

STATE OF MICHIGAN
COURT OF APPEALS

PENGELLY TRUCKING,

Plaintiff-Appellee,

v

GREAT AMERICAN LINES, INC.,

Defendant-Appellant.

UNPUBLISHED

July 19, 1996

No. 184459

LC No. 94-007394

Before: MacKenzie, P.J., and Markey and J.M. Batzer,*JJ.

MEMORANDUM.

Defendant appeals as of right from the trial court's order granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm in part and reverse and remand in part.

The trial court erred in granting summary disposition in plaintiff's favor as to the amounts defendant set off against contractual payments owed to plaintiff based on attorney fees that defendant actually expended. Although the driver service agreement and equipment service agreement covered the period between October 1, 1993 and September 30, 1994, plaintiff and defendant's predecessor in interest, Independent Contractors Leasing Corp, entered into a written agreement that is applicable to this case. The agreement contains an indemnification clause stating that plaintiff agrees to indemnify "against any loss or claim resulting from injury or death of such driver(s)." Notwithstanding the rule of strict construction applicable to indemnity agreements, such language is sufficiently broad to incorporate an obligation to make reimbursement for reasonable attorney fees expended in defense of a personal injury claim. *Redfern v R E Dailey & Co*, 146 Mich App 8, 19-20; 379 NW2d 451 (1985); *Hayes v General Motors Corp*, 106 Mich App 188, 200-202; 308 NW2d 452 (1981). Further, the word "any" means every. *In re Forfeiture of \$5,264*, 432 Mich 242, 249-250; 439 NW2d 246 (1989). Accordingly, the trial court erred in part because the indemnification agreement required plaintiff to reimburse defendant for attorney fees actually expended in defending itself against the underlying action brought by plaintiff's injured driver. We remand the matter for a determination of the amount of attorney

* Circuit judge, sitting on the Court of Appeals by assignment.

fees to which defendant is entitled.

The trial court did not err, however, in granting summary disposition with respect to the amount of \$2,500 that defendant withheld or escrowed as a contingency against liability for future attorney fees and related expenses. The common-law right of setoff in such situations does not apply to unliquidated damages. *Smith v Warner*, 14 Mich 152 (1886).

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Barbara B. MacKenzie

/s/ Jane E. Markey

/s/ James M. Batzer