee, filed the underlying suit against Benchmark Assisted Living after she fell on a walkway at the company's Newport facility the day after a winter storm. Benchmark's third-party complaint against DeCastro Landscaping claimed that the winter-services contract between the parties required DeCastro to indemnify it for Lougee's suit.

DeCastro argued that its ice treatment at Benchmark's Newport site (known as Blenheim) on the day of the storm fulfilled its contractual duties. DeCastro also asserted that Benchmark's employees had a duty to inspect the property for slippery areas and notify DeCastro if additional ice treatment was needed.

Referencing the contractual language, Judge Walter R. Stone granted Benchmark's motion for partial summary judgment.

"[T]he 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," Stone wrote.

The nine-page decision is Lougee, et al. v. Benchmark Assisted Living, LLC v. DeCastro Landscaping, LLC, Lawyers Weekly No. 61-099-16. The full text of the ruling can be found here.

Instructive guidance

Providence lawyer David P. Whitman said there was no question that the plaintiff's claim, based on improper snow removal, was in line with what the indemnification agreement was intended to cover.

"[The judge] does quote the standard Rhode Island rule that these types of indemnification contracts are construed strictly," said Whitman, who specializes in insurance coverage but was not involved in the suit.

The crucial factor in Stone's analysis of whether DeCastro performed its contractual duties appeared to be that it had the sole discretion to decide whether to put ice melt on walkways, Whitman added.

"The judge's application of well-established Rhode Island law on contractual analysis is useful because there is a lot of litigation over indemnification agreements," said Providence attorney Melissa E. Darigan, whose clients include insurance companies. "It is a reminder that parties should be careful to execute written agreements that properly express each side's intentions," she said.

"Parties can make a bad deal, and they will be held to that deal," Darigan said. "The words used in a contract matter. Where parties negotiate an agreement, and where those terms are clear and unambiguous, they are going to be held to the terms of the document that they signed."

Greg Vanden-Eykel, a Boston lawyer whose practice includes insurance coverage, said he is seeing more premises liability cases between health care organizations and their maintenance and service providers, so Stone's guidance should prove instructive to that industry.

"The fact that [the contract] was crafted so narrowly allowed the court to find the indemnification provision

enforceable," Vanden-Eykel said.

Meanwhile, Holly R. Rao said while the decision accurately articulates the law, one aspect of it struck her as unusual: the lack of discussion about an insurance procurement clause, which would require insurance to cover liability that arises from the services provided by the contractor.

When such a clause is in place, neither party has to worry about indemnity because the insurance company pays for the liability whether it falls on the landowner or the service contractor, said Rao, whose Warwick practice includes insurance defense work.
"Typically, [such clauses] go hand in hand," Rao said.

Benchmark's counsel, Jamie J. Bachant of Adler, Pollock & Sheehan in Providence, declined to comment because the case is ongoing. DeCastro's lawyer, Joseph-Anthony DiMaio of Sherry & DiMaio in Providence, did not respond to an interview request.

Lougee's lawyer, Neil P. Galvin of Corcoran, Peckham, Hayes & Galvin in Newport, said he does not expect the ruling to impact his client's case against the property owner.

Winter storm aftermath

The October 2012 contract between Benchmark and DeCastro Landscaping called for DeCastro to provide ice management and snow removal on Blenheim's walkways and parking lot. The language stated that "ice management services will be initiated and completed at the judgment of DeCastro Landscaping" and did not limit how many times DeCastro would need to apply ice melt to the walkways.

The agreement contained an indemnification clause, which required DeCastro to indemnify Benchmark from all lawsuits, losses and costs, including attorneys' fees, which Benchmark might face from any of DeCastro's actions that involved negligence, bad faith or a breach of its contractual duty to Benchmark.

The suit involved the cleanup following a Dec. 29 winter storm that left up to five inches of snow in Newport. That same day, DeCastro plowed, sanded and shoveled at Blenheim and performed ice melt services. DeCastro returned to the property the following morning to provide additional services but did not reapply ice melt. That morning, Lougee slipped and fell on ice on a Blenheim walkway.

Lougee sued Benchmark, which filed a third-party complaint against DeCastro with a claim for contractual indemnification. Benchmark alleged that any liability it had for Lougee's fall stemmed from how DeCastro executed its contractual duties, which fell squarely within the contract's indemnity provision.

At a hearing on Benchmark's partial summary judgment motion for its contractual indemnity claim against DeCastro, Stone indicated that he would grant the motion. He issued a written decision last month.

'Sufficiently specific'

Citing two Rhode Island Supreme Court rulings — Sangermano v. Roger Williams Realty Corp. in 2011 and Sansone v. Morton Mach. Works Inc. in 2008 — Stone wrote that indemnity provisions must be "strictly construed" against the party that claims contractual indemnification.

He also cited another state Supreme Court case, Dower v. Dower's Inc., which held that courts must not make inferences about words in "the apparently all-inclusive and catchall language of a general indemnity provision."

Continuing the analysis, Stone wrote that he found "no trouble" adhering to the standard outlined in Sangermano because the contract at issue in the case was "sufficiently specific" and the indemnity protections would arise only if DeCastro failed to uphold its end of the bargain.

"An indemnity clause that is sufficiently specific is enforceable against the parties. 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," Stone wrote.

Date Created
September 7, 2016