Environmental Assessment/Third-Party Beneficiary: Minnesota Appellate Court Addressing Negligence Claim

Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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Co-Author Galesia Jackson

The Minnesota Court of Appeals ("App. Ct.") addressed in a January 1, 2025, Opinion an issue arising out of an environmental assessment performed on a laundromat pursuant to a property transaction. *See Michelin Properties, LLC, and Clean Care LLC v. Jacobson Environmental, et al.*, 2025 WL 251713.

This case involved a judicial action alleging breach of contract, negligence, negligent misrepresentation, and breach of fiduciary duty.

The App. Ct. affirmed the district court's ruling on all claims except negligence, which it reversed.

Clean Care LLC ("Clean Care") was in the process of purchasing property for use as a laundromat. It intended to finance its purchase with City & County Credit Union ("Credit Union"). However, a Phase I environmental site assessment ("ESA") was required to be undertaken prior to obtaining financing.

Credit Union, through Servion Commercial Loan Resources ("Servion"), hired Jacobson Environmental to undertake a Phase I ESA assessment.

Jacobson Environmental completed two reports:

- The first report was commissioned by Servion and it is stated to have indicated:
- Only Servion and Jacobson Environmental listed as the contracting parties.
- Showed Clean Care and Kenny Luk (one of Clean Care's owners) as borrowers, third-party beneficiaries.
- Established that there were no environmental concerns.
- The second report was purchased directly by Clean Care and one of its owners.
- The report indicated that there could be contamination present as two previous laundromats had previously operated on the property.
- A Phase II report was therefore required.
- The conclusion was based on the fact that two dry-cleaning facilities had operated the property.

Clean care filed an action in District Court against Jacobson Environmental and Wayne Jacobson ("Respondents") after it received the second report, alleging several legal claims.

The App. Ct. reversed dismissal of the negligence claim.

The App. Ct. noted that Clean Care argued that there was an issue of material fact regarding whether it was a third-party beneficiary to the contract under the intent to benefit test. Respondents argued that the disclaimer (titled, “No Third-Party Beneficiaries”) excluded third-party beneficiaries (i.e., Clean Care).

A disclaimer was stated to be not dispositive of whether a defendant owes a duty of care to a plaintiff. Duty of care may exist for a professional when the plaintiff is not contractually bound by the professional’s actions (i.e., an environmental consultant) in some circumstances. This includes the circumstances indicating that the promisor intends to give the beneficiary the benefit of the promised performance (the intent-to-benefit test). To satisfy the test there must be some expression of intent on the part of the contracting parties.

The App. Ct. found that the test was satisfied after examining the various circumstances of the transaction. Therefore, the App. Ct. found in this situation a professional duty of care may exist for an environmental consultant who performs ESAs, even when the plaintiff is not contractually bound by the professional’s actions.

A professional duty of care might still arise when a party relies on a professional’s expertise and actions, even in the absence of a direct contractual relationship. This particularly occurs in regulated industries where the consequences of professional judgment extend beyond the immediate client.

A copy of the Opinion can be downloaded here.