STATE OF MINNESOTA

IN SUPREME COURT

A08-583

Court of Appeals — Dietzen, J.

Virgil Dykes and Connie Dykes
d/b/a Dykes Farms,

Respondents,

vs.

Filed: May 13, 2010
Office of Appellate Courts

Sukup Manufacturing Company,
defendant and third-party plaintiff,

Appellant,

vs.

Superior, Inc., third-party defendant,

Respondent.

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William D. Mahler, Will Mahler Law Firm, Rochester, Minnesota, for respondents Virgil Dykes and Connie Dykes d/b/a Dykes Farms.

Patrick D. Reilly, Leon R. Erstad, Erstad & Riemer, P.A., Minneapolis, Minnesota, for appellant.

Charles A. Bird, Bird, Jacobsen & Stevens, P.C., Rochester, Minnesota, for amicus curiae Minnesota Association for Justice.

Diane B. Bratvold, Jessica J. Stomski, Briggs and Morgan, P.A., Minneapolis, Minnesota, for amicus curiae Minnesota Defense Lawyers Association.

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## S Y L L A B U S

1. A settlement agreement that does not manifest an intent to release, discharge, or relinquish claims against a party to the agreement does not operate to discharge an alleged joint tortfeasor.

2. A judgment of dismissal with prejudice and on the merits is a final determination and an adjudication as to the claims asserted by the parties in the lawsuit.

Affirmed in part, reversed in part, and remanded for further proceedings.

## O P I N I O N

DIETZEN, Justice.

Respondents Virgil Dykes and Connie Dykes, d/b/a Dykes Farms, commenced this lawsuit against appellant Sukup Manufacturing Company asserting claims of consumer fraud, negligence, and breach of warranty arising out of the purchase and operation of an allegedly defective grain-moving system manufactured by Sukup. Sukup denied the allegations of the complaint and moved for summary judgment alleging that when the Dykes released and dismissed their claims against the equipment dealer, Superior, Inc., in a mediated agreement arising from a prior lawsuit, the Dykes also released their claims against Sukup. The district court granted Sukup's summary judgment motion and dismissed the Dykes' claims. The court of appeals reversed and remanded on the grounds that there were fact issues regarding the scope of the mediated agreement. We affirm the decision of the court of appeals in part, reverse in part, and remand for further proceedings.

The Dykes operate a farm in southern Minnesota. Sukup manufactures farm machinery, including grain-moving equipment. Sukup markets its products through a network of independent dealers. Superior is a Sukup dealer.

Prior to 2002, the Dykes transferred their harvested corn between a grain dryer and large capacity storage bins using a portable auger. In the summer of 2001, the Dykes were introduced to Sukup's "Cyclone Pneumatic Grain Moving System," which moves the corn from grain bins to a grain dryer using blowers and air transfer tubes rather than augers. In June 2002, the Dykes contacted Superior to discuss the Sukup equipment and to request a bid. Subsequently, the Dykes entered into a contract with Superior for the purchase and installation of the "Cyclone" equipment. In September 2002, Sukup delivered its components for the grain-moving system to the Dykes' farm, where Superior installed the system. The Cyclone system was operational in October. Superior billed the Dykes $33,390 for the equipment, labor, and change orders related to the installation.

Shortly after installation, problems with the system developed. According to the Dykes, the corn was being blown through the tubes at a very high rate of speed with no way to slow it down, resulting in damage to the corn. Because of that problem, the Dykes stopped using the equipment on October 20, 2002. The Dykes later determined that 75,000 bushels of corn had been damaged. The Dykes made repeated phone calls to Superior to try to resolve the problem, but were not successful. Finally, a Sukup representative inspected the equipment on November 15, 2002, and made modifications to the equipment. Despite the modifications, the system did not function properly.

When the Dykes refused to pay Superior's invoices, Superior filed a mechanic's lien and commenced a lawsuit to enforce its lien. The lawsuit named the Dykes and two of the Dykes' lenders—Security State Bank of Pine Island and Wells Fargo Financial Leasing, Inc. The Dykes counterclaimed for damages exceeding $50,000. Following mediation in August 2003, the parties executed a document entitled "Mediated Agreement."

The mediated agreement is one page in length, and includes an introductory paragraph stating that Superior and the Dykes "reached the following agreement relating to all issues growing out of the above noted lawsuit." The four paragraphs of the agreement provide that (1) Superior "will take down and remove" the grain-moving system installed on the Dykes' property; (2) Superior will remove an auger it installed; (3) Superior will remove its lien from the Dykes' property, and the parties will dismiss the complaint, answer, and counterclaim; and (4) Superior will return two uncashed checks to the Dykes. When the terms of the agreement were satisfied, the parties executed a stipulation for dismissal "with prejudice and on [the] merits."

In August 2006, the Dykes commenced this lawsuit against Sukup asserting claims including consumer fraud, negligence, and breach of warranty, and ultimately claimed damages of $2.5 million arising out of the operation of the allegedly defective grain-moving system manufactured by Sukup. Sukup denied the allegations of the complaint and asserted a third-party complaint against the dealer, Superior, for contribution and indemnity. Subsequently, Sukup brought a motion for summary judgment to dismiss the complaint on the grounds that the Dykes had previously settled their claims against

Superior, and that the mediated agreement between the Dykes and Superior had the effect of releasing Sukup. Virgil Dykes submitted an opposing affidavit in which he stated that "[a]t the mediation there were no discussions about Sukup's liability," they did not "discuss the issue of damages in any detail," the mediated agreement did not release any claims, and the Dykes did not receive full compensation. The district court agreed with Sukup and granted its motion for summary judgment dismissing the complaint.

The court of appeals reversed and remanded, holding that a settlement agreement that releases one or more joint tortfeasors does not release other tortfeasors from joint and several liability unless the parties to the settlement agreement "manifested such an intent, or if the injured party received full compensation for the damages sought against the other tortfeasors." *Dykes v. Sukup Mfg. Co.*, 761 N.W.2d 892, 893 (Minn. App. 2009). As a result, the court remanded the case for resolution of the fact issues. Subsequently, we granted review.

Sukup argues that there are no genuine issues of material fact that preclude summary judgment and that the court of appeals erred in failing to affirm the summary judgment. Essentially, Sukup argues that the mediated agreement entered into by the Dykes and Superior released Superior from liability and, because the Dykes did not preserve their claims against Sukup, they thereby released Sukup. The Dykes argue that the mediated agreement is not a general release, does not manifest an intent to release Sukup, and does not provide for full compensation; therefore, the court of appeals should be affirmed.

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