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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

J.M. EQUIPMENT COMPANY, INC.,

Cross-Complainant and Appellant,

v.

POTTER FARMS, INC.,

Cross-Defendant and Respondent,

MARIA GUZMAN et al.,

Plaintiffs and Respondents,

NISSAN FORKLIFT CORPORATION NORTH
AMERICA,

Defendant and Respondent.

F066705

(Super. Ct. No. 661955)

OPINION

APPEAL from a judgment of the Superior Court of Stanislaus County. Hurl W. Johnson III, Judge.

Vitale & Lowe and Douglas G. MacKay for Cross-complainant and Appellant.

Porter Scott, David A. Melton, Jeremy P. Ehrlich and Colleen R. Howard for Cross-defendant and Respondent.

This appeal raises an issue of statutory interpretation. Labor Code¹ section 3864 provides:

“If an action as provided in this chapter prosecuted by the employee, the employer, or both jointly against the third person results in judgment against such third person, or settlement by such third person, the employer shall have no liability to reimburse or hold such third person harmless on such judgment or settlement in absence of a written agreement so to do executed prior to the injury.”

The question presented is whether section 3864 requires that the “written agreement” referred to in the statute must be executed by all parties before it is enforceable. The trial court answered the question in the affirmative and granted summary judgment for respondent. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This action arose out of a personal injury incident in which plaintiff Maria Guzman was struck by a Nissan forklift operated by Geronimo Ortega Anaya. Both Guzman and Anaya were employees of respondent Potter Farms, Inc. The forklift was manufactured by Nissan Forklift Corporation North America and was rented to Potter by appellant J.M. Equipment Company, Inc. J.M. Equipment submitted a rental agreement to Potter, which included an indemnity provision running in favor of J.M. Equipment (indemnitee) and against Potter (indemnitor). Potter signed the rental agreement; J.M. Equipment did not.²

Guzman sued Nissan Forklift Corporation North America and J.M. Equipment Company. J.M. Equipment then cross-complained against Nissan and Potter. Potter filed a motion for summary judgment as to J.M. Equipment’s cross-complaint, arguing that workers’ compensation provided the exclusive remedy against Potter as Guzman’s

¹ Unless otherwise noted, all further statutory references are to the Labor Code.

² Apparently, the agreement did not even contain a place for J.M. Equipment to sign.

employer (§ 3602) and that section 3864 did not apply because the indemnity agreement was not executed by J.M. Equipment.³ The trial court agreed and granted summary judgment, citing *Hansen Mechanical Inc. v. Superior Court* (1995) 40 Cal.App.4th 722 (*Hansen*).

STANDARD OF REVIEW

We review a grant of summary judgment de novo; we must decide independently whether the facts not subject to triable dispute warrant judgment for the moving party as a matter of law. (*Intel Corp. v. Hamidi* (2003) 30 Cal. 4th 1342, 1348.)

DISCUSSION

Generally, workers' compensation is the exclusive remedy by which an employee, who is injured on the job, can be compensated by her employer or coemployee. (§ 3600 et seq.) Section 3864 provides an exception to that rule. If an enforceable indemnity agreement exists that satisfies the provisions of section 3864, the employer must indemnify the indemnitee (here, J.M. Equipment) for any damages the employee recovers against that indemnitee in a third party lawsuit. Here, one Potter employee (Guzman) was injured by another Potter employee (Anaya) arising from the operation of a forklift, which Potter had rented from J.M. Equipment. Guzman sued J.M. Equipment for her injuries and her husband sued for loss of consortium. J.M. Equipment filed an indemnity cross-complaint against Potter based on the terms of a written rental agreement, which Potter signed but J.M. Equipment did not, that included an indemnity clause requiring Potter to indemnify J.M. Equipment for injuries resulting from the use of the rented forklift.

The trial court granted summary judgment for Potter, holding that the indemnity agreement was unenforceable under section 3864 because it was not signed by

³ The cross-complaint contained multiple causes of action, but only the express contractual indemnity cause of action is contested on appeal.

J.M. Equipment. J.M. Equipment argues that its signature was not required because the party against whom the indemnity agreement is sought to be enforced (Potter) did sign the agreement and that is all that is necessary.

This is not a case of first impression. This very issue has been resolved adversely to J.M. Equipment by California case law.

In *Nielsen Construction Co. v. International Iron Products* (1993) 18 Cal.App.4th 863 (*Nielsen*), the court affirmed the sustaining of a demurrer on the very question posed here. As in our case, the indemnity agreement was signed by the employer-indemnitor but not by the indemnitee before the injury occurred. Appellant Nielsen, just as appellant J.M. Equipment in the case at bar, argued that section 3864 only required the person to be charged with the indemnity obligation to sign the indemnity agreement. The *Nielsen* court rejected that argument and concluded that section 3864 requires the signatures of all parties before it is enforceable. (*Nielsen, supra*, at p. 869.)

In *Hansen*, the court came to the same conclusion and relied upon the reasoning of *Nielsen*. (*Hansen, supra*, 40 Cal.App.4th at pp. 730-731.) The indemnitee in *Hansen* attempted to distinguish *Nielsen* on the ground that the contract in the *Hansen* case did not even have a signature line for the indemnitee's signature. The *Hansen* court disagreed, explaining:

“By logical implication, a contract which does not even have a signature line for the third party, and is not signed by that party, does not meet the requirement for execution under ... section 3864. Further, as the party which drafted the rental receipt agreement, [indemnitee] had the opportunity to draft an agreement which complied with section 3864, but did not do so.” (*Hansen, supra*, 40 Cal.App.4th at p. 731.)

J.M. Equipment argues that there is a split of authority on this question and that this court should follow the other view, which it contends is best articulated in *City of Oakland v. Delcon Associates* (1985) 168 Cal.App.3d 1126 (*Delcon*). In *Delcon*, the indemnity agreement had been signed by the indemnitee but not by the

employer-indemnitor before the injury. The court held that the indemnity agreement was not enforceable under section 3864 when only the indemnitee had signed the agreement. Both *Nielsen* and *Hansen* addressed *Delcon* and distinguished it. As the *Hansen* opinion explained:

“All *Delcon* stands for is the proposition that an indemnity agreement is not enforceable against an employer who does not sign it prior to the injury. *Delcon* does not address the issue of whether the agreement is enforceable where the third party does not sign it, although the employer has signed it.” (*Hansen, supra*, 40 Cal.App.4th at p. 731.)

Nielsen also emphasized that *Delcon* was not addressing the specific issue presented, that is, whether a written indemnity agreement is executed under section 3864 when the indemnitee fails to sign the agreement. (*Nielsen, supra*, 18 Cal.App.4th at p. 867.)

J.M. Equipment raises other arguments, including: (1) if both signatures were required, the Legislature would have expressly said so in the statute; (2) general contract principles render the agreement enforceable against Potter; and (3) the trial court’s ruling runs contrary to the public policy goals of the statute. Again, *Nielsen* and *Hansen* dispose of these arguments as well.

We find the opinions and holdings in *Nielsen* and *Hansen* persuasive. Section 3864 requires the signatures of both parties, not just the party against whom the indemnity burden is imposed.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to Potter Farms, Inc.

Kane, J.

WE CONCUR:

Levy, Acting P.J.

Franson, J.