

"4) Because his injuries occurred in the course and scope of his employment with P.J. Dick Incorporated, plaintiff received worker's compensation benefits from BWC pursuant to Chapter 4123 of the Revised Code.

"5) Plaintiff filed a lawsuit against P.J. Dick as a result of his injuries and eventually settled the lawsuit.

"6) Prior to settlement of the lawsuit, the BWC, pursuant to R.C. §4123.91, asserted a right of subrogation which it believed that it had against any settlement made or judgment paid to plaintiff by P.J. Dick.

"7) As a result of the BWC's demand of subrogation and the belief that the BWC had a right of subrogation, plaintiff paid \$65,000 to BWC out of his settlement proceeds by check dated August 31, 2000.

"8) On July 12, 2000, Mr. Triplett's counsel sent a letter to the BWC Subrogation Manager, Jay Hurlbert, which is attached as Ex. A and incorporated herein.

"9) Mr. Segerman sent a second fax letter on July 21, 2000 which is attached as Ex. B and incorporated herein.

"10) Mr. Segerman wrote a third letter to Mr. Hurlbert on September 1, 2000 enclosing a check for \$65,000 on behalf of Mr. Triplett which is attached as Ex. C. and incorporated herein.

"11) As of January 28, 2003, the BWC had paid a total of \$141,317.21, of which \$55,336.60 has been in lost wage compensation and \$85,980.61 has been medical bills.

"12) The BWC did not request that Mr. Triplett sign a written settlement agreement or release nor did the BWC receive a signed written settlement agreement or release."

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.

This court has had the opportunity to address similar issues to those raised in this case. In *Clark v. Ohio Bureau of Workers' Compensation*, 119 Ohio Misc.2d 17, 2002-Ohio-3522, 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. 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*, explained:

"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."

In *Clark*, as in the present case, plaintiff sought recovery of sums paid to the 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 defendant's execution of a settlement draft. Plaintiff argues herein that no contract existed.

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:

“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.)”

In this case, as in *Parsons*, supra, the written correspondence between the parties, together with defendant’s negotiation of the settlement draft, constitutes evidence of the essential terms of the parties’ settlement agreement and performance thereof. The fact that the parties never executed a “release,” does not prevent contract formation since the correspondence sent by plaintiff’s counsel to defendant’s representatives prior to defendant’s execution of the settlement draft clearly evidences the parties’ settlement agreement. Nevertheless, 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 fact. More specifically, plaintiff argues that the parties were mistaken as to the constitutionality of R.C. 4123.931.

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.

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.)

Although plaintiff characterizes the mutual mistake in this case as a factual one, it is clear that the mistake alleged is one of law. Accordingly, under the above-cited case 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.

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 also must fail.

For the foregoing reasons, plaintiff has failed to prove any of the claims asserted in this case. Judgment shall be rendered in favor of defendant.

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.

FRED J. SHOEMAKER
Judge

Entry cc:

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