

The Supreme Court of the State of Louisiana

COUVILLION GROUP, L.L.C.

No.2020-C-00074

VS.

PLAQUEMINES PARISH GOVERNMENT

IN RE: Professional Engineering Consultants Corporation - Applicant Third Party;
Applying For Writ Of Certiorari, Parish of Plaquemines, 25th Judicial District Court
Number(s) 61-918, Court of Appeal, Fourth Circuit, Number(s) 2019-CA-0564;

April 27, 2020

Writ application granted. See per curiam.

JHB

JLW

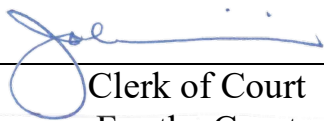
JDH

SJC

JTG

WJC

Supreme Court of Louisiana
April 27, 2020



Clerk of Court
For the Court

04/27/20

SUPREME COURT OF LOUISIANA

No. 2020-C-0074

COUVILLION GROUP, LLC

VERSUS

PLAQUEMINES PARISH GOVERNMENT

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FOURTH
CIRCUIT, PARISH OF PLAQUEMINES**

PER CURIAM:

Plaquemines Parish Government contracted with Couvillion Group, LLC, as general contractor, for a public works project at Port Eads. In a separate, unrelated contract, Plaquemines hired Professional Engineering Corporation (“PEC”) as the project’s engineer. During the course of the project, Plaquemines stopped Couvillion’s work to address design issues related to the elevation of a tank. PEC did not design the elevation of the tank and was wholly uninvolved in this portion of the project.

Plaquemines ultimately authorized the project to continue, accepted substantial completion of the work and tendered payment. Couvillion then demanded contractual delay damages for the period the project was stopped. In response, Plaquemines consulted PEC regarding whether delay damages were owed and, if so, what amount to pay. PEC recommended payment of \$1,045,211. Plaquemines rejected PEC’s recommendation and chose not to pay any delay damages.

Couvillion sued Plaquemines for the delay damages. Pursuant to Louisiana Code of Civil Procedure article 1111, Plaquemines filed a third party demand against PEC asserting contractual indemnity under a provision in the original engineering contract between Plaquemines and PEC, wherein PEC agreed to “indemnify and hold harmless [Plaquemines] against any and all claims asserted by any party for loss of life or injury or damages to person or property.” PEC filed an exception of no cause of action, relying on the language of both Louisiana Code of Civil Procedure article 1111 and the contractual indemnity provision. The trial court granted the exception and dismissed the claims against PEC. The court of appeal reversed and reinstated the claims. Judge Lobrano dissented concluding that Plaquemines’ alleged liability to Couvillion arose from the Couvillion construction contract, to which PEC was not a party. Judge Lobrano further noted PEC had no design responsibility for the elevation of the tank and the alleged delay damages attributed to that design were incurred *before* PEC was consulted by Plaquemines.

Louisiana Code of Civil Procedure article 1111 provides, “The defendant in a principal action by petition may bring in any person, including a codefendant, who is his warrantor, or who is or may be liable to him for all or part of the principal demand.” Here, PEC is not Plaquemines’ warrantor. Neither is PEC liable to Plaquemines for any part of Couvillion’s principal demand. The principal demand asserts Plaquemines’ negligence performing the Couvillion construction contract gives rise to contractual delay damages. There is no assertion by either Couvillion or Plaquemines that PEC caused any part of the delay damages claimed under the Couvillion construction contract. PEC’s only involvement relates to its recommendation to Plaquemines made after the events giving rise to the delay damages. As observed by Judge Lobrano, Couvillion’s claims against Plaquemines are too “attenuated” from Plaquemines’ claims against PEC to support the third party demand under Louisiana Code of Civil Procedure article 1111.

We also find no cause of action for contractual indemnity. The engineering contract requires PEC to indemnify Plaquemines for “damages to . . . property.” Neither the claims asserted by Couvillion against Plaquemines in the principal demand, nor by Plaquemines against PEC in the third party demand, involve damage to property. Rather, Plaquemines argues, and the court of appeal agreed, that “damages to . . . property” includes economic-only losses. We find that definition overly broad.

Words and phrases used in a contract must be given their plain, ordinary, and generally prevailing meaning, unless the words have acquired a technical meaning. La. C.C. art. 2047. Additionally, when words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties’ intent. La. C.C. at. 2046. We find use of the term “damages to . . . property” in the indemnity provision does not require a search for the parties’ intent, as the term has a plain, ordinary, and generally prevailing meaning, which is physical damage to tangible property. *See Stewart Interior Contractors, L.L.C. v. Metalpro Indus., L.L.C.*, 2007-0251 (La. App. 4 Cir. 10/10/07), 969 So. 2d 653, 661 (defining “property damage” as “physical damage to tangible property”); see *also Borden, Inc. v. Howard Trucking Co.*, 454 So. 2d 1081, 1090 (La. 1983): (acknowledging “property damage” was not defined in the insurance policy, but finding “common sense dictates that it means damage to tangible property . . . and not consequential losses arising from loss of use of damaged property.”)

Expanding that common usage to include economic-only losses without any relation to physical damage is neither warranted nor supported by law. *See Lawyer v. Kountz*, 97-2701 (La. App. 4 Cir. 7/29/98), 716 So. 2d 493, 498, *writ denied*, 98-2290 (La. 11/13/98), 731 So. 2d 264. Our adoption of the generally prevailing definition also aligns with the strict interpretation required for indemnity provisions.

See Berry v. Orleans Parish School Board, 2001-3283 (La. 6/21/02), 830 So.2d 283, 285 (Indemnity agreements are strictly construed). We reject the broader interpretation suggested by Plaquemines that would include economic-only losses within the definition of “damages to . . . property.”

We similarly conclude that indemnification for “any and all claims” as provided for in the engineering contract does not cover losses allegedly caused by the sole negligence of Plaquemines. Again, PEC had nothing to do with the work stoppage that gave rise to Couvillion’s claim for contractual delay damages. Requiring PEC to indemnify Plaquemines for damage related to the work stoppage would result in Plaquemines being indemnified for its sole fault. Use of the phrase “any and all claims” does not expressly provide indemnity to Plaquemines for its sole negligence, nor does it reflect the required specificity to trigger such indemnity. *Berry*, 830 So.2d at 285. See also, *Ponder v. SDT Waste & Debris Servs., L.L.C.*, 2015-1656 (La. App. 1 Cir. 8/16/17), 2017 WL 3498159.

The ruling of the court of appeal is reversed and vacated. The judgment of the district court granting PEC’s exception of no cause of action is reinstated.

REVERSED AND RENDERED.