IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Faith Louise, Plaintiff, v. Brightview Landscapes, LLC a/k/a The Brickman Group LLC, a foreign corporation, Bright View Window Cleaning, Inc., a/k/a Bright View Window Cleaning & Bldg. Maintenance Co., an Illinois corporation, Brightview Landscape Development, Inc., a foreign corporation, Brightview Landscape Services, Inc., a foreign corporation, American Veteran Industries, LLC, an Illinois corporation, Advocate Health and Hospitals Corporation, a not-for-profit Illinois corporation, Advocate Christ Medical Center, a not-for-profit Illinois corporation, Advocate Christ Hospital Health Partners, a not-for-profit Illinois corporation, Christ Hospital and Medical Center of Evangelical Hospitals Corporation, a not-for-profit Illinois corporation, and Advocate Aurora Health, Inc., a not-for-profit foreign corporation, Defendants. Advocate Health and Hospital Corporation, Third-Party Plaintiff, v. Brightview Landscapes, LLC, Third-Party Defendant.	)	No. 20 L 10543

MEMORANDUM OPINION AND ORDER

The Snow Removal Service Liability Limitation Act invalidates a contractual provision that shifts liability for proportional fault from one party to another. The contractual agreement at issue here makes each party responsible for its own fault and, therefore, does not violate the statute. For

that reason, the third-party defendant's motion to dismiss count one of the third-party plaintiff's counterclaim for contribution must be denied.

Facts

On August 31, 2017, Advocate Health and Hospitals Corporation (AHHC) and BrightView Landscapes, LLC executed an agreement for the provision of snow and ice removal services. The scope of work covered the winter seasons beginning in 2017 and ending in 2020 and required BrightView to begin snow and ice removal services as soon as snow or ice reached a visible accumulation. Ice treatment services were to be provided following any snow removal.

The AHHC-BrightView agreement contained two provisions in paragraph eight stating, in part, that:

> a. Vendor Indemnification Obligations. To the fullest extent permitted by law, [BrightView] . . . shall indemnify and hold harmless Advocate and its agents . . . from and against all actions, claims, demands, liabilities, damages, fines, penalties, losses, costs and expenses of any kind . . . incurred by [BrightView] in enforcing this indemnity . . . which involve or relate to . . . personal or bodily injury . . . or injury or damage to property of any kind . . . where all or any part of such Losses arise out of, or are claimed to arise out of, any Services provided hereunder, or the negligent or wrongful act or omissions of [BrightView] or any of its agents . . . in performing its obligations hereunder. . . .
>
> b. Advocate Indemnification Obligations. To the fullest extent permitted by law, Advocate . . . shall indemnify and hold harmless [BrightView] and its agents . . . from and against all Losses which arise out of, or are claimed to arise out of, the negligent or wrongful act or omission of [Advocate] or any of its agents . . . in performing its obligations hereunder.

On November 26, 2018 Faith Louise was in a parking garage at Christ Hospital located in Oak Lawn, Illinois. As Louise walked through the parking garage, she slipped on snow or ice, fell, and was injured. Louise subsequently filed suit against the defendants.

On September 28, 2022, Advocate filed counterclaims against BrightView. Count one of the counterclaims is for contribution based on a breach of contract alleging that BrightView failed to supply Advocate with the snow and ice removal services under the contract. The counterclaim for

contribution further alleges that the AHHC-BrightView agreement required BrightView to indemnify Advocate in all actions involving claims of personal injury arising out of BrightView's acts or omissions. Advocate alleges that BrightView breached the agreement by failing to provide the required snow removal and ice control services on November 26, 2018 and had assigned some or all of those services to American Veteran Industries without Advocate's prior written consent.

Analysis

BrightView brings its motion to dismiss pursuant to the Code of Civil Procedure, 735 ILCS 5/2-615, and the Snow Removal Service Liability Limitation Act (SRSLLA), 815 ILCS 675/1 – 99. It should be noted at the outset that because BrightView's argument relies on a statute outside the pleadings, the motion to dismiss is truly a section 2-619 motion. *Solaia Tech., LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 579 (2006). A court may, however, consider a mislabeled motion to dismiss as if it had been brought under the correct authorizing provision as long as the parties are not prejudiced. *See Safford-Smith, Inc., v. Intercontinental East, LLC*, 378 Ill. App. 3d 236, 240 (1st Dist. 2007).

Section 2-619 authorizes the involuntary dismissal of a claim based on defects or defenses outside the pleadings. *See Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 485 (1994). A court considering a section 2-619 motion must construe the pleadings and supporting documents in a light most favorable to the nonmoving party. *See Czarobski v. Lata*, 227 Ill. 2d 364, 369 (2008). All well-pleaded facts contained in the complaint and all inferences reasonably drawn from them are to be considered true. *See Calloway v. Kinkelaar*, 168 Ill. 2d 312, 324 (1995). A court is not to accept as true those conclusions unsupported by facts. *See Patrick Eng., Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. As has been stated: "The purpose of a section 2-619 motion is to dispose of issues of law and easily proved issues of fact early in the litigation." *Czarobski*, 227 Ill. 2d at 369.

BrightView argues that Advocate's counterclaim for contribution requires BrightView to indemnify Advocate "in all actions involving claims of personal injury in any manner arising out of the performance or nonperformance of the snow and ice control services delineated in the Agreement." Advocate Counterclaim, count one, ¶ 7. According to BrightView, such a position violates the SRSLLA. That statute provides, in part, that:

> A provision, clause, covenant, or agreement that is part of or in connection with a snow removal and ice control services contract is against public policy and void if it does any of the following:
>
> (1) Requires, or has the effect of requiring, a service provider to indemnify a service receiver for damages resulting from the acts or omissions of the service receiver or the service receiver's agents or employees.
> (2) Requires, or has the effect of requiring, a service receiver to indemnify a service provider for damages resulting from the acts or omissions of the service provider or the service provider's agents or employees.
> (3) Requires, or has the effect of requiring, a service provider to hold a service receiver harmless from any tort liability for damages resulting from the acts or omissions of the service receiver or the service receiver's agents or employees.
> (4) Requires, or has the effect of requiring, a service receiver to hold a service provider harmless from any tort liability for damages resulting from the acts or omissions of the service provider or the service provider's agents or employees.
> (5) Requires, or has the effect of requiring, a service provider to defend a service receiver against any tort liability for damages resulting from the acts or omissions of the service receiver or the service receiver's agents or employees.
> (6) Requires, or has the effect of requiring, a service receiver to defend a service provider against any tort liability for damages resulting from the acts or omissions of the service provider or the service provider's agents or employees.

815 ILCS 675/10.

BrightView is correct to argue that the language Advocate uses in paragraph seven of its counterclaim would, if true, violate the statute. The fundamental problem with BrightView's argument is that Advocate's statement in paragraph seven of its counterclaim for contribution does not accurately reflect the terms of paragraph eight of the AHHC-BrightView agreement. In fact, subparagraphs eight (a) and (b) unequivocally provide that BrightView and Advocate are each responsible for their own negligence. To that extent, paragraph eight is truly a provision for contributory negligence, not indemnification. *See Virginia Sur. Co. v. Northern Ins. Co.*, 224 Ill. 2d 550, 555 (2007) (contribution proportionally distributes loss among tortfeasors based on fault while indemnification shifts entire loss from one tortfeasor to another). Further, subparagraphs eight (a) and (b) do not

explicitly state or even infer that one party's fault in personal injury litigation is shifted to the other.

All the more obvious by its absence is any argument by BrightView as to which of the six SRSLLA provisions the AHHC-BrightView agreement violates. Indeed, even a cursory reading makes plain that subparagraphs eight (a) and (b) of the AHHC-BrightView agreement do not run afoul of any of the six statutory prohibitions. Absent any statutory violation, the so-called indemnification provisions in the AHHC-BrightView agreement are properly the basis for a counterclaim for contribution.

Conclusion

For the reasons presented above, it is ordered that:

1. BrightView's motion to dismiss count one of Advocate's counterclaim is denied; and
2. BrightView has until April 4 to answer count one of Advocate's counterclaim for contribution.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

MAR 21 2023

Circuit Court 2075