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18-P-758 Appeals Court

HERMIS YANIS, JR. vs. KEITH PAQUIN & another[1]; VINCENT MASTERSON, third-party defendant.

No. 18-P-758.

Worcester. January 10, 2019. - September 26, 2019.

Present: Vuono, Meade, & Rubin, JJ.

Practice, Civil, Counterclaim and cross-claim, Judgment, Entry of judgment. Contribution Among Tortfeasors. Indemnity.

Civil action commenced in the Superior Court Department on November 15, 2013.

A motion for entry of separate and final judgment was heard by Janet Kenton-Walker, J.

Gerald T. Anglin (Lauren Plante also present) for Keith Paquin.
Stephen R. Anderson for Sclamo's Appliance & Furniture, Inc.

VUONO, J. In this appeal we consider the propriety of the certification and entry of a separate and final judgment under Mass. R. Civ. P. 54 (b), 365 Mass. 820 (1974), following the

[1] Sclamo's Appliance & Furniture, Inc.

settlement by the plaintiff of his claims against one of the defendants in a personal injury action.

The following background emerges from the record materials before us, consisting mostly of the pleadings. The plaintiff, Hermis Yanis, Jr., was a tenant in an apartment building that was owned and managed by the defendant, Keith Paquin. When Yanis moved into his apartment, Paquin informed him that the natural gas stove did not work and that he should select a new one from defendant Sclamo's Appliance & Furniture, Inc. (Sclamo's). Once Paquin ascertained the cost of removing and disposing of the old stove, however, he decided to have it repaired rather than replace it. At Paquin's request, an employee of Sclamo's, allegedly the third-party defendant Vincent Masterson, went to Yanis's apartment on three separate occasions to make the repairs. It is disputed whether the employee was acting on his own behalf or as an employee of Sclamo's when he worked on the stove. After the final visit, the employee told Yanis that the stove had been fixed and was operational. One morning shortly thereafter, Yanis discovered that the stove's pilot light had gone out, he attempted to relight it, there was an explosion, and Yanis severely burned his right hand.

On November 15, 2013, Yanis filed a complaint in the Superior Court against both Paquin and Sclamo's. With regard to

Paquin, Yanis asserted claims of negligence, vicarious liability for Sclamo's negligence, breach of the implied warranty of habitability, and breach of the covenant of quiet enjoyment. Against Sclamo's, Yanis asserted claims of negligence, breach of contract as a third-party beneficiary, violation of G. L. c. 93A, and strict liability. Paquin filed an answer to Yanis's complaint in which he neither admitted nor denied that he had entered into a contract with Sclamo's to repair the stove. Paquin also asserted a cross claim against Sclamo's for contribution (as a joint tortfeasor) and for indemnification (based on vicarious liability). Sclamo's, in turn, filed an answer to Paquin's cross claim as well as its own cross claim against Paquin for contribution and for indemnification.[2]

Yanis and Sclamo's subsequently reached a settlement whereby Yanis received a payment of $15,000, and he executed a

[2] Sclamo's later filed a motion for leave to bring in Masterson as a third-party defendant, which a judge allowed. At the hearing on Sclamo's motion for entry of separate and final judgment as discussed infra, counsel for Sclamo's stated that Masterson was the individual who repaired the stove in Yanis's apartment. Counsel further stated that Masterson testified at his deposition that he was not working as Sclamo's employee at the time he repaired the stove. Rather, as counsel for Yanis explained, Masterson testified at his deposition that he was working for himself, after Paquin's father had contacted him about doing a job for Paquin. None of the deposition testimony has been included in the record appendix.

release of any and all claims he may have had against Sclamo's.[3] With Yanis's assent, Sclamo's filed a motion for entry of a separate and final judgment pursuant to Mass. R. Civ. P. 54 (b).[4] Relying on Long v. Wickett, 50 Mass. App. Ct. 380 (2000), Paquin opposed the motion on the grounds that there were no exceptional and compelling circumstances warranting relief under rule 54 (b), that his cross claim against Sclamo's for indemnification substantially overlapped the settled claims, and that an indemnification claim, unlike a contribution claim, was not extinguished by the settlement pursuant to G. L. c. 231B, § 4 (b).[5]

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[3] Sclamo's has asserted that the settlement was reached in good faith, and there has been no allegation to the contrary.

[4] Rule 54 (b) provides, in pertinent part, "When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment." "The determination and direction described in the rule is commonly referred to as rule 54(b) 'certification.'" Long v. Wickett, 50 Mass. App. Ct. 380, 383 n.5 (2000), quoting She Enters., Inc. v. License Comm'n of Worcester, 10 Mass. App. Ct. 696, 698 n.1 (1980).

[5] General Laws c. 231B, § 4, states that "[w]hen a release or covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury: . . . (b) It shall discharge the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor" (emphasis added).

Following a hearing, a judge approved the settlement and ordered the entry of a separate and final judgment that dismissed Yanis's complaint against Sclamo's but did not on its face address the cross claims.[6] In her memorandum of decision on Sclamo's motion, the judge properly acknowledged that G. L. c. 231B, § 4 (b), which discharges the tortfeasor to whom a good faith release is given from all liability for contribution to any other tortfeasor, does not "impair any right of indemnity under existing law." G. L. c. 231B, § 1 (e). Nonetheless, the judge stated that Paquin was not entitled to indemnification from Sclamo's because, as she put it, Paquin was "not without fault" for Yanis's injuries.[7]

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[6] At the hearing, counsel for Paquin stated that the settlement between Yanis and Sclamo's would extinguish Paquin's claim for contribution, but not his claim for indemnification. Counsel for Sclamo's argued that Paquin's claim for indemnification would have to be predicated on a contract or agreement between Paquin and Sclamo's, and there was no evidence that such a relationship existed. The judge stated that she was not there to decide the issue of indemnification but, rather, whether separate and final judgment should enter for Sclamo's.

[7] The judge explained her reasoning as follows:

> "Absent an express or implied contractual agreement by one party to indemnify another [which the judge stated the complaint does not allege here], . . . indemnification is available only where a party 'who is without fault . . . [is] compelled by operation of law to defend himself against the wrongful act of another.' Elias v. Unisys Corp., 410 Mass. 479, 482 (1991) . . . . 'The general rule is that a person who negligently causes injury to a third person is not entitled to indemnification from another person who also negligently caused that injury." Rathbun

The present appeal by Paquin ensued.[8] Paquin contends that the judge erred in certifying the entry of the separate and final judgment for Sclamo's. He asserts that such relief was not appropriate where his cross claim overlapped factually and legally with Yanis's dismissed claims against Sclamo's, and where the judge did not make an express finding that there was no just reason for delay. Because we agree with Paquin's arguments, we vacate the certification and entry of the separate and final judgment pursuant to rule 54 (b), and remand the case for further proceedings consistent with this opinion.[9]

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v. Western Mass. Elec. Co., 395 Mass. 361, 364 (1985). . . .

"Paquin cannot meet this threshold requirement to indemnification eligibility. Yanis'[s] claim against him is based on the allegation that Paquin, as the owner and manager of the apartment building where the accident took place, was negligent in providing and maintaining a proper and safe stove in Yanis'[s] rental unit; he is not without fault for Yanis'[s] injuries and his alleged liability is not solely derivative or vicarious of Sclamo's allegedly wrongful acts. As such, he is a joint tortfeasor who is entitled to contribution, not indemnification. Pursuant to G. L. c. 23lB, § 4 (b), the settlement agreement between Yanis and Sclamo's extinguished any potential claims Paquin had against Sclamo's." (Emphasis added.)

[8] Paquin and Sclamo's have participated in the appeal; Yanis and Masterson have not.

[9] Paquin also contends on appeal that because the judge's memorandum of decision was a final disposition of his cross claim against Sclamo's for indemnification, we should treat that decision as a judgment on the pleadings under Mass. R. Civ. P. 12 (c), 365 Mass. 754 (1974). We decline to do so.

Discussion. "[A] valid rule 54(b) certification requires the confluence of four factors: (1) the action must involve multiple claims or multiple parties; (2) there must be a final adjudication as to at least one, but fewer than all, of the claims or parties; (3) there must be an express finding that there is no just reason for delaying the appeal until the remainder of the case is resolved; and (4) there must be an express direction of the entry of judgment" (footnote omitted). Long, 50 Mass. App. Ct. at 385-386.[10] See note 4, supra. Rule 54 (b) is designed "to avoid the possible injustice of a delay in entering judgment on a distinctly separate claim or as to fewer than all the parties until the final adjudication of the entire case by making an immediate appeal available." Long, supra at 383 n.5, quoting 10 C.A. Wright, A.R. Miller, & M.K. Kane, Federal Practice and Procedure § 2654, at 33 (1998). The rule tries to balance the longstanding bedrock policy in Massachusetts against premature and piecemeal appeals with the need for prompt appellate review to avoid delay and any

[10] With regard to the second factor, we stated in Long that "[t]he multiple party aspect of rule 54(b) applies only if the [trial] court's judgment disposes of all of the rights or liabilities of one or more of the parties." Long, 50 Mass. App. Ct. at 386 n.7, quoting Sussex Drug Prods. v. Kanasco, Ltd., 920 F.2d 1150, 1153 (3d Cir. 1990). That is not the case here. The judge's order for a separate and final judgment dismissing Yanis's complaint against Sclamo's did not dispose of Sclamo's cross claim against Paquin for contribution and for indemnification.

resulting injustice or hardship. See Long, supra at 387-388. See also Morrissey v. New England Deaconess Ass'n -- Abundant Life Communities, Inc., 458 Mass. 580, 594-595 (2010).

"Whether there are multiple claims in an action and whether those claims have been finally adjudicated are matters of law subject to plenary review by an appellate court." Long, 50 Mass. App. Ct. at 386. "The determination of the presence or absence of a just reason for delay, on the other hand, is left to the sound discretion of the [motion] judge and is subject to reversal only for an abuse of that discretion." Id. See Finnegan v. Baker, 88 Mass. App. Ct. 35, 39 (2015). Appellate courts expect "strict compliance" with the provisions of rule 54 (b), Appleton v. Hudson, 397 Mass. 812, 813 n.3 (1986), and a judge's power to enter a separate and final judgment before the entire case has concluded should be "exercised sparingly." Long, supra at 389, quoting Harriscom Svenska AB v. Harris Corp., 947 F.2d 627, 629 (2d Cir. 1991).[11]

"The first step in appellate review of rule 54(b) cases is to 'scrutinize the [trial] court's evaluation of . . . the interrelationship of the claims so as to prevent piecemeal

[11] "Federal decisions are sources of precedent with respect to issues under our rule 54(b) because that rule 'was taken verbatim from Fed.R.Civ.P. 54(b),' J.B.L. Constr. Co. v. Lincoln Homes Corp., 9 Mass. App. Ct. 250, 252 (1980), so that in construing our rule we may rely upon Federal cases interpreting its Federal cognate." Long, 50 Mass. App. Ct. at 385 n.6.

appeals in cases which should be reviewed only as single units.'" Long, 50 Mass. App. Ct. at 390, quoting Curtiss-Wright Corp. v. General Elec. Co., 446 U.S. 1, 10 (1980). "In deciding whether . . . several separately stated counts are 'genuinely separate claims,' as opposed to merely a portion of a 'single [litigation] unit,' a determinative, indeed critical, distinction has been drawn between 'separate "claim[s] for relief" within the meaning of the rule . . . [and] different theories of recovery arising out of the same cause of action'" (citations omitted). Long, supra at 391. "A [party] presents multiple claims for relief . . . when the possible recoveries are more than one in number and not mutually exclusive or, stated another way, when the facts give rise to more than one legal right or cause of action." Long, supra at 392, quoting 10 C.A. Wright, A.R. Miller, & M.K. Kane, Federal Practice and Procedure § 2657, at 76-77. See Willhauck v. Halpin, 919 F.2d 788, 793 n.18 (1st Cir. 1990) (existence of multiple claims "almost always implies claims based on more than one set of facts giving rise to more than a single liability"). "Conversely, when a party asserts only one legal right, even if seeking multiple remedies, there is only a single claim for relief for rule 54(b) purposes." Long, supra. "Similarly, '[a]lternative [legal] theories of recovery based on the same factual situation are but a single claim, not multiple ones,'

under rule 54(b)." Id., quoting Sussex Drug Prods. v. Kanasco, Ltd., 920 F.2d 1150, 1154 (3d Cir. 1990). "Finally, there is only a single claim for relief, making a separate appeal under rule 54(b) inappropriate, in a case where the facts underlying the adjudicated portion of the case are largely the same as or substantially overlap those forming the basis for the unadjudicated issues." Long, supra. See Spiegel v. Trustees of Tufts College, 843 F.2d 38, 44-45 (1st Cir. 1988). Contrast Dattoli v. Hale Hosp., 400 Mass. 175, 176 (1987) (separate judgment for two defendants warranted where no other claims against them and no substantial overlap between issues on appeal and those remaining for trial).

Here, the allegations set forth in Yanis's complaint present different legal theories of recovery arising from the same factual scenario, thereby constituting a single claim, not multiple ones, for purposes of rule 54 (b). The motion judge accurately described Yanis's action as a "suit in negligence against Sclamo's . . . and Paquin for causing a gas explosion that injured Yanis'[s] hand." Although Yanis presented eight separate counts, four against Paquin and four against Sclamo's, the alleged facts underlying his settled claims against Sclamo's substantially overlap those forming the basis for his unresolved claims against Paquin. Each of the eight counts incorporates by reference every other paragraph of the complaint, including

those setting forth the "facts common to all counts," and requests damages for the harm Yanis sustained. In essence, all of Yanis's claims are inextricably intertwined.[12]

General Laws c. 231B, § 4 (b), which discharges the tortfeasor to whom a good faith release is given from all liability for contribution to any other tortfeasor, does not "impair any right of indemnity under existing law" (emphasis added). G. L. c. 231B, § 1 (e). See note 5, supra. A right to indemnification may arise in three circumstances: (1) where there is an express contract for indemnification; (2) where a contractual right to indemnification is implied from the relationship between the parties; and (3) under common law, where a party is exposed to liability because of the negligent act of another. See Fall River Hous. Auth. v. H. V. Collins Co., 414 Mass. 10, 13-15 (1992); Rathbun v. Western Mass. Elec. Co., 395 Mass. 361, 363-364 (1985). See also Araujo v. Woods Hole, Martha's Vineyard, Nantucket S.S. Auth., 693 F.2d 1, 2

[12] This assessment is bolstered by the fact that the settlement between Yanis and Sclamo's did not dispose of the cross claims for indemnification filed by Paquin and Sclamo's against each other, or Sclamo's cross claim against Paquin for contribution. Cf. Long, 50 Mass. App. Ct. at 390-391 (presence of counterclaim weighs heavily against rule 54 [b] certification, particularly where there is substantial overlap of dismissed claims and pending counterclaim). Those cross claims remain outstanding, and the judge erred in deciding, at the pleadings stage, that Paquin would not be entitled to indemnification from Sclamo's because he was "not without fault" for Yanis's injuries.

(1st Cir. 1982). With respect to this last circumstance, "[t]he general rule is that a person who negligently causes injury to a third person is not entitled to indemnification from another person who also negligently caused that injury." Rathbun, supra at 364. "Indemnification has been permitted, however, where the person seeking indemnification did not join in the negligent act of another but was exposed to liability because of that negligent act." Id. See Elias v. Unisys Corp., 410 Mass. 479, 482 (1991) (indemnification available where individual "who is without fault [is] compelled by operation of law to defend . . . against the wrongful act of another"); Decker v. Black & Decker Mfg. Co., 389 Mass. 35, 40 (1983) (right to indemnity limited to cases where would-be indemnitee held derivatively or vicariously liable for another's wrongful act).

Based on our review of the pleadings in the record before us, it is unclear whether there was a contractual relationship between Paquin and Sclamo's for the repair of the stove in Yanis's apartment. It is also unclear whether any actions taken personally by Paquin with relation to the stove can properly be characterized as negligent. We are therefore unable to determine whether or not there is any basis by which Paquin could be entitled to indemnification from Sclamo's. Such a determination will depend on the evidence that develops below. In the event of a finding of vicarious liability, Paquin could

be entitled to common-law indemnification from Sclamo's if he is found to be without fault for Yanis's injuries.

Given the factual and legal interrelationship between the settled and surviving claims, the judge erred in granting rule 54 (b) certification. This is a sufficient ground to vacate the certification. See Long, 50 Mass. App. Ct. at 394-395. Additionally, vacatur is appropriate here because the certification does not include an express finding that there was no just reason for delaying an appeal until the remainder of the case was resolved. See id. at 395.

A motion judge must closely examine the facts of a particular case "to ensure that allowing an appeal will not wrongly fragment the case," and should ascertain "whether [certification] will advance the interests of judicial administration and public policy." Long, 50 Mass. App. Ct. at 395, quoting Consolidated Rail Corp. v. Fore River Ry. Co., 861 F.2d 322, 325 (1st Cir. 1988). See United States Trust Co. v. Herriott, 10 Mass. App. Ct. 313, 322 (1980); J.B.L. Constr. Co. v. Lincoln Homes Corp., 9 Mass. App. Ct. 250, 252-253 (1980). It is incumbent on the judge to "specifically enumerate all of the factors and concerns relied upon when reaching [a] [certification] decision." Long, supra at 402, quoting Consolidated Rail Corp., supra. See Finnegan, 88 Mass. App. Ct. at 40-41 (trial judges urged to provide thorough analysis of

reasons for certification, consistent with what should be sparing use of rule 54 [b]). Explanatory findings are especially important where, as here, the judge's reasons for certification are not clear from the record, and the absence of such findings can result in dismissal of an appeal. See Long, supra at 402-403.

As we have noted, the judge's decision here does not include any express findings that there was no just reason for delay. In addition, the pleadings do not establish that this case presents the sort of "extraordinary feature[s] that should exist to justify recourse to the exceptional procedure authorized by rule 54(b)." Long, 50 Mass. App. Ct. at 397. To the contrary, this case appears to be a garden-variety negligence action. As such, we conclude that the rule 54 (b) certification was not warranted.

Conclusion. The certification and entry of the separate and final judgment pursuant to rule 54 (b) is vacated, and the case is remanded to the Superior Court for further proceedings consistent with this opinion.

So ordered.