IN THE COURT OF APPEALS OF TENNESSEE

VANLINER INSURANCE COMPANY,	)	C/A NO. 03A01-9511-CH-00405
	)	ANDERSON COUNTY CHANCERY COURT
Plaintiff-Appellee,	)	
	)	
	)	
	)	
	)	
	)	HONORABLE WILLIAM E. LANTRIP,
v.	)	CHANCELLOR
	)	
	)	
	)	
	)	
	)	
JANICE JESSING,	)	
	)	
Defendant-Appellant.	)	AFFIRMED AND REMANDED

PHILIP R. CRYE, JR. of RIDENOUR, RIDENOUR & FOX, Clinton, for Appellant.

J. GREGORY O'CONNOR and CHRISTOPHER D. HEAGERTY of CARPENTER & O'CONNOR, Knoxville, for Appellee.

OPINION

Susano, J.

This case involves an agreement of indemnification. It arose out of the aftermath of a motor vehicle accident between the appellant Janice Jessing (Jessing) and Daniel Brown (Brown). Brown and his employer were insured under a liability insurance policy issued by the appellee Vanliner Insurance Company (Vanliner). In the instant action, Vanliner sought indemnification from Jessing for payments made by it in satisfaction of subrogation claims asserted against Vanliner by State Farm Insurance Company (State Farm) and Cotton States Insurance Company (Cotton States). Both of these insurers had made payments to or for their insured, the appellant Jessing, under Georgia's no-fault insurance law. In support of its suit against Jessing, Vanliner relied upon language in a document entitled "Indemnifying Release" signed by Jessing when she settled her tort action against Brown, Vanliner, and others. Vanliner argued that Jessing had agreed to indemnify it for payments it ultimately had to make to settle the subrogation claims asserted by State Farm and Cotton States as a result of the accident. The trial court granted Vanliner summary judgment, finding the indemnification agreement valid, enforceable, and applicable to the payments made by Vanliner. Jessing appeals, raising the issue of whether the trial court erred in granting summary judgment to Vanliner. Finding no error in the trial court's judgment, we affirm.

I

On April 4, 1989, Jessing and Brown were involved in a motor vehicle accident in Cherokee County, Georgia. As a result of the accident, Jessing sustained serious injuries. As a consequence of those injuries, Jessing made no-fault claims against State Farm and Cotton States. Cotton States paid $20,000, and State Farm paid $5,000, in satisfaction of her claims.

Jessing thereafter filed a negligence suit against Brown, his employer, Cook Moving Systems, United Van Lines, Inc., and Vanliner, in the State of Georgia. The litigation was subsequently concluded when Vanliner paid Jessing $250,000 in full settlement of her negligence action. The document memorializing the settlement, signed by Jessing, was entitled "Indemnifying Release." The language in the document pertinent to this appeal provides as follows:

> I [Jessing] hereby expressly stipulate and agree in consideration of the aforesaid payment, to indemnify and hold forever harmless DANIEL J. BROWN, COOK MOVING SYSTEMS, INC., VANLINER INSURANCE COMPANY and UNITED VAN LINES, INC. against loss from any further claims, demands or actions that may hereafter at any time be made or brought against the said parties by STATE FARM INSURANCE COMPANY or COTTON STATES INSURANCE COMPANY or any of their subsidiaries, affiliates, successors or assigns who claim to have a subrogation interest on account of the injuries sustained in consequence of the aforesaid accident.

The "Indemnifying Release" is dated September 16, 1991.

In October, 1991, Cotton States filed suit against Vanliner, claiming a subrogation interest as a result of payments made pursuant to Jessing's no-fault claim. State Farm also filed suit against Vanliner claiming $5,000 as a subrogation interest by virtue of its no-fault payments. Shortly thereafter, Vanliner settled the suits by paying Cotton States $20,000 and State Farm $5,000. Vanliner then sued Jessing, seeking indemnification of the $25,000 paid in satisfaction of the subrogation claims, pursuant to the above-quoted indemnification language.

II

We review a grant of summary judgment under a well-established standard. In deciding whether a grant of summary judgment is appropriate, we must determine "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.03. We take the strongest legitimate view of the evidence in favor of the nonmoving party, allow all reasonable inferences from that evidence in its favor, and discard all countervailing evidence. *See* ***Byrd v. Hall,*** 847 S.W.2d 208, 210-11 (Tenn. 1993).

If, after applying this standard, we find that there are no genuine issues of material fact and that the moving party is entitled to a judgment as a matter of law, we must affirm the grant of summary judgment.

The material facts are undisputed in this case, and are as outlined in section I above. The only genuine issue asserted in Jessing's brief as being one of "fact" is "whether the existing subrogation claims fall within the indemnifying clause." This is not an issue of fact, but rather a legal question to be determined by an analysis of the undisputed facts, including the settlement agreement. Thus, our inquiry is whether Vanliner is entitled to relief as a matter of law.

III

The parties are in agreement that Tennessee's doctrine of *lex loci contractus* mandates the application of the substantive law of Georgia in this case. ***Ohio Cas. Ins. Co. v. Travelers Indemnity Co.,*** 493 S.W.2d 465 (Tenn. 1973).

Our analysis of this case is guided and determined by the most fundamental principles of contract law. As always, the task is to determine the true intent of the contracting parties, and the central goal is to effectuate that intent. ***Carsello v. Touchton,*** 204 S.E.2d 589, 591-92 (Ga. 1974), ***Peterson v. First Clayton Bank & Trust Co.,*** 447 S.E.2d 63, 65-66 (Ga.App. 1994).

In Georgia, this approach is not only mandated by the common law, *id.*, but also by legislative enactment:

> The cardinal rule of construction is to ascertain the intention of the parties. If that intention is clear and it contravenes no rule of law and sufficient words are used to arrive at the intention, it shall be enforced irrespective of all technical or arbitrary rules of construction.

O.C.G.A. § 13-2-3.

In ascertaining the intent of the parties, the first source to which the courts resort is the language of the contract itself. Georgia caselaw clearly demonstrates the general rule that if a contract's language is unambiguous, the court will not look beyond that language:

> Where the terms of a contract are plain and unambiguous, no construction is required or even permitted. ***Jones v. Barnes,*** 170 Ga. App. 762, 765, 318 S.E.2d 164 (1984). The existence or nonexistence of ambiguity in a contract is a question of law for the court. ***Foshee v. Harris,*** 170 Ga. App. 394, 395, 317 S.E.2d 548 (1984).

Heyman v. Financial Properties Developers, Inc., 332 S.E.2d 893, 895 (Ga. App. 1985); *see also* ***Hartley-Selvey v. Hartley,*** 410 S.E.2d 118, 119-20 (Ga. 1991); ***Reed v. Crown Ctr. Mgmt. Co.,*** 326 S.E.2d 825, 826 (Ga. App. 1985) ("No construction of an agreement is required or even permitted when the language employed by the

parties is plain, unambiguous, and capable of only one reasonable construction.").

Keeping these general principles in mind, we turn to the language of the "Indemnifying Release" signed by Jessing and relied upon by Vanliner. We find the import of this language crystal clear. If State Farm or Cotton States pursued a subrogation claim against Vanliner for payments made on account of injuries sustained by Jessing in the accident, Jessing agreed to indemnify Vanliner for the payment of those claims, in consideration of the $250,000 received from Vanliner in settlement of her negligence claim. That, of course, is precisely what happened--State Farm and Cotton States each filed a lawsuit seeking payment of its subrogation interest for the payments made by it in satisfaction of Jessing's no-fault insurance claim. That the two insurance companies were specifically named in the agreement, to the exclusion of all others, leads to the conclusion that Vanliner was well aware of the possible subrogation claims before it settled Jessing's negligence lawsuit. In fact, the record contains a letter from Cotton States to a representative of Vanliner, dated February 22, 1991, which makes this conclusion inescapable:

> This is a follow up to my conversation with you on February 21, 1991, regarding the status of [Jessing's] claim. You have advised that the claim is still in litigation. . .You further advised that you will protect our interest which is in the amount of $20.000.00.

We find the language of the "Indemnifying Agreement" to be without ambiguity, and fairly drafted to address the exact contingency which eventually did occur--the filing of subrogation claims by State Farm and Cotton States against Vanliner. The parties intended to provide a mechanism--indemnification--that would assure Vanliner that it would pay nothing beyond its $250,000 payment to Jessing as a result of her injuries.

Jessing argues, however, that to enforce the "Indemnifying Release" signed by her would be in violation of the principle, well-recognized in Georgia, that

> contractual indemnities do not extend to losses caused by an indemnitee's own negligence unless the contract expressly states that the negligence of the indemnitee is covered.

Allstate Ins. Co. v. City of Atlanta, 415 S.E.2d 308, 309 (Ga.App. 1992), *quoting* ***Southern R. Co. v. Union Camp Corp.,*** 353 S.E.2d 519 (Ga.App. 1987). Jessing relies primarily upon the ***Allstate*** decision, citing also the cases of ***Seaboard Coast Line R. Co. v. Union Camp Corp.,*** 243 S.E.2d 631 (Ga.App. 1978), and ***Georgia State Telephone Co. v. Scarboro,*** 251 S.E.2d 309 (Ga.App. 1978).

We find these cases distinguishable and thus inapplicable to the case at bar. In each of the three cases, the

language in the agreement on which the indemnitee relied was broad and general. In ***Allstate,*** the indemnity language was as follows:

> the undersigned further covenants and agrees to indemnify and hold harmless the [indemnitee], its officers, agents, servants and employees, from any and all claims, damages or costs which the [indemnitee], its officers, servants and employees, may be called upon to make as a result of the event hereinbefore referred to.

Allstate, 415 S.E.2d at 309. The indemnity language in the other cases was also quite broad and all-encompassing. ***Seaboard Coast Line R. Co.,*** 243 S.E.2d at 632-33 (requiring indemnification for "any and all loss"); ***Georgia State Telephone Co.,*** 251 S.E.2d at 310 (requiring indemnification for "all claims and suits for injury or damage to any person or property whatsoever. . ."). Because of the lack of specificity in the agreements and their failure to expressly address indemnification for acts of negligence on the indemnitee's part, the courts in each of the above cases refused to find the indemnitor liable for such negligent acts.

As we have already noted, there is no such failure of specificity here. The parties expressly agreed by their contract that Jessing would indemnify Vanliner in the specific event her no-fault insurers pursued their subrogation rights for money previously paid on her no-fault claims. To the extent that the

agreement can be characterized as one requiring indemnity for the negligent acts of Brown, Vanliner's insured, we note that Jessing could not have conceivably understood the agreement to require indemnification for anything else. Her initial tort lawsuit was for negligence, and the agreement at issue was the one memorializing the settlement of the negligence suit. Thus, an application of the general rule in ***Allstate*** to this case would vitiate the clear intent of the parties and render ineffective and superfluous the entire indemnity portion of the agreement. This we decline to do.

Finally, Jessing argues that the language of the "Indemnifying Release" should be construed so as not to include the subrogation claims by State Farm and Cotton States, because the agreement required indemnification for "loss from any *further* claims, demands or actions that may *hereafter* at any time be made or brought. . ." (emphasis added). Jessing argues that a proper interpretation of the words "further" and "hereafter" means the contract covered only those claims of which Vanliner was *not* aware at the time of the agreement, and since Vanliner knew of the possible subrogation interests of State Farm and Cotton States, they should not be included under the agreement. We find this semantical argument to be specious and entirely without merit. It is clear that the subrogation interests known to the parties before the agreement was signed were the precise ones contemplated by that document. As previously indicated, the parties intended to provide that Vanliner's exposure for

Jessing's injuries would be capped at $250,000. In order to do this, the parties addressed the potential subrogation claims that each of the parties knew were "out there."

For the aforementioned reasons, we affirm the judgment of the trial court. This case is remanded for the collection assessed below pursuant to applicable law. Costs on appeal are taxed and assessed to the appellant and her surety.

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Charles D. Susano, Jr., J.

CONCUR:

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Herschel P. Franks, J.

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William H. Inman, Senior Judge