

NOT DESIGNATED FOR PUBLICATION

VANESSA WILLIAMS * **NO. 2004-CA-0689**
VERSUS * **COURT OF APPEAL**
HOLIDAY INN WORLDWIDE * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 97-16374, DIVISION "A"
Honorable Carolyn Gill-Jefferson, Judge
* * * * *
Judge David S. Gorbaty
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(Court composed of Judge Charles R. Jones, Judge Terri F. Love, Judge David S. Gorbaty)

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AFFIRMED

Third party plaintiff Holiday Inns, Inc., n/k/a Bristol Hotel Company (Holiday Inns), appeals a summary judgment granted in favor of third party defendant, Pinkerton's, Inc. (Pinkerton's). For the following reasons, we affirm. **FACTS AND PROCEDURAL HISTORY:**

Vanessa Williams was injured on the job while working at the Holiday Inn Crowne Plaza as a security officer pursuant to a security contract between Ms. Williams' employer, Pinkerton's, and Holiday Inns. Ms. Williams filed the instant lawsuit against Holiday Inns, alleging its negligence and seeking damages for personal injury. Holiday Inns removed the case to federal court, where it subsequently filed its third party demand against Pinkerton's, seeking a defense and damages by alleging that Pinkerton's had breached the security service agreement between the parties by not obtaining the specified comprehensive general liability (CGL) policy required therein.

After remand, on 9/1/99 Holiday Inns filed a motion for summary judgment on the indemnity and insurance coverage issues. The trial court denied the motion, and this Court granted Holiday Inns' writ, but denied relief, stating that it was unclear whether the parties agreed to have Pinkerton's defend Holiday Inns against all liability arising under the contract.

Holiday Inns first filed a motion for summary judgment on the statutory employee issue in state court on 5/11/01. The trial court granted summary judgment on 6/20/01 finding that Holiday Inns was Ms. Williams' statutory employer, dismissing plaintiff's suit against Holiday Inns, with prejudice.

With the main demand being dismissed, the third party action against Pinkerton's continued with Pinkerton's filing a motion for summary judgment. Pinkerton's alleged that the security service agreement between the parties did not provide for a defense or indemnity of Holiday Inns when Holiday Inns' negligence caused the injury sued upon. Therefore, Pinkerton's was entitled to summary judgment as a matter of law.

Holiday Inns subsequently filed a motion for summary judgment

relative to the issues of coverage and duty to defend. The trial court rendered judgment on 12/11/03 granting Pinkerton's summary judgment and denying Holiday Inns.' This appeal followed.

DISCUSSION:

Appellate courts review summary judgments *de novo*. *Brown v. Connecticut General Life Ins. Co.*, 2000-0229, p. 2 (La.App. 4 Cir. 3/7/01), 793 So.2d 211, 212. A summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact, and that mover is entitled to judgment as a matter of law. La. Code Civ. Proc. art. 966 B. Summary judgments are favored, and the rules regarding such should be liberally applied. *Brown, supra*.

Holiday Inns frames its sole issue on appeal as whether a CGL policy, by definition, must contain a duty to defend. Because Holiday Inns contends that the policy must contain a duty to defend, it argues that the trial court erred in granting Pinkerton's motion for summary judgment. Holiday Inns specifically states that it is not appealing the trial court's ruling on indemnification.

Thus, it would appear that the only issue for review is whether or not Pinkerton's breached the security services contract by not obtaining a CGL policy which contained a duty to defend clause. After reviewing the facts of this case, we find that this issue is of no moment. If Holiday Inns concedes that Pinkerton's does not owe it indemnification, then on what ground does Pinkerton's owe a defense? Indemnity is inextricably tied to the duty to defend.

Paragraph 10 of the Security Service Agreement entitled "Indemnity and Insurance" states, in pertinent part:

Contractor assumes full responsibility and liability for any injury to Customer or third persons or damage to property to the extent caused in whole or in part by negligent or willful [sic] acts or omissions on the part of Contractor, its employees or agents arising from or in connection with the Agreement or the prosecution of the work thereunder including, but not limited to, fraudulent or dishonest acts of Contractor or Contractor's employees, personal injury, libel, slander, defamation, false arrest, detention or imprisonment, malicious prosecution, wrongful entry or eviction, or invasion of privacy. Contractor shall indemnify and save harmless Customer from and against any and all costs, losses, claims and expenses including, but not limited to, attorney's fees and court costs, which it suffers or pays as a result of negligent or willful [sic] acts or omissions as hereinabove described, by Contractor[,] its employees or its agents, which indemnity shall survive this Agreement. In any event, Customer will have the right, through counsel of its choice, to control any matter to the extent it could directly or indirectly affect Customer financially. Contractor will also reimburse Customer for all expenses reasonably

incurred by Customer to protect itself from, or to remedy, defaults under this Agreement.

During the term of this Agreement, Contractor shall maintain:

(a) employer's liability and worker's compensation insurance prescribed by applicable law, and

(b) comprehensive general liability insurance . . . all on an occurrence basis naming Customer and its subsidiaries as additional insureds and underwritten by any reputable insurance carrier approved by Customer with single-limit coverage for personal and bodily injury and property damage of at least \$1,000,000 for each occurrence.

Holiday Inns argues that under the terms of the contract, Pinkerton's had a duty to procure CGL insurance, name Holiday Inns as an additional insured, and to provide Holiday Inns with a defense for claims arising out of the contract. The only claims that could arise out of the above contract for which Pinkerton's would bear responsibility are claims of injury to Holiday Inns or third persons caused by Pinkerton's. There have been no allegations or proof of negligence by Pinkerton's.

Vanessa Williams made a claim against Holiday Inns for its negligence in causing her injuries; she did not allege any negligence on the part of Pinkerton's. We agree that liability policies generally provide that an insurer has a duty to defend the insured. However, the duty to defend extends only to damages suffered by the insured (Holiday Inns) as a result of

the insurer's (Pinkerton's), or its employees or agents, negligent or willful acts.

In *Home Ins. Co. of Illinois v. National Tea Co.*, 588 So.2d 361, 364 (La. 1991), the Supreme Court reiterated its holding in *Polozola v. Garlock*, 323 So.2d 1000, 1003 (La. 1977):

A contract of indemnity whereby the indemnitee is indemnified against the consequences of his own negligence is strictly construed, and such a contract will not be construed to indemnify an indemnitee against losses resulting to him through his own negligent act, unless such an intention is expressed in unequivocal terms.

Further, the *Polozola* court held that the general rules of interpretation of other contracts apply in interpreting indemnity contracts:

[A construction that renders a contract virtually nugatory] should be avoided in favor of one that gives the clause effect. When there is doubt as to the true sense of the words of a contract, they may be explained by referring to other words or phrases used in making the same contract. Further, all clauses of a contract should be interpreted the one by the other, giving to each the sense that results from the entire agreement. Finally, when there is anything doubtful in agreements, including

indemnity agreements, we must endeavor to ascertain what was the common intention of the parties, rather than adhere to the literal sense of the terms.

Home Ins. Co. of Illinois, supra, citing Polozola, 343 So.2d at 1003

(citations omitted). When after applying the rules set forth above, i.e., the general rules of construction of contracts, and interpreting the provisions of a contract as a whole, the intent of the parties to indemnify against negligence remains equivocal, a presumption or inference arises that the parties did not intend to hold the indemnitee harmless from such liability.

Home Ins. Co. of Illinois, supra.

To accept Holiday Inns argument, this Court would have to construe the contract to provide that Pinkerton's agreed to insure Holiday Inns for any claim made by any party even if due to Holiday Inns' own negligence. The law does not allow this Court to interpret the security services contract to provide for such blanket coverage.

Accordingly, we find no error in the trial court's grant of summary judgment to Pinkerton's. The judgment of the trial court is affirmed.

AFFIRMED