IN THE COURT OF APPEALS OF IOWA

No. 7-498 / 06-1725
Filed October 24, 2007

EMPLOYERS MUTUAL CASUALTY COMPANY AS SUBROGEE OF CRANE RENTAL & RIGGING COMPANY, INC.,
Plaintiff-Appellee,

vs.

ESTATE OF AUGUSTUS G. LARTIUS, RANI S. PRIMMER, and KUMARI J.V. HARVEY, as Administrators,
Defendants-Appellants.

Appeal from the Iowa District Court for Boone County, William C. Ostlund, Judge.

Appeal from the grant of summary judgment in favor of plaintiffs. **REVERSED AND REMANDED.**

Joseph M. Barron and John M. Wharton of Peddicord, Wharton, Spencer & Hook, L.L.P., Des Moines, for appellant.

Joseph P. McLaughlin and Mark J. Wiedenfeld of Wiedenfeld & McLaughlin, L.L.P., Des Moines, for appellee.

Heard by Sackett, C.J., and Huitink and Vogel, JJ.

SACKETT, C.J.

Appellant Augustus Lartius d/b/a LPM Homes of Ames and d/b/a Lartius Property Management (Lartius) appeals from the district court's entry of a summary judgment ordering him to indemnify Crane Rental & Rigging Company Inc. (Crane Rental) for money paid on its behalf by appellee Employers Mutual Casualty Company (Employers), now subrogee as Crane Rental's liability insurance carrier. Lartius contends the district court erred in finding he was bound by the language, found in the small print of a work order, to indemnify Crane Rental and/or Employers for sums paid to settle a claim with Dean Vogler, an employee of Lartius who was seriously injured when a crane owned by Crane Rental and operated by their employee hit an electric wire. At the time of the incident Lartius had leased the crane and it was operating on his premises. We reverse and remand.

I. Scope of Review.

Our review of a grant of summary judgment is for correction of errors of law. *Wiedmeyer v. Equitable Life Assurance Soc'y*, 644 N.W.2d 31, 33 (Iowa 2003).

II. Background.

Both parties filed motions for summary judgment. The agreed undisputed facts are (1) Crane Rental leased a crane with operator to Lartius on June 7, 2001, for work to be done on Lartius's property, (2) Vogler was injured on June 7, 2001, when the crane Lartius leased contacted an electric power line causing injury to Lartius's employee Vogler, (3) Crane Rental rented a crane to Lartius on June 19, 2001, (4) after the June 19 work was completed, Lartius initialed a document captioned "Work Order" (copy attached hereto) and gave Crane Rental a check

dated June 20 in the amount of $1,608.50, (5) the work order contained provisions for Lartius to indemnify Crane Rental.[1]

The following facts, though not agreed upon, were not contested and are also undisputed facts: (1) there is no evidence of a work order being signed prior to the June 7 or June 19 work being done, (2) the only work order that was signed was presented to Lartius on June 19 or 20, 2001, after Vogler's accident, (3) Employers paid $425,791.02 on behalf of Crane Rental in settlement, litigation, and defense of Vogler's claim.

In ruling on the motion for summary judgment the district court found that Lartius's signature on the work order required him to indemnify Crane Rental. The court specifically found (1) the document clearly addresses the issue of indemnification; (2) the document specifically referenced the work done on June 7, albeit retroactively; and (3) the parties were aware of the injury on June 7, which

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[1] The indemnity provisions in the work order are:

> Lessee agrees that the equipment and all persons operating such equipment, including operators, thereof (however they may be paid) are under Lessee's exclusive jurisdiction, supervision and control and agrees to indemnify and waive subrogation, and hold Crane Rental and Rigging, its employees and agents, harmless from all loss, damage or injury to property, including the equipment, all claims of death or injury including Crane Rental and Rigging's employees and arising in any manner out of lessee's operation, or claim by other parties arising from the use, maintenance, or operation of the equipment. This shall apply to and include all costs or expenses arising out of all claims specified herein including expense of investigation, defense, judgment or settlement. *This shall be applicable regardless of any claim or proof of fault on the part of Crane Rental and Rigging or its employees.* Lessee agrees to provide suitable access to the site and adjacent areas to permit the equipment to approach and leave to work area under its own power. A clear area for the unrestricted operation and dismantling of the equipment shall also be provided. Lessee agrees to temporarily disconnect or remove all overhead obstructions and wires. . . . The Lessee shall be responsible for all damage done to Crane's rental equipment while the equipment is being operated or stored in the Lessee's care and/or supervision.

(Emphasis added.)

should have heightened Lartius's care when signing the document. The court then said:

> In light of all the circumstances surrounding the execution of the contract and contractual provisions, this Court finds the defendant's signature sufficient to indicate an intent to indemnify Crane Rental for the plaintiff's injury, and the indemnity agreement between the parties is enforceable.

The district court sustained Employer's motion for summary judgment and dismissed Lartius's motion for summary judgment. Lartius contends this was error because (1) the indemnity language is ambiguous as to whether it is intended to cover losses or liabilities incurred prior to the execution of the indemnity document, (2) there is no clear manifestation that Lartius intended to agree to indemnify Crane Rental for an accident that had already occurred, (3) Lartius was not aware that the work order included an indemnity agreement, and (4) enforcing the agreement would be unconscionable.

Employers contends the agreement covers the earlier injury, it is not unconscionable, and it is not relevant that Lartius did not read the indemnity provision, nor was it relevant where the indemnity agreement was located on the work order or the size in which it was printed.

III. Summary Judgment.

Summary judgment is appropriate only when the moving party shows there are no genuine issues of material fact. *Wright v. Am. Cyanamid Co*., 599 N.W.2d 668, 670 (Iowa 1999). The burden is on the party moving for summary judgment to prove the facts are undisputed. *Kolarik v. Cory Int'l Corp*., 721 N.W.2d 159, 162 (Iowa 2006). A party seeking summary judgment must show "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a

matter of law." Iowa R. Civ. P. 1.981(3). A genuine issue of material fact is present if reasonable minds could differ on how the issue should be resolved. *Christy v. Miulli*, 692 N.W.2d 694, 699 (Iowa 2005). In considering whether the moving party has met its burden, we view the record in the light most favorable to the nonmoving party. *Eggiman v. Self-Insured Servs. Co.*, 718 N.W.2d 754, 758 (Iowa 2006). If the moving party has met its burden to show there are no genuine issues of material fact, the nonmoving party must set forth specific facts to show a genuine factual issue exists. *K & W Elec.*, *Inc. v. State*, 712 N.W.2d 107, 112 (Iowa 2006).

IV. Indemnification.

Under a contract for indemnification, "one party (the indemnitor) promises to hold another party (the indemnitee) harmless from loss or damage of some kind." E. Allan Farnsworth, *Farnsworth on Contracts* § 6.3, at 116 (3d ed. 2004). "Generally, no particular language is required to support indemnification, and a written agreement can be established without specifically expressing the obligation as indemnification." *McNally & Nimergood v. Neumann-Kiewit Constructors, Inc.*, 648 N.W.2d 564, 570 (Iowa 2002); *see Jenckes v. Rice*, 119 Iowa 451, 452-53, 93 N.W. 384, 385 (1903). "Ordinarily, indemnifying agreements will be enforced according to their terms, as in any other contract case." *McComas-Lacina Constr. Co. v. Able Constr.*, 641 N.W.2d 841, 845 (Iowa 2002). Interpretation is reviewed by the court as a legal issue unless it is dependent on extrinsic evidence. *Am. Family Mut. Ins. Co. v. Petersen*, 679 N.W.2d 571, 575 (Iowa 2004); *McKenzie v. E. Iowa Tire, Inc.*, 448 N.W.2d 464, 466 (Iowa 1989). Absent ambiguity in the agreement, we are bound by the language expressed in the contract. *Pirelli-Armstrong Tire Corp. v. Midwest-Werner & Pfleiderer, Inc.*, 540 N.W.2d 647, 649 (Iowa 1995);

Huber v. Hovey, 501 N.W.2d 53, 56 (Iowa 1993). Interpretation of a contract requires a court to determine the meaning of contractual words. *LeMars Mut. Ins. Co. v. Joffer*, 574 N.W.2d 303, 306 (Iowa 1998).

V. Analysis.

First, we agree with Crane Rental's assertion that the fact that Lartius did not read the agreement does not preclude it from being enforced.

> 'The case law of this jurisdiction suggests that a party is usually bound by the documents he signs even though, as is contended by the defendant here, it has not expressly accepted all of the contract provisions or is even aware of them.' It is also the settled rule of law that if a party to a contract is able to read (the contract), has the opportunity to do so, and fails to read the contract he cannot thereafter be heard to say that he was ignorant of its terms and conditions for the purpose of relieving himself from its obligation.

Joseph L. Wilmotte & Co. v. Rosenman Bros., 258 N.W.2d 317, 323 (Iowa 1977) (quoting *Preston v. Howell*, 219 Iowa 230, 236, 257 N.W. 415, 418 (1934)); *see Schlosser v. Van Dusseldorp*, 251 Iowa 521, 528, 101 N.W.2d 715, 719 (1960); *see also Crum v. McCollum*, 211 Iowa 319, 323, 233 N.W. 678, 680 (1930).

An agreement in writing speaks for itself; and, absent fraud or mistake, ignorance of the contents of a written agreement will not serve to negate or avoid its contents. *Huber*, 501 N.W.2d at 55-56; *Small v. Ogden*, 259 Iowa 1126, 1132, 147 N.W.2d 18, 22 (1966). We therefore look to the terms of the contract signed to determine whether the terms are clear or whether there is an ambiguity. *See Martin & Pitz Assocs., Inc. v. Hudson Constr. Servs., Inc.*, 602 N.W.2d 805, 809 (Iowa 1999). Lartius contends, among other things, that in looking at the contract we will find, contrary to the district court's holding, that there is no clear and plain manifestation of an intention for the indemnification provision to cover past losses.

We construe the contract most strictly against Crane Rental for several reasons. First, where an indemnification is not given by one in the insurance business but is given incident to a contract whose main purpose is not indemnification, the indemnity provision must be construed strictly in favor of the indemnitor. *Id.* The document in question was not given by one in the insurance business and its main purpose was not indemnification. The document was captioned in large letters as a work order and outlined the work done and charges incurred. The indemnification provision is not titled and is mixed in with language defining time for payment, interest on payment, and overtime provisions. Second, an indemnity contract is strictly construed against the drafter, in this case Crane Rental. *See id*. Third, a party will not be indemnified for its own negligence "unless the agreement provides for it in 'clear and unequivocal' language." *Payne Plumbing & Heating Co., Inc. v. Bob McKiness Excavating & Grading, Inc*., 382 N.W.2d 156, 160 (Iowa 1986); *see Martin & Pitz*, 602 N.W.2d at 809. Here, Crane Rental's document contained language relieving it of its own negligence. Fourth, usually a contract of indemnity covers only losses or liabilities that are incurred after the execution of the contract, and not a loss or liability that had been incurred prior to the execution of the contract, unless it plainly manifests an intention not to be limited to future losses or liabilities, but also to cover past transactions and existing losses or liabilities. *Evans v. Howard R. Green Co*., 231 N.W.2d 907, 916 (Iowa 1975).

Lartius contends there is no clear and plain manifestation of an intention for the indemnification provision to cover past losses. We are inclined to agree. Clearly there is no language in the indemnification provisions that specifically provides for Lartius's indemnification of Crane Rental's prior losses or liabilities. Nor does it

specifically provide for indemnification of the Vogler loss. The work order serves both as a form on which to authorize work to be performed and as a form on which to acknowledge work done.[2] In this case it was used for the latter purpose. The reference in the document to equipment leased on June 7, the hours worked that day, and the charges for the work that day are not sufficient to meet the plain and manifest intent requirement of *Evans*. *Id.* at 917. To cover past losses there needs to be not only a plain manifestation of an intention not to be limited to future loss or liabilities, but also to cover past transactions and existing losses or liabilities. *Id.*

Crane Rental relies on *Hawkins Constr. Co. v. First Fed. Sav. & Loan Ass'n*, 416 F. Supp. 388 (N.D. Iowa 1976), to support its position. The *Hawkins*'s case roots go back to the summer of 1966 when First Federal, in preparation for the construction of a multiple-story office building on property in Council Bluffs, Iowa, contracted with American Wrecking Company to do demolition, clearing, and excavation work on the property where the building was to be constructed. *Hawkins Constr.*, 416 F. Supp. at 389. The property remained partially excavated until August of 1967. *Id.* at 390. It was not until August 10 of that year that First Federal and Hawkins, a general contractor, executed a contract for Hawkins to finish the excavation work and construct the new multiple-story building. *Id*. Hawkins had inspected the site in July of 1967. *Id.* Under the August 10 contract, Hawkins accepted the construction site in its then existing condition and agreed to indemnify and hold First Federal harmless for claims arising from the prosecution of the

[2] At the bottom of the form there are two boxes for signature. The first says "I hereby authorize Crane Rental and Rigging Co., Inc. to Perform Work as Directed." The second says, "Acknowledgement-Crane Rental and Rigging has performed the Work Described." Lartius's signature covers both boxes although the larger part of his signature is in the first box. However it would appear that he was acknowledging work done.

project. *Id.* In addition, the contract contained an acknowledgement by Hawkins that he had examined, in addition to other things, all documents pertaining to the work as well as the location, accessibility, and general character of the work site and all existing buildings within and adjacent to the site, and had satisfied himself as to the feasibility and correctness of the plans and specifications for the work. *Id.* at 395.

It was not until August 13, 1967, that Hawkins moved the first of his equipment on the site and not until August 19 that Hawkins commenced work. *Id.* at 391. In early September 1967, substantial cracks appeared in the foundation of an adjacent building. *Id.* at 392. First Federal and Hawkins were sued in the Iowa district court by the adjacent building owner. *Id.* at 390. Following a bench trial, judgment was rendered against both parties on a negligence theory and against Hawkins on a third-party beneficiary theory. *Id.* Hawkins ultimately paid the entire judgment and filed a complaint in federal court seeking equitable contribution from First Federal on the theory that because they were found negligent they should pay one-half the judgment. *Id.* at 394. First Federal claimed, among other things, that the indemnity clause estopped Hawkins from requesting contribution, and on this theory Hawkins was denied recovery. *Id.* at 395-96.

While the contract did not clearly specify that Hawkins would be required to indemnify First Federal for its actions prior to the contract, the court found by the patent terms of the contract that Hawkins agreed to accept the construction site with all defects and attendant potential for liability as it existed on August 10, 1967, and with Hawkins's *superio*r knowledge of the activity, agreed to shoulder the burden for potential liability. *Id.* at 396. The court further noted the contract provisions

evidenced an obligation undertaken by Hawkins plaintiffs to assume full responsibility for the conditions of the worksite on the contract date and these provisions, coupled with the realities of the relationship of the parties, manifested the parties' intention that the plaintiffs would indemnify for any past negligence by First Federal relating to worksite conditions. *Id*.

Hawkins is distinguishable from the situation here in a number of ways. There the parties entered into an extensive written contract defining the responsibilities of each. The indemnification provision was separate and distinct. It was prefaced with capitalized letters that provided, "CONTRACTOR TO PROTECT, DEFEND, INDEMNIFY AND HOLD OWNER HARMLESS." *Id.* at 395. The specific provisions were in the same sized type as the other provisions of the contract, unlike here where the indemnification provision was not titled nor in the same sized type as the work order and the other contract provisions, and the indemnification language was mixed with other provisions. *See id.*

Furthermore, the Hawkins and First Federal contract contained a section referring to the contractor's understanding whereby Hawkins acknowledged, among other things, that he had carefully examined all documents pertaining to the work, the location, accessibility and general character of the site including all existing buildings and structures within and adjacent to the site, and had satisfied himself as to the nature of the work and had satisfied himself as to the feasibility and correctness of plans, drawings, and specifications for the construction work. *Id.* Hawkins was also found by the court to have superior knowledge of the activity. *Id.* at 396. There is no claim here that Lartius had any superior knowledge in the operation of cranes.

Considering all factors, most particularly the fact that the indemnification language relied upon did not clearly and specifically indicate an intention that the indemnification provisions were not to be limited to future losses or liabilities but would cover past losses and liabilities of Crane Rental, we believe the district court should have entered summary judgment for Lartius. We therefore reverse the summary judgment finding Lartius responsible for indemnifying Crane Rental and their subrogee, Employers, for the loss. We remand to the district court to dismiss with prejudice at Crane Rental's costs.

REVERSED AND REMANDED.

Crane RENTAL & RIGGING CO., INC.

Work Order

NUMBER: G 00284

LPM HOMES
CUSTOMER (LESSEE)

6100 Lincoln WAY
MAILING ADDRESS

LOT 2

AMES, IA 50010

SAME — AMES, IA.
JOB LOCATION — STATE

645
JOB CONTACT

CUSTOMER ORDER NO.

515-292-9607
CUSTOMER PHONE

CUSTOMER MOBILE

CUSTOMER FAX

Lessee agrees that the equipment and all persons operating such equipment, including operators, thereof (however they may be paid), are under Lessee's exclusive jurisdiction, supervision and contol and agrees to indemnify and waive subrogation, and hold Crane Rental and Rigging, it's employees and agents, harmless from all loss, damage or injury to property, including the equipment, all claims of death or injury including Crane Rental and Rigging's employees, and arising in any manner out of lessee's operation, or, claim by other parties arising from the use, maintenance, or operation of the equipment. This shall apply to and include all cost or expenses arising out of all claims specified herein including expense of investigation, defense, judgement or settlement. This shall be applicable regardless of any claim or proof of fault on the part of Crane Rental and Rigging or its employees. Lessee agrees to provide suitable access to the site and adjacent areas to permit the equipment to approach and leave to work area under its own power. A clear area for the unrestricted operation and dismantling of the equipment shall also be provided. Lessee agrees to temporarily disconnect or remove all overhead obstructions and wires. Lessee hereby acknowledges that all driveways, parking lots, and all other surfaces or structures over which equipment is to be operated on or adjacent to are of sufficient strength to withstand the weight of this equipment including placement of outriggers and agrees to be solely responsible for any damage thereto. Lessee acknowledges that all equipment is leased portal to portal from Crane Rental and Rigging's yard. All payments are due and payable, net 10 days, to Crane Rental and Rigging. Interest may be charged at the rate of 1 1/2% per month (18% annual rate) on past due accounts after 30 days from the invoice date. In addition, Lessee agrees to pay all cost and expenses incurred by Crane Rental and Rigging including but not limited to attorney fees, collection agency charges, court cost, in effort to collect past due accounts. Overtime rates shall apply after eight hours, through lunch time, and outside of normal working hours. No warranties have been made with respect to the capacity of the machinery or to the fitness for a particular purpose unless otherwise expressed in writing herein. The Lessee shall be responsible for all damage done to Crane Rental and Rigging's equipment while the equipment is being operated or stored under the Lessee's care and/or supervision.

BOOM LENGTH:	MAX. WEIGHT: 19,600 #	RADIUS:	ESTIMATED VALUE:

DESCRIPTION OF WORK: SET TANKS (SEPTIC TANK)

	DATE	EQUIPMENT/LABOR	HOURS WORKED REG	HOURS WORKED OT	HOURS WORKED DT	RATES REG	RATES OT	RATES DT	TOTAL
EQUIPMENT TIME	6/7	#677 70T				$180.00			
							$195.00		
		11:00 - 3:30 (4½)	4	½					$817.50
	6/19	#677 70T				$180.00	$195.00		630.00
		1 RIGGER				46.00	$61.00		161.00
		1:00 to 4:30	3½						$1608.50
YARD TIME		PD CK. #1952							

PERMITS - NE	☐	Subsistence	☐
PERMITS - IA	☐	Barricades	☐
PERMITS - SD	☐		☐
PERMITS - MN	☐		☐

SPECIAL OPERATING AND LOADING INSTRUCTIONS

CRANE RENTAL & RIGGING EMPLOYEE SIGNATURE

DATE

I HEREBY AUTHORIZE CRANE RENTAL AND RIGGING CO., INC. TO PERFORM WORK AS DIRECTED.

COMPANY NAME:

SIGNATURE:

PRINT NAME

ACKNOWLEDGEMENT- CRANE RENTAL AND RIGGING HAS PERFORMED THE WORK DESCRIBED

ACKNOWLEDGING SIGNATURE X

PRINT NAME

EXHIBIT
tabbies
1