

# Court of Claims of Ohio

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THE OHIO CASUALTY INSURANCE COMPANY

Plaintiff/Counter Defendant

v.

OHIO BUREAU OF WORKERS' COMPENSATION

Defendant/Counter Plaintiff

Case No. 2013-00541

Judge Patrick M. McGrath

## ENTRY GRANTING PLAINTIFF/COUNTER DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

{¶1} On July 24, 2014, plaintiff/counter defendant, The Ohio Casualty Insurance Company (Ohio Casualty), filed a motion for summary judgment pursuant to Civ.R. 56. On August 1, 2014, defendant/counter plaintiff, Ohio Bureau of Workers' Compensation (OBWC) filed a cross-motion for summary judgment pursuant to Civ.R. 56. On August 11, 2014, OBWC filed a memorandum in opposition to Ohio Casualty's motion for summary judgment. On August 18, 2014, Ohio Casualty filed a memorandum in opposition to OBWC's motion for summary judgment. The motions are now before the court for a non-oral hearing pursuant to L.C.C.R. 4(D).

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable

minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." See also *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317 (1977).

{¶4} The facts of this case are undisputed. Attached to Ohio Casualty's motion for summary judgment is a document entitled "Stipulations" which is signed by counsel for both parties. The stipulations provide as follows:

{¶5} "1. From 1976 to 1987, Ohio Casualty, as surety, issued surety bonds ('the Surety Bonds') in favor of OBWC and the Industrial Commission of Ohio as obligees, on behalf of Trumbull Memorial Hospital ('TMH'), as principal. Copies of the Surety Bonds are attached hereto as Exhibit A.

{¶6} "2. On March 16, 2009, TMH and certain of its affiliates (collectively, 'the Forum Health Debtors') filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the Northern District of Ohio, which cases were jointly administered as *In re Forum Health, et al.*, Case No. 09-40795 ('the Bankruptcy Case').

{¶7} "3. OBWC filed two proofs of claims in the Bankruptcy Case, copies of which are attached hereto as Exhibits B and C.

{¶8} "4. As part of the Bankruptcy Case, a Liquidating Trust ('the Liquidating Trust'), administered by a Liquidating Trustee ('the Liquidating Trustee'), was established to administer certain assets and claims of the Forum Health Debtors.

{¶9} "5. On or about August 24, 2011, OBWC Voluntarily entered into a settlement with the Liquidating Trustee, the terms of which are set forth in the Liquidating Trustee's Motion for an Order Pursuant to Federal Rule of Bankruptcy Procedure 9019(A) Approving the Terms of the Settlement with the Ohio Bureau of Workers' Compensation, a copy of which is attached hereto as Exhibit D.

{¶10} “6. On September 21, 2011, the Bankruptcy Court entered an order (‘the Settlement Order’) approving the Liquidating Trustee’s settlement with OBWC. A copy of the Settlement Order is attached as Exhibit E.

{¶11} “7. Following the entry of the Settlement Order, OBWC submitted invoices to Ohio Casualty for claim amounts owned under the Surety Bonds.

{¶12} “8. Ohio Casualty paid \$125,873.39 based upon the claims by OBWC under the Surety Bonds (‘the Subject Payments’) following the entry of the Settlement Order.

{¶13} “9. OBWC continues to assert claims under the Surety Bonds.

{¶14} “10. As of January 10, 2014, OBWC has submitted invoices totaling \$46,140.46 that have not been paid by Ohio Casualty.”

{¶15} Ohio Casualty alleges in count one of its complaint that OBWC has been “unjustly enriched” by payments of \$125,873.39. Ohio Casualty argues that it learned of the Settlement Order only after it paid OBWC \$125,873.39 under the Surety Bonds. In addition to seeking recovery of \$125,873.39, Ohio Casualty also seeks a declaration that its obligations under the Surety Bonds have been fully released. In the counterclaim, OBWC alleges that Ohio Casualty owes \$46,140.46 under the Surety Bonds. OBWC also seeks a declaration that Ohio Casualty has not been released from its liability for future payments due on the Surety Bonds.

{¶16} The crux of the parties’ dispute centers on whether TMH’s debt was “discharged” or “released” as a part of the bankruptcy proceedings. Ohio Casualty argues that if the debt was released by OBWC, then its secondary obligation was likewise released. OBWC argues that if the debt was discharged, then Ohio Casualty remains liable under the Surety Bonds.

{¶17} “A ‘discharge’ (or a ‘bankruptcy discharge’) is a statutory construct and a bankruptcy law term of art. See, eg., 11 U.S.C. §§ 727(a), 1129(d) & 1328(a). It refers to a form of relief that permanently enjoins attempts to collect debts of a debtor by

creditors of that debtor. A bankruptcy discharge is granted to a debtor under certain circumstances (such as upon an individual's fulfillment of his statutory obligations, or pursuant to a plan). By statute, a bankruptcy discharge is a form of relief available only to a debtor. By confirming a plan that includes a release of a non-debtor, the bankruptcy court is not entering a bankruptcy discharge for that non-debtor; it is entering a release for that non-debtor. While there is similarity in effect between a bankruptcy discharge and a release of a non-debtor (both forms of relief adjudicate a claim for a debt), they are not interchangeable concepts." *In re U.S. Fidelis, Inc.*, 481 B.R. 503, 516 (Bankr.E.D.Mo. 2012).

{¶18} A release is a creation of contract rather than the bankruptcy code. *McBroom v. Safford*, 10th Dist. Franklin No. 11AP-885, 2012-Ohio-1919, ¶ 12. There is no dispute that OBWC entered into a settlement agreement with the Liquidating Trustee. As a part of that settlement agreement, which was confirmed by a bankruptcy court, OBWC "agree[d] to release all claims against the Debtors and their estates other than their rights under this Settlement and the Plan." Exhibit D, page 4. The settlement plan allowed OBWC a priority claim of \$500,000 and an unsecured claim of \$7,526,674.

{¶19} Nowhere in the "Motion for an order \* \* \* approving the terms of the settlement with [OBWC]" or in the bankruptcy court's order granting the motion and approving the terms of the settlement is the term "discharge" used. Exhibit D and E. Additionally, the language of the settlement plan does not limit the release to the Forum Health Debtors. Nowhere in the release does OBWC reserve any claims against guarantors such as Ohio Casualty.

{¶20} When a creditor executes a release of its claims against its debtor, the debtor's surety is likewise released. Restatement of the Law, 3rd Suretyship and Guaranty, Section 39 (1996), provides: "To the extent that the obligee releases the principal obligor from its duties pursuant to the underlying obligation \* \* \* the secondary

obligor is discharged from any unperformed duties pursuant to the underlying obligation \* \* \*.” OBWC is the obligee, TMH is the principal obligor and Ohio Casualty is the secondary obligor. As a result of the release of TMH, Ohio Casualty is “discharged from any unperformed duties pursuant to the underlying obligation[.]” *Id.*

{¶21} In support of its position that its surety rights have been destroyed, plaintiff offered the undisputed affidavit of Judith R. Bufler, a Senior Bond Claim Specialist III and provider of services to Ohio Casualty. Bufler avers as follows:

{¶22} “3. I am the individual with responsibility for the claims of Ohio Bureau of Workers’ Compensation (‘OBWC’) regarding the bonds issued by Ohio Casualty on behalf of Trumbull Memorial Hospital (‘TMH’) in the above-captioned matter, and I maintain custody and control of the claim file in this matter.

{¶23} “4. The claims made by OBWC against Ohio Casualty in this matter relate to OBWC Risk No. 20003035 [‘3035 claims’]. Risk No. 20003035 relates to claims arising against TMH from 1972 to 1997. Ohio Casualty’s Surety Bonds cover part of that time for claims arising for the time period from 1976 to 1987.

{¶24} “5. OBWC informed Ohio Casualty that the claims arising after Forum Health was created in 1997 related to OBWC Risk No. 20005202.

{¶25} “6. OBWC notified Ohio Casualty of the default and bankruptcy of TMH after the Settlement Agreement was entered on September 21, 2011; however, OBWC did not advise Ohio Casualty at that time of the Settlement Agreement until after Ohio Casualty had paid \$125,873.39 in claims.

{¶26} “7. After discovering that OBWC had entered into the Settlement Agreement, Ohio Casualty refused to pay additional claims and demanded the repayment of the \$125,873.39 it paid on or about November 22, 2011.”

{¶27} There is no dispute that OBWC did not file a proof of claim in the bankruptcy case for the 3035 claims. Accordingly, pursuant to the settlement

agreement and the proof of claims filed therewith, OBWC released the 3035 claims. Thus, OBWC released Ohio Casualty's obligations under the surety bonds.

{¶28} Ohio Casualty's complaint asserts one count of unjust enrichment. "Unjust enrichment is an equitable doctrine to justify a quasi-contractual remedy that operates in the absence of an express contract or a contract implied in fact to prevent a party from retaining money or benefits that in justice and equity belong to another." *Struna v. Ohio Lottery Comm.*, 10th Dist. Franklin No. 03AP-787, 2004-Ohio-5576, ¶ 22, quoting *Turner v. Langenbrunner*, 12th Dist. Warren No. CA2003-10-099, 2004-Ohio-2814, ¶ 38. "A plaintiff seeking to recover under unjust enrichment or quantum meruit must establish that: (1) the plaintiff conferred a benefit on the defendant; (2) the defendant knew of the benefit; and (3) it would be unjust to permit the defendant to retain the benefit without payment." *Meyer v. Chieffo*, 193 Ohio App.3d 51, 2011-Ohio-1670, ¶ 37 (10th Dist.).

{¶29} Based upon the foregoing, the court finds that Ohio Casualty has conferred a benefit on OBWC; OBWC knew of the benefit; and it would be unjust to permit OBWC to retain the benefit. Therefore, Ohio Casualty's motion for summary judgment is GRANTED, OBWC's motion for summary judgment is DENIED, and judgment is rendered in favor of Ohio Casualty in the amount of \$125,873.39. All previously scheduled events are VACATED. Court costs are assessed against OBWC. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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PATRICK M. MCGRATH  
Judge

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