STATE OF MICHIGAN

COURT OF APPEALS

CHRYSLER CORPORATION,

Plaintiff-Appellee,

v

CHURCHILL TRANSPORTATION, INC.,

Defendant-Appellant.

UNPUBLISHED
February 21, 1997

No. 183854
Wayne Circuit Court
LC No. 94-412738-CK

Before: MacKenzie, P.J., and Jansen and T.R. Thomas,* JJ.

PER CURIAM.

Defendant appeals as of right from a February 17, 1995, order of the Wayne Circuit Court granting summary disposition in favor of plaintiff. We affirm.

This is a contractual indemnification action. On July 7, 1989, the parties entered into a contract for transportation services. The contract included an indemnification clause. On June 23, 1992, one of defendant's employees slipped and fell during the course of a delivery to a Chrysler transmission plant. The employee sustained serious injuries and filed suit against Chrysler alleging negligence. Chrysler tendered the claim to defendant, but defendant failed to defend. Ultimately, Chrysler and defendant's employee settled the suit for $250,000.

On April 13, 1994, plaintiff filed suit against defendant seeking indemnification under the contract. The parties both filed motions for summary disposition and the trial court denied defendant's motion for summary disposition and granted plaintiff's motion. The trial court found the contract to be clear and unambiguous and ruled that defendant was required to indemnify plaintiff for any damages assessed against plaintiff in connection with the negligence action. Ultimately, the trial court granted summary disposition in favor of plaintiff with respect to damages as well, and awarded plaintiff $261,248.12.

On appeal, defendant raises three issues. It claims that the contract did not require it to indemnify plaintiff for damages caused by plaintiff's own negligence. Defendant also claims that the

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

mere presence of the injured employee at plaintiff's plant was insufficient to require it to indemnify plaintiff under the contract. Finally, defendant argues that the injury to the employee did not arise out of transportation services such as to trigger any indemnification to plaintiff.

The contract in question contains the following indemnification clause:

> **3. INSURANCE AND INDEMNIFICATION.** Carrier will furnish to Chrysler and maintain in effect during the term of this Agreement, at its sole expense, insurance in amounts and coverages satisfactory to Chrysler. Such insurance will be primary to, and not excess over or contributory with, any other valid, applicable collectible insurance in force for Chrysler. Except for Commodity loss and damage claims filed by Chrysler or its agent that are governed in Section 2, Carrier will defend, indemnify and hold harmless Chrysler, its parent corporation, subsidiaries, officers, directors and employees, against any and all claims, liabilities, losses, damages, penalties, fees, settlements and expenses connected with: 1) injury to or the death of any person, 2) damage to or loss of any property of any person, or 3) the violation of or noncompliance with any law or regulation, allegedly or actually resulting from or arising out of any act or omission, negligent or otherwise, of Carrier, or its employees or subcontractors, in connection with the performance of transportation services.

The trial court found the above indemnification clause to be clear and unequivocal. Where an indemnity contract is clear and unambiguous, its interpretation is a question of law for the trial court to decide. *Walbridge Aldinger Co v Walcon Corp,* 207 Mich App 566, 572; 525 NW2d 489 (1994). Further, indemnity contracts are to be construed in accordance with the rules for the construction of contracts in general. *Triple E Produce Corp v Mastronardi Produce, Ltd,* 209 Mich App 165, 172; 530 NW2d 772 (1995). Indemnity contracts should be construed to effectuate the intent of the parties, which may be determined by considering the language of the contract, the situation of the parties, and the circumstances surrounding the making of the contract. *Id.* An indemnity contract will be construed strictly against the party who drafts the contract and the party who was the indemnitee. *Id.*

Defendant argues that the indemnification contract does not expressly or impliedly indemnify plaintiff for plaintiff's own negligence. Michigan courts have discarded the rule of construction that indemnity contracts will not be construed to provide indemnification for the indemnitee's own negligence unless such an intent is expressed clearly and unequivocally in the contract.[1] *Vanden Bosch v Consumers Power Co,* 394 Mich 428; 230 NW2d 271 (1975); *Sherman v DeMaria Bldg Co,* 203 Mich App 593, 597; 513 NW2d 187 (1994). Rather, broad indemnity language may be interpreted to protect the indemnitee against its own negligence if this intent can be ascertained from other language in the contract, surrounding circumstances, or from the purpose sought to be accomplished by the parties. *Id.*

Given the broad language in the indemnification agreement in this case, we find that the trial court did not err in granting summary disposition in favor of plaintiff. The indemnification language is clear and unambiguous and provides for indemnification against *any and all claims* connected with

injury to any person arising out of any act or omission of defendant's employees in connection with the performance of transportation services. Accordingly, the indemnification agreement clearly and unambiguously provides for indemnification of the indemnitee's own negligence.

Defendant next claims that the trial court erred in granting summary disposition in favor of plaintiff because there was a material factual dispute concerning whether the injury arose out of an act or omission on the part of plaintiff. This argument is wholly without merit. It is undisputed that defendant's employee sustained his injuries during the course of a delivery to a Chrysler transmission plant. Further, the injury occurred at the plant on a loading dock. There is no factual dispute here. The indemnification contract clearly applies resulting from any act or omission, negligent or otherwise, on the part of the carrier (defendant). Contrary to defendant's argument, there is no requirement that defendant be found negligent in order for plaintiff to be entitled to indemnification since the language states that the act or omission be negligent *or otherwise*.

Lastly, defendant argues that there is a material factual dispute with regard to whether injury to the employee arose out of transportation services. The employee was injured when he slipped and fell on a loading dock at plaintiff's plant while delivering a load of parts to the plant. There is clearly no factual dispute here that the employee was injured in connection with the performance of transportation services. Defendant has failed to come forth with any documentary evidence to establish that there was a material factual dispute regarding this issue for trial. *McCart v J Walter Thompson, USA, Inc,* 437 Mich 109, 115; 469 NW2d 284 (1991).

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Kathleen Jansen
/s/ Terrence R. Thomas

[1] Because this case does not concern a construction contract, there is no violation of our public policy that a party to a construction contract may not require another party to purchase insurance to cover the other party's sole negligence. See MCL 691.991; MSA 26.1146(1); *Chrysler Corp v Skyline Industrial Services, Inc,* 448 Mich 113, 129-130; 528 NW2d 698 (1995); *Sentry Ins Co v Nat'l Steel Corp,* 147 Mich App 214, 221; 382 NW2d 753 (1985).