STATE OF MICHIGAN

COURT OF APPEALS

RAYMOND D. BARKER II,

Plaintiff,

v

RAYMOND L. JABLONSKI and VIRGINIA JABLONSKI,

Defendants/Cross-Plaintiffs/
Appellants,

and

JABLON ENTERPRISES, INC.,

Defendant/Cross-Defendant/
Appellee.

UNPUBLISHED
January 31, 1997

No. 181875
Genesee County
LC No. 92-12195-NO

Before: Hoekstra, P.J., and Marilyn Kelly and J.B. Sullivan,* JJ.

PER CURIAM.

Defendants/cross-plaintiffs Raymond and Virginia Jablonski (plaintiffs) appeal as of right from a Genesee Circuit Court judgment for defendant/cross-defendant Jablon Enterprises, Inc. (defendant). In 1992 Raymond Barker filed a claim against both plaintiffs and defendant for injuries he suffered after falling in a parking lot. A jury trial was held on Barker's claim and a jury verdict in Barker's favor against plaintiffs was entered; the jury returned a verdict of no cause of action against defendant. In their cross-claim, plaintiffs sought indemnity from defendant under a lease agreement between the parties, and the trial court, following a bench trial, entered a judgment in defendant's favor. We reverse.

Plaintiffs first argue that the trial court erred in finding that the parking space in which Barker fell was not within the leased premises. We disagree. Although the lease facially purported to convey the

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

parking lot in its entirety, the parties' conduct under the lease is relevant in ascertaining their intent. See *In re Loose*, 201 Mich App 361, 366-67; 505 NW2d 922 (1993). Raymond Jablonski's testimony demonstrated that the lease's description of the leased premises was not accurate. Further, evidence showed that Copeland, a tenant of plaintiffs, was allowed exclusive use of the parking spot that was in the lot leased to defendant by plaintiffs. Thus, we are not left with a definite and firm conviction that the trial court erred in finding the parking spot was not part of the premises leased to defendant. *Arco Industries Corp v American Motorists Ins Co*, 448 Mich 395, 410; 531 NW2d 168 (1995).

Plaintiffs argue that even if the parking space where Barker fell was not part of the leased premises, as found by the trial court, the indemnity provision of the lease still applied because the accident occurred "on or about" the premises. We agree. This Court's decision in *Wagner v Regency Inn Corp*, 186 Mich App 158, 168; 463 NW2d 450 (1990) supports plaintiffs' position and we find the analysis contained therein to be applicable to the instant case. Here, because the lease provision purported to indemnify plaintiffs for any occurrence "on or about" the leased premises, the fact that the single parking space in which Barker fell was not part of the leased premises does not preclude the indemnity clause from requiring defendant to indemnify plaintiffs in this instance.

Defendant argues that even if the lease covered the parking spot in question, it does not have a duty to indemnify because plaintiffs breached the covenant of quiet enjoyment. Even assuming arguendo that the covenant was breached, the appropriate remedy would be to compensate defendant for its loss rather than to nullify the other provisions of the lease. See *Royal Oak Wholesale Co v Ford*, 1 Mich App 463, 466-67; 136 NW2d 765 (1965).

Defendant further argues that the indemnity clause in the lease between the parties cannot be construed to indemnify plaintiffs for their own negligence absent unequivocal terms so providing. We disagree. Michigan courts have discarded this rule of construction. *Sherman v DeMaria Bldg Co*, 203 Mich App 593, 596-97; 513 NW2d 187 (1994). Broad indemnity language can be interpreted to protect the indemnitee against his own negligence if this intent can be otherwise ascertained. *Id*. at 597. Here, the indemnity clause in question states that "[t]he tenant agrees to indemnify and hold harmless the Landlord from any liability for damages to any person or property in, on or about said premises from any cause whatsoever." We find that use of the term "any" in the indemnity clause evidences an intent that plaintiffs be indemnified in the broadest range of possibilities. See *Skotak v Vic Tanny International, Inc*, 203 Mich App 616, 619; 513 NW2d 428 (1994).

Based upon the foregoing, we conclude that plaintiffs were entitled to summary disposition on the issue of indemnification. Accordingly, the judgment of the trial court is reversed, and the case is remanded for entry of an order granting summary disposition to plaintiffs. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Marilyn Kelly
/s/ Joseph B. Sullivan