NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 0856

CF INDUSTRIES, INC. AND HARTFORD FIRE INSURANCE COMPANY

VERSUS

TURNER INDUSTRIAL SERVICES, INC., COOPERHEAT-MQS, INC. AND CATALYST PROCESS SPECIALISTS, INC.

Judgment rendered: February 9, 2007

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On Appeal from the 23rd Judicial District Court
Parish of Ascension, State of Louisiana
Case #69,737; Division A
The Honorable Ralph Tureau, Judge Presiding

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BEFORE: PETTIGREW, DOWNING AND HUGHES, JJ.

DOWNING, J.

This action arises out of an explosion at CF Industries, Inc.'s (CFI) facility in Donaldsonville, Louisiana, on May 24, 2000 that was caused by a failed weld in a pressure vessel. An employee of Cooperheat-MQS, Inc. (MQS),[1] Sammy Charlet, had recently inspected the vessel.

In 1995 CFI and MQS signed an agreement including a provision that CFI was not entitled to indemnification from MQS for the negligent acts caused by Charlet (1995 ATC). Lumbermens Mutual Casualty Company (LMC) was MQS's insurer at the time of the accident. A subsequent agreement was signed in 1996, possibly providing indemnification to CFI for the negligent acts caused by Charlet (1996 ATC).

This appeal only decides if the trial court erred in granting CFI's partial summary judgment that declared there was no material issue of fact as to whether the 1996 ATC terminated the 1995 ATC. Specifically, the judgment held (1) that the 1996 ATC governed the rights and obligations of CFI and MQS, with respect to the work performed by Charlet at the time of the incident; and (2) that CFI was an additional insured under the LMC policy. The judgment denied that LMC owed coverage to CFI for all amounts paid in connection with the explosion.

LMC appealed the judgment alleging that the trial court erred in finding that, as a matter of law, (1) the 1996 ATC governed the obligations between CFI and MQS at the time of the incident, and (2) that CFI qualifies as an additional insured under the policy. We agree with LMC. For the following reasons we reverse the trial court judgment.

As a general rule, a motion for summary judgment is rarely appropriate for a determination based on subjective facts such as intent, motive, malice, knowledge or good faith. ***Sanders v. Ashland Oil, Inc.***, 96-

[1] MQS has filed for Chapter 11 bankruptcy protection in Houston, Texas, and is no longer a party.

1751, pp. 6-7 (La.App. 1 Cir. 6/20/97), 696 So.2d 1031, 1035. Thus, where a contract is ambiguous and the intent of the parties becomes a question of fact, very often there are conflicting affidavits concerning the intent of the parties, and granting a summary judgment motion is inappropriate. ***Id.***

Generally, a contract between the parties is the law between them, and the courts are obligated to give legal effect to such contracts according to the true intent of the parties. ***Sanders***, 96-1751 at p. 7, 696 So.2d at 1036. This intent is to be determined by the words of the contract if they are clear, explicit and lead to no absurd consequences. ***Sanders***, 96-1751 at p. 8, 696 So.2d at 1036; LSA-C.C. art. 2046. In such cases, the meaning and intent of the parties to the written contract must be sought within the four corners of the instrument and cannot be explained or contradicted by parol evidence. ***Id.***; LSA-C.C. art. 1848.

Here, the trial court apparently determined that it was the intent of the parties to replace the 1995 ATC with the 1996 ATC. In the trial court's written reasons it stated, "... this Court finds that when CFII and MQS mutually agreed in writing to the 1996 ATC, it was the intent of CFII and MQS to terminate the 1995 ATC. Thus, it is the opinion of this Court that the 1996 ATC governed the rights and obligations between CFII and MQS at the time of the explosion on May 24, 2000 to work performed after October 1996." (Emphasis added).

Lumbermens, however, points to a number of circumstances that shows a factual dispute over intent. Among these are:

(1) The 1995 ATC claims to be a universal agreement and provides terms and conditions for termination that are not clearly met by the 1996 ATC.

(2) The 1996 ATC makes no reference to the 1995 ATC. The 1996 ATC may be invalid or partially limited per the terms of the 1995 ATC.

(3) The handwritten, allegedly contemporaneous, notation stating: "Note: these terms and conditions apply to CFI P.O.#98074."

(4) The deposition testimony of Bill McDonough stating that the 1996 agreement only applied to the "Wet-Mag" job, and not to the services performed by Sammy Charlet.

(5) Purchase and change orders dated after the Oct. 31, 1996 ATC was signed referring to the 1995 ATC. Specifically, on Nov. 2, 1996, a change order was issued stating that terms of the 1995 ATC applied. On Jan. 3, 1998, another change order addressing services provided by Charlet was specifically made subject to the terms and conditions of the 1995 ATC.

(6) Lumbermens argues that the course of dealing between the parties demonstrates that the 1995 ATC governs all of Charlet's services no matter when performed.

After a careful review of the record, we conclude that it is disputed whether it was the intent of the parties that the provisions in the 1996 ATC would terminate the earlier document. Where a contract is ambiguous and the intent of the parties becomes a question of fact, and there is conflicting evidence concerning the intent of the parties, granting a summary judgment motion is inappropriate. Therefore, we conclude that the trial court erred in granting CFI's motion for partial summary judgment. Accordingly, we reverse the portion of the judgment that granted partial summary judgment to CFI.

This memorandum opinion is issued in accordance with Uniform Rules – Courts of Appeal, Rule 2-16.1.B. We reverse the trial court judgment. All costs of this appeal are assessed to Plaintiff/Appellee, CF Industries, Inc.

REVERSED