FILED
AUG 17 1995
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 5-182 / 94-1318

GETHMANN CONSTRUCTION COMPANY, INC.,

Appellee,

vs.

CARL SCHULER MASONRY CONSTRUCTION CO.,

Appellant.

Appeal from the Iowa District Court for Marshall County, Dale E. Ruigh, Judge.

Defendant subcontractor appeals the district court order granting summary judgment for the plaintiff contractor. **AFFIRMED.**

John F. Lorentzen of Nyemaster, Goode, McLaughlin, Voigts, West, Hansell & O'Brien, P.C., Des Moines, for appellant.

Glenn Goodwin of Finley, Alt, Smith, Scharnberg & May, P.C., Des Moines, for appellee.

Considered by Donielson, C.J., and Hayden and Huitink, JJ.

DONIELSON, C.J.

At issue is whether a subcontractor is obligated to indemnify the general contractor for damages sustained by one of the subcontractor's employees. The district court found the parties' written agreement expressly required the subcontractor to indemnify the general contractor. Absent extrinsic evidence bearing on the interpretation of the indemnity provision, construction of the provision is a matter of law to be decided by the court. *See Evans v. Howard R. Green Co.*, 231 N.W.2d 907, 916 (Iowa 1975). Our review is for the correction of errors at law. Iowa R. App. P. 4. We affirm.

At all times relevant to this litigation, Gethmann Construction, Inc., ("Gethmann") was the general contractor hired to do construction work at the Kmart store in Marshalltown, Iowa. Gethmann subcontracted certain portions of the work to Carl Schuler Masonry Construction Co. ("Schuler"). Gethmann and Schuler entered into a written contract in which Schuler agreed:

> To indemnify and hold harmless the Contractor against any and all losses, damages, claims or suits (including expenses, costs and attorney fees) based upon or arising out of damages or injuries (including death) to persons or property caused by the Subcontractor or his employees, agents or subcontractors or furnishers of supplies in connection with the performance of this Subcontract Agreement or caused by or allegedly caused by conditions created thereby, or by the failure of the Subcontractor to comply with any terms of this Subcontract Agreement. *The Subcontractor further agrees to indemnify and hold harmless the Contractor for or from any damages or compensation (including expenses, costs and attorney fees) which it may be*

> *subjected to in connection with the death or injury of any and all employees of the Subcontractor.*

(Emphasis added.)

On or about July 25, 1991, Matthew Miller, an employee of Schuler, was injured at the Kmart construction site. He filed a lawsuit against Gethmann claiming he had suffered damages as a result of Gethmann's negligence. Gethmann filed a declaratory judgment action to determine whether the above-quoted portion of the Gethmann-Schuler contract required Schuler to indemnify it for any damages collected by Mr. Miller. The contractor and subcontractor both filed motions for summary judgment. For the purpose of ruling on the motions, the district court presumed Gethmann's negligence was the sole proximate cause of Mr. Miller's injuries. Gethmann does not dispute the propriety of this presumption on appeal.

Agreements relieving an indemnitee from its own negligence are looked on with some disfavor. *Employers Mut. Casualty Co. v. Chicago and North W. Transp. Co.*, 521 N.W.2d 692, 694 (Iowa 1994). The enforceability of such contracts turns on whether the indemnifying language is clear and unequivocal. *Herter v. Ringland-Johnson-Crowley Co.*, 492 N.W.2d 672, 674 (Iowa 1992). Broad and general language will not suffice to shift the burden of liability, particularly when the damage is caused by the indemnitee's sole negligence. *Id.* "However, the contract need not expressly relieve the indemnitee of its own negligence if the words of the agreement clearly import that intent." *Id.*

The indemnity provision at issue in this case contains two severable indemnity clauses. Each clause contains its own conditions which trigger Schuler's obligation to indemnify Gethmann. The first clause of the indemnity provision covers losses, damages, claims or suits caused in some way by Schuler in connection with the performance of the subcontractor agreement. The second clause of the indemnity provision obligates Schuler to indemnify Gethmann for any damages or compensation connected with the death or injury of any of Schuler's employees. The contract provides the indemnity obligation assumed by Schuler in the second clause is in addition to that described in the first clause. Unlike Schuler's liability under the first clause, its duty to indemnify under the second clause is not contingent upon a causal connection between its conduct and the damages sustained by the injured employee.

Our supreme court has long recognized the enforceability of a clear contractual provision for indemnity even when it applies to an indemnitee's own negligence. *Thornton v. Guthrie County Rural Elec. Coop Ass'n*, 467 N.W.2d 574, 576-77 (Iowa 1991). Schuler contends the second indemnity clause is not clear and unequivocal and is too ambiguous to require it to indemnify Gethmann for damages resulting from its own negligence. In a well-reasoned ruling, the district court rejected Schuler's claim of ambiguity and ruled the second clause would be rendered meaningless if not construed to require indemnity by Schuler. We agree.

Courts must strive to give effect to all the language of a contract. *Fashion Fabrics of Iowa, Inc., v. Retail Investors Corp.*, 266 N.W.2d 22, 26 (Iowa 1978). When considered in its entirety, the indemnity provision of the contract clearly imports the intent that Schuler expressly extended its duty to indemnify to further include all damages or compensation sustained by its employees, regardless of its own conduct and/or lack of causation. We affirm the district court's grant of Gethmann's motion for summary judgment.

AFFIRMED.