

STATE OF MICHIGAN
COURT OF APPEALS

GHASSAN MOHAMAD AHMAD and NADIA
AHMAD,

UNPUBLISHED
May 12, 1998

Plaintiffs,

v

No. 200413
Oakland Circuit Court
LC No. 95-507926-NI

THE COMMUNITY HOUSE ASSOCIATION,

Defendant/Cross-Plaintiff/Appellee,

and

L & L WINE AND LIQUOR CORPORATION,

Defendant/Cross-Defendant/Appellant.

Before: Gage, P.J., and Reilly and Jansen, JJ.

PER CURIAM.

L & L Wine and Liquor Corporation (L & L Wine) appeals as of right from a December 17, 1996 order granting summary disposition in favor of The Community House Association (Community House) pursuant to MCR 2.116(C)(10) in this indemnification action. We affirm.

The underlying facts are essentially undisputed. L & L Wine and Community House entered into a contract regarding the rental of the Community House facility located in Birmingham. On October 2, 1995, L & L Wine, as one of twenty-five wine manufacturers, participated in a wine tasting exposition to present wines to various restaurants and retail outlets. Each table was staffed by either a representative of the winery or a representative from L & L Wine. Community House wait staff were not responsible for serving the wine. Community House is a non-profit corporation that rents its premises to various public and private functions. Community House has a class C liquor license so that alcohol may be served on its premises. Community House purchased the alcohol from L & L Wine, on a not-for-profit basis, and then sold back any unused wine to L & L Wine. During the exposition, however, Community House wait staff's function was to ensure that the food table was stocked, that the

hall was kept clean, and that “spit buckets” were emptied frequently. Representatives from L & L Wine or from the other wineries actually poured the wine.

Gary Cook, a sales manager for L & L Wine, stocked one of the wine booths. Cook began drinking at the exposition at approximately 8:30 p.m. He admitted to consuming approximately thirty-seven to forty ounces of wine. Cook left Community House between 9:30 p.m. and 9:45 p.m. and went to a nearby bar. Cook left the bar around 10:30 p.m. He was then involved in a serious automobile accident in Farmington Hills involving plaintiffs Ghassan and Nadia Ahmad in which Cook rear ended them.¹

Plaintiffs sued Cook, L & L Wine, and Community House. Plaintiffs brought suit against L & L Wine under the doctrine of respondeat superior, under the Dramshop Act, and for negligence.² Plaintiffs also sued Community House under the Dramshop Act. Community House then filed a cross-complaint against L & L Wine for indemnification based on the contract signed by the parties for the wine tasting exposition. Community House moved for summary disposition on its cross-complaint and L & L Wine opposed the motion, arguing that Community House’s interpretation of the indemnity clause in the contract was contrary to the intent of the parties and that the indemnity clause could not be enforced as a matter of public policy. The trial court granted summary disposition in favor of Community House on its cross-complaint.³

On appeal, L & L Wine raises two issues. It first argues that the trial court’s interpretation of the indemnity clause in the contract is contrary to the parties’ intent and that a question of fact exists regarding the intent of the parties. It alternatively argues that the indemnity clause is violative of public policy because enforcement of the clause would abrogate Community House’s non-delegable duties under the Dramshop Act. We do not find either issue to require reversal.

The indemnity clause in the contract signed by the parties states the following:

To the fullest extent permitted by law, the contractor [L & L Wine] agrees to indemnify and hold harmless and to defend The Community House Association, Inc., its board of directors, agents, contractors and volunteers against any and all claims, demands, suits, or losses including reasonable attorney fees and costs and damages which may be asserted, claimed or recovered against or from The Community House Association, Inc., its board of directors, agents, contractors and volunteers by reason of personal injury, and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this contract.

An indemnity contract is construed in the same manner as are contracts generally. *Zurich Ins Co v CCR and Co (On Rehearing)*, 226 Mich App 599, 603; ___ NW2d ___ (1997). The cardinal rule in the interpretation of contracts is to determine the intention of the parties. *Id.* The law presumes that the parties understand the import of a written contract and had their intention manifested by its terms. *Id.*, p 604. Where the terms of a contract are unambiguous, their construction is for the court to determine as a matter of law and the plain meaning of the terms may not be impeached by extrinsic evidence. *Id.*

Therefore, a written contract is construed according to the intentions expressed in it, when those intentions are clear from the face of the instrument. *Id.*

We agree with the trial court that the indemnity clause in the contract is clear and unambiguous. That being the case, the contract may not be impeached with extrinsic evidence. We construe the indemnity clause according to its plain and clear terms. The broad language used in the indemnity clause is a clear indication that the parties intended to protect Community House against the type of liability imposed in this case. The use of the terms “any and all claims . . . which arises out of or is in any way connected or associated with this contract” certainly applies to this case where an employee of L & L Wine became intoxicated during a function sponsored by L & L Wine and then caused a serious automobile accident as a result of drinking during the exposition held at Community House. Since the contract concerns room rental, food costs and provisions, and alcoholic beverage service, plaintiffs’ claims against Community House clearly arise out of the contract, that being the wine tasting exposition. See, e.g., *Wagner v Regency Inn Corp*, 186 Mich App 158; 463 NW2d 450 (1990).

Accordingly, the trial court did not err in finding that the indemnity clause was clear and unambiguous and in finding that the indemnity clause encompassed the wine tasting situation. There is no ambiguity in the language of the indemnity clause such that the intent of the parties must be resolved by a finder of fact.

Plaintiff also contends that the indemnity provision violates public policy because it would allow Community House to abrogate its non-delegable duties under the Dramshop Act. Specifically, MCL 436.22(7); MSA 18.993(7) provides:

Any licensee subject to the provisions of subsection (4) regarding the unlawful selling, furnishing, or giving of alcoholic liquor to a visibly intoxicated person shall have the right to full indemnification from the alleged visibly intoxicated person for all damages awarded against the licensee.

Here, Community House, as the holder of a class C liquor license, is the licensee. Because L & L Wine is a distributor, and not a retailer, of an alcoholic beverage, it is not subject to liability under the Dramshop Act. See MCL 436.22(3); MSA 18.993(3). Community House, however, seeks indemnification pursuant to the contract between it and L & L Wine, not pursuant to the Dramshop Act.

Moreover, although the Dramshop Act clearly permits Community House to seek indemnification from Gary Cook, the alleged intoxicated person, it does not specifically prohibit Community House from seeking indemnification from L & L Wine, Cook’s employer and distributor of the intoxicating beverage. Indeed, this Court has held that the principal of a retail licensee may be held vicariously liable under the Dramshop Act. *Kerry v Turnage*, 154 Mich App 275, 281; 397 NW2d 543 (1986). This case is similar in that Community House is seeking indemnification from Cook’s employer under a theory of respondeat superior. Accordingly, the Dramshop Act does not preclude Community House’s claim for indemnification under the contract.

Further, there is no public policy exception here. It is not contrary to this state's public policy for a party to contract against liability for damages caused by its own ordinary negligence. *Skotak v Vic Tanny, Inc*, 203 Mich App 616, 617-618; 513 NW2d 428 (1994). There is no claim or showing that the contract was unfairly or unknowingly made, or in any other way invalid. See *id.*, p 618. Because the indemnity clause is clear and unambiguous, the trial court properly found that its interpretation was a question of law for the court to decide. *Id.*, p 619. The indemnity clause is not invalid as against public policy nor is it precluded by the Dramshop Act.

The trial court did err in granting summary disposition in favor of Community House regarding its cross-complaint.

Affirmed.

/s/ Hilda R. Gage
/s/ Maureen Pulte Reilly
/s/ Kathleen Jansen

¹ According to the first amended complaint, Ghassan Ahmad suffered paralysis in both legs as a result of the accident.

² The trial court granted summary disposition in favor of L & L Wine with respect to plaintiffs' suit in an order entered December 13, 1996.

³ Apparently, L & L Wine settled the case with plaintiffs, on behalf of Community House, for \$3 million. At the time of the settlement, the parties agreed that the order granting summary disposition in favor of Community House on its cross-complaint was preserved for appeal.