STATE OF MICHIGAN

COURT OF APPEALS

KATHY L. LAMBERS and BARRY H. LAMBERS,

Plaintiffs,

v

WHEELS, INC., a foreign corporation,

Defendant/Third-Party Plaintiff-Appellant,

v

GRAND RAPIDS AUTO AUCTION,

Third-Party Defendant-Appellee.

UNPUBLISHED
December 6, 1996

No. 187787
LC No. 93-19149-NI

Before: Markey, P.J., and Michael J. Kelly and M.J. Talbot.* JJ.

PER CURIAM.

Defendant/third-party plaintiff Wheels, Inc. (hereinafter "Wheels") appeals as of right from the trial court's grant of summary disposition to third-party defendant Grand Rapids Auto Auction (hereinafter "GRAA") regarding Wheels' suit against GRAA based on an indemnification provision contained in a contract between these parties. The trial court found that the contract clearly provided that GRAA owed a duty to indemnify Wheels only in the event that GRAA breached the parties' contract. Because Wheels admitted that GRAA had not breached the contract, GRAA was not obligated to indemnify wheels and was, therefore, entitled to summary disposition.

On appeal, Wheels claims that the trial court erred in granting summary disposition to GRAA and that the issue of the parties' intent regarding the contract should have gone to trial for a jury determination. We disagree.

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* Circuit judge, sitting on the Court of Appeals by assignment.

Wheels' argument for contractual indemnification from GRAA is based upon paragraph nine of the parties' contract, which provides as follows:

> Auctioneer [GRAA] shall indemnify, defend and hold harmless Wheels, its' [sic] affiliates, subsidiaries, officers, directors, employees, successors and assigns from and against any and all loss, damage, liability, claims, causes of action, and expenses of whatever kind and nature including any civil or criminal actions of whatever kind and nature arising from the breach of this Agreement.

A trial court's grant of a motion for summary disposition is reviewed de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; ___ NW2d ___ (1995). All the evidence and reasonable inferences therefrom must be construed in favor of the nonmoving party. *Skinner v Square D Co,* 445 Mich 153, 161-162; 516 NW2d 475 (1994).

The rules of construction with respect to indemnity contracts are set forth in *Pritts v J I Case Co,* 108 Mich App 22; 310 NW2d 261 (1981).

> An indemnity contract is construed in accordance with the rules for the construction of contracts generally. The cardinal rule in the construction of indemnity contracts is to enforce them so as to effectuate the intention of the parties. Intention is determined by considering not only the language of the contract but also the situation of the parties and the circumstances surrounding the contract. Indemnity contracts are construed most strictly against the party who drafts them and against the party who is the indemnitee. [*Id.*, 29.]

However, rules of construction are resorted to only when a contract is ambiguous. *Barner v City of Lansing,* 27 Mich App 669, 671; 183 NW2d 877 (1970). An unambiguous contract is not subject to construction and must be enforced according to its terms. *Id.* A contract is not ambiguous if it admits of but one interpretation. *Auto Owners Ins Co v Zimmerman,* 162 Mich App 459, 461; 412 NW2d 925 (1987). A mistake in the wording of a contract is not an ambiguity. *Goodwin, Inc v Orson E Coe Pontiac, Inc,* 43 Mich App 640, 645; 204 NW2d 749 (1972), rev'd on other grounds 392 Mich 195 (1974). If the contract's terms are clear and have a definite meaning, the court may not rewrite the contract, in effect making a new contract. *Id.*

In granting GRAA's motion for summary disposition, the trial court stated,

> I think I know what Wheels intended, what the drafter intended, but it's not really what they wrote. What they intended, I assume, is probably to say "arising from this agreement" and not "from the breach of this agreement," but that's not what they wrote. They wrote "arising from the breach of this agreement." So there is -- from what I think is the clear language, there has to be a breach of the agreement. There has to be insurance coverage, adequate insurance coverage, of Wheels's vehicles to cover

any loss, theft or damage or injury to person, but there is no claim that there isn't, and there is no indication that there is a breach of the agreement.

We regard the trial court's decision as well supported by the above-cited rules for contract construction. While it is true that when a court construes a contract, it must consider, in addition to the contract language, the "situation of the parties and the circumstances surrounding the contract," *Pritts, supra*, 29, as noted, rules of construction are resorted to only when a contract is ambiguous, and an unambiguous contract must be enforced as it is written, *Barner, supra,* 27 Mich App 671. The contract language is not ambiguous; thus, the trial court did not err in granting GRAA summary disposition.

Affirmed.

/s/ Jane E. Markey
/s/ Michael J. Kelly
/s/ Michael J. Talbot