

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

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DANIEL SCHOENING,

Plaintiff,

v

KIA MOTOR ENGINEERING, INC., K-F LAND  
COMPANY LIMITED PARTNERSHIP, and  
STUART FRANKEL DEVELOPMENT  
COMPANY,

Defendants,

and

K-F LAND COMPANY LIMITED PARTNERSHIP,  
and STUART FRANKEL DEVELOPMENT  
COMPANY,

Cross-Plaintiffs-Appellees,

v

KIA MOTOR ENGINEERING, INC,

Cross-Defendant-Appellant.

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Before: Holbrook, Jr., P.J., and Michael J. Kelly and Gribbs, JJ.

MEMORANDUM.

In this contractual indemnification action, cross-defendant KIA Motor appeals as of right from the trial court's determination that the terms of the lease at issue required it to indemnify, defend, and hold harmless cross-plaintiffs in an underlying premises liability action. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

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LC No. 95-491346 NO

An indemnity contract is construed in accordance with the rules for the construction of contracts generally. *Chrysler Corp v Brencal Contractors, Inc*, 146 Mich App 766, 771; 381 NW2d 814 (1985). The cardinal rule in the construction of indemnity contracts is to ascertain and give effect to the intention of the parties. *MSI Construction Managers, Inc v Corvo Iron Works, Inc*, 208 Mich App 340, 343; 527 NW2d 79 (1995); *Pritts v J I Case Co*, 108 Mich App 22, 29; 310 NW2d 261 (1981). A contract may provide for indemnification for the indemnitee's own negligence and concurrent negligence, if this intent can be ascertained from other language in the contract, surrounding circumstances, or the purpose sought to be accomplished by the parties. *MSI Construction, supra*, 343; *Sherman v DeMaria Building Company, Inc*, 203 Mich App 593, 597; 513 NW2d 187 (1994).

Here, the lease's indemnification provision opens with the following language: "Lessor shall be indemnified, defended and held harmless by Lessee from and against any and all claims, actions, damages, liability and expense, including attorneys' fees, in connection with . . . personal injury . . . ." This language clearly evinces the intent that the lessor should be held harmless from its own negligence. See *Pritts, supra*, 29-30.

The indemnity provision then delineates the various circumstances under which the lessee agrees to hold the lessor harmless and to indemnify the lessor. The indemnity provision indicates, amongst other circumstances, that the lessee will indemnify the lessor for "personal injury . . . arising from or out of . . . any occurrence in, upon or at the . . . Common Areas allocated to the Leased Premises, including . . . all persons in the Common Areas at its or their invitation or with their consent . . . ." If we assign the terms "Common Areas" and "Leased Premises" their contractual definitions and the word "allocated" its common meaning, and if we acknowledge the broad sweep of the lease's grant of the use of the common areas of the commercial development to the lessee, then we must conclude that the phrase "Common Areas allocated to the Leased Premises" includes all parking areas and driveways within the development, including the parking lot in which plaintiff Schoening fell. Accordingly, the circumstances surrounding Schoening's fall trigger KIA Motor's indemnification obligation under § 10.01(i) of the lease.

KIA Motor is not released from this obligation by the language of § 10.06, because that section is inapplicable given that the "injured party" was Schoening, rather than KIA Motor or cross-plaintiffs.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Michael J. Kelly

/s/ Roman S. Gibbs