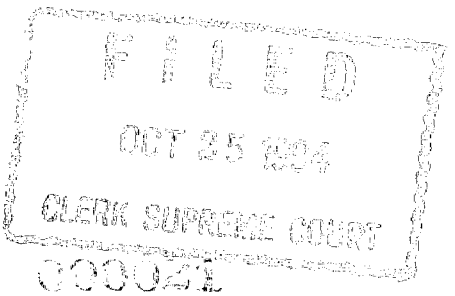
IN THE COURT OF APPEALS OF IOWA

No. 4-266 / 93-1699



PATRICIA ARCHER, Executor of the Estate of Frances Beaman Archer, d/b/a Val Air Ballroom,

Plaintiff-Appellant,

vs.

PALMER BROADCASTING LTD., PARTNERSHIP, d/b/a WHO RADIO,

Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, George W. Bergeson, Judge.

Plaintiff, as executor of deceased's estate, appeals from a judgment of the district court in a declaratory judgment action. **REVERSED AND REMANDED.**

Dawn R. Siebert of Finley, Alt, Smith, Scharnberg, May & Craig, P.C., Des Moines, for appellant.

Joseph A. Happe and Patrick D. Smith of Huber, Kelley, Book, Cortese & Happe, Des Moines, for appellee.

Heard by Sackett, P.J., and Habhab and Cady, JJ.

SACKETT, P.J.

The question in this appeal is whether the trial court correctly determined, on summary judgment in a declaratory judgment action, defendant had no responsibility to indemnify plaintiff and dismiss the action. We reverse and remand.

Plaintiff-appellant Patricia Archer, executor of the estate of Frances Beaman Archer, leased the Val Air Ballroom to defendant-appellee Palmer Broadcasting Ltd. Partnership for a Leisure Suit Convention and dance. The lease was written and contained the following paragraph, the subject of this controversy:

> The Licensee [defendant] agrees hereby to assume liability for any and all claims arising from injuries to persons or property received in or about the described building and premises during the period covered by this agreement.

Susan Nervig claimed she was injured while at the Leisure Suit Convention and dance and sued plaintiff for negligence contending she tripped on a step when she entered the dance floor. Plaintiff filed this declaratory judgment action asking the trial court to declare defendant to be responsible for the claim.

Defendant moved for summary judgment, and the matter was presented to the trial court on stipulated facts.

The trial court found:

> 1. The language showed no clear intent to shift liability of plaintiff's negligence to the defendant.

2. The clause does not give the defendant adequate notice it assumes responsibility for the plaintiff's negligence as well as its own.

Plaintiff contends the trial court erred when it held the contract did not clearly provide indemnity for plaintiff.

We review for errors at law. Iowa R. App. R. 4. Although this is an appeal of a ruling sustaining a summary judgment, no facts are in dispute, the matter having been presented to the trial court on stipulated facts. Therefore, our only task is to determine if the trial court correctly applied the law.

Parties who contract to relieve themselves from liability do not violate public policy. Gateway Transp. Co. v. Phillips and Phillips Co., 261 N.W.2d 175, 178 (Iowa 1978). The Iowa courts recognize the enforceability of indemnity agreements but, where the agreement results in indemnifying one for his or her own negligence, the courts do not look at them as favorable and have said:

> The general rule is an indemnity agreement will not be construed to relieve the indemnitee from the effect of its own negligence unless the agreement provides for it in "clear and unequivocal" language.

Thorton v. Guthrie County Rural Elec. Coop. Ass'n, 467 N.W.2d 574, 576 (Iowa 1991); Payne Plumbing & Heating Co. v. Bob McKiness Excavating & Grading, Inc., 382 N.W.2d 156, 160 (Iowa 1986).

The trial court's ruling hinges on the absence of specific language in the document saying defendant indemnifies plaintiff for its own negligence.

Plaintiff contends the language of the document is sufficient to show the parties intended defendant indemnify plaintiff for plaintiff's own negligence.

General language is not sufficient, but the contract does not have to expressly relieve the indemnitee of its own negligence if the words of the agreement clearly convey that intent. See Herter v. Ringland-Johnson-Crowley Co., 492 N.W.2d 672, 674 (Iowa 1992); Payne, 382 N.W.2d at 160. The question is whether the words "any and all claims" are sufficient to meet this test. Plaintiff leased defendant the dance hall for the Leisure Suit Convention and dance. Susan Nervig was injured during the course of the dance.

We hold as a matter of law the lease is clear that any and all claims made during the Leisure Suit Convention and dance would be indemnified. Nervig's injuries, if any, were sustained during the period covered by the agreement. See Employers Mut. Casualty Co. v. Chicago and N. W. Transp Co., --- N.W.2d ---, --- (Iowa 1994).

We find that defendant shall assume liability and be responsible for the lawsuit Susan Nervig filed against plaintiff.

We reverse and remand. We do not retain jurisdiction.

REVERSED AND REMANDED.