STATE OF MICHIGAN

COURT OF APPEALS

TRAVELERS INSURANCE COMPANY,

Plaintiff-Appellant,

v

SILVER MOON JEWELRY, INC.,

Defendant-Appellee.

UNPUBLISHED
December 18, 1998

No. 204052
Wayne Circuit Court
LC No. 96-627432 CZ

Before: Doctoroff, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

On appeal, plaintiff argues that the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(10) because there was a genuine issue of material fact regarding whether the indemnity provision of the license agreement required defendant to indemnify plaintiff. We disagree.

Plaintiff's subrogor, the Equitable Life Assurance Society of the United States, owned Eastland Mall and entered into a license agreement with defendant, whereby defendant leased a one-hundred square foot space in the mall that contained a kiosk from where defendant would sell southwestern Native American art and jewelry. The license agreement had a provision which essentially provided that defendant would indemnify Equitable for any claims in connection with personal injury "arising or resulting from or in connection with" defendant's "use and occupancy of the Licensed Area." On January 23, 1994, Amy Doppelberger was on her way to work at defendant's kiosk when she slipped on an icy handicap ramp near the entrance to Eastland Mall. Doppelberger brought a personal injury action against Equitable. Equitable settled the case with Doppelberger for $16,500.

On appeal, plaintiff argues that the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(10) because there was a genuine issue of material fact regarding whether the indemnity provision of the license agreement required defendant to indemnify plaintiff. We disagree. We review the trial court's grant of summary disposition de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1996).

An indemnity contract is 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.* Furthermore, an indemnity contract "will be construed strictly against the party who drafts the contract and the party who was the indemnitee." *Id.* Where the terms of a contract are unambiguous, their construction is for the court to determine as a matter of law. *Zurich Ins Co v CCR & Co (On Rehearing)*, 226 Mich App 599, 604; 576 NW2d 392 (1997). The law presumes that the parties to a contract "understand the import of a written contract and had the intention manifested by its terms." *Id.*, 604.

In this case, the trial court determined that the indemnification agreement suffered no ambiguity, and plaintiff does not contest this determination on appeal. Rather, plaintiff argues that the trial court erred in failing to find that the indemnity provision of the licensing agreement was broad enough such that it should be applied to Doppelberger's claim. This writer disagrees.

The relevant portions of the indemnity provision of the license agreement essentially provide that defendant shall indemnify Equitable for any claims in connection with personal injury "arising or resulting from or in connection with" defendant's "use and occupancy of the Licensed Area and the [kiosk] Unit." The license agreement clearly provides that defendant would occupy "100 square feet" inside the mall and utilize a kiosk. The language of the indemnity provision is clear and unambiguous, and only provides for Equitable to be indemnified for liability arising from defendant's "use and occupancy" of the one-hundred square feet it is entitled to occupy under the license agreement. Plaintiff has failed to present any evidence that the parties intended anything differently. Although plaintiff argues that the indemnity provision here is as broad as those provisions found in *Wagner v Regency Inn Corp*, 186 Mich App 158, 168; 463 NW2d 450 (1990), and *Calladine v Hyster Co*, 155 Mich App 175, 399 NW2d 404 (1986), we disagree. Accordingly, we hold that the trial court did not err in granting summary disposition in favor of defendant.

Affirmed.

/s/ Martin M. Doctoroff
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald