

STATE OF MICHIGAN
COURT OF APPEALS

VICKIE L. UHLMAN, as Next Friend of
CHRISTINA UHLMAN, a minor,

UNPUBLISHED
August 4, 2000

Plaintiff,

and

ATTORNEY GENERAL and DEPARTMENT OF
COMMUNITY HEALTH,

Intervening Plaintiffs,

v

No. 214013
Shiawassee Circuit Court
LC No. 96-006033-NO

CITY OF OWOSSO,

Defendant-Cross-Plaintiff-
Appellant,

and

MILLAR ELEVATOR SERVICE COMPANY,

Defendant-Cross-Defendant-
Appellee.

Before: Murphy, P.J., and Kelly and Talbot, JJ.

MEMORANDUM.

The City of Owosso appeals as of right the order granting summary disposition to Millar Elevator Service Company on a cross-claim for indemnification. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's daughter was injured when she put her hand through a scissors-type door in a special lifting device installed at the Owosso Public Library. The City received the required approvals and the device was installed in 1986. Millar Elevator provided service for the device beginning in 1992. The

City sought indemnification under the service contract for its liability to plaintiff. It asserted that Millar failed to inform it of a 1990 change in the building code which precluded use of scissors-type gates. The trial court granted summary disposition to Millar, finding that the lifting device was approved by the state at the time of installation, that existing codes did not require retrofitting, and that Millar had only undertaken a contract for maintenance.

Indemnity contracts should be construed to give effect to the intention of the parties. *Sherman v DeMaria Building Co, Inc*, 203 Mich App 593, 596; 513 NW2d 187 (1994). In ascertaining the intent of the parties, the court must consider the language of the contract as well as the situation of the parties and the circumstances surrounding the contract. *Id.*

The City failed to show that the contract was intended to provide indemnification in this situation. The service contract related to basic maintenance on the lifting device. The code change regarding the use of scissors-type doors preceded the service contract. The code change did not require retrofitting of existing devices. There is no basis for finding that the contract rendered Millar liable to indemnify the city under these circumstances.

Affirmed.

/s/ William B. Murphy

/s/ Michael J. Kelly

/s/ Michael J. Talbot