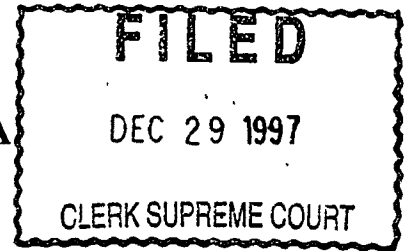


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IN THE COURT OF APPEALS OF IOWA

No. 7-480 / 96-2031



IN THE MATTER OF THE GUARDIANSHIP OF MATTHEW TRAE CAMPBELL

Clifstina CAMPBELL, Individually and as Guardian and Legal Representative of
MATTHEW TRAE CAMPBELL, a Minor,
Plaintiff,

PENN-DANIELS INCORPORATED, d/b/a **JACK'S DISCOUNT, INC.**,
Defendant/Cross Claimant-Appellee,

vs.

MUSCATINE PLAZA LIMITED PARTNERSHIP,
Defendant/Defendant to Cross Claim/Appellant.

Appeal from the Iowa District Court for Muscatine County, Patrick J. Madden,
Judge.

A lessor appeals a summary judgment ruling requiring it to indemnify its lessee
in connection with injuries sustained by a customer who fell on a sidewalk outside of
the lessee's store. **AFFIRMED AND REMANDED.**

Craig A. Levien and Jean Dickson Feeney of Betty, Neuman & McMahon,
L.L.P., Davenport, for appellant.

Michael J. Coyle and Norman J. Wangberg of Fuerste, Carew, Coyle, Juergens
& Sudmeier, P.C., Dubuque, for appellee.

Heard by Streit, P.J., and Vogel and Mahan, JJ.

VOGEL, J.

Landlord, Muscatine Plaza Limited Partnership (“Plaza”) appeals a summary judgment ruling requiring it to indemnify its tenant, Jack’s Discount, Inc. (“Jack’s”), in connection with injuries sustained by a customer who fell on a sidewalk outside of the Jack’s store.

Background facts. Jack’s is a lessee/tenant of retail space from Plaza, lessor/landlord. Clifstina Campbell was injured when she fell while looking at a display located on a sidewalk outside of Jack’s. She brought suit against Jack’s and the Plaza and the defendants filed cross-claims against one another for indemnity.

Jack’s and the Plaza each settled with Campbell, and they filed a joint motion for summary judgment. The court concluded Jack’s was entitled to indemnity from Plaza in the amount of \$23,928 plus attorney fees and costs. Plaza appeals.

Scope of review. We review this action for correction of errors at law. Iowa R. App. P. 4.

I. Summary judgment and indemnity. Plaza argues it was entitled to indemnity because the lease required Jack’s to procure insurance for injuries to persons occurring “in, on or about the premises” and arising from the tenant’s operations therein. It contends the court erroneously created an “outside/inside” distinction for determining who should provide liability coverage.

The trial court found the lease contemplated that “common areas” would be used for Jack’s displays and the Plaza had contracted to provide insurance for injury and damages occurring in those common areas.

A. Lease provisions. We turn to the language contained in the lease. Section 1A of the lease provides as follows:

1. PREMISES:

A. Landlord, in consideration of the covenants and agreements hereinafter contained, does hereby demise and lease to Tenant a building of approximately 80,640 square feet (hereinafter the ‘Premises’) to be or being constructed on the real property legally described on Exhibit A-1 hereto (hereinafter ‘Parcel A’). Parcel A is located in the City of Muscatine, Muscatine County, Iowa. The Premises are located generally as shown designated on the Site Plan attached as Exhibit B (the ‘Site Plan’).

....

C. Landlord hereby grants unto Tenant, during the entire term of this Lease, a non-exclusive right and easement for itself, its agents, employees and customers, to use in common with the agents, employees and customers of Landlord and other tenants in the Shopping Center, the automobile parking areas, driveways, footways, and all facilities intended for use in common by the foregoing upon and appurtenant to the Shopping Center (the ‘Common Areas’), for the purposes of ingress and egress on foot and by motor vehicles, for parking motor vehicles, for loading and unloading merchandise and for the display of merchandise (provided, however, that any such displays shall be of a temporary nature, and shall be confined to the sidewalks adjacent to the building in which the occupant of the Shopping Center, including Tenant, so displaying merchandise shall be conducting its business (Landlord and Tenant agree to enforce the foregoing restriction against all occupants of any Shopping Center Parcel owned by such party.). Tenant agrees that it shall observe reasonable regulations of general applicability which are furnished in writing by

Landlord concerning the parking of employees' cars and the maintaining of an orderly flow of vehicular and pedestrian traffic in and about the Shopping Center.

The lease also contains an insurance clause, to-wit:

12. LIABILITY INSURANCE: Tenant shall procure and pay the premium for liability insurance in the amount of Three Million Dollars (\$3,000,000.00) per occurrence to protect Tenant and Landlord against liability for injuries to persons and damage to property in, on or about the Premises and arising from Tenant's operations therein. Landlord shall be named as an additional insured on any such insurance policy.

Landlord shall procure and pay the premium for liability insurance in the amount of Three Million Dollars (\$3,000,000.00) per occurrence to protect Tenant and Landlord against liability for injuries to persons and damage to property in, on or about the Common Area or other areas of the Shopping Center. Tenant shall be named as an additional insured on any such insurance policy.

The parties shall evidence their compliance with the foregoing provisions by delivery of certificates of insurance, in compliance therewith, to the other party.

“[W]here the intent of the parties is expressed in clear and unambiguous language, we enforce the contract as written.” *Howard v. Schildberg Constr. Co.*, 528 N.W.2d 550, 554 (Iowa 1995) (citing *Iowa Fuel & Minerals, Inc. v. Iowa State Bd. of Regents*, 471 N.W.2d 859, 863 (Iowa 1991)). We find the lease as written is unambiguous, defining both Jack's leased premises and the common areas. We accordingly adhere to a strict interpretation of the lease. We conclude, as did the district court, that the lease contemplated “common areas” would be used for Jack's displays and that Plaza had contracted to provide insurance for injury and damages

occurring in those common areas. We find the district court appropriately determined Jack's is entitled to indemnity from Plaza in the amount of \$23,928 and, pursuant to the lease, attorney fees and costs. We remand for a determination of attorney fees. Costs on appeal are assessed to Plaza.

AFFIRMED AND REMANDED.