[Cite as *Reinhart v. Ohio Bur. of Workers' Comp.*, 2004-Ohio-312.]

IN THE COURT OF CLAIMS OF OHIO

MICHAEL F. REINHART :

Plaintiff : CASE NO. 2002-08513
Judge Fred J. Shoemaker

v. :

DECISION

THE OHIO 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, as follows:

{¶3} "1. Plaintiff Michael F. Reinhart was severely injured in an industrial accident on February 3, 1997, for which a third party was liable.

{¶4} "2. As a result of his work-related accident, Mr. Reinhart filed a successful claim with the Bureau of Workers' Compensation, Claim Number 97-311626.

{¶5} "3. In addition to the Workers' Compensation claim, Mr. Reinhart also filed a personal injury lawsuit against the third party involved in the February 3, 1997 industrial accident, Mariah, Inc.

{¶6} "4. Mr. Reinhart received the amount of $825,000.00 in settlement of the personal injury lawsuit.

{¶7} "5. Pursuant to R.C. 4123.931, the BWC asserted a subrogation right in the proceeds of the $825,000.00 settlement of the personal injury lawsuit.

{¶8} "6. Joint Stipulation Exhibit A, [attached to stipulations] is an authentic and admissible copy of a letter dated February 24, 1999 from Mr. Reinhart's then-attorney John M. Alton to Jay Hurlbert of the BWC, enclosing a check in the amount of $92,000 payable to the BWC in full and final settlement of the BWC's subrogation claim arising out of Mr. Reinhart's claim against Mariah, Inc. A release is also enclosed with the letter.

{¶9} "7. Joint Stipulation Exhibit B, [attached to stipulations] is an authentic and admissible copy of the check for $92,000 enclosed with the February 24, 1999 letter, to be paid to the order of the Bureau of Workers' Compensation, drawn on the John M. Alton Co. LPA trust account.

{¶10} "8. Joint Stipulation Exhibit C, [attached to stipulations] is an authentic and admissible copy of the release that was enclosed with the February 24, 1999 letter. The parties have been unable to locate a signed copy of this release.

{¶11} "9. On June 27, 2001, the Ohio Supreme Court declared R.C. 4123.931 to be unconstitutional in its entirety, in *Holeton v. Crouse Cartage Co.* (2001), 92 Ohio St.3d 115.

{¶12} "10. Joint Stipulation Exhibit D, [attached to stipulations] is an authentic and admissible copy of a letter dated July 25, 2002, from Mr. Reinhart's current attorney to the BWC making a demand that the BWC write a check to Mr. Reinhart for $92,000.00.

{¶13} "11. Joint Stipulation Exhibit E, [attached to stipulations] is an authentic and admissible copy of a letter from the BWC to Mr. Reinhart's attorney in response to the July 24, 2002 letter, refusing to reimburse Mr. Reinhart the amount of $92,000.00.

{¶14} "12. Compensation recipients who had not settled or tried their third party claims before June 27, 2001, were not required to pay subrogation claims to the Bureau of Workers' Compensation."

{¶15} 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 a right of subrogation.

{¶16} 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. 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.

{¶17} The Court of Appeals in *Clark*, explained the ruling as follows:

{¶18} "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 $65,000 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."

{¶19} In the present case, as in *Clark*, supra, 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, the parties did exchange correspondence during the negotiation process that culminated in defendant's execution of a settlement draft and plaintiff's execution of a release. Plaintiff argues that no contract existed.

{¶20} 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:

{¶21} "'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.)"

{¶22} In this case, as in *Parsons*, supra, the written correspondence between the parties, together with plaintiff's execution of the release, 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.

{¶23} 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.

{¶24} It is obvious from the stipulated facts and circumstances surrounding this transaction that the parties agreed to settle this claim in order to avoid the expense of protracted litigation and to allow plaintiff's claim for future workers' compensation benefits to remain open. Although there is no direct evidence that plaintiff's payment represents a reduction in the current amount due BWC, under the terms of the release executed by the

parties, the payment by plaintiff constitutes a complete settlement of any claims for subrogation now existing and any future claims "which may hereafter accrue related to the above-described incident." Thus, the evidence demonstrates the parties' agreement is supported by legally sufficient consideration.

{¶25} 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.

{¶26} 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, it is equally true that a contract may not be reformed or rescinded because of a mutual mistake of law. *Sloan v. The Standard Oil Co.* (1964), 177 Ohio St. 149; 76 Corpus Juris Secundum, 645, Release, Section 25; *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.

{¶27} 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.)

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

{¶29} Plaintiff has also set forth causes of action for unjust enrichment and in tort. However, having determined that defendant rightfully obtained a portion of plaintiff's settlement proceeds under the terms of a valid, enforceable contract, plaintiff's cause of action for conversion and unjust enrichment must also fail. Finally, while plaintiff advances several constitutional arguments in support of his claim for reimbursement, this court is without jurisdiction to consider claims for relief premised upon alleged violations of the United States Constitution. See, e.g., *Graham v. Ohio Bd. of Bar Examiners* (1994), 98 Ohio App.3d 620; *White v. Chillicothe Correctional Institution* (Dec. 29, 1992), Franklin App. No. 92-AP1230; *White v. Dept. of Rehab. & Corr.* (Dec. 22, 1992), Franklin App. No. 92AP-1229.

{¶30} For the foregoing reasons, plaintiff has failed to prove any of his claims in this case. Judgment shall be rendered in favor of defendant.

{¶31} This case has been submitted for a decision based upon 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.

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FRED J. SHOEMAKER
Judge

Entry cc:

Richard F. Swope — Attorney for Plaintiff
6504 East Main Street
Reynoldsburg, Ohio 43068-2268

Peggy W. Corn — Attorney for Defendant
Assistant Attorney General
150 East Gay Street, 23rd Floor

Columbus, Ohio 43215-3130

LP/cmd
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