

Wayne Coop. Ins. Co. v Gentner

2021 NY Slip Op 32128(U)

November 4, 2021

Supreme Court, Wayne County

Docket Number: Index No. 80740

Judge: Daniel G. Barrett

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At a Term of the Supreme Court
held in and for the County of
Wayne at the Hall of Justice in the
Town of Lyons, New York on the
10th day of September, 2021

PRESENT: Honorable Daniel G. Barrett
Acting Supreme Court Justice

STATE OF NEW YORK
SUPREME COURT COUNTY OF WAYNE

WAYNE COOPERATIVE INSURANCE COMPANY
A/S/O 406 STAFFORD RD., LLC,

Plaintiff

DECISION
Index No. 80740

-vs-

RICHARD G. GENTNER, JOHN E. GENTNER, III,
AND GENTNER PRECISION COMPONENTS, INC.,

Defendant

The Plaintiff, Wayne Cooperative Insurance Company a/s/o 406 Stafford Rd., LLC, is seeking to recover monies expended as a result of a fire on April 2, 2015 which occurred at 406 Stafford Road, Palmyra, New York from Defendants Richard G. Gentner, John E. Gentner, III and Gentner Precision Components, Inc..

A judgment against Defendant John E. Gentner, III, in the amount of \$160,000.00 has been previously secured by the Plaintiff.

PRELIMINARY MATTER

The verified Complaint dated March 30, 2017 alleges three causes of action. The first cause of action alleges a negligence cause of action against Defendant Richard G. Gentner. The second cause of action alleges a negligence cause of action against Defendant John E. Gentner, III. The third and final cause of action alleges a negligence cause of action against Defendant Gentner Precision Components, Inc.. There are no allegations in the Verified Complaint relating to any agreements between any of the Defendants and the Plaintiff relating to promises to pay the Plaintiff for damages as sustained by way of subrogation. In addition, there are no causes of action alleging that the corporate veil should be pierced.

STIPULATION

The parties have stipulated that the damages are set at \$160,000.00 plus interest. In addition, the parties stipulated the Plaintiff does have rights to subrogation.

SUMMARY OF TESTIMONY

John Gentner was the first witness. At the time of the incident he was production manager. He now works at Gould Pumps part time. He was laid off approximately March 2020 during the pandemic. That Richard is the president of the corporation.

John admitted in his previous deposition that he occasionally burned business debris such as skids and unusable cardboard tubes. John admitted on the day of the fire he used a couple of the cardboard tubes to start the fire.

In the photo marked Exhibit 2 there are other cardboard tubes around the 55 gallon drum where the fire took place. There was also fire in something called the chicken fryer that was left there by one of the employees. John admitted he had a key over the years and stored personal things at the business, tools, camping equipment, etc..

He was there when the fire was burning for a couple of hours and he left about 5:30. Apparently after he left the coals from the fire were blown over to the business building.

The contents of this fire were a mattress they used camping, books and other papers from the camper and also papers from his children from school. He went inside the building and he had two tubes to accelerate the fire.

He acknowledged the landlord told him not to burn any fires at the business but to do it across the street. He acknowledged his brother Richard told him not to set any fires. After Richard told him not to set any fires he never had another conversation with him about that.

It was just a lack of judgment on his part. No one requested him to burn anything and he did it completely on his own. He didn't tell Richard about the fire nor anyone else for that matter.

He admitted he told Richard not to make any payment plans since he was responsible. He works part time for the business again.

Richard Gentner testified he bought the business in 2012. He is the president and John was an employee. The key was to keep their largest customer with them when he bought it and that happened.

He admitted he told his brother and other employees to keep the property neat and clean so when customers come to the business the place will look well maintained. The major customer was coming about two weeks after the fire.

He acknowledged John Sandman told him and his brother not to burn anything at the business. There was no written policy about not burning.

He admitted that he, John and four other siblings stored things at the business. He did not allow any other employees to store things there. He did allow David Sykes to store his chicken cooker there because he was repairing it. That is the chicken cooker that John used as part of the fire.

After he was called back to the business by the fire department he asked John why he did it and he just said he was burning personal debris.

At some point he had a conversation with a police officer and the insurance investigator. He is not exactly sure what he said. He understands the fire investigator claims that he told him that he was burning cardboard to clean up the place so when the customer came everything would be orderly.

He admitted sending an email to offer to resolve the matter by a payment plan. On or about June 15, 2015 he sent an email to Steve Ressue at Wayne Cooperative. He indicated he just needed to work out a payment plan. He was having a conversation with his brother John and John told him not to pay them.

He got a letter back from Steve Ressue indicating it was \$160,000.00 with interest he did not respond. He admitted at the deposition that he sent the email to string Mr. Ressue along to buy more time. He only got a lawyer after a default motion was made by the Plaintiff. He admitted he took no action against John after the fire.

He did not instruct his brother to set the fire, was not aware the fire was set and was not present. He indicated he never signed a contract to pay the money back.

The fire investigator then testified, Jason Karasinski. He has been a fire investigator for seventeen years. He spoke with both Gentner's at the scene. He took photographs of numerous cardboard rolls that looked like they were ready to be burned. Admitted into evidence was his report finding the responsibility of the fire to be that of John and the business.

He spoke to Richard a couple days after the incident. John showed him around and showed him the damage. His report is dated May 19, 2015.

Steve Ressue then testified. He works at Wayne Co-op. He sent a letter to the brothers advising them they were responsible and they were pursuing them for subrogation. He got an email from Richard offering to pay, Exhibit 3. He waited to respond because he had to find out if there was any insurance. He found out there was no coverage as of February 2016. He said he tried to call Richard but couldn't reach him. He sent him a letter on May 5, 2016 accepting the terms that Richard previously proposed. He said consideration for the contract was not seeking interest, however the letter does not specifically say that. It does say that he wants \$160,000.00 in damage. He didn't hear from Richard. In December 2016 he contacted his attorneys.

On cross he was asked if there was any terms in the emails about payment. It was going to be so much a month. The first one was \$650.00 a month and the second was \$5,000.00 down and \$525.00 a month. He admitted that there was never any written agreement and no signatures by anyone.

ANALYSIS

As framed by the Verified Complaint, this Decision will address the issue of negligence against Defendants Richard and Gentner Precision Components, Inc. (hereafter Gentner, Inc.).

Defendant Gentner, Inc. came into being sometime in 2012 when Defendant Richard purchased the assets of P.B. Machine Company which had fallen into bankruptcy.

From the inception of Defendant Gentner, Inc. through the date of this fire, April 2, 2015, no fires were permitted on the property near the building.

David Sandman, who acquired the real property on which the subject building is located, directed both Richard and John not to burn anything on the property in 2012 when he acquired title to the property.

Mr. Sandman would permit burning on the opposite side of the road from the property. From the time Defendant Gentner, Inc. was formed until the building burned there were no fires on the property. The most recent fire, prior to the April 2nd fire, on the property was before 2008/2009 according to John's deposition testimony.

In April 2015, John was an employee of Gentner, Inc., he was not an owner, officer or board member of this company. His title was production manager. As production manager he would aid any other person that might need help. He ran three machines and provided maintenance on the machines, as needed. He would also help any other employee. John acknowledged awareness of David Sandman's directive not to burn on the property.

Prior to the formation of Gentner, Inc., John had the responsibility of starting and attending the fires on the property. This responsibility was given to him by his father who owned the property at the time.

CONTENTS OF THE FIRE

Essentially, the contents of the fire were personal property of John. He burned a mattress, as well as papers from a trailer that was stored in the building. Richard gave John permission to use wooden skids from the building for firewood. Using his own personal circular saw, John cut the wooden skids in such a manner that the portions containing nails and staples were discarded and burned and the remains of the skids were used for firewood. Initially, the skids were property of Defendant Gentner, Inc.. The ownership of the skids transferred to John when Richard gave him permission to use them for firewood. So the nail encrusted portions of the skids in the fire were John's property.

John admitted he burned some cardboard tubes and he used them for kindling. Plaintiff's Exhibit 2 admitted into evidence is a photo labeled "origin of fire". This photo depicts the charred chicken cooker and the 55 gallon drum and the charred ground in that area. In addition, it shows over ten (10) uncharred and unburned cardboard tubes. John testified that these tubes were pulled out of the building by the firemen.

The report of fire investigator Jason Karapinski indicates Richard advised that John was burning cardboard rolls to clean up the back of the shop as they had a potentially new client coming to visit the building later in the week. This statement by Richard does not demonstrate that either he or Defendant Gentner, Inc. authorized such activity.

PIERCING THE CORPORATE VEIL

Plaintiff argues that in fact John actually was the director of the company and chief executive officer and not Richard. This was based upon testimony that John told Richard not to enter a payment plan with the Plaintiff. Richard had been in contact with Wayne Cooperative about a possible resolution of the matter. However, the Court finds that John did not have any authority on behalf of the corporation, that he was simply telling Richard his opinion about entering into a payment plan. Therefore the Court finds no piercing of the corporate veil and therefore the corporation is not responsible for any of the actions made by John outside the scope of his duties and having been told not to burn anything at the business site.

SETTLEMENT PROPOSAL/CONTRACT

The Plaintiff also argues that the Defendant Richard is bound by a contract with the Wayne Cooperative about settling the matter and a contract for a payment plan. The Court finds there was no contract between the parties. They never actually agreed on terms and nothing was signed by either party. Plaintiff argues that it was an oral contract and therefore Richard is bound. The Court finds that there was not a contract in that there was no consideration. Plaintiff argues that the Plaintiff who was waiving any interest was willing to accept \$160,000.00 as an agreed upon sum. However, there is nothing in any of the discussions between the parties and/or in the emails between them that set forth that Wayne Cooperative was waiving the interest and therefore that would be the consideration for any contract.

DECISION

John advised he began burning around 5:00 P.M.. This was after business hours. There were no other employees around. It is clear from the testimony and the deposition transcripts admitted into evidence that Richard never sanctioned a fire on the land surrounding the business, ever. Richard had no knowledge that John was going to start a fire on April 2. In addition, John had no authority to act on behalf of the corporate Defendant, Gentner, Inc.. The negligence causes of action pleaded against Richard and Gentner, Inc., are dismissed.

This constitutes the Decision of the Court. Counsel for Defendants to prepare the appropriate Order.

Dated: November 4, 2021
Lyons, New York



Daniel G. Barrett
Acting Supreme Court Justice