2019 IL App (2d) 170781-U
No. 2-17-0781
Order filed April 12, 2019

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

CENTRAL LABORERS' PENSION FUND, NORTH CENTRAL ILLINOIS LABORERS' HEALTH AND WELFARE FUND, NORTHERN ILLINOIS ANNUITY FUND, ILLINOIS LABORERS' AND CONTRACTORS JOINT APPRENTICESHIP AND TRAINING FUND, MIDWEST REGION FOUNDATION FOR FAIR CONTRACTING, INC., NORTHERN ILLINOIS WELFARE FUND, INDUSTRY ADVANCEMENT FUND, LABORERS'-EMPLOYERS COOPERATION EDUCATION TRUST, VACATION FUND, MARKET PROMOTION FUND, ORGANIZATION FUND, and LABORERS' LOCAL 32,	)	Appeal from the Circuit Court of De Kalb County.
Plaintiffs-Appellants,	)	
v.	)	
FIDELITY & DEPOSIT COMPANY OF MARYLAND and NICHOLAS AND ASSOCIATES, INC.,	)	Nos. 09-L-108 09-CH-344
Defendants-Appellees.	)	Honorable William P. Brady, Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Hutchinson and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: In labor organizations' action to recover attorney fees under terms of a payment bond, the trial court did not err in dismissing one claim and granting summary judgment on another in favor of general contractor and surety.

¶ 2 This action involves a general contractor and its subcontractor who contracted with union labor to complete a school construction project. Plaintiffs, which are benefit funds, labor management organizations, and labor organizations, filed actions to recover monetary contributions that the subcontractor was contractually obligated to set aside as fringe benefits for the union members.

¶ 3 On remand from a prior appeal (*Central Laborers' Pension Fund v. Nicholas and Associates, Inc.*, 2011 IL App (2d) 100125), the parties settled all claims except for attorney fees. Plaintiffs alleged, *inter alia*, that the general contractor and the bank that had issued the payment bond owed fees under the terms of the bond (count IV) and the Bond Act (30 ILCS 550/1 *et seq.* (West 2010)) (count V). The trial court dismissed count V for failure to state a claim and subsequently granted defendants summary judgment on count IV.

¶ 4 Plaintiffs appeal, arguing that attorney fees are warranted because (1) the settlement qualifies as an amount "found to be due and owing" to plaintiffs under the payment bond and (2) the Bond Act requires defendants to pay all "just claims due" (30 ILCS 550/2 (West 2010)). We affirm.

¶ 5 I. BACKGROUND

¶ 6 Defendant Nicholas & Associates (Nicholas) signed contracts with De Kalb Community School District No. 428 (De Kalb School District) to serve as the general contractor for the construction of an elementary school. Nicholas hired KMC Masonry, LLC (KMC), as a subcontractor to perform masonry work. KMC secured labor for the project by entering into

collective bargaining agreements (CBAs) with plaintiffs Laborers' Local 32 and Laborers' Welfare Fund of the Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity. The CBAs required KMC to make monetary contributions to the other plaintiffs (the funds). By signing the CBAs, KMC also agreed to become a party to the various agreements and trust declarations that governed the funds. KMC allegedly breached the CBAs by failing to pay the mandatory contributions.

¶ 7 On August 21, 2009, plaintiffs filed in the trial court a complaint for an accounting on a mechanic's lien against Nicholas and KMC. The complaint alleged that Nicholas contracted with the De Kalb School District to serve as the general contractor in building the school and that Nicholas hired KMC to perform masonry work on the project.

¶ 8 The complaint alleged that KMC employees performed labor on the project from November 2008 through April 2009 and that the CBA required KMC to pay fringe benefits to plaintiffs for each hour worked. The complaint alleged that KMC failed to pay the contributions.

¶ 9 On July 19, 2009, plaintiffs gave Nicholas, KMC, and the De Kalb School District notice of a claim for a mechanic's lien for $130,613, representing the amount of the fringe benefit contributions that KMC had allegedly failed to make, as well as additional costs, damages, and attorney fees.

¶ 10 Nicholas responded that the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. § 1001 *et seq.* (2006)) preempted the state statutes under which plaintiffs sought to recover. On January 12, 2010, the trial court granted Nicholas's motion to dismiss the complaint on the ground of preemption.

¶ 11 On appeal, we held that ERISA does not preempt the Mechanics Lien Act and reversed the dismissal of the complaint. On January 9, 2012, we remanded the cause to the trial court for

further proceedings. *Central Laborers' Pension Fund*, 2011 IL App (2d) 100125, ¶ 52. Nicholas filed a petition for leave to appeal to the Illinois Supreme Court and a writ of *certiorari* to U.S. Supreme Court, but each was denied.

¶ 12 In a separate action, plaintiffs filed a complaint in the circuit court of DeKalb County against Nicholas and defendant Fidelity & Deposit Company of Maryland (Fidelity) on November 17, 2009. Plaintiffs sought recovery for the same unpaid fringe benefits based on the Bond Act and the payment bond issued by Fidelity. Plaintiffs again alleged that KMC had failed to make the required contributions for KMC employees who had performed work on the project. Plaintiffs alleged that the CBA between Laborer's Local 32 and KMC had required KMC to make the contributions. The complaint sought payment for $130,619 in contributions and all sums found to be "just claims due" within the meaning of the Bond Act, including costs, attorney fees, and liquidated damages.

¶ 13 On August 16, 2012, the trial court consolidated the action on the mechanic's lien with the action on the payment bond and the Bond Act.

¶ 14 On October 26, 2015, plaintiffs filed a six-count, second-amended complaint, restating the allegations underlying their claims. Counts IV and V, which are at issue in this appeal, sought attorney fees from Nicholas and Fidelity. Count IV was brought under section 6 of the Fidelity payment bond, and count V was brought under the Bond Act as sums "justly due" under the statute.

¶ 15 On May 9, 2016, the court entered an agreed order dismissing counts I, II, and III of the second-amended complaint based on a settlement agreement among all the parties. The order reserved plaintiffs' right to pursue attorney fees, including in counts IV and V.

¶ 16 On August 5, 2016, the trial court granted defendants' motion to dismiss count V, and on August 30, 2017, the court granted defendants summary judgment on count IV, thereby disposing of the entire second-amended complaint. Plaintiffs filed a timely notice of appeal on September 25, 2017, challenging the dismissal of count V and summary judgment for defendants on count IV.

¶ 17 II. ANALYSIS

¶ 18 In general, Illinois courts follow the "American Rule," which provides that, absent statutory authority or a contractual agreement, each party is responsible for his or her own attorney fees. *Morris B. Chapman & Associates, Ltd. v. Kitzman*, 193 Ill. 2d 560, 572 (2000). Contracts that provide for an award of attorney fees to the prevailing party are in derogation of common law and must be strictly construed. *Forest Preserve District v. Continental Community Bank & Trust Co.*, 2017 IL App (1st) 170680, ¶ 31.

¶ 19 On appeal, plaintiffs argue that defendants must pay plaintiffs' attorney fees and costs because (1) the parties' settlement agreement qualifies as an amount "found to be due and owing" to plaintiffs under the payment bond and (2) the Bond Act requires defendants to pay all "just claims due" (30 ILCS 550/1 (West 2010)). Defendants respond that we should adhere to the American Rule because the payment bond and the Bond Act do not specifically mention attorney fees, which renders them ambiguous.

¶ 20 A. Count V: Bond Act

¶ 21 The trial court dismissed count V under section 2-615 for failure to state a claim. Section 2-615 tests the legal sufficiency of the amended complaint. The question presented on review is whether the allegations of the complaint, construed in the light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted. *Henderson Square*

Condominium Ass'n v. LAB Townhomes, LLC, 2015 IL 118139, ¶ 61. In making this determination, all well-pleaded facts must be taken as true, and the complaint should not be dismissed unless it clearly appears that no set of facts can be proved that would entitle the plaintiff to recovery. The standard of review is *de novo*. *Henderson Square*, 2015 IL 118139, ¶ 61.

¶ 22 Count V alleged the following facts, which are taken as true. Nicholas entered into an agreement to construct the school for the DeKalb School District. As required by the Bond Act, Nicholas furnished payment and performance bonds to the DeKalb School District for the benefit of persons performing labor on the project. Fidelity issued the bonds. Nicholas contracted with KMC as a subcontractor to perform masonry work. Pursuant to a CBA with KMC, Laborers' Local 32 agreed to provide labor for the project. The CBA required KMC to make fringe benefit payments to plaintiff in accordance with the terms and conditions of plaintiffs' agreements and declarations of trusts, and to pay liquidated damages, costs, and attorney fees if the contributions were not timely made.

¶ 23 Accordingly, count V alleged that KMC was liable for all reasonable costs for collecting overdue payments, including reasonable attorney fees, costs, and other charges. Count V further alleged that these fees and costs are "just claims due" and that there are no provisions in the Bond Act or the bond that would exclude the fees and costs from being found to be just claims due. Count V concluded that, because KMC failed to pay the contributions and wage deductions as required by the CBA, Fidelity and Nicholas are liable for the attorney fees and costs incurred to collect those amounts due and owing to plaintiffs.

¶ 24 Section 6 of the CBA required KMC to pay plaintiffs' attorney fees and other costs of collection if KMC failed to make the mandatory contributions to the funds. Section 6 of the

agreement specifically provides that "*[i]f an employer fails to pay contributions as required by the Trust Agreements and this Agreement*, the Funds shall have the right to take whatever steps are necessary to secure compliance with this Agreement and the Trust Agreements, any other provision hereof to the contrary notwithstanding, and *the Employer shall be liable for all reasonable costs of collection of the payments due together with reasonable attorneys' fees and such other reasonable costs and charges* as may be assessed by the Trustees of the Funds pursuant to the Trust Agreements, including the cost of any and all audits." (Emphases added.)

¶ 25 The CBA between plaintiffs and KMC obligated KMC to pay benefits to plaintiffs, as collection agents, and allowed plaintiffs to recover attorney fees from KMC if the contributions were not made. However, Nicholas and Fidelity are not parties to the CBA, and therefore, neither are bound by KMC's obligation to pay attorney fees pursuant to the CBA.

¶ 26 Because KMC cannot pay plaintiffs' attorney fees, plaintiffs sought recovery from Nicholas and Fidelity under section 1 of the Bond Act. Section 1 gives a claimant the right to collect from the principal and the surety any amounts that are due under the agreement between the claimant and a subcontractor. The statute provides that the surety bond issued by Fidelity is deemed to contain the following provision:

> " 'The principal and sureties on this bond agree that all the undertakings, covenants, terms, conditions and agreements of the contract or contracts entered into between the principal and the State or any political subdivision thereof will be performed and fulfilled and to pay all persons, firms and corporations having contracts with the principal or with subcontractors, *all just claims due* them under the provisions of such contracts for labor performed or materials furnished in the performance of the contract on account of which this bond is given, when such claims are not satisfied out of the contract

> price of the contract on account of which this bond is given, after final settlement between the officer, board, commission or agent of the State or of any political subdivision thereof and the principal has been made.'." (Emphasis added.) 30 ILCS 550/1 (West 2016).

¶ 27 Plaintiffs renew their argument that, under section 1, Nicholas and Fidelity owe "any and all sums found to be 'just claims due' within the meaning of the [Bond Act], including but not limited to costs, attorney's fees, and liquidated damages." The underlying issue of whether the Bond Act entitles plaintiffs to attorney fees and costs from defendants is a question of law, which we review *de novo*. *Klaine v. Southern Illinois Hospital Services*, 2016 IL 118217, ¶ 13. Our primary objective in construing statutory provisions is to ascertain and give effect to the intent of the legislature. *Klaine*, 2016 IL 118217, ¶ 14. The most reliable indicator of legislative intent is the language of the statute. *Klaine*, 2016 IL 118217, ¶ 14. Where the language is clear and unambiguous, the statute must be given effect as written, without resorting to other aids of statutory construction. *Klaine*, 2016 IL 118217, ¶ 14.

¶ 28 "Statutes permitting the recovery of costs are in derogation of the common law and must be strictly construed." *Negro Nest, LLC v. Mid-Northern Management, Inc.*, 362 Ill. App. 3d 640, 642 (2005). The legislature historically has determined when attorney fees should be awarded pursuant to statute and has specifically provided for attorney fees where it wished to. *Negro Nest, LLC*, 362 Ill. App. 3d at 650. To do so, the legislature employs specific language like "attorney fees" to overcome the common-law rule. Where the legislature has not used such specific language, courts have consistently refused to give an expanded reading to the legislative language used. Accordingly, Illinois courts have refused to interpret imprecise statutory language as permitting attorneys fees. *Negro Nest, LLC*, 362 Ill. App. 3d at 650.

¶ 29 Defendants argue that, under this standard of strict construction, the absence of an express reference to "attorney fees" in the Bond Act compels us to affirm the trial court's dismissal of plaintiffs' fee shifting claim. We agree. Section 1 refers to "just claims due," but does not mention attorney fees or any other type of collection cost by name. Furthermore, the payment bond does not mention attorney fees or fee shifting, which would have permitted recovery against defendants pursuant to the Bond Act. Without an express payment bond provision or unambiguous statutory language prescribing fee shifting to the principal and surety, we conclude that the trial court did not err in dismissing count V of the second-amended complaint for failing to state a claim.

¶ 30 Plaintiffs urge us to depart from the American Rule, citing *Capital Development Board ex rel. P.J. Gallas Electrical Contractors, Inc. v. G.A. Rafel & Co.*, 143 Ill. App. 3d 553, 562 (1986), for the proposition that attorney fees are recoverable under the Bond Act "if specifically authorized by contract." In *Gallas*, the bonded contract contained an attorney fees provision that was incorporated into the bond by reference. However, this court determined that the provision was ambiguous, and therefore, unenforceable against the surety. We noted that, although the attorney fees provision in the bonded contract was a term of the bond through incorporation by reference, it did not justify an award of attorney fees against the surety. *Gallas*, 143 Ill. App. 3d at 562-63. The provision stated that the contractor or his bondsman shall pay the attorney fees that any creditor may incur in the forced collection of "any just claim" from the bond obligee. *Gallas*, 143 Ill. App. 3d at 563.

¶ 31 This court found that a surety may be liable if the bond incorporated the construction contract by reference and the contract allowed for attorney fees. *P.J. Gallas Electrical Contractors, Inc.*, 143 Ill. App. 3d at 562. However, this case is distinguishable in that the CBA

between KMC and plaintiffs was not incorporated by reference into the payment bond. Without incorporation by reference, the fee-shifting provision in the CBA does not bind Nicholas or Fidelity under the bond.

¶ 32 We agree with defendants that count V failed to state a claim because the term "attorney fees" does not appear in section 1, which would be necessary to overcome the American Rule against fee shifting. We further agree that attorney fees do not qualify as a "just claim" under section 1 because the federal statute and federal cases cited by plaintiffs are not analogous the facts of this case or binding on this court. Taking all well-pleaded facts as true and construing the allegations of the complaint in the light most favorable to plaintiffs, we conclude that count V does not state a cause of action upon which relief can be granted. See *Henderson Square*, 2015 IL 118139, ¶ 61.

¶ 33 B. Count IV: Payment Bond

¶ 34 As discussed, in conformance with the Bond Act, Nicholas obtained a payment bond for the project with Nicholas as principal, Fidelity as surety, and the De Kalb School District as obligee. Count IV of the second-amended complaint alleged that Fidelity failed to comply with section 6 of the bond. Section 6 provides as follows:

> "6. When the Claimant has satisfied the conditions of Section 4, the Surety shall promptly and at the Surety's expense take the following actions:
>
> 6.1 Send an answer to the Claimant, with a copy to the Owner, within 60 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
>
> 6.2 Pay or arrange for payment of any undisputed amounts.

> 6.3 The Surety's failure to discharge its obligations under this Section 6 shall not be deemed to constitute a waiver of defenses that the Surety or Contractor may have or acquire as to a claim. However, *if the Surety fails to discharge its obligations under this Section 6, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs to recover any sums found to be due and owing to the Claimant.*" (Emphasis added.)

¶ 35 Count IV alleged that Fidelity did not comply with section 6, and therefore was liable for attorney fees incurred to recover "sums found to be due and owing." Count IV alleged that, on May 26, 2009, plaintiffs sent a notice of claim and a claim for payment to Nicholas, Fidelity, and the De Kalb School District. The notice of claim and claim for payment included spreadsheets showing, with substantial accuracy, the amount of hours worked by each employee and the fringe benefit contributions related to the hours worked. Plaintiffs alleged that, after receiving the notice and the claim, defendants had the ability to verify the hours and amounts that plaintiffs claimed were due and owing, because Nicholas had KMC's certified payroll records.

¶ 36 Plaintiffs further alleged that, on June 9, 2009, Fidelity's representative sent plaintiffs' counsel a letter acknowledging receipt of the claim in the amount of $74,753 for unpaid fringe benefit fund contributions for employees of KMC who worked on the project. The letter did not allege noncompliance with the Bond Act or section 4 of the bond.

¶ 37 On June 10, 2009, Fidelity's representative asked Nicholas' president for his written position and intentions with respect to the claim, so Fidelity could timely respond by July 25, 2009, which was 60 days after receipt of the claim. Plaintiffs alleged that Fidelity never answered the claim by stating the amounts that were undisputed or stating the basis for challenging any amounts that were disputed. Therefore, plaintiffs alleged, Fidelity did not

discharge its duties in compliance with section 6 of the bond. Plaintiffs alleged that, under section 6.3 of the bond, Fidelity's noncompliance triggered a duty to indemnify plaintiffs for their reasonable attorney fees.

¶ 38 On July 20, 2009, plaintiffs served a supplemental notice of claim and claim on Fidelity, Nicholas, and the De Kalb School District. The amended claim stated that $130,613 was due and effectively notified the De Kalb School District and Fidelity that Nicholas had not paid the amount previously claimed. Plaintiffs alleged that Fidelity never responded to the amended claim as required by section 6 of the bond.

¶ 39 Instead, Fidelity filed a complaint for declaratory judgment in federal court on October 12, 2009. The next day, more than 180 days after the original May 26, 2009, notice, plaintiffs received a request for a waiver of service for the complaint. Plaintiffs asserted that the request for a waiver of service did not constitute a written answer, within 60 days after receipt of the claim, in compliance with section 6 of the bond.

¶ 40 Count IV concluded that Fidelity had failed to discharge its contractual duty to timely answer the claim and amended claim, and therefore Fidelity and Nicholas are jointly and severally liable under the bond to indemnify plaintiffs for the reasonable attorney fees incurred to collect the amounts due and owing.

¶ 41 The parties filed opposing motions for summary judgment in which they disputed the meaning of section 6.3 of the bond. The trial court granted defendants' motion and denied plaintiffs' motion. On appeal of an order granting summary judgment, a reviewing court must determine whether "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2016). The

purpose of summary judgment is not to try an issue of fact but to determine whether one exists. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 42-43 (2004). "A genuine issue of material fact precluding summary judgment exists where the material facts are disputed, or, if the material facts are undisputed, reasonable persons might draw different inferences from the undisputed facts." *Adames v. Sheahan*, 233 Ill. 2d 276, 296 (2009). Although summary judgment is encouraged to aid the expeditious disposition of a lawsuit, it is a drastic means of disposing of litigation. *Adams*, 211 Ill. 2d at 43. Consequently, a court must construe the evidence in the record strictly against the movant and should grant summary judgment only if the movant's right to a judgment is clear and free from doubt. *Adams*, 211 Ill. 2d at 43. On appeal from an order granting summary judgment, a reviewing court must consider whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether summary judgment is proper as a matter of law. *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116-17 (1993). We review the trial court's summary judgment ruling *de novo*. *Barnett v. Zion Park District*, 171 Ill. 2d 378, 385 (1996).

¶ 42 Pursuant to section 6.3 of the bond, if Fidelity failed to discharge its obligations under section 6, plaintiffs would be entitled to their reasonable attorney fees incurred to recover any "sums found to be due and owing" to plaintiffs. The opposing motions disputed the meaning of the phrase "found to be due and owing," which does not specify who would make such a determination.

¶ 43 The primary objective when construing the language of a contract is to give effect to the intent of the parties, which is discerned from the language of the contract. *Thompson v. Gordon*, 241 Ill. 2d 428, 441 (2011). If the words in the contract are clear and unambiguous, they must be given their plain, ordinary and popular meaning, but if the language of the contract is susceptible

to more than one meaning, it is ambiguous. *Thompson*, 241 Ill. 2d at 441. However, a contract is not rendered ambiguous merely because the parties disagree on its meaning. *Central Illinois Light Co. v. Home Insurance Co.*, 213 Ill. 2d 141, 153 (2004). Rather, ambiguity exists only if the term is susceptible to more than one reasonable interpretation. *Nicor, Inc. v. Associated Electric & Gas Insurance Services Ltd.*, 223 Ill. 2d 407, 417 (2006).

¶ 44 For the following reasons, we conclude that, despite plaintiffs' intent to preserve their claim for attorney fees, the settlement released defendants' from all liability on the underlying claim under the bond. Thus, we hold that the joint stipulation of dismissal and the settlement agreement unambiguously provide that no sums were "found to be due and owing," and therefore, defendants owe no duty to indemnify plaintiffs for their fees.

¶ 45 The joint stipulation of dismissal of counts I, II, and III was entered on May 4, 2016. The stipulation provided for "the release [of] the Defendants from claims that were alleged or could be alleged in counts I through III except that the Parties have agreed that the Plaintiffs' claims for attorneys' fees in Count II are not released and survive as part of Count V of the Second-Amended Complaint."

¶ 46 Consistent with the stipulation, paragraph 8 of the settlement agreement provides that the parties "agree that to the extent that any aspect of [plaintiffs] attorney fee claim is contained in count II of the second-amended complaint, the said claim for attorney fees survives this agreement as alleged in count V of the second-amended complaint. [Plaintiffs], [Nicholas], and [Fidelity], further agree that [plaintiffs'] attorney fee claim is reserved and not waived or released and that both [Nicholas] and [Fidelity] reserve and do not waive or release any and all defenses that either or both may have to [plaintiffs'] attorney fee claim whether in law or equity."

¶ 47 However, two other sections of the settlement agreement release defendants from all claims from which an attorney fee claim might arise. Paragraph 7 provides that plaintiffs "jointly and severally fully and irrevocably release [Nicholas] and [Fidelity] *** from all manner of liability, loss, damages, expenses, demands, liens, rights of action, causes of action, assessments, fines, levies, fringe benefits, wages, interest, liquidated damages and any and all other amounts that are claimed or could have been claimed by [plaintiffs] in counts I and II of the second amended complaint whether in law or equity, known or unknown, except that [plaintiffs'] fee claim is not included in this release in accordance with paragraph 8 hereof."

¶ 48 Moreover, paragraph 17 expressly states that Nicholas and Fidelity do not admit liability to plaintiffs for the underlying claims:

> "This agreement is entered into solely for the purpose of settling disputed claims, and this agreement and its contents shall not be construed as an admission by *** [Nicholas] and [Fidelity] of any (a) liability or wrongdoing; (b) violation of any statute, law regulation, contract, bond, collective bargaining agreement or declaration of trust; or (c) waiver of defenses as to those matters within the scope of this agreement. It is understood and agreed by [plaintiffs] that *** [Nicholas] and [Fidelity] deny engaging in unlawful conduct, and this agreement does not constitute an admission by *** [Nicholas] and [Fidelity] of any violation of any law, regulation, contract, bond, collective bargaining agreement or declaration of trust."

¶ 49 Plaintiffs argue that the parties themselves found the sums set forth in the settlement to be due and owing, and therefore the mere existence of the settlement is evidence that sums are due and owing by defendants, which would trigger liability for attorney fees. However, the trial court adopted defendants' interpretation that "found to be due and owing" means a finding of

liability by a neutral third party, such as after arbitration or a trial. No neutral, third-party finding occurred because the two sides settled the underlying dispute.

¶ 50 Plaintiffs argue that a neutral, third-party finding of liability is not required because section 6.3 of the bond does not expressly mention it. To draw a contrast with section 6.3, plaintiffs cite several statutes that explicitly require a judicial finding of liability in favor of the party seeking fees. However, the bond in this case is subject to the rules of contract interpretation and where the language is unambiguous, we will not resort to aids of construction or read into it provisions that the parties did not express.

¶ 51 We need not reach the issue of whether a finding of liability must be made by a third party, because under the terms of the settlement agreement, no finding of liability was made at all. The settlement was made solely for the purpose of settling the disputed underlying claims and did not constitute an admission of liability by defendants. Plaintiffs expressly released defendants from all underlying claims, which had the effect of establishing that no sums were found to be due and owing. Despite the provisions reserving plaintiffs' attorney fees claim, the settlement agreement unambiguously states that defendants' payment was not an admission of liability of any kind. Without a finding – by anyone – of liability for sums due and owing, plaintiffs may not invoke section 6.3 of the payment bond to recover attorney fees.

¶ 52 III. CONCLUSION

¶ 53 For the reasons stated, we affirm the judgment of the circuit court of De Kalb County.

¶ 54 Affirmed.