

with the contracting party, the Association. This Court agrees. While the South Carolina Supreme Court case of Laurens Emergency Medical Specialist, P.A. v. M.S. Bailey & Sons Bankers, 355 S.C. 104, 584 S.E.2d 375 (2003) may allow for indemnity claims between contracting parties (so-called "second party indemnity"), the Court here, as in Laurens, sees no language in the contract of indemnity between Whipple and the Association calling for such second party indemnification. To the contrary, as in Laurens, this Court finds the contract of indemnity at bar to be one of third party indemnification.

Generally, "the construction of contracts is a question of law for the court." Watson v. Underwood, 407 S.C. 443, 455, 756 S.E.2d 155, 161-62 (Ct. App. 2014), citing, Hope Petty Motors v. Hyatt, 310 S.C. 171, 175, 425 S.E.2d 786, 789 (Ct.App.1992). Determining what the parties intended becomes a question of fact for the jury only when the contract is ambiguous. Id. "If a contract is unambiguous, extrinsic evidence cannot be used to give the contract a meaning different from that indicated by its plain terms." Bates v. Lewis, 311 S.C. 158, 161 n. 1, 427 S.E.2d 907, 909 n. 1 (Ct.App.1993). "A contract is ambiguous only when it may fairly and reasonably be understood in more ways than one." Jordan v. Sec. Grp., Inc., 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993). "Whe[n] the language of a contract is plain and capable of legal construction, that language alone determines the instrument's force and effect." Id. "The [c]ourt's duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully." Id.

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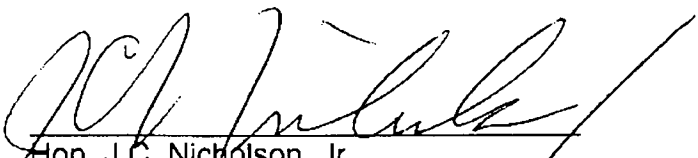
Here, the Court finds as a matter of law the contract of indemnity between Whipple and the Association presented to this Court is clear and unambiguous, and can be construed with no other meaning than one of third party indemnity, and not of second party indemnity. As referenced above, this Court finds no clear language of second party indemnity in the contract of indemnity, and, only finds language of third party indemnity. Accordingly, this Court finds that Whipple cannot maintain a claim of second party indemnity against the Association.

Whipple contends that even if the Covenants and Restrictions provide only for indemnification involving third party claims, the Association's motion still should be denied because a dispute exists as to whether or not the claims in the present case are properly being brought by the Association instead of by individual members of the Association. This Court rejects Whipple's argument because only the Association has been named as a party to this action.

Nothing in this Order shall in any way, shape, or form prevent Whipple from pursuing a claim of indemnity, pursuant to the operative Covenants and Restrictions presented to this Court for review, from any third party.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Partial Summary Judgment is **GRANTED**.

This 22 day of April, 2016 at Charleston, South Carolina.


Hon. J.C. Nicholson, Jr.
Circuit Court Judge, Ninth Judicial
Circuit