

STATE OF MICHIGAN
COURT OF APPEALS

RICK EDWARD O'NEAL,

Plaintiff,

V

BARTON MALOW COMPANY and MUNSON
MEDICAL CENTER AND HOSPITALS,

Defendants,

and

BARTON MALOW COMPANY,

Defendant/Third-Party Plaintiff-
Appellant,

v

ARTEC INTERIORS OF TRAVERSE CITY,
INC,

Third-Party Defendant-Appellee.

Before: Murphy, P.J., and Hood and Murray, JJ.

PER CURIAM.

Third-party plaintiff, Barton Malow Co. (plaintiff), appeals as of right from the trial court's order granting third-party defendant Artec Interiors of Traverse City, Inc.'s (defendant) motion for summary disposition in this contract indemnification case. We affirm.

An appellate court reviews the grant or denial of a motion for summary disposition de novo to determine if the moving party was entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The moving party has the initial burden to support its claim to summary disposition by affidavits, depositions, admissions, or other documentary evidence. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the nonmoving party to demonstrate that a genuine issue of disputed fact exists for trial. *Id.* Construction and interpretation of a contract presents a question

of law that an appellate court reviews de novo. *Bandit Industries, Inc v Hobbs Int'l, Inc (After Remand)*, 463 Mich 504, 511; 620 NW2d 531 (2001).

Plaintiff alleges that the trial court erred in concluding that the indemnification provision was not invoked as a result of a worker's fall on exterior snow-covered stairs.¹ We disagree. Review of the indemnification provision at issue² in this case reveals that plaintiff would be indemnified for all claims or suits arising out of or resulting from the performance of the work. We interpret a contract by reading it as a whole and by according its terms their plain and ordinary meaning. *Farm Bureau Mutual Insurance Co v Buckallew*, 246 Mich App 607, 611; 633 NW2d 473 (2001). We may consult dictionary definitions when terms are not expressly defined by the contract. See *Oakland Co Bd of Co Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998). The contract expressly limited interpretation of the term "work" to include only the construction work, carpentry and gypsum wallboard construction, that was completed by defendant. The injuries at issue did not occur during the construction process, but occurred while walking on an external stairwell. Accordingly, the trial court properly concluded that the indemnification provision was not invoked under the circumstances of this case. *Maiden, supra*.

Affirmed.

/s/ William B. Murphy
/s/ Harold Hood
/s/ Christopher M. Murray

¹ As an initial matter, we note that plaintiff challenges the dismissal of the breach of contract claim because defendant failed to produce the insurance policy. We note that the contract at issue expressly provided that insurance coverage would be submitted prior to commencement of any work. Furthermore, the burden of production of documentary evidence does not shift to the nonmoving party until the moving party has made and supported its claim to summary disposition. *Quinto, supra*; MCR 2.116(G)(4). Plaintiff failed to present any documentary evidence to indicate that the contract provision to provide insurance was not complied with. Accordingly, this claim of error is without merit.

² In the trial court, the parties' briefs discussed the indemnification provision as contained in the original contract only. On appeal, plaintiff alleges that supplemental language to the indemnification provision is in dispute. In order to be preserved for appellate review, an issue must be raised, addressed, and decided by the trial court. *Miller v Inglis*, 223 Mich App 159, 168; 567 NW2d 253 (1997). Accordingly, the issue of the supplemental language has not been preserved for appellate review. *Id.* Nonetheless, for reasons of judicial economy, we note that both provisions indicate that the indemnification provision is invoked when any claim arises out of the performance of the work. Accordingly, the disposition under either language remains the same.