

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Be Careful What You Sign - You May Be Paying For Someone Else's Negligence

By Jack Weston

In *Velez v. Dollar Tree Stores, Inc.*, an unpublished decision of the Michigan Court of Appeals, Secrest Wardle represented defendant Dollar Tree Stores. Plaintiff *Velez* filed suit alleging that she suffered injuries while she was in Dollar Tree and attacked by another customer, defendant Gardner. The space leased by Dollar Tree was owned by defendant Lamar, who had contracted with defendant Securitas to provide security services for the property. Plaintiff alleged assault and battery against Gardner (Count I), negligence against Dollar Tree (Count II), negligence and gross negligence against Securitas for allowing the assault to occur (Counts III and IV), and assault and battery against Securitas for allegedly "roughing up" Plaintiff while breaking up the fight (Count V). Securitas filed a cross-complaint against Lamar, asserting that Lamar owed Securitas indemnification and defense under a contract between them, which stated:

(e) [Lamar] agrees to indemnify, defend, and hold [Securitas] harmless from and against any claims made by a third party(s), including, but not limited to, injury, death or damages or loss of property, arising from [Securitas'] negligent acts or omissions, including those relating to the hiring, firing, training, supervision, or retention of Personnel by [Securitas], its agents or employees.

Dollar Tree, Securitas, and Lamar moved for summary disposition on Plaintiff's claims, based upon settled Michigan case law that the only duty landowners and merchants owe in response to an independent criminal act on their property is to make reasonable efforts to contact the police. The trial court granted summary disposition in their favor as to all of Plaintiff's claims. Securitas also moved for summary disposition of its cross-claim, arguing that, under the contract, it was entitled to indemnification from Lamar. Lamar, in response, moved to dismiss Securitas' cross-claim, arguing that it had no duty to indemnify Securitas for deliberate acts of assault and battery committed by Securitas

SECRET WARDLE NOTES:

Although *Velez* is an unpublished decision and not binding on lower courts, it accurately sets forth Michigan law regarding contractual indemnity.

Owners and managers of property must carefully review any potential contracts with third party vendors, such as security companies, landscape companies, and snow removal contractors, that were prepared by those vendors. The contracts may contain unfavorable indemnification provisions that could lead to the property owner or manager having to pay for the negligence of the vendor, as was the situation in *Velez*. Property owners and management companies should insist on using their own form contract, which contains indemnification and other such provisions in favor of the owner or manager.

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employees, and that Securitas should properly seek indemnification from Dollar Tree. The trial court denied Securitas' motion for summary disposition, reasoning that the contract between Securitas and Lamar did not specify that Lamar was obligated to reimburse Securitas for defense costs, and granted Lamar's motion to dismiss Securitas' cross-complaint.

At the close of discovery, Securitas filed a renewed motion for summary disposition, again arguing that its contract with Lamar entitled it to indemnity. In its renewed motion, Securitas conceded that it would not be owed indemnification for Count V, since the assault and battery claim would fall outside of the parameters of the indemnification agreement. Securitas maintained, however, that it had incurred expenses of \$33,274.32 in defending against the negligence claims in Counts III and IV of Plaintiff's Complaint, and was entitled to judgment against Lamar in that amount. This motion was again denied, and Securitas filed an Application for Leave to Appeal with the Michigan Court of Appeals. Granting leave, the Court held that an indemnity contract, such as the one at issue, is construed in accordance with the general rules for contract construction. Contractual indemnity depends on the terms to which the parties have agreed. *Grand Trunk Western R, Inc v Auto Warehousing Co*, 262 Mich App 345, 351 (2004). If the terms of an indemnity contract are unambiguous, interpretation of the contract is a question of law, and the court must discern the intentions of the parties by reference to the contract alone. *Hubbell, Roth & Clark, Inc v Jay Dee Contractors, Inc*, 249 Mich App 288, 291 (2002).

Analyzing Plaintiff's Complaint, the Court noted that Plaintiff claimed she was injured because Securitas negligently trained its employees. The Court held that this claim clearly fell within the scope of the indemnification provisions of the contract between Lamar and Securitas. Furthermore, the Court held that the contractual provision that Lamar was required to "defend" Securitas against claims included within the scope of the contract was unambiguous, and indicated that, if such a claim arose, Securitas could reasonably expect to have its defense expenses paid by Lamar. Further, under the contract, Securitas could reasonably expect to recover funds expended in defending the action. The Court of Appeals therefore ruled that the trial court erred by denying Securitas' motion for summary disposition of its cross-claim, and granted Securitas summary disposition on its-cross claim against Lamar.

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We welcome your questions and comments.

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