08/19/83 Paul D. Johnson

1983.CDC.0000216 (1983) | Cited 0 times | D.C. Circuit | August 19, 1983

Before: ROBINSON, Chief Judge, WRIGHT, Circuit Judge and MACKINNON, Senior Circuit Judge.

1. Because of the similarity of issues in the numerous actions growing out of the WMATA construction, the court ordered these appeals consolidated and expedited. Johnson v. Bechtel Assoc. Prof. Corp., No. 82-2017 (D.C. Cir. Jan. 7, 1983).

2. The Washington Area Metropolitan Transit Authority (WMATA or the Authority) is a legal entity created by and deriving its authority from an interstate compact (Compact) entered into by Maryland, Virginia, and the District of Columbia with the consent of Congress. U.S. CONST. art. I, § 10, cl. 3. WMATA was formed to develop and operate a transit system

3. Two Bechtel entities were sued in the district court actions, Bechtel Civil and Minerals, Inc., a Nevada corporation, and its local affiliate, Bechtel Associates Professional Corporation. The two corporations are indistinguishable for the purposes of these appeals and therefore will both be referred to simply as "Bechtel."

4. See note 2 supra.

5. Appellants challenge the grant of summary judgment on the section 80 issue in the following cases: Johnson v. Bechtel Assoc. Prof. Corp., No. 81-0963 (D.D.C. 1982); Walker v. Bechtel Civil and Minerals, Inc., No. 81-1125 (D.D.C. July 8, 1982); Clanagan v. Bechtel Assoc. Prof. Corp., No. 81-1481 (D.D.C. July 8, 1982); Eighmey v. Bechtel Civil and Minerals, Inc., No. 81-1261 (D.D.C. June 21, 1982).

6. Appellants' reliance on the Restatement is misplaced. While the Restatement does distinguish between "servants" and "independent cntractors" for some purposes, it also makes clear that both "servants" and "independent contractors" may be agents. Restatement (Second) of Agency § 2 (1958). Section 251 of the Restatement, applied to the situation herein, obviates the need for any distinction between "servants" and "independent contractors" or "non-servants agents." § 251. Liability for Physical Harm Caused by a Servant or a Non-servant Agent A principal is subject to liability for physical harm to the person . . . of another caused by the negligence of a servant or a non-servant agent: (a) in the performance of an act which the principal is under a duty to have performed with care. . . . Restatement (Second) of Agency § 251 (1958). WMATA, the principal, had a duty to protect workers from physical harm caused by the construction of Metro. By entrusting the performance of that duty to an agent (Bechtel), WMATA is liable for any harm caused by its agent's negligence, regardless of whether the agent was a servant or an independent contractor. See Restatement (Second) of Agency § 251 comments (a) (1958).

7. Appellants suggest that the legislative history of the Compact reveals that the term "agent" was intended to have an extremely narrow meaning. The only "legislative history" cited by appellants is a Senate Judiciary Committee Staff paper

which, appellants purport, explains the purpose of section 80. Liability for Contracts and Torts (Article XVI sec. 80) This would make the Authority liable for its contracts and torts and the torts of its personnel (emphasis added) committed in the conduct of any proprietary function, in accordance with the law of the applicable signatory (including rules on conflict of laws). It would absolve the Authority from liability for torts occurring in the performance of a governmental function, and provides that this section would not constitute a waiver by any of the signatories or their subjurisdictions of any immunity from suit. Ludolph Brief at 22. Based upon this statement, appellants argue that the intent of section 80 was to immunize only individuals acting as agents and not persuasive. The "legislative history" relied upon is little more than a losse statement of the statute. Without more, such statements cannot serve to narrow the meaning of an unambiguous statutory term.

8. The annual contracts executed by WMATA and Bechtel from 1971 until the present did not change significantly from year-to-year. The relevant portions of these contracts are exhibits in the district court record in Johnson v. Bechtel Assoc. Prof. Corp., No. 81-0963, and all references to the contracts are to the district court record.

9. At a hearing conducted by the district court in Johnson v. Bechtel Assoc. Prof. Corp., No. 81-0963, on May 17, 1982, John S. Egbert, Assistant General Manager for Design and Construction for WMATA (Contracting Officer), testified to the working relationship between WMATA, Bechtel and the subcontractors. The relevant testimony is contained in Appellees Record Excerpts 22-23, 31, and 51.

10. See note 9 supra.

11. The Act, 33 U.S.C. § 904(a) (1976), provides: (a) Every employer shall be liable for and shall secure the payment to his employees of the compensation payable under sections 907, 908 and 909 of this title. In the case of an employer who is a subcontractor, the contractor shall be liable for and shall secure the payment of such compensation to the employees of the subcontractor unless the subcontractor has secured such payment.

12. The District of Columbia Workers' Compensation Act, D.C. Code 36-501 et seq. (1973), adopted the provisions of the federal Longshoremen's and Harbor Workers' Compensation Act. For simplicity, the Act will be referred to by the federal statute section numbers.

13. 33 U.S.C. § 905(a) (1976) provides: (a) The liability of an employer prescribed in section 904 of this title shall be exclusive and in place of all other liability of such employer to the employee. . . .

14. Appellants challenge the grant of summary judgment on the section 905(a) issue in the following cases: Wilmes v. Washington Metropolitan Area Transit Auth., No. 81-0114 (D.D.C. Dec. 16, 1982); Buchanan v. Bechtel Assoc. Prof. Corp., No. 81-3057 (D.D.C. Nov. 19, 1982); Williams v. Washington Area Metropolitan Transit Auth., No. 82-0999 (D.D.C. Oct. 6, 1982); Clanagan v. Washington Metropolitan Area Transit Auth., 558 F. Supp. 209 (D.D.C. 1982); Walker v. Washington Metropolitan Area Transit Auth., No. 81-1125 (D.D.C. Sept. 2, 1982); Johnson v. Bechtel Assoc. Prof. Corp., No. 81-0963 (D.D.C. Aug. 24, 1982); Eighmey v. Bechtel Assoc. Prof. Corp., No. 81-1261 (D.D.C. July 30, 1982).

15. Probst expressly reserved the question of what ought to be done if the general contractor, or general employer, is

actually required to pay compensation benefits to the injured employee of the subcontractor under § 904.

379. F.2d at 767 (footnote omitted) (emphasis added). However, the question left open in Probst is not the precise issue herein. WMATA was not "required" to obtain workmen's compensation insurance under section 904. WMATA voluntarily assumed that responsibility. The fact that WMATA voluntarily obtained compensation insurance also distinguishes the WMATA case from Fiore v. Royal Painting Co., 398 So. 2d 863 (Fla. Dist. Ct. App. 1981). In Fiore, the subcontractor's insurance lapsed unbeknownst to the general contractor. Following the work-related death of an employee of the subcontractor, the general contractor payed direct benefits to the decedent's widow and children. In a subsequent wrongful death action, the defendant-contractor moved for and obtained summary judgment based upon section 905(a) employer immunity. Reversing the grant of summary judgment on appeal, the Fiore court held that the general contractor was not entitled to statutory immunity. The court rejected the general contractor's quid pro quo argument and construed the Act to allow immunity only to the "actual employer (in this type of situation, a complying subcontractor)." Id. at 865. The Fiore court denied statutory immunity to the general contractor, notwithstanding the fact that his subcontractor had defaulted and the general contractor had in fact assumed his obligation under the statute. Fiore represents an extreme interpretation of the Act and is distinguishable on its facts.

16. We express no opinion on the issue whether the subcontractors have "secure[d]" compensation insurance under section 904(a) and would thereby be entitled to immunity.

17. In the following cases the district courts allowed the plaintiff to amend his complaint to add WMATA as a defendant: Johnson v. Bechtel Assoc. Prof. Corp., No. 81-0963 (D.D.C. May 18, 1982); Buchanan v. Bechtel Assoc. Prof. Corp., No. 81-3057 (D.D.C. July 7, 1982); Clanagan v. Washington Metropolitan Area Transit Auth., No. 81-1481 (D.D.C. July 8, 1982); Wilmes v. Washington Metropolitan ARea Transit Auth., No. 81-0114 (D.D.C. July 13, 1982). In Wilmes, the plaintiff also sought to amend his complaint via Rule 15(c) to add the subcontractors as defendants. The district court denied plaintiff's motion to amend. Wilmes v. Washington Metropolitan Area Transit Auth., No. 81-0114 (D.D.C. Dec. 16, 1982). Wilmes appeals this denial and for the reasons stated in this section of our opinion, we remand this aspect of the case also. A more complete factual record is a prerequisite for review of a Rule 15(c) decision.

18. Rule 15(c) of the Federal Rules of Civil Procedure provides: (c) Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

19. Johnson v. Bechtel Assoc. Prof. Corp., No. 81-0963, slip op. at 1 (D.D.C. Aug. 24, 1982); Clanagan v. Washington Metropolitan Area Transit Auth., 558 F. Supp. 209, slip op. at 6 n.2 (D.D.C. 1982); Buchanan v. Bechtel Assoc. Prof. Corp., No. 81-3057, slip op. at 2 (D.D.C. Nov. 19, 1982); Wilmes v. Washington Metropolitan Area Transit Auth., No. 81-0114 (D.D.C. 16, 1982).

20. Section 33(b) of the Longshoremen's Act, 33 U.S.C. § 933(b) (1976), provides: Acceptance of such compensation under an award in a compensation order filed by the deputy commissioner or Board shall operate as an assignment to the employer of all right of the person entitled to compensation to recover damages against such third person unless such person shall comence an action against such third person within six months after such award.

21. In a footnote the Rodriquez Court stated: Whether the statutory language [section 33(b)] provides the exclusive solution for unusual conflict-of-interest problems, such as that identified in Czaplicki, is a question that is not presented on the facts of these cases. We accordingly do not decide whether, or to what extent, Czaplicki survived the 1959 amendments.

451. U.S. at 612 n.30.

22. Our decision is in accord with an earlier decision by a panel of this court, Phillippi v. Bechtel Assoc. Prof. Corp., No. 82-1615 (D.C. Cir. Feb. 24, 1983)