

Thomas Devine v. Roche Biomedical Laboratories, et al.

1. We review the entry of the summary judgments entered in favor of NorDx and Roche by examining the evidence in the light most favorable to Devine to determine [870*870](#) whether the Superior Court committed an error of law.

In this case, judgments entered in favor of NorDx and Roche since Devine didn't state a clear issue. When reviewing a motion for summary judgments, the Superior Court must examine evidence in the light most favorable to Devine. This means that the court will lean on the side of Devine and give more "leniency" to benefits of doubts. However, Devine must still be able to prove his allegations for a ruling in his favor.

2. This he fails to do. It is not enough that he benefitted or could have benefitted from the performance of the contract. The intent must be clear and definite, whether it is expressed in the contract itself or in the circumstances surrounding its execution. *Id.* If BIW did not intend to confer upon Devine an enforceable right, any benefit enjoyed by him as a result of the performance of the contract renders him a mere incidental beneficiary. "An incidental beneficiary cannot sue to enforce third party beneficiary rights." *Id.* [\[1\]](#)

Thomas Devine benefitting from the BIW-NorDx contract does not constitute a satisfactory requisite to create an enforceable third party contract. There must be intent in the actual language of the contract itself to express that BIW's intent is directly causal to a benefit to Thomas Devine. The benefit also must not be incidental and must be directly intended for him. The facts surrounding the case shows that any benefit that Thomas experiences as a result of the BIW-NorDx contract would only be incidental. This results in defining Devine as an incidental beneficiary and thus nullifying any third party rights because legally, incidental beneficiaries do not have the right to sue under third party beneficiary principles.

3. No language in the contract indicates BIW's intent to benefit third parties. The contract provides that NorDx will provide courier service and that Roche will provide clinical laboratory services and report the results orally and in writing. While the contract acknowledges that BIW is relying on NorDx's special skills, knowledge and ability regarding the type of work to be performed, we read this language neither to expand the work contracted for nor to indicate an intent that the performance of that work benefit BIW employees.

The contract between BIW-NorDx does not state any third party rights. NorDx serves as a courier and subcontracts with Roche who does the actual testing of the specimens. BIW is relying on the expertise of NorDx but the intent of this was not to benefit any of the BIW employees. The intent is a policy within their company serving as a method to ensure quality control of the employees. The testing does not have a direct benefit to BIW employees, it merely serves as a condition of employment.

4. In the absence of contract language, there must be circumstances that indicate with clarity and definiteness that BIW intended to give an employee such as Devine an enforceable benefit under the contract. In assessing the relevant circumstances, courts must be careful to distinguish between the consequences to a third party of a contract breach and the intent of a promisee to give a third party who might be affected by that contract breach the right to enforce performance under the contract. If consequences become the focus of the analysis, the distinction between an incidental beneficiary and an intended beneficiary becomes obscured. Instead, the focus must be on the nature of the contract itself to determine if the contract necessarily implies an intent on the part of the promisee to give an enforceable benefit to a third party. The contract between BIW and NorDx does not meet that standard

If ambiguity or plain lacking of language inferring intent exists, there must be instances that can illustrate clarity in BIW's intent to give Devine an enforceable benefit. In this case the court must be careful in making their decision between the third party of a contract breach and the intent of promise who might affected by the contract. If the problem become the focus then incidental beneficiary and an intended beneficiary becomes uncertain.

5 That contract was intended to help BIW implement its Substance Abuse Policy and Procedures. Although that policy appropriately evinces a concern for the well-being of employees who suffer from substance abuse, BIW implemented that policy because, as the policy notes, substance abuse affects "security, safety, quality control, productivity and employee health," all of which are important to the economic well-being of the company.

The focus of BIW's company is based on economics and profit. In ensuring their best measures and methods of generating an environment to succeed, policies and regulations are implemented to drive the company in a progressive manner. One such way was to enforce a substance abuse policy where they test employees to safeguard that they are not using any illegal substances. The intent and motivator for BIW implementing tests are for self-growth of the company and not the benefits of the

employees' health. This shows that the intent of the tests were not tied directly to the benefits of the employees and thus invalidating a third party beneficiary right that Thomas Devine is seeking.

6 This recognition of the reasons for the policy and the related contract with NorDx is important because it underscores why the nature of the contract itself does not imply an intent on the part of BIW to confer an enforceable benefit on an employee like Devine. BIW is not in the health care business. It engaged in drug testing of Devine and other employees to advance its economic objectives. Similarly, Devine did not submit to the drug testing at BIW to address his health concerns. He submitted only because the drug testing was a condition of employment. For both BIW and Devine, the drug testing was incidental to their employment relationship

The policy and the contract with NorDx is important because the contract doesn't suggest on part of BIW to grant an enforceable benefit on their employees. In Devine case he submitted drug testing for condition of employment. The company's primary intent for the policy was not to ensure the employees' were healthy but only as a condition to their hiring.

7. By contrast, if Devine went to a physician who took a urine sample from him as part of a physical examination and submitted the sample to an independent laboratory for analysis and interpretation, Devine would clearly be an intended beneficiary of the [871*871](#)contractual relationship between the doctor and the laboratory. The patient-doctor relationship is all about the health of the patient. Had Devine gone to a doctor to address his health concerns, a doctor would submit a specimen for testing primarily for the benefit of his patient. The laboratory would perform its work primarily for the benefit of the patient. Given these facts, the contract between the doctor and the laboratory would necessarily imply an intent on the part of the doctor to confer an enforceable benefit on the patient with respect to the contractual performance of the laboratory.

As an example, a doctor-patient relationship was used to show a distinction in third party rights. A doctor's occupational duty is to check on the health of their patients. A doctor draws fluids and sends to a lab to run tests to observe and analyze the health of the patient. This shows a direct tie to the benefit of the patient and would imply intent to benefit between the doctor and lab since there is no other reason for these tests to be done but to check the health of the patient. If Devine goes to a physician as part of a physical examination, he would be considered a beneficiary of the contractual relationship between the doctor and lab.

8. Who won??

Supreme Judicial Court of Maine affirms ruling of lower court. Thomas Devine loses due to lack of proving that there was an intent for him to benefit from BIW-NorDx-Roche agreement. He has no third party rights here and even any incidental benefits he experienced would still not give him any grounds to sue as by rule, incidental beneficiaries cannot sue under third party contracts. The court found nothing to indicate the laboratory had any duty to Devine.