

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SCOTT NYS,

Plaintiff,

v

MADONNA UNIVERSITY,

Defendant/Third-Party Plaintiff-  
Appellant,

v

SMART (THE AUTHORITY), a/k/a SUBURBAN  
MOBILITY AUTHORITY FOR REGIONAL  
TRANSPORTATION,

Third-Party Defendant-Appellee.

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UNPUBLISHED

April 26, 2005

No. 252167

Wayne Circuit Court

LC No. 02-211272-NO

Before: Saad, P.J. and Fitzgerald and Smolenski, JJ.

PER CURIAM.

In this premises liability action, third-party plaintiff Madonna University appeals as of right the trial court's denial of its motion for summary disposition on its indemnification claim against third-party defendant SMART and the grant of SMART's motion for summary disposition on that same claim. We reverse and remand.

I. Facts and Procedural History

Pursuant to a contract with Madonna University, SMART obtained permission for its "Park & Ride" patrons to use approximately fifty parking spaces on Madonna's property adjacent to Levan Road in Livonia. Plaintiff Scott Nys was a patron of SMART's "Park & Ride" program and throughout the workweek would park in the designated area of the Madonna lot and catch a SMART bus to and from his place of employment in Detroit. On January 27, 2000, the SMART bus plaintiff was riding pulled into the Madonna lot to disembark its passengers. While stepping down from the bus, which had parked on the apron of the driveway leading into the parking lot, Nys slipped and fell on a patch of snow-covered ice. As a result of the fall, Nys suffered two broken ankles.

On April 5, 2002, Nys filed a premises liability complaint against Madonna. On May 7, 2002, Madonna filed a third-party complaint against SMART seeking indemnification under its contract with SMART. On April 11, 2003, Madonna filed a motion for summary disposition under MCR 2.116(C)(10) against Nys and under MCR 2.116(C)(9) and (10) against SMART. In its motion against SMART, Madonna argued that SMART breached its contract when it permitted passengers to disembark onto the apron of the driveway rather than at the designated bus stop and that the contract's indemnification clause applied regardless of Madonna's fault. SMART responded on May 30, 2003, with a cross-motion for summary disposition under MCR 2.116(I)(2). SMART argued that the indemnification clause did not apply because Madonna breached the contract by not removing the snow and ice from the driveway apron and was the sole cause of Nys' injuries. SMART also argued that the indemnification clause applied only to injuries arising out of the use of the actual parking spaces and not the driveway where Nys fell.

Nys settled his claim with Madonna for \$300,000, which claim was dismissed with prejudice by stipulation on September 2, 2003. On September 23, 2003, the trial court heard oral arguments from the remaining parties on the issue of indemnification. At the close of the oral arguments, the trial court stated,

In this case the Plaintiff slipped and fell on Madonna's property. The bus in this case was on a city street. The responsibility for maintaining the snow removal and ice removal was Madonna's. I don't believe the provisions of the contract were intended to cover this situation. The Court relies on the Lehmann<sup>1</sup> decision. So Madonna University's motion for summary disposition is hereby denied. SMART's motion for summary disposition is hereby granted. [Footnote added.]

On October 20, 2003, the trial court entered its order and this appeal followed.

## II. Standards of Review

This Court reviews de novo the grant or denial of summary disposition to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. [*Id.* at 120.]

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<sup>1</sup> *Lehmann v T & L Partnership*, unpublished opinion per curiam of the Court of Appeals, issued October 25, 2002 (Docket No. 230293).

“A motion brought under MCR 2.116(C)(9) seeks a determination whether the opposing party has failed to state a valid defense to the claim asserted against it.” *Nicita v Detroit (After Remand)*, 216 Mich App 746, 750; 550 NW2d 269 (1996). Only the pleadings are considered in a motion under MCR 2.116(C)(9). MCR 2.116(G)(5). “The well-pleaded allegations are accepted as true, and the test is whether the defendant’s defenses are so clearly untenable as a matter of law that no factual development could possibly deny a plaintiff’s right to recovery.” *Nicita, supra* at 750. In a motion under MCR 2.116(I)(2), “[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party.” Finally, the interpretation of a contract is a question of law this Court reviews de novo. *DaimlerChrysler Corp v G-Tech Pro Staffing, Inc*, 260 Mich App 183, 184; 678 NW2d 647 (2003).

### III. The Lease Agreement

SMART argues that the indemnification clause does not apply under the facts of this case. We disagree.

The relevant parts of the lease agreement between SMART and Madonna provides

This agreement is entered into between SMART (the Authority) and Madonna University (Owner) on September 1, 1997, for the purpose of allowing the Authority to use certain premises of the Owner as a Park & Ride Lot. The terms of this agreement are as follows:

1. DESIGNATED PARKING AREA: - The Authority’s riders may use the following area of the Owner’s premises in which to park:

Approximately 50 spaces in the parking lot located at the northeast corner of the University in the dormitory parking area between the hours of 6:00 a.m. to 7:00 p.m., Monday through Friday. Buses will not enter the property and passengers will board and disembark the buses on Levan Road.

2. NON-LIABILITY: - Neither the owner, tenants, nor the Authority assume any personal or property liability including any damage or theft of cars or their contents while parked in the designated parking area and that all users of this facility will be so informed. In addition, the Authority will indemnify and save harmless the owner from all claims, damages, expense, costs, and charges, losses and liability to persons or property arising from the use of this property by SMART for public transit purposes.

3. PAYMENTS: - The Authority shall pay Owner for the use of the “designated parking area” the following amounts:

SMART will pay Owner the sum of \$2,500 per year which includes routine maintenance as well as timely snow removal. [Emphases in original.]

An indemnity contract is construed like any other contract. *DaimlerChrysler Corp, supra* at 185. Indemnity contracts should be construed to give effect to the parties’ intent. *Sherman v*

*DeMaria Bldg Co*, 203 Mich App 593, 596; 513 NW2d 187 (1994). “In ascertaining the intention of the parties, the court must consider the language of the contract as well as the situation of the parties and the circumstances surrounding the contract.” *Id.*

The parties’ contract states that SMART will indemnify and save harmless Madonna “from all claims, damages, expense, costs, and charges, losses and liability to persons or property arising from the use of this property by SMART for public transit purposes.” SMART contends that the phrase “this property” refers to the parking spaces described in the first paragraph and, as a result, SMART’s duty to indemnify should be limited to use that occurs within that parking area. We agree that “this property” refers to the leased parking spaces. However, this does not necessarily limit the uses to which the indemnity clause could apply to uses that occur within the confines of the leased spaces. For the lease of the parking spaces to have any real value, the use permitted by the agreement must necessarily include vehicular and pedestrian access to the parking spaces. Furthermore, the use for which indemnity may apply is limited to use of “this property by SMART for public transit purposes.” The phrase “for public transit purposes” contemplates all uses necessary for the leased premises to function as a Park & Ride lot. Thus we cannot agree with SMART that the indemnification clause applies only to events that occur within the four corners of the leased parking area.<sup>2</sup> On the contrary, we hold that the plain meaning of the indemnification clause contemplates all uses consistent with the use of the leased parking spaces by SMART for public transit purposes (i.e. as a Park & Ride lot). Consequently, Nys’ slip and fall while stepping off the SMART bus, which brought him to the lot to retrieve his car, comes within the meaning of the indemnification clause.

SMART next contends that, because Madonna was solely responsible for the removal of snow and ice from the area where Nys fell and the indemnification clause was not broad enough to encompass indemnification for Madonna’s sole negligence, SMART cannot be held liable under the indemnification clause. We disagree.

Broad, all-inclusive indemnification language “may be interpreted to protect the indemnitee against its own negligence if such intent can be ascertained from other language in the contract, surrounding circumstances, or from the purpose sought to be accomplished by the parties.” *Fischbach-Natkin v Power Process Piping, Inc*, 157 Mich App 448, 452; 403 NW2d 569 (1987). Here, the indemnity clause states that it provides indemnification for “all claims . . . and liability to persons or property arising from the use of this property by SMART for public transit purposes.” The word “all” in an indemnity provision has been interpreted to impart the “broadest possible indemnification.” *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 173; 530 NW2d 772 (1995). Although the indemnity provision did not explicitly state that Madonna was to be held harmless for its own negligence, we conclude that the broad,

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<sup>2</sup> The facts of this case are distinguishable from the facts present in *Lehman, supra*. In rendering its opinion, the court in *Lehman* relied upon the specific definition of the premises to which the indemnification clause applied. The court determined that the indemnification language limited indemnification to claims *in or about* the defined premises. *Lehman, supra*. Hence, the language of the indemnification clause in that case narrowed the uses to which indemnification could be applicable. There are no such limitations in the present case.

inclusive language of the indemnity provision can only be construed as applicable to claims such as that brought by Nys.

Reversed and remanded for entry of an order granting summary disposition in favor of Madonna University. We do not retain jurisdiction.

/s/ Henry William Saad  
/s/ E. Thomas Fitzgerald  
/s/ Michael R. Smolenski