

**IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA**

MAX LAGUERRE,

Plaintiff,

v.

PEACHTREE PROPERTY SUB, LLC,
DOING BUSINESS AS CROWNE
PLAZA HOTEL ATLANTA-
MIDTOWN; FO PEACHTREE
PROPERTY, LLC, DOING BUSINESS
AS CROWNE PLAZA HOTEL
ATLANTA-MIDTOWN; AWH
PARTNERS, LLC, DOING BUSINESS
AS CROWNE PLAZA HOTEL
ATLANTA-MIDTOWN, CAJUN
CONTRACTORS, INC., CAJUN
BUILDERS, INC., CAJUN
DEVELOPMENT, LLC AND JOHN
DOES 1 THROUGH 5,

Defendants.

CIVIL ACTION FILE NUMBER:
17-A-64087

**ORDER GRANTING CROWNE PLAZA DEFENDANTS' RENEWED MOTION FOR
SUMMARY JUDGMENT ON THEIR CLAIMS FOR INDEMNITY AND
CONTRIBUTION**

Before the Court is the Crowne Plaza Defendants' Renewed Motion for Summary Judgment on their claims for Indemnity and Contractual Indemnity. Their original motion was denied without prejudice on May 13, 2019, on the grounds that it was premature given that no liability determination as to any defendants had yet been made. Since the matter has been tried to a verdict before a jury, the Crowne Plaza Defendants now renew their Motion. After reviewing the written submissions of the parties and the applicable Georgia law, and hearing argument on the matter, the Court finds as follows:

On or about March 23, 2015, the Crowne Plaza Defendants contracted with the Cajun Defendants to perform renovations to the entrance ceiling of a hotel (hereinafter "the Trade Contract"). The Project was later expanded to include renovations to the fitness center area and the second-floor pool deck. The Cajun Defendants subcontracted R&R Construction and Renovations, Inc. to perform the work. As part of the pool deck renovations, R&R demolished the existing pool cabanas that surrounded the pool area. On July 20, 2015, at approximately 3:30PM, while the demolition was underway, Plaintiff, who is a taxi cab driver, was waiting outside of his taxi cab at a taxi stand in front of the hotel when a metal pipe fell from the roof of the hotel.

Paragraph 9 of the Trade Contract provides, in pertinent part:

To the fullest extent permitted by law, Contractor [Cajun] shall defend, indemnify and hold Owner [FO Peachtree Properties, LLC] harmless from and against any and all claims, damages, losses, liabilities and expenses, including without limitation attorney's fees, arising out of or resulting from the performance of the Work or Contractor's failure to comply with the terms and provisions of the Contract, to the extent caused in whole or in part by any intentional, negligent or otherwise wrongful acts or omissions of Contractor or anyone for whose acts it may be liable including employees, subcontractors and consultants. . . Contractor shall take all necessary precautions to properly protect the work and the property and work of owner or any other persons on the Project Site, from damages caused by the actions of Contractor or any of its Subcontractors. Contractor shall be liable for any loss, or damage to, any such property or any injuries to any persons that are caused by the action or neglect of Contractor or any of its employees, subcontractors, or consultants.

(See Trade Contract, pp. 5-6, attached to the Crowne Plaza Defendants' Renewed Motion for Summary Judgment as Exhibit A.) Relying on this provision, the Crowne Plaza Defendants corresponded with the Cajun Contractors on February 2, 2017 and March 2, 2017, tendering this matter for defense and indemnity, in order to avoid the time and expense of litigating the issue and engaging in motion practice. See Exhibit M to the Crowne Plaza Defendants' Theories of Recovery and Statement of Undisputed Material Facts. It is undisputed that the Cajun Defendants did not accept the tender of the Crowne Plaza Defendants' defense. As a result, the Crowne Plaza

Defendants filed a Crossclaim against the Cajun Defendants on the grounds of an alleged (a) breach of common law duty of indemnity, (b) breach of contract, and (c) common law contribution.

The present action was specially set to be tried in front of a jury on June 17, 2019. On Friday, June 14, 2019, the parties announced that Plaintiff and the Crowne Plaza Defendants had reached a settlement in anticipation of trial. Per Cajun's request, and at the Court's determination that the Crowne Plaza Defendants were still parties to the litigation at the time, the Crowne Plaza Defendants were included on the verdict form, for apportionment purposes. On June 20, 2019, the jury returned a verdict against Cajun, finding them 100% liable for Plaintiff's injuries, and awarding \$5,000,000 in compensatory damages and \$500,336 in punitive damages.

At the conclusion of the trial, the jury conclusively found that Plaintiff was injured by the pipe falling from the pool deck of the Crowne Plaza Hotel, and that Plaintiff's injuries were caused 100% by the negligence of Cajun Contractors. Through their renewed motion, the Crowne Plaza Defendants now seek summary judgment against the Cajun Defendants to recover the monies paid to Plaintiff to settle all claims alleged against them.

Here, the Court finds that the contract is clear and unambiguous. See Caswell v. Anderson, 241 Ga. App. 703 (2000) (citations omitted) (“[W]here contract language is unambiguous, no construction is necessary and the court must simply enforce the contract according to its clear terms.” “Contract language is unambiguous if it is capable of only one reasonable interpretation.”) Specifically, the Trade Contract provides for indemnification to the Crowne Plaza Defendants “from and against any and all claims...arising out of or resulting from” the Cajun Defendants’ negligence. Under Georgia law pertaining to indemnity provisions, “‘arising out of’ means ‘had its origins in,’ ‘grew out of,’ or ‘flowed from.’” JNJ Found. Specialists, Inc. v. D. R. Horton Inc., 311 Ga. App. 269, 270 (2011), quoting BBL-McCarthy, LLC V. Baldwin Paving Co., 285 Ga.

App. 494, 498 (2007). “The term ‘arising out of’ does not mean proximate cause in the strict legal sense, nor [does it] require a finding that the injury was directly and proximately caused by [the indemnitor’s] actions. Almost any causal connection or relationship will do.” *Id.* “As long as the claim or loss at issue is shown to be ‘partly attributable’ to the specified act in the contract, the contractual obligation to pay the claim or loss arises.” See also Viad Corp v. U.S. Steel Com, 343 Ga. App. 609, 615 (2017). The jury in this case has already determined that Plaintiff’s injuries were wholly caused by the Cajun Defendants’ negligence.

The Cajun Defendants argue that the Trade Agreement violates Georgia’s anti-indemnification statute, O.C.G.A. § 13-8-2(b). The statute provides that indemnity provisions for a party’s own negligence are not enforceable where the provision at issue “(1) relate[s] in some way to a contract for ‘construction, alteration, repair, or maintenance’ of certain property and (2) promise to indemnify a party for damages arising from that own party’s sole negligence.” See Kennedy Dev. Co. v. Camp, 290 Ga. 257, 259 (2011). This is not the case here. First, the indemnification provision provides that “Contractor shall be liable for any loss, or damage to, any such property or any injuries to any persons **that are caused by the action or neglect of Contractor or any of its employees, subcontractors, or consultants.**” See Trade Contract, ¶ 9. As such, indemnification for the Crowne Plaza Defendants’ sole negligence is not contemplated. Moreover, the Crowne Plaza Defendants are not looking to be indemnified for their sole negligence. In this case, a jury has already determined no fault on the part of the Crowne Plaza Defendant and, instead, has placed the entire liability on the Cajun Defendants.

The Cajun Defendants also take issue with the amount of the settlement, arguing that the Crowne Plaza Defendants did not mitigate their damages. The Cajun Defendants point to the jury verdict which found the Crowne Plaza Defendants zero percent at fault for Plaintiff’s damages as

evidence that the Crowne Plaza Defendants overpaid on the pre-trial settlement. However, viewing the matter in its totality, the Court finds that the \$1,000,000.00 pre-trial settlement was reasonable under the circumstances. It is undisputed that the Crowne Plaza Defendants had attempted to tender their defense to the Cajun Defendants and the Cajun Defendants refused to assume the defense. The \$5,000,000.00 verdict shows that Plaintiff's injuries were substantial, and it was not unreasonable for the Crowne Plaza Defendants to limit their potential liability at \$1,000,000.00, which, subsequently, avoided any possibility of the entry of a larger verdict and additional attorney's fees against them.

Accordingly, the Cajun Defendants are bound by their agreement with the Crowne Plaza Defendants to indemnify the Crowne Plaza Defendants for the amount of the settlement. Moreover, the Cajun Defendants are liable for the costs and expenses incurred by the Crowne Plaza Defendants, including attorney fees.¹ Based on the foregoing, the Court HEREBY enters judgment in favor of the Crowne Plaza Defendants, and against Defendant Cajun Contractors, Inc., in the amount of \$1,000,000.00 for their crossclaims on contractual indemnification, which were held in abeyance by this Court's Order of March 13, 2019.

SO ORDERED, this 14th day of November, 2019.



THE HONORABLE DAX LOPEZ
Judge, State Court of DeKalb County
State of Georgia

STATE COURT OF
DEKALB COUNTY, GA.
11/14/2019 9:23 AM
E-FILED

BY: Kelly Flack

¹ Per the Crowne Plaza Defendants, evidence to substantiate their attorney's fees will be filed separately.