IN THE COURT OF APPEALS OF TENNESSEE

AT KNOXVILLE

REVIS DALE DUBBERLY, CH-00254	) C/A NO. 03A01-9808-
	)
Plaintiff-Appellee,	) McMINN CHANCERY
	)
v.	) HON. EARL H. HENLEY,
	) CHANCELLOR
LYNN TRUCK SERVICES, INC., d/b/a E.D.S. OF ATHENS,	)
	)
	)
Defendant/Cross-complainant-Appellee,	)
	)
	)
and	)
	)
CLAUDE AND BETTY THOMPSON,	)
	)
Defendants/Cross-defendants-Appellants. (CLAUDE THOMPSON only).	) AFFIRMED) AND) REMANDED

ROBERT J. UHORCHUK, SPICER, FLYNN & RUDSTROM, PLLC, Chattanooga, for Appellee, Lynn Truck Service, Inc.

RANDY G. ROGERS, Athens, for Defendants-Appellants.

O P I N I O N

Franks, J.

Plaintiff Dubberly brought suit for workers compensation benefits, and defendant Lynn Truck Service ("Lynn") settled the claim. The Trial Court then held that defendant Claude Thompson was obligated to compensate Lynn for the amount of this settlement with plaintiff Dubberly. Thompson has appealed.

Thompson had employed Dubberly as a truck driver, and Thompson and

Lynn entered into an agreement under which Thompson was to provide a truck and driver to complete a delivery for Lynn. Dubberly was injured while making the delivery and filed suit against the Thompsons and Lynn, seeking workers compensation benefits. Lynn filed a cross-complaint against the Thompsons, alleging they were obligated under the agreement to provide workers compensation coverage. Ultimately, the Trial Court entered judgment against Claude Thompson for $9,164.80 in favor of Lynn.

We conclude the Trial Court properly entered judgment in favor of Lynn. Thompson's obligation arises from his contract with Lynn:

> The CONTRACTOR [Appellant] shall pay all the compensation due of every driver/employee which include [sic], but is not limited to, Workmen's compensation insurance costs . . .
> [T]he CONTRACTOR, at his own expense, shall provide Workman's Compensation Insurance covering CONTRACTOR and all individuals employed by CONTRACTOR . . .

Thompson argues that, independent of this contract, he would have no obligation to pay worker's compensation.[1] In this case, however, he voluntarily assumed the obligation to provide such insurance.

Thompson argues the contract is ambiguous and should be construed against the drafter, Lynn. Ambiguous language in a contract is generally construed against the drafter. *Christ Lutheran Church v. Equitable Church Builders, Inc.*, 909 S.W.2d 451 (Tenn. App. 1995). A contract is ambiguous "when it is of uncertain meaning and may fairly be understood in more ways than one." *Empress Health and Beauty Spar, Inc. V. Turner*, 503 S.W.2d 188, 190-191 (Tenn. 1973). "A strained construction may not be placed on the language used to find ambiguity where none exists. *Id.* At 191.

The contract is this case is not ambiguous. Thompson argues that since

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[1] The appellant is exempt from this requirement pursuant to T.C.A. §50-6-106.

he had no statutory obligation to provide worker's compensation insurance, no payments were "due." The agreement, however, imposes a contractual obligation to provide this insurance. Where the language of a contract is plain and unambiguous, it is the court's duty to interpret an enforce it as written. *Book-Mart of Florida, Inc. v. National Book Warehouse, Inc.*, 917 S.W.2d 691 (Tenn. App. 1995).

Thompson argues that Lynn was not entitled to recover from him based upon T.C.A. §50-6-113. Under the statute "[a]ny principal, or intermediate contractor, or subcontractor who pays compensation under the foregoing provisions may recover the amount paid, from any person who, independently of this section, would have been liable to pay compensation to the injured employee. . . ." T.C.A. §50-6-113(b). This section applies only "in cases where the injury occurred on., in, or about, the premises on which the principal contractor has undertaken to execute work or which are otherwise under the principal contractor's control or management." T.C.A. §50-6-113(d).

Thompson also argues that since this accident occurred at a plant where Dubberly was making a delivery, it does not fall within the ambit of T.C.A. §50-6-113(d). In *Davis v. J. & B. Motor Lines*, 245 S.W.2d 769 (Tenn. 1952), the Supreme Court interpreted identical language in an earlier version of the statute. A truck driver was injured in an accident while hauling freight on the highway. The court held that the highway was the "premises" on which the principal contractor had undertaken to execute work and the injury sustained was therefore compensable. In this case, the contract contemplated delivery to the plant where Dubberly was injured. He was injured while making the delivery. Thus, the injury meets the requirements of T.C.A. §50-6-113(d).

Thompson correctly notes that *Davis* was distinguished in *Long v. Statelines Sys., inc.*, 738 S.W.2d 622 (Tenn. 1985). In *Long*, the court determined that

T.C.A. §50-6-113 did not apply to injuries suffered by a commercial truck driver. The court's decision, however, was based on the 1976 amendments to T.C.A. §50-6-106(1), rendering it inapplicable to the commercial trucking scenario. In this case, however, Thompson voluntarily agreed to provide worker's compensation insurance. *Long*, therefore, is distinguishable. We conclude the Trial Court correctly determined Thompson was liable for the amount of the settlement, and we affirm its judgment.

The cause is remanded with the cost of the appeal assessed to appellant.

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Herschel P. Franks, J.

CONCUR:

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Houston M. Goddard, P.J.

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Charles D. Susano, Jr., J.