

STATE OF MICHIGAN
COURT OF APPEALS

TRANSNATION TITLE COMPANY, INC.,

Plaintiff,

v

LON DOMGJONI, JAK DOMGJONI, and ZOJA
DOMGJONI,

Defendants/Third-Party Plaintiffs-
Appellees,

and

BASIC MORTGAGE COMPANY, a/k/a BASIC
MORTGAGE, INC., and ROBERT DENHA,

Third-Party Defendants-Appellants,

and

JEFFREY HARTMAN,

Third-Party Defendant.

Before: Davis, P.J., and Murphy and Servitto, JJ.

PER CURIAM.

Third-party defendants Basic Mortgage Company (“Basic Mortgage”) and Robert Denha appeal as of right, challenging the trial court’s order granting summary disposition in favor of third-party plaintiffs Lon Domgjoni, Jak Domgjoni, and Zoja Domgjoni pursuant to MCR 2.116(C)(10). We affirm.¹

¹ Although the trial court’s order establishing Basic Mortgage’s and Denha’s liability was entered on July 17, 2006, the final order in this case, which established the amount of that
(continued...)

This action arose out of a prior transaction in which Lon Domgjoni purchased real property from his parents, Jak and Zoja Domgjoni, who owed outstanding property taxes and delinquent mortgage payments on the property. The transaction was arranged and financed by Jeffrey Hartman, who was at the time a mortgage broker employed by Basic Mortgage. It was later discovered that Hartman's financing was fraudulent.

The title company redeemed Hartman's dishonored checks, and the Domgjonis, anticipating that they would be asked for reimbursement, brought suit for indemnification against Hartman,² Basic Mortgage, and Denha.³ While that suit was pending, plaintiff Transnation Title Company brought this action for reimbursement against the Domgjonis.

While the action between Transnation and the Domgjonis was still pending in the trial court, Lon Domgjoni entered into a settlement agreement with Basic Mortgage and Denha. That agreement included an indemnification provision.

Transnation's action was subsequently resolved when the Domgjonis entered into a stipulated order of dismissal in which they agreed to reimburse Transnation pursuant to a payment schedule.

The Domgjonis then filed this third-party action seeking reimbursement from Basic Mortgage and Denha for the amount of the Transnation judgment and other expenses arising from that action, pursuant to the settlement agreement in the earlier action.

The Domgjonis moved for summary disposition pursuant to MCR 2.116(C)(10), and Basic Mortgage and Denha opposed the motion on the ground that the voluntary settlement in this action was not within the scope of the indemnification provision in the earlier settlement agreement. The trial court disagreed and granted summary disposition in favor of the Domgjonis.⁴ The trial court thereafter denied Basic Mortgage and Denha's motion for reconsideration.

We review a trial court's decision on a summary disposition motion de novo. *Reed v Breton*, 475 Mich 531, 537; 718 NW2d 770 (2006). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Wilson v Alpena Co Rd Comm*, 474 Mich 161, 166; 713

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liability, was entered on August 16, 2006. A postjudgment motion for reconsideration was filed on August 30, 2006, and denied on September 12, 2006. The claim of appeal was filed fewer than 21 days later, on October 3, 2006. This Court therefore has jurisdiction, MCR 7.204(A)(1)(b), contrary to the Domgjonis' assertion that this Court lacks jurisdiction.

² A default judgment was entered against Hartman.

³ Denha is the principle officer and shareholder of Basic Mortgage.

⁴ Basic Mortgage and Denha also argued below that Jak and Zoja Domgjoni were not parties to the settlement agreement, but the trial court concluded that their presence in the instant action did not affect Basic Mortgage and Denha's contractual obligation to indemnify Lon Domgjoni. Because Basic Mortgage and Denha do not address this issue in their brief on appeal, we consider it waived. *Steward v Panek*, 251 Mich App 546, 558; 652 NW2d 232 (2002).

NW2d 717 (2006). The moving party is entitled to judgment as a matter of law if the proffered evidence fails to establish a genuine issue of any material fact. *Reed, supra*.

Basic Mortgage and Denha argue on appeal that the trial court erred in determining that the indemnification provision applies to voluntary settlements. This issue raises a question of the proper interpretation of the earlier settlement agreement. Indemnity contracts are construed in accordance with the general rules for construction of contracts. *Badiee v Brighton Area Schools*, 265 Mich App 343, 351; 695 NW2d 521 (2005); *Grand Trunk W R, Inc v Auto Warehousing Co*, 262 Mich App 345, 350; 686 NW2d 756 (2004). Although contractual indemnity is an area of law that is guided by well-established general principles, each case must ultimately be determined according to the contract terms to which the parties agreed. *Id.* at 351. If an indemnity contract is unambiguous, it must be enforced according to its terms. *Badiee, supra* at 351. Conversely, if an indemnity contract is ambiguous, the trier of fact must determine the parties' intent. *Id.*

In the instant case, the earlier settlement agreement provides, in pertinent part:

Basic will indemnify and hold harmless Domgjoni . . . from and for any and all legal fees, expenses and costs, actual attorney fees, *judgments, verdicts, or awards, demands, rights, causes of action, losses and claims of any kind which may arise out of or relate to claims which are the subject of the Suit*
[Emphasis added.]

The plain and unambiguous language does not state that the indemnitor will only be required to indemnify losses that are imposed by a court order. Rather, the broad language “losses and claims of any kind” clearly encompasses voluntary settlements such as the stipulated order of dismissal between Transnation and the Domgjonis.

Basic Mortgage and Denha argue that the circumstances surrounding the execution of the settlement agreement indicate that the parties never intended for Basic Mortgage and Denha to indemnify Lon Domgjoni for a voluntary settlement. However, the surrounding circumstances may not be considered in construing the settlement agreement because the contract language is unambiguous. Extrinsic evidence of the parties' intent is not admissible to vary contract terms that are clear and unambiguous. *In re Kramek Estate*, 268 Mich App 565, 573-574; 710 NW2d 753 (2005). Relying on *Grand Trunk, supra*, Basic Mortgage and Denha emphasize that the indemnification agreement does not specifically mention voluntary settlements, and that the Transnation lawsuit was pending when the settlement agreement was executed. However, nothing in *Grand Trunk* suggests that an indemnification agreement may not apply to a voluntary settlement that was executed while another lawsuit was pending.

Basic Mortgage and Denha also argue that the trial court erred in denying their motion for reconsideration. We find no error. The motion for reconsideration was filed more than 14 days after the trial court decided the Domgjonis' motion for summary disposition. Although the summary disposition order was not the final order in the case, it was the order resolving the motion on which Basic Mortgage and Denha sought reconsideration and, therefore, the motion for reconsideration was untimely with respect to that order. MCR 2.119(F)(1). Additionally, a party moving for reconsideration must “demonstrate a palpable error *by which the court and the parties have been misled.*” MCR 2.119(F)(3) (emphasis added). Basic Mortgage and Denha

argue that the trial court erred in imposing liability on Denha individually, given that the indemnification provision applies only to Basic Mortgage. However, Basic Mortgage and Denha cannot plausibly argue that they were misled by their own failure to recognize that the plain language of the settlement agreement imposed an obligation only on Basic Mortgage. Neither can they assert that the trial court was misled by their own failure to raise this issue in the trial court.

Affirmed.

/s/ Alton T. Davis

/s/ William B. Murphy

/s/ Deborah A. Servitto