IN THE COURT OF APPEALS OF IOWA

No. 3-388 / 92-2081

IN RE THE CLAIMS OF BOWMAN TRANSPORTATION, INC., IN THE LIQUIDATION OF CARRIERS INSURANCE CO.,

BOWMAN TRANSPORTATION, INC.,

Appellant,

Appeal from the Iowa District Court for Polk County, Rodney J. Ryan, Judge.

The insured appeals from the district court ruling upholding the liquidator's denial of insured's claim against insurer. **AFFIRMED.**

John Vernon of Dickinson, Throckmorton, Parker, Mannheimer & Raife, P.C., Des Moines, for appellant.

Deborah M. Tharnish of Davis, Hockenberg, Wine, Brown, Koehn & Shors, P.C., Des Moines, for appellee.

Considered by Donielson, C.J., and Hayden and Habhab, JJ.

HABHAB, J.

The insured, Bowman Transportation, Inc., appeals from a district court ruling upholding the liquidator's denial of the insured's claim against the insurer. We affirm.

Bowman Transportation, Inc., purchased workers' compensation insurance and other insurance from Carriers Insurance Company. The workers' compensation policy had a $100,000 deductible. On January 16, 1986, the district court declared Carriers insolvent and ordered its liquidation. The Commissioner of Insurance of the State of Iowa, the Liquidator, sent Bowman notice that claims had to be filed by January 16, 1987.

In September 1990, pursuant to its power to collect monies due the insurer, the Liquidator filed suit against Bowman. The Liquidator claimed Bowman owed Carriers $25,261.41 for self-insured retention (SIR) billings. SIR billings relate to claims paid by the insurer for which it is entitled to reimbursement from the insured because the claims were within the deductible amount. Bowman paid $14,357.75 to settle the lawsuit and the parties signed a mutual release in October 1990, which stated Bowman would release Carriers and its Liquidator from any and all claims which Bowman has or may ever claim to have against them.

On April 22, 1992, Bowman sent Carriers a proof of claim for the John Heinsohn estate. The Liquidator sent Bowman a letter stating that he would recommend the claim be given Class 6 priority under Iowa Code section

507C.42(6) (1991) (late filed claims against a liquidated insurer's estate).

On July 9, 1992, Bowman sent proof of claims for Melvin Parks, Walter Hardin, Ernest Coker, George Lee, and persons unknown and unspecified. The Liquidator replied that it would not pay any of the claims because of the October 10, 1990 release.

Bowman objected to the denials and the matter was set for hearing in district court. After a hearing, the district court found Carriers Insurance Company and its Liquidator had been released from all claims and that the claims submitted should not be classified under any of the classes established by 507C.42. The district court specifically found: "No basis for reformation of the Release has been shown, and at most, Bowman has shown only a unilateral mistake regarding the language of the Mutual Release." The court approved the Liquidator's denial of the claim. Bowman appeals.

This matter was docketed in equity and tried by equitable proceedings. Therefore, our scope of review is de novo. Iowa R. App. P. 4.

Bowman argues the district court erred in denying his claim. Bowman claims the October 1990 mutual release between the liquidator and Bowman only applies to the SIR billings and does not bar the claims filed by Bowman on behalf of third parties whose damages had just exceeded Bowman's $100,000 deductible.

Since a release is a contract, its validity is governed by the usual rules relating to contracts. Verne R. Houghton Ins. v. Orr Drywall, 470 N.W.2d 39, 42 (Iowa 1991) (citation omitted). The cardinal principle is that the intent of the parties must control and except in cases of ambiguity this is determined by what the contract itself says. Id. The intent of the parties must be determined from what they did; and if the instrument is clearly a full release there is no room for construction. Id.

The mutual release states:

> Upon payment of Fourteen Thousand Three Hundred Fifty Seven and 75/100 Dollars ($14,357.75), Carriers Insurance Company, in liquidation, will file a Dismissal with Prejudice of the lawsuit styled David J. Lyons, Acting Commissioner of Insurance of the State of Iowa as Liquidator of Carrier Insurance Company vs. Bowman Transportation, Inc., Equity No. CE24-13873-110 in the Iowa District Court for Polk County, and Bowman Transportation, Inc. shall stand released and discharged from any and all claims, demands or causes of action which Carriers Insurance Company and its Liquidator now has or may ever claim to have against Bowman Transportation, Inc.
>
> Bowman Transportation, Inc. hereby releases and discharges Carriers Insurance Company and its Liquidator from any and all claims, demands or causes of action which Bowman Transportation, Inc. has or may ever claim to have against them.

We find the language of the release unambiguous. Nothing in its language limits the release to only the SIR billings.

Bowman also asserts that if the release applies to all claims, it was the result of mutual mistake.

A contract may be voidable under certain exceptional circumstances involving mutual mistake. The parties must be mistaken on a basic assumption of which the contract was made unless the adversely affected party bears the risk of the mistake. Id. (citing Restatement (Second) of Contracts § 152 (1981)). A mistake regarding a "basic assumption" that will justify voidance of a contract must affect the essence of the parties' contract. Id. (quoting Restatement cmt. b).

Bowman points to the Liquidator's conduct after the release was signed as evidence the mistake was mutual. Bowman states the Liquidator took no action to reject the claims previously filed by Bowman and the claims continued to have been process and paid by the state guaranty fund.

It is the Liquidator's position that the release Bowman signed was a full release of all claims Bowman might have against Carriers or its Liquidator. The Liquidator acknowledges it never told various state guaranty funds which handled Carriers' claims to stop handling Bowman related claims. The Liquidator states this was because it believed claims that were timely filed by Bowman, which had already been turned over to various state guaranty funds, were under the domain of the state guaranty funds and therefore not subject to the release. The Liquidator points out that Bowman had not released claims it might have pending against the guaranty funds.

Bowman also claims the Liquidator initially dealt with some of submitted claims without mentioning the existence of the release. The Liquidator admits that one claim dated

April 22, 1992, the Heinsohn claim, was accidentally given creditor Class 6 priority under Iowa Code section 507C.42. However, in a letter dated July 2, 1992, counsel for the Liquidator stated the claim was assigned creditor Class 6 by an employee of the Liquidator's who did not remember about the release and that the release precluded the claim. The Heinsohn estate and survivors have since filed their own claim. This claim does not appear to be a subject of this appeal.

We agree with the district court that Bowman has not met its burden of showing a mutual mistake occurred requiring reformation of the release. We affirm the district court's decision to deny Bowman's claims and to not classify them under Iowa Code section 507C.42 (1991).

AFFIRMED.