Louis v Rector
2006 NY Slip Op 30853(U)
October 3, 2006
Supreme Court, New York County
Docket Number: 109575-2004
Judge: Rosalyn H. Richter

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 24

GERARD LOUIS,

Plaintiff,

-against-

THE RECTOR, CHURCHWARDENS AND VESTRYMEN OF TRINITY CHURCH IN THE CITY OF NEW YORK, TRINITY REAL ESTATE CO., LLC, FIRST QUALITY MAINTENANCE LP., COMMERCIAL COMBUSTION SERVICE & INSTALLATION CORP., and FRED SMITH PLUMBING & HEATING COMPANY, INC.,

Defendants.

DECISION AND ORDER
Index No. 109575-2004
Motion Sequence No. 2

THE RECTOR, CHURCHWARDENS AND VESTRYMEN OF TRINITY CHURCH IN THE CITY OF NEW YORK AND TRINITY REAL ESTATE CO., LLC,

Third-Party Plaintiffs,

-against-

FIRST QUALITY MAINTENANCE LP AND COMMERCIAL COMBUSTION SERVICE AND INSTALLATION,

Third-Party Defendants.

FIRST QUALITY MAINTENANCE LP,

Second Third-Party Plaintiff,

-against-

FRED SMITH PLUMBING & HEATING COMPANY,

Second Third-Party Defendant.

Richter, J.:

In this action, plaintiff Gerard Louis contends that he was caused to suffer injuries as a result of the negligence of defendants The Rector, Churchwardens, and Vestrymen of Trinity Church in the City of New York and Trinity Real Estate Co., LLC (collectively "Trinity"), Commercial Combustion Service and Installation Corp. ("Commercial"), Fred Smith Plumbing & Heating

Company, Inc. ("Fred Smith") and First Quality Maintenance, LP ("First Quality").

The following facts are undisputed. Trinity owns a building located at 350 Hudson Street in Manhattan. Peter St. John, a Trinity employee, was, at all relevant times, Trinity's Property Manager. Trinity retained direct control of the building, but hired First Quality to perform day-to-day repairs, and, to some extent, to oversee the work of other workers coming into the building. Kenneth Goedtel, an employee of First Quality, was the building's mechanic and he testified at his deposition that workers coming into the building were required to check in with him. On June 6, 2003, Edward Cortez, an employee of Fred Smith, arrived at the building in response to a complaint about a leaking steam valve on the eighth floor. Trinity and Fred Smith had no ongoing contractual relationship, but dealt with each other on an as-needed basis. Mr. Cortez removed the valve, but did not cap the pipe.

In early August 2003, Mr. Goedtel advised Mr. St. John that the valve had been removed. However, Mr. St. John felt no urgency about replacing the valve, or having the pipe capped, because it was summertime, and the boiler was not operating. Nevertheless, Mr. St. John made a number of telephone calls trying to find a plumber who would replace the valve more cheaply than Fred Smith. Mr. Cortez, too, was not concerned about leaving the steam pipe open because he expected that Trinity would replace the valve very shortly and because, in his experience, buildings generally test their boilers just before the onset of the heating season. On August 18, 2003, with the pipe still open, John Wierta, an employee of Commercial, arrived at the building in order to carry out a triennial boiler inspection. Mr. Wierta was met by Mr. Goedtel, who told him about the missing steam valve and warned him not to turn the boiler on. Nevertheless, Mr. Wierta turned the boiler on and shortly thereafter, steam and water began to issue from the open pressurized pipe on the eighth floor. The heat of the steam activated a portion of that floor's sprinkler system, a fire alarm began to sound and an evacuation order was given. Upon seeing the steam, plaintiff Gerard Louis ran to his office to get his keys. As Louis made his way toward his office, a co-worker bumped into him and Louis fell sustaining injuries.

In this motion, Trinity moves for summary judgment pursuant dismissing the complaint and all cross-claims and counterclaims raised against them. First Quality, Commercial and Fred Smith all cross-move for the same relief. In addition, Trinity seeks contractual and common-law indemnification from First Quality and Commercial, and First Quality seeks an order directing Commercial to assume the defense and indemnification of it. All of the defendants assert that summary judgment is warranted in their favor because any alleged negligence on their part did not proximately cause Louis's injuries. They argue that the event causing Louis's injuries was not foreseeable and was the result of a superceding intervening act relieving them of liability – namely, Louis's co-worker bumping into him.

It is well-settled that "where the acts of a third person intervene between the defendant's conduct and the plaintiff's injury . . . liability turns upon whether the intervening act is a normal or foreseeable consequence of the situation created by the defendant's negligence". *Derdiarian v. Felix Contracting Corp.*, 51 N.Y.2d 308, 315 (1980). If the intervening act is unforeseeable in the normal course of events, or is independent of or far removed from the defendant's actions, it can constitute a superseding act which breaks the causal connection and relieves the defendant of liability. *Gross v. New York City Transit Auth.*, 256 A.D.2d 128 (1st Dept. 1998). Where "independent intervening acts . . . operate upon but do not flow from the original negligence" and "only one conclusion may be drawn from the established facts, the question of legal cause may be decided as a matter of law." *Derdiarian v. Felix Contracting Corp.*, 51 N.Y.2d at 315.

Applying these principles, the Court concludes that Louis's co-worker bumping into him constitutes an independent intervening act that broke any causal connection between defendants' conduct and Louis's injuries as a matter of law. There is no doubt that the immediate cause of Louis's injuries was his co-worker's bumping into him. Indeed, Louis testified at his deposition that his co-worker was the cause of his accident. The question before this Court is whether that act was a reasonably foreseeable consequence of defendants' alleged negligence. The Court concludes that, under the circumstances here, it was not foreseeable that Mr. Wierta's act of turning on the boiler

with knowledge of the open valve would result in one of Louis's co-workers bumping into him. Nor was it foreseeable that any of the actions of the other defendants, even if negligent, would result in Louis's accident. Notably, this is not a case where Louis was injured by water that collected on the floor as a result of the release of the steam, or where Louis was injured because the steam prevented him from safely navigating his course. In those situations, it could be argued that injuries flowing therefrom were foreseeable. Rather, Louis was injured as a result of a co-worker knocking into him, which was completely independent of and far removed from any negligence on the part of Mr. Wierta.

"[A]lthough virtually every untoward consequence can theoretically be foreseen 'with the wisdom born of the event,' . . . the law draws a line between remote possibilities and those that are reasonably foreseeable". *Di Ponzio v. Riordan*, 89 N.Y.2d 578 (1997). Here, the Court concludes that Louis's co-worker's bumping into him constituted a remote possibility that could not have been foreseen by any of the defendants here. Louis's theory of liability, if accepted, would mean that a defendant's negligence that resulted in a fire alarm sounding or sprinkler going off would subject the defendant to liability for any injuries sustained as a result of building occupants reacting to the alarm or sprinkler. Indeed, Louis's argument, if accepted, could subject a defendant to liability whenever an injury occurs in an evacuation even if the defendant had nothing to do with that evacuation or with building safety, such as defendant Fred Smith or First Quality. The Court cannot extend the concept of foreseeability to such remote harm. Accordingly, defendants' motions and cross-motions for summary judgment dismissing the complaint should be granted. Because no defendant can be found to have been at fault for plaintiff's injuries, all cross-claims for contribution and common law indemnification are rendered academic. *See Welch v. De Cicco*, 9 A.D.3d 725 (3d Dept. 2004)(indemnification and contribution claims became academic following the defendants' successful cross-motion for summary judgment dismissing the plaintiffs' complaint).

Trinity's motion seeking contractual indemnification from First Quality and Commercial is denied because the purported contracts that Trinity has submitted are unsigned and are of no legal

effect. It is true that an unsigned contract may be enforceable if there is objective evidence showing that the parties intended to be bound. *See Flores v. Lower E. Side Serv. Ctr., Inc.*, 4 N.Y.3d 363 (2005). Here, however, Trinity has failed, in its initial motion papers, to submit any such objective evidence of the parties' intent.[1] *See Geha v. 55 Orchard Street, LLC*, 29 A.D.3d 735 (2d Dept. 2006). For the same reasons, First Quality's cross-motion seeking contractual indemnification from Commercial is denied.

This constitutes the decision and order of the Court.

October 3, 2006

Justice Rosalyn Richter

[1] The Court cannot consider the reply affidavit of Mr. St John because such affidavit is contained in Trinity's reply papers and thus does not suffice to meet Trinity's *prima facie* burden of showing existence of valid binding contracts.