

H&R HOSPITALITY OF DE LLC,)
)
Plaintiff,)
)
v.)
SELECTIVE INSURANCE)
COMPANY OF THE SOUTHEAST,)
SELECTIVE INSURANCE)
COMPANY OF AMERICA)
DELMARVA VETERAN)
BUILDERS, LLC, and)
HARRY CASWELL, INC.,)
)
Defendants.)

C.A. No.: N26C-06-155 SSA

Submitted: October 15, 2026

Decided: October 20, 2026

Upon Defendant Delmarva Veteran Builders Motion for Judgment on the Pleadings: Denied.

The Court must determine whether a release in a later agreement (the Business Loan Agreement, hereinafter “BLA”) bars this action for negligence. The cause of action for negligence arises from a water leak which caused property damage. Moving Defendant, Delmarva Veteran Builders (“DVB”), served as the general contractor on the project. Later, the parties engaged in a lending agreement which DVB asserts released the present tort claim.

Standard of Review

“After the pleadings are closed[,] ... any party may move for judgment on the pleadings.”¹ In determining a motion under Rule 12(c) for judgment on the pleadings, the Court accepts the non-moving party’s well-pleaded allegations as true, draws all reasonable inferences in that party’s favor, and grants judgment “only when no material issue of fact exists and the movant is entitled to judgment as a matter of law.”² But the Court “will ‘not rely upon conclusory allegations ... [and] neither inferences nor conclusions of fact unsupported by allegations of specific facts ... are accepted as true.’”³ Where, as here, the movant seeks judgment against the party asserting the claims, the motion fails unless that party “could not recover under any reasonably conceivable set of circumstances susceptible of proof.”⁴

A written instrument attached to a pleading “is a part thereof for all purposes.”⁵ DVB attached the BLA to its Answer. Superior Court Civil Rule 7(a)

¹ Super. Ct. Civ. R. 12(c).

² *Desert Equities, Inc. v. Morgan Stanley Leveraged Equity Fund, II, L.P.*, 624 A.2d 1199, 1204–05, 1204 n.7 (Del. 1993) (citations omitted).

³ *Festival Fun Parks, LLC v. MS Leisure Co.*, 2023 WL 8714994, at *4 (Del. Super.) (alterations in original) quoting *McMillan v. Intercargo Corp.*, 768 A.2d 492, 500 (Del. Ch. 2000).

⁴ *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Holdings LLC*, 27 A.3d 531, 536 (Del. 2011) citing *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896–97 (Del. 2002).

⁵ Super. Ct. Civ. R. 10(c).

identifies the answer as a pleading. Accordingly, the Court will consider the BLA without converting this Motion into one for summary judgment.⁶

Contract Interpretation

Delaware enforces unambiguous contracts according to their plain meaning; when “the contract’s language is clear and unambiguous, the parties’ intent is ascertained by giving the language its ordinary and usual meaning.”⁷ The instrument is read as a whole,⁸ so that each provision is given effect in light of the others, and “where reasonable minds could differ as to the contract’s meaning, a factual dispute results and the fact-finder must consider admissible extrinsic evidence.”⁹

Analysis

Defendant DVB relies on *Riverbend Community, LLC v. Green Stone Engineering*¹⁰ to support its claim for judgment on the pleadings. The release in that case was entitled “Receipt and General Release.”¹¹ The text of the signed

⁶ See *Lagrone v. American Morell Corp.*, 2008 WL 4152677, at *4 (Del. Super.). That agreement was attached to the Answer of the moving defendant. An answer to a complaint is a pleading according to the Delaware Supreme Court in *Stuart v. Stuart*, 159 A.3d 264 (2017). See also Superior Court Civil Rule 7(a).

⁷ *Dover Mall, LLC v. Tang*, 2023 WL 6536975, at *3 (Del. Super.) quoting *John Petroleum, Inc. v. Parks*, 2010 WL 3103391, at *4 (Del. Super.), amended, 2023 WL 7903639 (Del. Super.) (internal quotations removed).

⁸ *GMG Cap. Invs., LLC v. Athenian Venture Partners I, LP*, 36 A.3d 776, 779 (Del. 2012) quoting *E.I. du Pont de Nemours & Co., Inc. v. Shell Oil Co.*, 498 A.2d 1108, 1113 (Del. 1985).

⁹ *Id.* at 783 (citations omitted).

¹⁰ 55 A.3d 330 (Del. 2012).

¹¹ *Id.* at 333.

release in *Riverbend* applied to “all known or unknown, suspected or unsuspected, past, present, and future claims, demands [,] damages, interest, penalties, legal fees and all other actions, or suites [sic] at law or in equity....because of any matter or thing done, omitted, or suffered to be done...”¹² The Supreme Court found this general release operated to bar the tort claims at issue.¹³ Additionally, *Riverbend* instructs that the scope of a release is controlled by the parties’ intent which is ascertainable by reviewing “the overall language of the document.”¹⁴

The language in this case is not as comprehensive as the release in *Riverbend*. The BLA states the Lender (DVB) “agree[d] to make the Loan to Borrower [Plaintiff], the proceeds of which shall be used for commercial purposes.”¹⁵ Paragraph 9.3 appears to support Defendant’s argument, if the Court does not read the clause in its entirety:

The borrower, together with any other Obligor, hereby waives and releases all claims and defenses against the Lender and/or with respect to the payment or enforcement of the Obligations and the Lender’s rights in any collateral or other security on account of any of the forgoing.¹⁶

The BLA also defines the term “Obligations.”

¹² *Id.*

¹³ *Id.* at 336.

¹⁴ *Id.*

¹⁵ Def.’s Ans., Ex. 2, D.I. 17, at § 2.1.

¹⁶ *Id.* at § 9.3 (emphasis added).

all present and future indebtedness, duties, obligations, and liabilities, whether now existing or contemplated or hereafter arising, of the Borrower or any Other Obligor to the Lender, under, arising pursuant to, in connection with the Loan and/or the Loan Documents or any other documents evidencing any indebtedness to the Lender; and (b) any and all renewals, extensions, substitutions, amendments, restatements or rearrangements of any or all of the foregoing.¹⁷

Further, the BLA defines the term “Loan Documents.” Again, when these definitions are considered, they do not cover the negligence action asserted in this case.

this Agreement, the Note, the Guaranty Agreements and any and all other documents, instruments, guarantees, certificates, agreements, loan agreements, security agreements, guaranties, deeds of trust, mortgages, assignments or other contract with or for the benefit of the Lender, or securing or evidencing payment of any indebtedness of the Borrower, previously, simultaneously or hereafter executed and/or delivered by the Borrower, any Other Obligor, and/or any other Person in connection with the Loan or any of the Obligations.¹⁸

The Court finds the language cited by DVB is not as comprehensive as that used by the parties in *Riverbend*. The plain and unambiguous meaning of this

¹⁷ *Id.* at 4 (emphasis added).

¹⁸ *Id.* at 3.

agreement, when read as a whole, is that it releases claims with respect to the Loan and/or the Loan Documents.

The Court is not convinced that Defendant's proposal constitutes a Loan Document. The Court is also not convinced this negligence action is an Obligation. Under these circumstances, an unsigned construction proposal cannot be the basis for releasing Defendant from liability for any harm arising out of the entire construction project. The overall language of the BLA does not evidence an intent to release prior claims of negligence for flooding because the BLA is largely concerned with the extension of a loan.

CONCLUSION

For the above reasons, the Motion of DVB for Judgment on the Pleadings is DENIED.

IT IS SO ORDERED.

/s/Sonia Augusthy
Sonia Augusthy, J.