SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3187-20

SANS AMERICA, INC.,

Plaintiff-Respondent,

v.

AMGO CONSULTING, LLC,

Defendant-Appellant.

Argued April 13, 2022 – Decided May 9, 2022

Before Judges Fisher and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-2096-20.

David A. Cohen argued the cause for appellant (The Basil Law Group, PC, attorneys; Robert J. Basil and David A. Cohen, on the briefs).

Michael J. Lauricella argued the cause for respondent (Archer & Greiner, PC, attorneys; Patrick Papalia, Michael J. Lauricella, and Robert J. Faugno, on the brief).

PER CURIAM

The parties entered into a contract that called for plaintiff Sans America, Inc., to provide defendant AMGO Consulting, LLC, with the services of individuals possessing specialized abilities, to assist AMGO in its performance of a contract with a third party. After contracting with Sans America, AMGO provided work orders and, in response, Sans America provided two employees for an anticipated twelve-month period. Four months later, AMGO terminated the work orders, bringing about an abrupt end to the parties' contractual relationship and the commencement of this litigation.

Sans America filed a complaint alleging AMGO failed to pay for the services rendered by the two employees prior to the work orders' termination, amounting to $58,752, plus accruing interest. AMGO acknowledged it owed that sum and that the third party had compensated AMGO for the work done by the two employees, but argued its indebtedness to San America should be set off against damages it sought in its counterclaim of $2,438,288 in "lost client revenue."

Sans America successfully moved for summary judgment in its favor on both the complaint and counterclaim, and AMGO appeals, arguing the existence of contested material facts precluded summary judgment. We find no merit in AMGO's arguments and affirm substantially for the reasons set forth by Judge

Thomas Daniel McCloskey in his thorough and well-reasoned oral decision. We add only the following few comments.

The contested material facts that AMGO claims stood in the way of summary judgment actually consist only of its own interpretation of the contract. We agree with the trial judge that those parts of the contract implicated here are unambiguous and required no interpretation. As the judge recognized, paragraph 11.4 of the contract anticipated a potential early termination of a work order:

> In the event that [Sans America] personnel leaves the project for any reason before completion of the work order term, there will be amount deduction equal to two weeks invoice amount.[1]

AMGO argues that this provision merely provided the least to which it was entitled, but there is nothing in the contract to support a broader view of AMGO's rights, and whatever "secret, unexpressed intent" AMGO might have possessed cannot contradict the plain meaning of their unambiguous contract. Schor v. FMS Fin. Corp., 357 N.J. Super. 185, 191 (App. Div. 2002). AMGO drafted this contract and even if it could be said – and we don't think it can – that there is ambiguity about whether AMGO may be entitled to additional monetary remedies when a work order was not completely fulfilled beyond the

[1] The damages awarded to Sans America in the judgment under review reflects that two-week deduction.

two-week deduction, we consider the scope of the parties' undertaking and how they expressed their intentions by construing the writing against AMGO, the writing's creator. See, e.g., In re Estate of Miller, 90 N.J. 210, 221 (1982).

In suggesting it was entitled to greater relief than just a two-week deduction, AMGO refers only to paragraph 12, which is entitled "Indemnification" in upper case letters, and states that Sans America "shall indemnify and hold harmless AMGO, its directors and employees, against all loss, settlement, costs of expenses (including legal fees), as incurred resulting from or arising out of any breach of this Agreement by [Sans America]." This provision has no bearing on AMGO's argument that Sans America is somehow monetarily responsible to AMGO beyond what is called for in paragraph 11.4. An indemnification clause is a promise by the indemnitor (here, Sans America) to hold the indemnitee (AMGO) harmless from any loss sustained as a result of claims or suits brought against the indemnitee by another that were actually caused by the indemnitor's wrongdoing. See, e.g., Investors Sav. Bank v. Waldo Jersey City, LLC, 418 N.J. Super. 149, 159 (App. Div. 2011). For example, if the third party for whom AMGO was providing services successfully sued AMGO for damages done to its business by Sans America's employees, this contractual provision would ostensibly provide AMGO with a basis for seeking

compensation from Sans America for the loss sustained by AMGO as a result of that third party claim. That's not what happened here. AMGO has not shown its relationship with the third party was damaged through the actions of Sans America or its employees. And AMGO has not shown that the third party made a claim, formally or informally, against it because of some default on Sans America's part. To the contrary, AMGO acknowledges that the third party fully compensated it for the work performed by the two Sans America employees. Because AMGO was not called to answer to another for the wrongful acts or omissions of Sans America, the indemnification provision is irrelevant to what AMGO claims here.

In the final analysis, AMGO's claim that Sans America breached the contract must fail because it is, as AMGO admits, based solely on the fact that the individuals Sans America provided to work on AMGO's project with the third party did not remain on the job for the anticipated twelve months. The contract, however, provided both parties with the right to terminate these or any other work orders sooner than originally anticipated; paragraph 14.3 of the contract expressly provided that either could terminate a work order for any reason and at any time "by giving two . . . weeks prior notice." And, as we have already observed, AMGO's remedy on such an occasion is its right to a two-

week deduction in any payments due Sans America. Even if the parties had not already provided a template for sorting out the consequences of a work-order termination, AMGO has not shown Sans America failed to perform as agreed; indeed, it was AMGO that terminated the work order, not Sans America. There being no showing of any act or omission on Sans America's part that was inconsistent with its contractual requirements, any dispute about whether the contract would permit or foreclose such a claim is, in the circumstances presented, purely academic.

Affirmed.