

STATE OF MICHIGAN
COURT OF APPEALS

LAKE STATES INSURANCE COMPANY, a/k/a
HARLEYSVILLE INSURANCE COMPANY, as
subrogee of THE MUSLIM CENTER OF
BLOOMFIELD HILLS,

Plaintiff,

v

MANARA CONSTRUCTION COMPANY,
MANARA CONSTRUCTION, BASIM
ABDULLAH, and S. A. TORELLO, INC.,

Defendants,

and

MANARA BUILDERS, INC.,

Defendant/Third-Party Plaintiff-
Appellant,

and

CONTRACTORS EQUIPMENT LEASING,
INC.,

Third-Party Defendant-Appellee.

Before: Neff, P.J., and Bandstra and Zahra, JJ.

PER CURIAM.

Defendant Manara Builders, Inc. (Manara), appeals as of right, challenging the trial court's dismissal of its third-party complaint for indemnification against Contractors Equipment Leasing, Inc. (CEL), pursuant to MCR 2.116(C)(10). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

UNPUBLISHED
July 20, 2006

No. 268174
Oakland Circuit Court
LC No. 2004-060219-CZ

Lake States Insurance Company brought this action against Manara as the subrogee of its insured, the Muslim Center of Bloomfield Hills. The Muslim Center contracted with Manara to have Manara renovate a former school building and to construct an addition immediately adjacent to existing classrooms and a gymnasium. Because the addition included a basement, the construction required a braced excavation to maintain the foundation of the existing building. Manara subcontracted with CEL, which drove twenty-foot-long sheet piling into the ground near the existing structure. The excavation was approximately 17 feet deep in some areas, and the penetration of the sheet piling below the bottom of the excavation was inadequate to resist the pressure of the soil and weight of the existing building once the dirt was removed for the addition's basement. As a result, a portion of the foundation of the existing building shifted and caused damage to the existing structure.

Manara's third-party complaint sought indemnification from CEL for any liability incurred by Manara to Lake States arising from the sheet piling work for the project. The trial court granted CEL's motion for summary disposition, relying on the following provision in the agreement between Manara and CEL:

Owner and general contractor agree with the designed proposed process and accepts [sic] responsibility for it and its risks and will not hold Contractors Equipment Leasing, Inc. responsible for its risks or cracking of walls or footings.

On appeal, Manara argues that the phrase "designed proposed process" refers only to the process of driving the sheet piling into the ground. Because the claims in Lake States's complaint and Manara's third-party complaint were not based on damage during the installation process, but rather were due to a faulty design and failure to adequately support the sheet piling, Manara contends that the above provision does not bar its claims.

This Court reviews de novo a trial court's ruling on a motion for summary disposition. *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 369; 666 NW2d 251 (2003). In interpreting a contract, this Court's obligation is to determine the intent of the contracting parties, but if the contractual language is unambiguous, it is reflective of the parties' intent as a matter of law. *Id.*, p 375. This Court will construe and enforce a contract as written unless it is contrary to public policy. *Id.*

The parties' contract clearly states that Manara agreed not to hold CEL responsible for (1) risks of the designed proposed process or (2) cracking of walls or footings.

With respect to the first part, the crux of the parties' dispute turns on the meaning of "process," which is defined in the *Random House Webster's College Dictionary* (1997) as "a systematic series of actions directed to some end." Manara's position requires that the term "process" be limited to the process of driving the sheet pilings into the ground. However, that limitation does not appear in the provision. Absent some limitation in the contract, the ordinary definition of "process" encompasses the series of actions directed to completing the work that was the subject of the contract.

With respect to the second part, Manara's position requires the "cracking of walls or footings" to be limited to cracking that occurred during the installation of the sheet pilings. Again, that limitation is not supported by the language of the contract.

The trial court properly concluded that the language of the contract was not ambiguous and that Manara accepted responsibility for all risks arising from the alleged faulty design and inadequate support of the sheet piling.

Affirmed.

/s/ Janet T. Neff

/s/ Richard A. Bandstra

/s/ Brian K. Zahra