FILED
JUN 1 1979
CLERK, SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

CHARLES K. CRAVATTA,

Plaintiff,

vs.

CHEMPLEX COMPANY,

Defendant and third-party plaintiff-appellee,

vs.

RAGAN PLUMBING AND HEATING, INC.,

Third party defendant appellant,

and

A. P. GREEN COMPANY,

Third party defendant.

Filed June 1, 1979

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2-62178

Appeal from Clinton District Court - Powell D. Phelps, Judge.

Third party defendant appeals from judgment entered against it in third party claim for indemnity based on a "hold harmless" contract clause. Affirmed.

Roy M. Irish, of Patterson, Lorentzen, Duffield, Timmons, Irish & Becker, of Des Moines, and Matt K. Wolfe, of Wolfe & Wolfe, of Clinton, for appellant.

Ralph D. Sauer, of Betty, Neuman, McMahon, Hellstrom & Bittner, of Davenport, for appellee.

Submitted to Oxberger, C. J., Donielson, Snell, Carter and Johnson, JJ.

DONIELSON, J.

Third party defendant Ragan Plumbing and Heating, Inc. (hereinafter "Ragan") appeals from judgment entered against it in a third party claim for indemnity based on a "hold harmless" clause of a contract between Ragan and Chemplex Company (hereinafter "Chemplex").

The case was submitted to the trial court on a stipulation of facts. On January 13, 1971, Chemplex and Ragan entered into a contract wherein Ragan would provide plumbers, fitters, welders, boilermakers, operating engineers, common laborers, and equipment as required to perform certain maintenance work at Chemplex's Clinton, Iowa plant. The contract form contained an indemnity clause as follows:

> 14. INJURY TO PERSONS AND DAMAGE TO PROPERTY: Contractor [Ragan] shall defend and save Chemplex harmless from all claims for injuries to, or death of, any and all persons, and for loss of or damage to property arising under or by reason of this Agreement, except claims resulting from the sole negligence of Chemplex, its employees, or its other subcontractors, agents, or representatives. Notwithstanding the foregoing, Contractor shall utilize at his own risk materials, tools, equipment or facilities furnished by Chemplex for use by the Contractor and not to be incorporated in the work and Contractor shall defend and save Chemplex harmless from all claims for injuries to, or death of, any and all persons, and for loss of and damage to property resulting from or by reason of the Contractor's utilization thereof whether or not caused partially or totally by the negligence of Chemplex, its employees, sub-contractors, agents or representatives. (Emphasis added).

Chemplex authored the form language in the contract.

Plaintiff Cravatta was employed by Ragan and was injured when he was standing on a bench to reach a door in a furnace and a firebrick fell from the furnace and struck him. Both Chemplex and Ragan were aware of the hazard from falling bricks, and plaintiff himself had been struck on prior occasions. All materials, tools and equipment, and facilities for the work were furnished by Chemplex except for a few hand tools owned by the employees themselves.

Cravatta filed suit against Chemplex alleging that Chemplex had been negligent.[1] The suit was settled for $75,000, with a $2500 portion being paid by third

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[1] Cravatta was an employee of Ragan whose injury arose out of and in the course of his employment and received full payment of benefits entitled from Ragan under Iowa's Worker's Compensation. He was therefore barred from claiming compensation from Ragan because of chapter 85's, The Code 1971, single remedy provisions.

party defendant A. P. Green Company. The sole issue before us is whether Ragan is required to indemnify Chemplex for its $72,500 payment to Cravatta.

The trial court found that both Chemplex and Ragan were negligent in not taking protective measures to prevent injury to workers, and construed paragraph 14 of the contract to require Ragan to indemnify Chemplex for the amount paid to Cravatta in settlement. The trial court observed that any contractual intention that Ragan would indemnify Chemplex for losses sustained by Chemplex's own negligence must be clearly and unequivocally expressed. General, broad and all-inclusive language is insufficient for the purpose. Trushcheff v. Abell-Howe Co., 239 N.W.2d 116, 134 (Iowa 1976); Evans v. Howard R. Green Co., 231 N.W.2d 907, 916 (Iowa 1975).

Ragan contends that the language of the contract indemnity clause was too broad and indefinite to apply to claims arising from Chemplex's own negligence, when that negligence is not solely Chemplex's. Ragan focuses on the language, "claims" and urges the court to interpret that contractual language closely to its literal meaning. Since Cravatta brought his claim against Chemplex and alleged negligence on the part of only Chemplex in his petition, Ragan asserts that the indemnification provision is not applicable, and Cravatta's settlement falls within the exclusionary clause of the contract.

Chemplex, as author of the contract, chose the word "claims." If it intended the contract to cover "injury" or "loss and damage" it could easily have done so. See Buckeye Cellulose Corp. v. Braggs Elec. Const. Co., 593 F.2d 824, 825 (8 Cir. 1979); Missouri Pacific Railroad v. Winburn Tile Manufacturing Co., 461 F.2d 984, 988 (8 Cir. 1972). Ambiguous contract language is construed against the party who prepared it particularly when it would relieve the party authoring the contract from liability for its own negligence. Sears, Roebuck and Co., Inc. v. Poling, 248 Iowa 582, 588, 81 N.W.2d 462, 465 (1957). We would construe the indemnity clause to mean what it literally says, and deny Chemplex indemnification because of the exclusion.

The trial court further relied on the second sentence of paragraph 14, however, which states that Ragan shall utilize at its own risk "materials, tools, equipment or facilities furnished by Chemplex" and will indemnify Chemplex from all claims for injuries . . . resulting from or by reason of [Ragan's] utilization thereof whether or not

caused partially or totally by the negligence of Chemplex." It found that Cravatta was injured in facilities furnished by Chemplex and while using equipment furnished by Chemplex. The indemnifying language in this clause is clear and unambiguous. Under the analysis above, Ragan specifically agreed to indemnify Chemplex even for claims resulting from its own negligence. See Trushcheff; Evans. The court can construe an indemnity contract to permit an indemnitee to recover for its own negligence when it is firmly convinced that such an interpretation reflects the intention of the parties. United States v. Seckinger, 397 U.S. 203, 211, 90 S.Ct. 880, 885, 25 L. Ed.2d 224, 233 (1970). We find no error and affirm the decision of the trial court.

AFFIRMED.

Snell, J., concurs. Oxberger, C. J., dissents. Carter and Johnson, JJ., specially concur.

OXBERGER, C. J., (dissenting)

Under the stipulation of facts submitted by the parties, there was no basis for a finding of negligence on the part of Ragan. Neither the majority nor the trial court cites any example of a breach of duty by Ragan towards its employee, Cravatta. The facts do support a finding that Cravatta's injuries were the result of the negligence of Chemplex alone. Chemplex, as owner of the premises, had a duty to provide Cravatta with a safe place to work. The furnace out of which a firebrick fell injuring Cravatta was under Chemplex's control. Employees of Chemplex had made repairs on the furnace prior to the accident. The trier of fact could find Chemplex negligent for failing to secure the bricks. The first section of the indemnity clause of the contract between Chemplex and Ragan provided that Ragan would indemnify Chemplex for all claims for injuries "except claims resulting from the sole negligence of Chemplex. . ." Thus, Chemplex should be denied indemnification because of this exclusion.

I do not believe the second sentence of the indemnity clause applies to the instant facts. Under that sentence, Ragan agreed to use at its own risk "materials, tools, equipment or facilities furnished by Chemplex" and to indemnify Chemplex from all claims for injuries "resulting from or by reason of [Ragan's] utilization thereof whether or not caused partially or totally by the negligence of Chemplex . . ." Cravatta was not injured by the use of any tool furnished by Chemplex. His use of a bench to hold a firedoor on the furnace under repair was not the proximate cause of his injury. Rather, his injuries were sustained when a firebrick fell from the furnace for some unexplained reason. I would not construe the word "facilities" to include the physical structure of Chemplex's place of business or the furnace located thereon. In my opinion, therefore, Cravatta's injuries did not result from Ragan's use of "materials, tools, equipment or facilities" of Chemplex, and the indemnity clause is inapplicable. I would reverse the judgment of the trial court.

CARTER, J. (specially concurring)

I concur in the result. But I find the obligation to indemnify arises from the first sentence of paragraph 14 of the agreement. The exception to this clause relates only to claims "resulting from the sole negligence of Chemplex." It does not relate, as the majority suggests, to claims based upon the sole negligence of Chemplex. Under the trial court's findings of fact, this claim did not result from the sole negligence of Chemplex, but rather from the combined negligence of Chemplex and Ragan in failing to take measures to protect workers from injury.

Johnson, J., joins in this special concurrence.