

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

---

MEIJER, INC.,

Plaintiff-Appellee,

v

GREAT LAKES AUTOMATIC DOOR, INC. and  
INVESTORS INS GROUP,

Defendants-Appellants.

---

UNPUBLISHED

June 8, 2004

No. 247667

Wayne Circuit Court

LC No. 01-139746-CL

Before: Saad, P.J., and Talbot and Borrello, JJ.

PER CURIAM.

Defendants Great Lakes Automatic Door, Inc., and Investors Insurance Company appeal as of right the May 6, 2003, order granting summary disposition to plaintiff Meijer, Inc., in this indemnification/contract action. We affirm.

This case stems from an underlying personal injury action brought in April 1998, by 78-year-old Mary Baytes, an amputee, who was allegedly injured when an automatic door in a Westland Meijer store closed on her and knocked her down. Baytes filed suit against Meijer, Great Lakes Door, and Nabco Entrances, Inc., in which she alleged that she had been injured because of a defect in the automatic door which had been negligently manufactured by Nabco (or its predecessor)<sup>1</sup> and installed and/or serviced by Great Lakes. Defendants first agreed to defend in the underlying action, but then withdrew their defense. Plaintiff Meijer ultimately entered into a settlement agreement with Baytes and sought recovery from defendants under the indemnity provision in Great Lakes service agreement with Meijer, which included the following indemnity provision:

11. In the event that SELLER [Great Lakes] is required to render any labor or services on premises owned or leased by BUYER [Meijer] or does in fact render any labor or services on such premises, in addition to the foregoing terms and conditions, [Great Lakes] agrees as follows:

---

<sup>1</sup> Baytes reached a separate settlement with defendant Nabco, which is not at issue here.

c. To protect, defend, indemnify and save [Meijer] and its Related Parties harmless from any and all claims, actions, demands, damages and costs, including attorney fees, asserted by any person, including but not limited to [Meijer], its employees and the employees of [Great Lakes], on account of personal injuries or death or damages to property (including [Meijer's] property) allegedly occurring, growing out of, incident to or resulting directly or indirectly from [Great Lakes'] rendering of any labor or services to [Meijer}, whether such loss, damage, injury or liability is contributed to by the negligence of [Meijer] or its employees and whether due to imperfections (latent or patent) of any material or equipment furnished by [Meijer] or defect (latent or patent) in [Meijer's] premises on or about which [Great Lakes'] labor or services are rendered.

The trial court granted plaintiff's motion for summary disposition and ordered defendants to indemnify plaintiff for the costs of defense and the settlement paid to Baytes.

"This Court reviews de novo a trial court's grant or denial of summary disposition. The interpretation of a contract is also a question of law this Court reviews de novo on appeal, including whether the language of a contract is ambiguous and requires resolution by the trier of fact." *DaimlerChrysler v G-Tech*, 260 Mich App 183, 184-185; 678 NW2d 647 (2003), citations omitted.

Indemnity agreements are construed in the same manner as other contracts. "Thus, an unambiguous written indemnity contract must be enforced according to the plain and ordinary meaning of the words used in the instrument." *Id.*, citations omitted. When an indemnitor [Great Lakes, in this case] refuses to provide a defense and the indemnitee [Meijer, in this case] enters into a reasonable settlement, the indemnitee is entitled to recover. *Ford v Clark Equipment*, 87 Mich App 270, 277-278; 274 NW2d 33 (1978). Unlike many of the indemnity agreements cited by the parties, the agreement here specifically indemnified plaintiff for "any and all claims, actions, demands, damages and costs, including attorney fees, asserted by any person," "on account of personal injuries . . . *allegedly* occurring, growing out of, incident to or resulting directly or indirectly from [Great Lakes'] rendering of any labor or services to [Meijer]," (emphasis added.). The plain language of the indemnity agreement in this case does *not* require that the claimed injury be caused in fact by Great Lakes' labor or services, only that the connection between Great Lakes and the injury be alleged. Here, Baytes filed an underlying claim "on account of personal injuries," "allegedly occurring" as a result of Great Lakes' "design, manufacture, distribution and sale, installation and/or services of the automatic door in the Meijer store. Nor are we persuaded by defendants' argument that any "link" between plaintiff and Great Lakes dissolved when Great Lakes was dismissed from the underlying action. Even after the dismissal of Great Lakes from the underlying suit, the core of Baytes' action was her allegation that she was injured by a door that had been improperly serviced. Great Lakes had a contract with Meijer to service their doors. The trial court properly granted plaintiff summary

disposition on the basis of Baytes' complaint and the unambiguous language of the parties' indemnity agreement.

Affirmed.

/s/ Henry William Saad

/s/ Michael J. Talbot

/s/ Stephen L. Borrello