STATE OF MICHIGAN

COURT OF APPEALS

QAIS M. SHUHTRAH,

Plaintiff-Appellant,

v

MR. D'S LEASING, L.L.C.,

Defendant-Appellee.

UNPUBLISHED
August 18, 2005

No. 261555
Wayne Circuit Court
LC No. 04-417555-NI

Before: Zahra, P.J., and Cavanagh and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, a native of Yemen, and defendant, an ice cream seller, entered into a lease pursuant to which plaintiff rented a truck from defendant for the purpose of selling ice cream. The lease provided that plaintiff agreed that defendant would not be liable for any injuries he sustained while operating the truck, and that he would hold defendant harmless from liability of any kind resulting from the use or operation of the truck.

Plaintiff filed suit alleging that he was injured when a latch on the door of the truck failed due to defendant's negligent maintenance, and the door closed on his right hand. Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that pursuant to the lease, plaintiff agreed to hold it harmless from liability resulting from injury arising out of the use of the truck. In response, plaintiff argued that the disclaimer provision was not enforceable because it did not clearly and unequivocally absolve defendant of liability for its own negligence, and that the lease was an unenforceable contract of adhesion.

The trial court, citing *American Empire Ins Co v Koenig Fuel & Supply Co*, 113 Mich App 496; 317 NW2d 335 (1982), and *Fischbach-Natkin Co v Power Process Piping, Inc*, 157 Mich App 448; 403 NW2d 569 (1987), granted defendant's motion, finding that the language of the lease was broad and indemnified defendant against liability for all injuries arising from the use of the leased truck, including injuries sustained by plaintiff. In addition, the trial court rejected plaintiff's argument regarding the lease as a contract of adhesion on the ground that plaintiff failed to cite authority in support of his position.

After reviewing the trial court's decision de novo, we affirm. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

A contract is to be construed in its entirety. The primary goal in the interpretation or construction of a contract is to honor the intent of the parties. If the contract fairly admits of but one interpretation, it is not ambiguous, and must be enforced as written. *J & J Farmer Leasing, Inc v Citizen Ins Co*, 260 Mich App 607, 612-613; 680 NW2d 423 (2004), vacated in part on other grounds and remanded 472 Mich 353; 696 NW2d 681 (2005).

Broad, all-inclusive indemnification language "may be interpreted to protect the indemnitee against its own negligence if such intent can be ascertained from other language in the contract, surrounding circumstances, or from the purpose sought to be accomplished by the parties." *Fischbach-Natkin, supra* at 452. Language expressly shielding an indemnitee from his own negligence is not necessary in order for such indemnification to be provided. *Id*. at 452-453.

A contract may be deemed one of adhesion if: (1) the party agrees to the contract only because he or she has no meaningful choice to obtain the goods or services elsewhere; and (2) the challenged provision is substantively unreasonable. *Rembert v Ryan's Family Steak Houses, Inc*, 235 Mich App 118, 157 n 28; 596 NW2d 208 (1999).

Plaintiff's assertion that the trial court erred in relying on *Fischbach-Natkin, supra*, because that case dealt with an indemnity clause rather than a disclaimer is without merit. A disclaimer and an indemnity clause are to be interpreted in the same manner. *American Empire, supra* at 498-499. In this case, the lease provided that defendant was not liable for any injury to plaintiff resulting from the use of the truck, and that plaintiff agreed to hold defendant harmless for any such injury. We conclude that although the lease did not specifically state that defendant was to be held harmless for its own negligence, the broad, inclusive language of the lease can only be construed as applying to claims such as those brought by plaintiff. *Fischbach-Natkin, supra* at 452-453.

The trial court declined to rule on plaintiff's argument that the lease was a contract of adhesion on the ground that plaintiff failed to support his argument with admissible evidence, MCR 2.116(G)(6), and to cite authority in support thereof. Our review is limited to issues actually decided by the trial court. *Preston v Dep't of Treasury*, 190 Mich App 491, 498; 476 NW2d 455 (1991). Plaintiff has not shown that admissible evidence existed to create a question of fact as to whether he signed the lease because he had no meaningful choice to obtain a similar employment opportunity elsewhere, or as to whether the challenged provision, i.e., the disclaimer, was substantively unreasonable. *Rembert, supra*.

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Donald S. Owens