COURT OF APPEALS
DECISION
DATED AND FILED

November 14, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2016AP1422 **Cir. Ct. No. 2012CV11451**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

RAYMUNDO LUCERO AND TAYSET LUCERO,

PLAINTIFFS,

V.

AMERISURE INSURANCE COMPANY,

DEFENDANT,

APPLETON-OSHKOSH-NEENAH MSA LIMITED PARTNERSHIP, D/B/A VERIZON WIRELESS BY ALLTEL COMMUNICATIONS WIRELESS OF LOUISIANA, INC., ITS GENERAL PARTNER AND NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA,

DEFENDANTS–THIRD-PARTY PLAINTIFFS–APPELLANTS–CROSS-RESPONDENTS,

V.

MCSHANE CONSTRUCTION COMPANY LLC AND TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA,

THIRD-PARTY DEFENDANTS–RESPONDENTS–CROSS-APPELLANTS,

CHRIS L. GREENE, INC. AND AMERISURE INSURANCE COMPANY,

THIRD-PARTY DEFENDANTS–RESPONDENTS–CROSS-RESPONDENTS.

APPEAL and CROSS-APPEAL from orders of the circuit court for Milwaukee County: DAVID A. HANSHER, Judge. *Affirmed in part, reversed in part, and cause remanded*.

Before Brennan, P.J., Brash and Dugan, JJ.

¶1 BRENNAN, P.J. This appeal relates to a dispute over indemnification and insurance between defendants in a personal injury action. The negligence and safe-place claims—filed by drywall installer Raymundo Lucero and his wife for damages related to an on-the-job accident—ultimately settled, leaving only the third-party claims for indemnification and insurance. The defendants are the owner of the property where Lucero was working when he was injured, the general contractor on the construction project, and the subcontractor for whom Lucero was working, along with their respective insurers. At this stage, the dispute centers on the contracts defining the terms of the defendants' relationships and the parties' respective insurance policy contracts. Each defendant claimed that contracts limited its responsibility to pay the Luceros' damages or exempted it entirely from responsibility.

¶2 The owner of the property under renovation—Verizon Wireless/Alltel[1]—seeks review of two rulings. The two rulings had the effect of relieving the defendants against whom the owner had filed third-party complaints—general contractor McShane Construction Company, LLC, and its insurer[2]; and subcontractor Chris L. Greene, Inc., and its insurer[3]—of any obligation to indemnify or insure Verizon Wireless/Alltel for the Luceros' damages. The first is an October 2015 order that granted summary judgment to McShane and its insurer on the third-party complaints and denied Verizon Wireless/Alltel's motion for declaratory judgment on those third-party complaints. The second is a June 2016 order that granted summary judgment to McShane and its insurer as to the Luceros' claims against them.

¶3 In their cross-appeal, McShane and its insurer argue that even if this court finds that the circuit court erred as to McShane's obligations under the relevant contracts, this court should, on alternate grounds, affirm the circuit court's orders dismissing them from the case.

¶4 We first consider whether under the relevant contracts and related evidence in the record, the circuit court correctly denied the motion by Verizon

[1] The name of the owner is Appleton-Oshkosh-Neenah MSA Limited Partnership, d/b/a Verizon Wireless by Alltel Communications Wireless of Louisiana, Inc., its General Partner. We will refer to the owner as Verizon Wireless/Alltel. Its insurer is National Union Fire Insurance Company of Pittsburgh, PA.

[2] McShane's insurer is Traveler's Property Casualty Company of America.

[3] Greene's insurer is Amerisure Insurance Company.

Wireless/Alltel for declaratory judgment.[4] We conclude that it did and affirm that part of the order on the grounds that the evidence, viewed most favorably to the nonmoving party, was not sufficient to establish as a matter of law that Verizon Wireless/Alltel can enforce the Master Agreement as an "Affiliate" of the Verizon entity that signed the Master Agreement with McShane. In light of the language of the contracts at issue here, "reasonable, but differing, inferences can be drawn from the undisputed facts." *See* ***Delmore v. American Family Mut. Ins. Co.***, 118 Wis. 2d 510, 516, 348 N.W.2d 151 (1984).

¶5 We next consider whether the circuit court was correct in granting summary judgment to McShane, the general contractor, and its insurer on the third-party complaint. We reverse that part of the order on the grounds that the evidence, viewed most favorably to the non-moving party, falls short of establishing as a matter of law that Verizon Wireless/Alltel was *not* an affiliate under the Master Agreement. The law that governs the contract here is that

[4] As this court noted in an order dated June 8, 2017, Third-Party Defendant–Respondent–Cross-Respondent Amerisure Insurance Company filed a motion after briefing was complete to dismiss this appeal and cross-appeal on the ground that Verizon Wireless/Alltel appealed a non-final order and failed to appeal the correct final order. This court ordered that Amerisure's motion to dismiss and Greene's joinder in that motion held in abeyance. We now deny that motion based on the following rule:

> If the language of the document only arguably disposes of the entire matter in litigation, that is, if there is some ambiguity as to whether the language of the order or judgment disposes of the entire matter in litigation as to one or more of the parties, then we will construe the ambiguity to preserve the right of appeal.

Admiral Ins. Co. v. Paper Converting Mach. Co., 2012 WI 30, ¶27, 339 Wis. 2d 291, 811 N.W.2d 351. In ***Admiral***, our supreme court reached the merits of the case, reversing the court of appeals' determination that it lacked subject matter jurisdiction due to an untimely appeal. ***Id.***, ¶22. In this case, there are three overlapping orders from the circuit court, two of which arguably "dismiss" claims that were dismissed by a prior order. Accordingly, we reach the merits "pursuant to our policy of construing any ambiguity to preserve the right of appeal." *See* ***id.***

contracts "should be construed to effectuate the parties' intent[.]" *See* ***Aon Risk Servs. v. Cusack***, 102 A.D.3d 461, 463 (N.Y. App. Div. 2013). In light of the language of the contracts and the relationships of these parties in connection to this construction project, and in light of the fact that McShane does not dispute that the Master Agreement obligates it to indemnify *someone* and name *someone* as an additional insured for the work on this construction project, we conclude that McShane is not entitled to summary judgment on the third-party complaint. Due to our remand for resolution of the material factual disputes, we decline to reach McShane's cross-appeal as the facts may be different after remand.

¶6 Because we conclude that neither movant is entitled to judgment as a matter of law, we remand for further proceedings.

BACKGROUND

The initial claim and the defendants' third-party complaints.

¶7 The parties to this case were involved in a $7.8 million renovation project at 4600 West College Avenue, Appleton. The project was "generally described as Verizon Appleton" according to McShane, and we will use that name for the project. Lucero was a drywall installer working on the Verizon Appleton project.

¶8 Lucero and his wife brought this personal injury action to recover for an injury he suffered when a sheet of drywall he was carrying knocked loose an overhead light fixture and caused it to fall on him. The owner, Verizon Wireless/Alltel, filed a third-party complaint against the general contractor (McShane) and its insurer, and filed a third-party complaint against the

subcontractor (Greene) and its insurer. The general contractor, McShane, and its insurer each filed third-party claims against the subcontractor and its insurer.

The basic corporate structure of the Verizon-related entities.

¶9 The parties dispute what constitutes an "affiliate" as defined in the contracts being construed here, but they do not dispute the identities of the Verizon entities that are directly and indirectly involved in this case; nor do they dispute the fact of the corporate structure in which the entities exist. One is the parent company, and three are its subsidiaries.

¶10 Verizon Communications, Inc., is a Delaware corporation. As relevant to this case, it indirectly wholly owns three subsidiaries.

¶11 The following entities are its subsidiaries:

- Verizon Corporate Services Group, Inc., the signatory (with McShane) on the Master Agreement, a New York corporation that "acts as a sourcing agent for other Verizon entities" and "acted as the sourcing agent for" Verizon Wireless/Alltel.

- Verizon Wireless/Alltel, the owner of the commercial property that was the site of the Verizon Appleton project.

- Cellco Partnership d/b/a Verizon Wireless.

The contracts.

¶12 As relevant to this appeal, three documents govern the work on the Verizon Appleton project: the Master Agreement; the Letter of Authorization; and

the subcontract agreement. These three documents together define the obligations of the owner, the general contractor, and the subcontractor.

The Master Agreement's purpose and provisions relevant to this appeal.

¶13 For purposes of this appeal, the first contract signed in connection with the Verizon Appleton project was the September 2009 Master Agreement, a forty-five–page document identified in the heading of each page as "MA-002536-2009." The Agreement explicitly incorporated nine attached exhibits: "This Agreement together with its exhibits constitutes the entire agreement between the parties[.]" The signatories to the Master Agreement were (1) McShane, the general contractor on the Verizon Appleton project, and (2) Verizon Corporate Services Group, Inc., the wholly-owned subsidiary of Verizon Communications, Inc. that "acts as a sourcing agent for other Verizon entities."

¶14 The Master Agreement serves as a preliminary agreement that sets the terms that will apply to any later construction contracts for specific projects:

> This Agreement does not by itself order any Work. Such Work will be ordered, if at all, on an individual project basis … upon issuance by Verizon of an Authorization Letter.

The Master Agreement's purpose is to "establish the framework under which Contractor will serve as a general contractor in the construction of a Project as identified in an Authorization Letter." In the Master Agreement, the signatories agree to the ground rules that will govern any future construction contracts made pursuant to the Master Agreement. Several parts of the Master Agreement relate to the main issue presented on appeal, which is whether Verizon Wireless/Alltel, the owner of the Verizon Appleton project, is entitled to the indemnification and

insurance coverage that McShane, the contractor signatory, agreed to provide under certain circumstances to entities defined as "Affiliate[s]."

¶15 The first and most relevant part is the provision that gives certain other "Verizon Affiliate[s]" the power to enforce the Master Agreement. Paragraph 2.8 states that "[a] Verizon Affiliate that obtains or uses construction services shall be entitled to all of the rights and benefits afforded under this Agreement and may enforce the terms and conditions of this Agreement in its own name as though it were a direct signatory to the Agreement."[5] As further explained below, the dispute at the center of this case is whether the owner of the Verizon Appleton project on which the contractor and subcontractor worked was "a Verizon Affiliate that obtain[ed] or use[d] construction services" such that the Master Agreement obligated McShane, the contractor, to indemnify and insure the owner for Lucero's claim and damages.

¶16 The second relevant part is the definition of "Affiliate" set forth in Paragraph 1.3. This definition, read in connection with Paragraph 2.8 of the Master Agreement, is the point of contention. It is one long sentence that we break into parts with added emphasis for ease of reading:

> *Affiliate means*, at any time, and with respect to any corporation, partnership, person or other entity,
>
> *any other* corporation, partnership, person or *entity*
>
> *that* at such time, directly or indirectly through one or more intermediaries, *controls, or is controlled by, or is under common control with*,
>
> *such first corporation*, partnership, person or other entity.

[5] It further provides that a contractor may enforce this Agreement, but "only against an Affiliate that has requested and obtained services under this Agreement."

(Formatting changed and emphasis added.) The paragraph contains a further definition for the word "control" as used in the above definition of "affiliate." It means "*the possession*, directly or indirectly, of *the power to direct* or cause the direction of *the management and policies* of *a corporation, partnership, person or other entity*, whether through the ownership of voting securities, or by contract or otherwise." (Emphasis added.)

¶17 The third relevant part is the indemnification provision found in Paragraph 16.1, which states in relevant part that the contractor signatory—in this case, McShane—

> *shall indemnify* and hold harmless Verizon and its officers, directors, *affiliates*, employees, agents and contractors from and *against all claims, costs, losses and damages* … caused by, *arising out of* or resulting from … *this Agreement*, provided that any such claim, cost, loss or damage … is caused in whole or in part by any negligent or willful act or omission of the Contractor, Subcontractor, … [or] any person… directly or indirectly employed by any of them[.]

(Emphasis added.) Other language in this provision states that indemnification is limited to claims arising at least in part from negligence of the contractor, subcontractor, and their employees; it does not include claims arising from the "sole negligence" of the Verizon affiliate.

¶18 The fourth relevant part is the section that imposes insurance-related obligations on McShane, the contractor signatory. It has the obligation to maintain a commercial general liability (CGL) policy with limits of at least two million dollars. The Master Agreement states that "[s]uch policies shall be primary and non-contributory by Verizon" and that "Verizon shall be named as an additional insured on the general and automobile liability policies." And the Master Agreement further obligates the contractor signatory to "require [its]

subcontractors, if any, who may enter upon Verizon's Site to maintain insurance policies with the same coverage and limits as [the contractor signatory]," with "Verizon … to be included as an additional insured on the general and automobile liability coverage."

¶19 Finally, the Master Agreement specifies that its construction is to be "in accordance with the laws of the State of New York[.]"

¶20 Attached to the Master Agreement as Exhibit B is a document entitled "Sample Construction Contract Authorization Letter." Like the other attachments, its header contains a cross reference to the Master Agreement, "MA-002536-2009." Above the body of the letter, it states, "RE: Construction Agreement between Verizon Corporate Services Group Inc., on behalf of itself and its Affiliates ('Verizon') and McShane Construction Company ('Contractor')." The sample has blanks for the type of information that varies from project to project, such as the description of the work, the location, the agreed-upon cost in dollars, the project commencement and completion dates, milestone deliverable dates, and the name of the "Verizon Project Manager." It defines Verizon Corporate Services Group Inc. as "the contracting entity for Cellco Partnership d/b/a Verizon Wireless."

The letter of authorization signed by "Verizon" and McShane Construction Company.

¶21 The December 2010 "Letter of Authorization [f]or Appleton, WI MSC expansion and renovation project" directly references the September 2009 Master Agreement seven times. It is addressed to Mark Tritschler, the McShane representative who also signed the Master Agreement. At the end of the letter is a statement that it is "[a]greed to and accepted by Contractor," and Tritschler's

signature appears there. The Letter states that it is in reference to the "Construction Agreement between Verizon Services Corp., on behalf of itself and its Affiliates ('Verizon') and McShane Construction Company ('Contractor')." It authorizes work on "the MSC expansion and renovation project at 4600 West College Avenue, Appleton" specifically stating that it does so "[p]ursuant to the terms and conditions of the above-referenced agreement (the 'Agreement')[.]" The agreed-upon price for the job is given as $7,879,474.00.

The subcontract between McShane and Greene

¶22 McShane subsequently contracted with Greene for work on the "[p]roject generally described as Verizon Appleton … located at 4600 W. College Ave., Appleton[.]" The five-page subcontract defined the Owner of the project as "Verizon Corporate Services Group, Inc." The subcontract described the work to be completed and the price to be paid for it.

¶23 The subcontract required Greene to (1) obtain certain insurance coverage, (2) name as additional insureds both McShane and anyone McShane was required to list as additional insureds on McShane's policy, and (3) make the coverage it obtains primary:

> 9.1 Subcontractor shall purchase and maintain … such insurance as will protect it from the claims set forth below[6] which may arise out of or result from Subcontractor's operations under the Subcontract Agreement, whether such operations are by Subcontractor or by anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable[.]
>
> …

[6] As relevant to this case, the list of claims following this provision includes "[c]laims for damages because of bodily injury … of Subcontractor's employees."

> [P]rior to the Subcontractor's commencing any work with regard to the Project, the Subcontractor shall carry insurance as required above. Subcontractor shall name *McShane, the Owner, the Owner's designated lender and such other parties as McShane is required under the Contract Documents to name as Additional Insureds,* as Additional Insureds on the Subcontractor's General Liability, Automobile Liability and Umbrella/Excess policies.… Additional Insured coverage shall be primary insurance and not excess over, or contributing with, any other valid or collectible insurance available.…

(Emphasis added.) As the circuit court noted, the parties do not dispute that Wisconsin law governs the interpretation of the subcontract.

The Luceros' personal injury action, their settlement, and the remaining cross-claims related to who is responsible to pay the damages.

¶24 The Luceros ultimately settled their claims, and the circuit court approved the settlement and the distribution agreement. The settlement did not resolve the third-party claims by and against the entities who are now parties to this appeal.

DISCUSSION

Rules for reviewing summary judgment and declaratory judgment rulings.

¶25 This case involves review of a denial of a declaratory judgment motion and grant of a summary judgment motion.

¶26 Wisconsin's Uniform Declaratory Judgments Act provides that a person who has rights under a contract can "obtain a declaration of rights, status or other legal relations thereunder." WIS. STAT. § 806.04(2) (2015-16)[7]. "The grant

[7] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

or denial of a declaratory judgment is addressed to the trial court's discretion." ***Commercial Union Midwest Ins. Co. v. Vorbeck***, 2004 WI App 11, ¶7, 269 Wis. 2d 204, 674 N.W.2d 665. Review of that decision, however, is *de novo* when the exercise of such discretion turns upon a question of law. ***Id.*** Construction of a contract is an exercise that presents a question of law. ***Id.***

¶27 Similarly, summary judgment presents a question of law that we review *de novo*. ***Id.*** Issues of contract construction are commonly resolved by way of declaratory judgment and summary judgment motions. ***Id.***

¶28 "There is a standard methodology which a trial court follows when faced with a motion for summary judgment." ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 314, 401 N.W.2d 816 (1987). "The first step of that methodology requires the court to examine the pleadings to determine whether a claim for relief has been stated." ***Id.*** at 315. "If a claim for relief has been stated, the inquiry then shifts to whether any factual issues exist." ***Id.***

¶29 Summary judgment is appropriate only if there are no genuine issues of material fact, and the moving party, having established a prima facie case, is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2). Summary judgment materials, including pleadings, depositions, answers to interrogatories, and admissions on file are viewed in the light most favorable to the nonmoving party. *See* ***Rainbow Country Rentals and Retail, Inc. v. Ameritech Publ'g Inc.***, 2005 WI 153, ¶13, 286 Wis. 2d 170, 706 N.W.2d 95. Any doubts regarding "the existence of a genuine issue of material fact should be resolved against the party moving for summary judgment." ***Grams v. Boss***, 97 Wis. 2d 332, 338-39, 294 N.W.2d 473 (1980) (overruled on other grounds). It "should not be granted if reasonable, but differing, inferences can be drawn from the undisputed facts."

Delmore, 118 Wis. 2d at 516. Summary judgment is not proper "unless the moving party demonstrates a right to a judgment with such clarity as to leave no room for controversy[.]" ***Grams***, 97 Wis. 2d at 338.

¶30 An appellate court is "required to apply the standards set forth in the [summary judgment] statute just as the trial court applied those standards." ***Green Spring Farms***, 136 Wis. 2d at 315.

Construction of a contract under New York law.

¶31 The Master Agreement, the contract at the heart of this case, contains a choice-of-law provision in Paragraph 26.15 designating that the interpretation of the contract is governed by the laws of the state of New York. We therefore turn to relevant law from that jurisdiction.

¶32 Contracts "should be construed to effectuate the parties' intent[.]" ***Aon Risk Servs.***, 102 A.D.3d at 463. Courts must "avoid an interpretation that would leave contractual clauses meaningless." ***Two Guys from Harrison-N.Y., Inc. v. S.F.R. Realty Assocs.***, 472 N.E.2d 315, 318 (N.Y. 1984). "[T]he court is to arrive at a construction which will give fair meaning to *all* of the language employed by the parties[.]" ***Tantleff v. Truscelli***, 110 A.D.2d 240, 244 (N.Y. App. Div. 1985). Construing the meaning of provisions within a contract is generally, but not always, a question of law. In the construction of contracts, unambiguous provisions "must be given their plain and ordinary meaning, and the interpretation of such provisions is a question of law for the court." ***Vigilant Ins. Co. v. Bear Stearns Cos., Inc.***, 884 N.E.2d 1044, 1047 (N.Y. 2008). However, under some circumstances, contract disputes under New York law involve questions of fact that cannot be resolved on summary judgment. *See* ***Frontier Insulation Contractors, Inc. v. Merchants Mut. Ins. Co.***, 690 N.E.2d 866, 870

(N.Y. 1997) (in declaratory judgment action, application of insurance policy term "product" to substance at issue presented "a question of fact that cannot be resolved on this record in this summary judgment posture").

I. Verizon Wireless/Alltel is not entitled to summary judgment on its declaratory judgment motion because it has not shown that it is entitled to judgment as a matter of law that it is an "Affiliate" under the Master Agreement signed by Verizon Corporate Services Group, Inc.

¶33 In denying Verizon Wireless/Alltel summary judgment on its declaratory judgment motion, the circuit court first noted that the Master Agreement's direct signatories were Verizon Corporate Services Group, Inc. and McShane. It noted that the Master Agreement gives "all of the rights and benefits under this Agreement," along with the right "to enforce the terms and conditions of the Agreement in its own name as though it were a direct signatory to the Agreement," to "[a] Verizon Affiliate that obtains or uses construction services[.]"

¶34 It turned to the Master Agreement's definition of "Affiliate." An "Affiliate" is "any corporation, partnership, person or other entity that … directly or indirectly … controls, or is controlled by, or is under common control with, such first … entity." It also examined the Master Agreement's definition of "control" ("the possession … of the power to direct or cause the direction of the [entity's] management and policies").

¶35 It considered two documents offered by Verizon Wireless/Alltel: the Assistant Corporate Secretary's Certificate dated November 10, 2014, and Viju S. Menon's affidavit. The Assistant Corporate Secretary's Certificate stated that the Verizon signatory and Verizon Wireless/Alltel are both wholly owned subsidiaries of Verizon Communications, Inc. The affidavit by Menon, who was the senior

vice president at Verizon Corporate Services Group, contained his sworn assertion that the Verizon signatory to the Master Agreement was "authorized to act as a sourcing agent" for other Verizon entities such as Verizon Wireless/Alltel. The circuit court concluded that Verizon Wireless/Alltel had "not presented sufficient evidence" that it is an "Affiliate" of the signatory to the Master Agreement, pointing to a lack of evidence that "the parent corporation (Verizon Communications, Inc.) has the power to direct or cause the direction of the management and policies of the limited partnership." The circuit court concluded that "establishing this element of control" was the only way to show that Verizon Wireless/Alltel was an "Affiliate," and it held that the certificate and the affidavit lacked that evidence.

¶36 On appeal, Verizon Wireless/Alltel argues that it is entitled to declaratory judgment that the Master Agreement requires McShane to indemnify it and to name it as an additional insured. Alternatively, it argues that "[a]t the very least, the evidence submitted … created a reasonable inference that [it] was a Verizon Affiliate." It argues that "[n]o party has submitted any evidence to the contrary, that [it] was *not* the Verizon Affiliate that utilized the construction services or that there was some other Verizon Affiliate that used the construction services instead."

¶37 For the reasons identified by the circuit court concerning the contract language, Verizon Wireless/Alltel fails to establish as a matter of law that it is entitled to summary judgment. The circuit court compared the definitions to the established facts; as the comparison shows, the provisions of the Master Agreement, read together with the Letter of Authorization, do not contain language defining the word "Affiliate" that "demonstrates a right to a judgment

with such clarity as to leave no room for controversy[.]" ***Grams***, 97 Wis. 2d at 338.

¶38 Our conclusion is only that Verizon Wireless/Alltel cannot satisfy the summary judgment standard and is therefore not entitled to judgment as a matter of law. Further proceedings are necessary.

II. McShane is not entitled to summary judgment on the questions of its obligation to indemnify and name Verizon Wireless/Alltel as an additional insured because McShane has not established as a matter of law that Verizon Wireless/Alltel is not an "Affiliate" under the Master Agreement McShane signed.

¶39 McShane had sought summary judgment on the question of any obligation it had under the Master Agreement to indemnify and insure the owner of the Verizon Appleton project. The circuit court reiterated that Verizon Wireless/Alltel had "not established that [it] was a Verizon Corporate Affiliate and so has no power to enforce the Master Agreement under § 2.8." It stated that "therefore" McShane's and its insurer's motions for summary judgment were granted. As for the contract's provision that "Verizon shall be named as an additional insured," the circuit court concluded that it did not apply to Verizon Wireless/Alltel because the agreement did not specify that a "Verizon Affiliate" must be named as an additional insured. The circuit court concluded that the Master Agreement explicitly extended certain rights to "Verizon" and others to "Verizon Corporate's affiliates." Absent an explicit extension, there was no requirement to name Verizon Wireless/Alltel as an additional insured.

¶40 Applying the summary judgment standard, however, requires consideration of competing inferences, and summary judgment "should not be granted if reasonable, but differing, inferences can be drawn from the undisputed

facts." ***Delmore***, 118 Wis. 2d at 516. As stated above, summary judgment is not proper "unless the moving party demonstrates a right to a judgment with such clarity as to leave no room for controversy[.]" ***Grams***, 97 Wis. 2d at 338.

¶41 Here, the circuit court did not account for competing inferences that can be drawn from the undisputed facts. First, it is not disputed that McShane did construction work for a Verizon entity that owned the Verizon Appleton project work site at 4600 West College Avenue. Second, it is not disputed that McShane is a signatory to the Master Agreement and as a signatory, promised to indemnify *a* Verizon entity and name *a* Verizon entity as an additional insured on its CGL policy as part of a seven-million-dollar contract. Third, it is not disputed that McShane is a signatory on the Letter of Authorization for the Verizon Appleton project that is in all relevant respects identical to the sample letter of authorization attached and incorporated into the Master Agreement signed by McShane. Fourth, it is not disputed that the subcontract agreement between McShane and Greene required Greene to maintain specific levels of insurance and to name as additional insureds "McShane, the Owner, the Owner's designated lender and such other parties as McShane is required under the Contract Documents to name as Additional Insureds[.]"

¶42 In light of the rule that we are to construe the Master Agreement to effectuate the parties' intent, these facts give rise to a reasonable inference that it was actually the parties' intention that the owner of the premises where the construction would take place—the very party that would be exposed to liability for any negligence of McShane and its subcontractor—would be the entity identified as "Affiliate" in the Master Agreement and would be indemnified and named an additional insured by McShane. It is reasonable to infer that the use of the name "Verizon" in the Master Agreement means "Verizon Corporate Services

Group for itself and for the benefit of Verizon Affiliates," a reading that is consistent with the sample authorization letter that is attached and incorporated. Thus, a reasonable inference of the meaning of "affiliate" could be drawn in Verizon Wireless/Alltel's favor. On the other hand, the absence of clear language on the meaning of "affiliate" could lead to a reasonable inference favoring McShane.

¶43 Under the proper application of the summary judgment standard, these reasonable, but differing inferences are fatal to McShane's motion. *See* ***Delmore***, 118 Wis. 2d at 516. We are left with two competing motions that are not sufficiently rebutted by the opposing party. Thus, this matter goes forward for additional proceedings.

III. The remainder of the third-party claims are contingent on the outcome of further proceedings on remand.

¶44 After disposing of the claims that turn on the question of who is an "Affiliate," the circuit court's order addressed the obligations of the contractor's insurer, the subcontractor, and the subcontractor's insurer to indemnify and provide coverage for Verizon Wireless/Alltel, concluding that "Alltel is not entitled to reimbursement from anyone," and further construing the parties' insurance policies based on that conclusion.

¶45 The contractual relationships between these parties are rooted in the Master Agreement and are contingent on the determination of who is the "Affiliate" McShane contracted to indemnify and insure. We do not reach questions concerning the insurers' policy language because the other parties' obligations cannot be determined until a court or jury resolves the factual dispute

regarding whether Verizon Wireless/Alltel is an "Affiliate" of the Verizon entity signatory to the Master Agreement.

¶46 We conclude that neither movant was entitled to judgment as a matter of law on that point, the portion of the order denying summary judgment to Verizon Wireless/Alltel is affirmed, the remainder of the order is reversed, and the cause is remanded for further proceedings. For the reasons stated above, no costs are awarded on the cross-appeal.

By the Court.—Orders affirmed in part, reversed in part, and cause remanded.

Not recommended for publication in the official reports.