

STATE OF MICHIGAN
COURT OF APPEALS

NOREAST ERECTORS, INC,

Plaintiff-Appellant,

UNPUBLISHED
July 26, 1996

v

No. 184266
LC No. 93-454784 CZ

VULCAN IRON WORKS, INC,

Defendant-Appellee,

and

LUCKENBACH/ZIEGELMAN & PARTNERS, INC
d/b/a LUCKENBACH/ZIEGELMAN & PARTNERS
AND WALBRIDGE ALDINGER CO,

Defendants.

Before: Hood, P. J. and Griffin and J. F. Foley*, JJ.

PER CURIAM.

Plaintiff Noreast Erectors, Inc. appeals as of right orders of the trial court granting summary disposition in favor of defendant Vulcan Iron Works, Inc.,(Vulcan). The trial court granted summary disposition pursuant to MCR 2.116(C)(7) with respect to the portions of plaintiff's breach of contract and negligence claims against Vulcan which arose prior to April 16, 1991.¹ We affirm.

This action arises out of the construction of the W.K. Kellogg Foundation headquarters in Battle Creek, Michigan. Walbridge Aldinger Co., the project manager, contracted with Vulcan for the construction of a portion of the building. Vulcan subcontracted with plaintiff, whereby plaintiff agreed to erect structural steel on the project. Nearly three years after the initial agreement, plaintiff commenced

* Circuit judge, sitting on the Court of Appeals by assignment.

this action asserting breach of contract and negligence claims arising out of delays in the construction process.

Plaintiff contends that the trial court improperly granted summary disposition in favor of defendant when there were factual issues concerning the scope of a release. We disagree. The scope of a release is governed by its terms and encompasses only those claims intended to be released. *Cardova Chemical Co v Dept of Natural Resources*, 212 Mich App 144, 148; 536 NW2d 860 (1995). Where the terms of the release are unambiguous and unequivocal, the parties' intent as expressed therein governs its scope. *Burgess v Clark*, 215 Mich App 542; 547 NW2d 59 (1996). The contractual language is construed in accordance with its plain and ordinary meaning. *SSC Associates Limited Partnership v General Retirement System*, 210 Mich App 449, 452; 534 NW2d 160 (1995). The construction of clear contractual language is a question of law that is reviewed de novo by this Court. *Id.*

Purchase order 6909, which was signed by plaintiff's president on April 16, 1991, contains the following language:

THE ACCEPTANCE OF THIS PURCHASE ORDER REPRESENTS ALL COSTS RELATED TO THE CHANGES THRU FIELD ORDER 157 AND BULLETINS THRU BULLETIN 126, AS WELL AS ALL COSTS INCIDENTAL TO THESE CHANGES AS DETERMINED NOW OR IN THE FUTURE AND THEIR EFFECT ON THE OVERALL PROJECT. NOREAST FURTHER WAIVES ALL RECOURSE OF ANY NATURE BY NOREAST OR ITS SUBCONTRACTORS, VENDORS, MATERIALMEN OR SUPPLIERS AS THIS ORDER REPRESENTS AN AGREEMENT FOR PURCHASE ORDER #6389 AND 6897 FOR WORK AUTHORIZED TO DATE.

The language of the release provision is not ambiguous. Through the use of clear language, the parties expressed their intent to settle all plaintiff's claims relating to work performed prior to April 16, 1991. Given its plain and ordinary meaning, the contractual language "recourse of any nature" encompasses both contract and tort claims. Plaintiff's argument that the listing of both work orders and purchase orders creates ambiguity is unavailing. The language clearly amends the parties' contract to include all work authorized or directed up to that time. We therefore conclude that the trial court properly granted summary disposition with respect to the portion of plaintiff's claims which arose prior to April 16, 1991.

With regard to plaintiff's assertion that the trial court abused its discretion in granting defendant's motion to amend its answer and add affirmative defenses, we find no error. Leave to amend "shall be freely given when justice so requires." MCR 2.118(A)(2). Although the motion was brought late in the proceedings, the only prejudice suffered by plaintiff involved its losing on the merits. This is not the type of prejudice that justifies denial of a motion to amend. *Ben P. Fyke & Sons v Gunter Co*, 390 Mich 649, 657; 213 NW2d 134 (1973). In light of our determination that the release was clear and unambiguous, further discovery would not alter the disposition of this case because the

contractual language governed the scope of the release. *Burgess, supra* at 3. Accordingly, we find that the trial court did not abuse its discretion in granting the motion. *Coffey v State Farm Mutual Automobile Ins Co*, 183 Mich App 723, 727; 455 NW2d 740 (1990).

Having resolved the matter on this basis, the question of whether the trial court abused its discretion in granting defendant's motion to strike plaintiff's supplemental witness list is rendered moot and , we need not address it.

Affirmed.

/s/ Harold Hood

/s/ Richard Allen Griffin

/s/ John F. Foley

¹Plaintiff's remaining claims against defendant Vulcan Iron Works, Inc. were dismissed without prejudice upon stipulation of the parties. Plaintiff's claims against the other named defendants are not at issue in this appeal, having been dismissed or settled.