

IN THE COURT OF CLAIMS OF OHIO

JOSE ORTIZ :
 :
Plaintiff : CASE NO. 2002-02442
 : Judge Fred J. Shoemaker
v. :
 :
 : DECISION
BUREAU OF WORKERS' :
COMPENSATION :
 :
 :
Defendant

: : : : : : : : : : : : : : : :

{¶1} By agreement of counsel, and with the consent of the court, this case has been submitted for a decision based upon stipulated facts and trial briefs.

{¶2} The following material facts are established in the stipulation filed by the parties.

{¶3} "1. On February 27, 1998, plaintiff was employed by Elyria Foundry Company, Inc. (hereinafter 'EFC'), in the City of Elyria, County of Lorain, and State of Ohio. EFC is an Ohio corporation, duly licensed to do business in the State of Ohio.

{¶4} "2. On February 27, 1998, plaintiff suffered severe and permanent bodily injuries while acting in the course and scope of his employment with EFC, when plaintiff was operating a conveyor system owned by EFC and located in the city of Elyria, County of Lorain, and State of Ohio.

{¶5} "3. Plaintiff subsequently claimed workers' compensation benefits for said injuries from defendant Bureau of Workers

Compensation (hereinafter 'BWC'), and the defendant assigned Claim Number 98-335561 to plaintiff's workers' compensation claim.

{¶6} "4. Plaintiff also filed a civil action against EFC in the Court of Common Pleas, Lorain County, Ohio as Case No. 98 CV 121591, asserting that he suffered such injuries as a direct and proximate result of the intentionally tortious conduct of EFC, in that EFC knowingly failed to equip the aforesaid conveyor system with guards whose absence made plaintiff's injuries substantially certain to occur.

{¶7} "5. Defendant BWC allowed plaintiff's claim for workers' compensation benefits, arising out of injuries plaintiff received in the above-described incident, and paid said benefits under Claim Number 98-335561 to or on behalf of the plaintiff for temporary total disability and for loss of plaintiff's right leg below the knee.

{¶8} "6. Defendant BWC paid workers' compensation benefits of at least \$140,000.00 under Claim Number 98-335561 to or on behalf of the plaintiff.

{¶9} "7. EFC agreed to settle the civil action filed against it by plaintiff, and to pay plaintiff moneys to settle said action.

{¶10} "8. Defendant BWC then asserted subrogation claims, pursuant to R.C. 4123.93 and R.C. 4123.931, against the settlement between the plaintiff and EFC for moneys defendant paid to or on behalf of the plaintiff as workers' compensation benefits under Claim Number 98-335561.

{¶11} "9. Defendant BWC demanded payment from plaintiff's settlement with EFC, and defendant received the sum of \$140,000.00 from plaintiff's settlement with EFC on or about December 26, 2000, in payment of defendant's subrogation claims pertaining hereto.

{¶12} "10. Defendant obtained the sum of \$140,000.00 in full and final payment of defendant's past, present and future

subrogation claims under R.C. 4123.93 and R.C. 4123.931, for moneys defendant paid to or on behalf of the plaintiff as workers' compensation benefits under Claim Number 98-335561.

{¶13} "11. Defendant has not paid back to the plaintiff any part of the \$140,000.00 that defendant received from plaintiff's settlement with EFC, as described above.

{¶14} "12. Attached hereto as Plaintiff's Exhibit A is a true copy of a letter dated December 15, 1998 from defendant BWC to Joseph Domiano, an attorney for the plaintiff, asserting BWC's subrogation rights under R.C. 4123.93, et seq. against moneys recovered by the plaintiff from his claims against EFC, as described above.

{¶15} "13. Attached hereto as Defendant's Exhibit 1 is a true copy of a letter dated December 14, 2000 from Caroline R. Grossmann, BWC's Subrogation Attorney, to Kevin Lenson, an attorney for the plaintiff, confirming a telephone conversation in which Ms. Grossman informed Mr. Lenson that BWC 'would accept \$140,000 as a full and final settlement of its subrogation interest for benefits arising out of the accident of 2-27-98."

{¶16} "14. Attached hereto as Defendant's Exhibit 3 is a true copy of a letter dated December 26, 2000 from Jeffrey H. Friedman, an attorney for the plaintiff, to Caroline R. Grossman, BWC's Subrogation Attorney, stating that a check in the amount of \$140,000.00 is enclosed as full and final settlement of BWC's subrogation claim against plaintiff's settlement with EFC, as described above.

{¶17} "15. Attached hereto as Defendant's Exhibit 3 is a true copy of a check in the amount of \$140,000.00 from the law firm of Friedman, Domiano & Smith Co., L.P.A. as payment for the full and final settlement of BWC's subrogation claim against plaintiff's settlement with EFC, as described above."

{¶18} Subsequent to the settlement of plaintiff's tort action and the payment to BWC, the Ohio Supreme Court in *Holeton v. Crouse Cartage Co.*, 92 Ohio St.3d 115, 2001-Ohio-109, held that R.C. 4123.931 was unconstitutional. In this action, plaintiff seeks recovery of the funds he paid to BWC plus prejudgment interest on the grounds that BWC never had right of subrogation.

{¶19} This court has had the opportunity to address similar issues to those raised in this case. In *Clark v. Ohio Bureau of Workers' Compensation*, this court held that the *Holeton* decision should not be applied retroactively so as to nullify vested contractual rights and obligations. *Id.* In affirming this court's decision in *Clark*, the Tenth District Court of Appeals held that "[a]s an agency of the state of Ohio, the BWC is authorized to enter into contracts ***. The question is whether the BWC's contractual rights vested before the Ohio Supreme Court declared the subrogation statute unconstitutional. Here, the contractual rights of the BWC vested at the time the contractual obligations of the contract were fulfilled, i.e., at the time the BWC received payment." *Clark v. Ohio Bureau of Workers' Comp.*, Franklin App. No. 02AP-743, 2003-Ohio-2193 at paragraphs 11-12. See, also, *Kissinger v. Pavlus*, Franklin App. No. 01AP-1203, 2002-Ohio-3083, at paragraph 27. The Court of Appeals in *Clark*, explains as follows:

{¶20} "Here, the BWC made an offer to compromise its subrogation claim through a contract in which the parties agreed to mutual concessions in order to avoid litigation with its attendant expenses and resultant burden upon the legal system. The stated purpose of the settlement agreement was to avoid litigation. The release stated, in pertinent part, that the settlement was 'the compromise of a doubtful and disputed claim and that the payment made is not to be construed as an admission of liability on the

part of the party or parties hereby released and that said releasees deny liability therefore and intend merely to avoid litigation and buy their peace.' *** Thus, we conclude that the payment of \$155,000 to the BWC arose as a result of a settlement agreement designed to avoid further litigation of the issue of the BWC's subrogation claim."

{¶21} In *Clark*, as in the present case, plaintiff sought recovery of sums paid to BWC pursuant to R.C. 4123.931. Although the parties in this case did not execute a separate settlement agreement and release, the parties did exchange correspondence during the negotiation process which culminated in plaintiff's execution of a settlement draft. Plaintiff argues herein that no contract existed.

{¶22} However, in *Parsons v. BWC* (July 8, 2003), Court of Claims Case No. 2001-07513, this court found, under circumstances similar to those presented in this case, that the parties had executed a binding settlement agreement. In finding that a valid enforceable agreement existed, this court in *Parsons*, stated:

{¶23} "'In order to formulate a binding, legal agreement, contract law requires an offer, acceptance, consideration, and mutual assent between two parties ***.' *Ginn v. Horn* (April 7, 1987), Franklin App. No. 86AP-668. Upon review of the joint exhibits submitted by the parties, the court finds that plaintiff and BWC reached an agreement to terminate BWC's subrogation lien for the negotiated amount of \$775,000. The letters that were exchanged describe the negotiation process; accordingly, this court finds that defendant asserted a right to more than \$854,000 and subsequently offered to settle the claim for a reduced amount. (Joint Exhibits A and C.) Plaintiff accepted the offer and paid \$775,000. (Joint Exhibit B.) The monies were received by BWC on June 12, 2001. (Joint Stipulation of Fact #6.)"

{¶24} In this case, as in *Parsons*, supra, the written correspondence between the parties, together with plaintiff's negotiation of the settlement draft, constitutes evidence of the essential terms of the parties' settlement agreement and performance thereof. Nevertheless, plaintiff argues that the agreement is not binding upon plaintiff because it was not supported by sufficient consideration. The court disagrees.

{¶25} Valid consideration may consist of either a detriment to the promisee or a benefit to the promisor. *Ford v. Tandy Transp., Inc.* (1993), 86 Ohio App.3d 364, 384. The consideration given by each party to a contract need not be expressed and "may be inferred from the terms and obvious import of the contract." *Nilavar v. Osborn* 127 Ohio App.3d 1, quoting 17 Ohio Jurisprudence 3d 478, Contracts, Section 46. Once consideration is shown, a court will not generally inquire into the adequacy of the consideration. *Ford*, at 384.

{¶26} The evidence in this case clearly establishes that the parties agreed to settle this claim for a compromised amount in order to avoid the expense of protracted litigation and to allow plaintiff's claim for future workers' compensation benefits to remain open. Thus, the evidence demonstrates the parties' agreement is supported by legally sufficient consideration.

{¶27} Plaintiff argues, in the alternative, that even if the parties had entered into a contract regarding settlement, the contract is voidable due to a mutual mistake of law. More specifically, plaintiff argues that the parties were mistaken as to the constitutionality of R.C. 4123.931.

{¶28} Although it is true under Ohio contract law that a contract may be avoided where one party can show that it was executed by mutual mistake of a past or present fact, material to the agreement; see *Sloan v. The Standard Oil Co.* (1964), 177 Ohio

St. 149; 76 Corpus Juris Secundum, 645, Release, Section 25; it is equally true that a contract may not be reformed or rescinded because of a mutual mistake of law. *Roberts v. Jones* (1949), 86 Ohio App. 327; *City of Cincinnati v. Fox* (1943), 71 Ohio App. 233; *McDonald v. French* (1940), 32 Ohio Law Abs. 356.

{¶29} This general rule underlies the decisions of the Ohio Supreme Court in *DeRolph v. State*, 78 Ohio St.3d 419, 1997-Ohio-87, wherein the court stated: "*** an agreement by one party to borrow and repay money and another party to lend the money results in a contract. As we stated in *Peerless Elec. Co. v. Bowers* (1955), 164 Ohio St. 209, 210, 'the general rule is that a decision of a court of supreme jurisdiction overruling a former decision is retrospective in its operation, and the effect is not that the former was bad law, but that it never was the law. *The one general exception to this rule is where contractual rights have arisen or vested rights have been acquired under the prior decision.*' (Original emphasis.) Subsequently, in *Wendell v. AmeriTrust Co., N.A.* (1994), 69 Ohio St.3d 74, 77, this court said that "in *Peerless Elec. Co. v. Bowers* ***, we held that, generally, a decision of this court overruling a previous decision is to be applied retrospectively with an exception for contractual or vested rights that have arisen under the previous decision. *This reasoning applies with similar force when the court's decision strikes down a statute as unconstitutional.*" (Original emphasis.)

{¶30} Based upon the above-cited law, plaintiff is not entitled to rescind the settlement agreement even though the parties entered into and performed the settlement agreement under a mutual mistake as to the constitutionality of R.C. 4123.931.

{¶31} Furthermore, having determined that the parties in this case entered into a valid, enforceable settlement agreement which created vested contractual rights and obligations, plaintiff's

claim for reimbursement for monies paid pursuant to the settlement agreement is without merit. Judgment shall be rendered in favor of defendant.

{¶32} This case has been submitted for a decision based upon the stipulated facts and trial briefs. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of defendant.

Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

FRED J. SHOEMAKER
Judge

Entry cc:

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