



Warranty disclaimer may not bar action for contribution

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When an equipment supplier provides equipment to a contractor that fails to perform and causes damages to a third party, a warranty disclaimer may not protect the equipment supplier in an action for contribution brought by the contractor. In *Ohio Casualty Insurance Company, et al., v. Allied Technical Services, Inc.*, 2014-Ohio-748, the Court of Appeals of Ohio, 9th District, reviewed a case in which a contractor was hired to repair a portion of a city's sanitary sewer district.

Before winning the bid to perform the work, the contractor asked a pump supplier to recommend a pump capable of creating a bypass in the area of the sewer system that required repair. However, the eight-inch pump recommended by the supplier was determined to be inadequate after overnight rains flooded the sewer system. The flooding caused homeowners to suffer property damage. After the contractor and its insurer settled with the homeowners, the contractor and its insurer sued the pump supplier for contribution under R.C. 2307.25(A) and implied indemnity, asserting that the contractor paid more than its proportional share of damages to the homeowners and requesting to recover that overpayment from the pump supplier.

The pump supplier defended the action arguing that indemnification and warranty disclaimer provisions of the rental agreement barred the contractor's claims for contribution and implied indemnification. The trial court agreed with the pump supplier, finding that the terms of the warranty disclaimer prevented any claim of tort liability against the pump supplier because the pump supplier was not warranting the pump as fit for the particular purpose utilized. On appeal, the appellate court disagreed with the trial court's ruling, determining that the trial court had improperly cast the lawsuit as one for breach of warranty rather than contribution and, by extension, ordinary negligence. The appellate court sent the case back to the trial court to determine whether by virtue of its conduct, the pump supplier breached a duty of care to the homeowners, and, assuming it did, the amount the contractor can recover from the pump supplier.

Based on the ruling of the court of appeals, it appears that a warranty disclaimer by an equipment supplier may not protect it from liability under Ohio's contribution statute if the equipment supplier's negligent selection of equipment contributes to property damage to third parties.

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