

Fuller-Mosley v Union Theological Seminary

2003 NY Slip Op 30098(U)

November 17, 2003

Supreme Court, New York County

Docket Number: 0105149/2000

Judge: Diane A. Lebedeff

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

DIANE A. LEBEDEFF

PRESENT:

PART 8

Justice

JANEETA Fuller-Masley
- v -
Union Theological Seminary

INDEX NO. 105149/00
MOTION DATE 10/21/03
MOTION SEQ. NO. 013
MOTION CAL. NO. 2

The following papers, numbered 1 to _____ were read on this motion to/for RR

~~Notice of Motion/~~ Order to Show Cause — Affidavits — Exhibits ...
X-motion

Answering Affidavits — Exhibits _____

Repeating Affidavits _____

PAPERS NUMBERED	
	1
	2,3

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this ~~motion~~

MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION.

SCANNED
NOV 20 2003

Dated: NOV 17 2003

DR

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

MOTION/CASE IS DESECTFULLY REFERRED TO JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 8

..... X

JANESIA FULLER-MOSLEY,

Plaintiff,

-against-

Index No. 105149/00
Mot. Seq. Nos. 013
014 & 015

UNION THEOLOGICAL SEMINARY, SCORCIA
& DIANA ASSOCIATES, INC., BOHEMIA
ELECTRIC CORP. and MIRO VOJAR, FOCUS
LIGHTING, INC., Architectural Lighting
Design, LITEMAKERS, INC., VENEZIA
BISHOP & PARTNERS, P.C., JEFF VENEZIA
AND THOMAS BISHOP,

Defendants,

-----X

SCORCIA & DIANA ASSOCIATES, INC.,

Third-party Plaintiff,

-against-

FOCUS LIGHTING, INC, Architectural
Lighting Design, LITEMAKERS, INC.,
VENEZIA BISHOP & PARTNERS, P.C.,
JEFF VENEZIA, THOMAS BISHOP, THOMAS
BISHOP ARCHITECTS, I.P. GROUP,
Consulting Engineers,

Third-party Defendants.

-----X

DIANE A. LEBEDEFF, J.:

Motions sequence numbers 013, 014 and 015 are consolidated herein for
disposition

This action is for personal injuries sustained by plaintiff, when a chandelier suspended approximately 30 feet from the ceiling crashed down upon her. This court by order dated September 15, 2003, granted summary judgment dismissing certain claims and cross-claims against some of the defendants including Union Theological Seminary (“Seminary”), the owner of the lecture hall where the accident occurred, Focus Lighting, Inc. (“Focus”), the designer of the chandelier, Litemakers, Inc. (“Litemakers”), the manufacturer of the chandelier, and Venezia Bishop & Partners, P.C., Jeff Venezia and Thomas Bishop (hereinafter collectively referred to as “Venezia Bishop”), the architect of the Project. Summary judgment was also granted to third-party defendant I.P. Group, Consulting Engineers (“IP Group”), a consulting engineer retained by Venezia Bishop, with respect to the mechanical systems and electrical distribution for the Project. Summary judgment, however, was denied to defendants, Scorcia & Diana Associates (“Scorcia”), the general contractor, Bohemia Electric Corp. (“Bohemia”), the electrical subcontractor which installed the chandelier and Miro Vojar, the principal of Bohemia.

Motion number 013 is plaintiff's motion for an order granting leave to renew and reargue that portion of the court's prior order, which granted defendant Litemakers, Inc. (“Litemakers”), summary judgment dismissing this action as against it. The defendant Scorcia & Diana Associates, Inc. (“Scorcia”) cross moves for an order granting leave to renew and reargue and upon renewal and reargument granting it summary judgment and denying summary judgment to defendants Seminary, Focus, Litemakers and Venezia Bishop.

Motion number 014 is a motion by Scorcia for the identical relief sought in its above cross-motion. This motion was brought as the result of a procedural objection

raised by one of the defendants, who argued a cross-motion cannot seek affirmative relief from a nonmoving party.

Motion number 015 is plaintiffs amended notice of motion seeking leave to renew and reargue as against all the defendants which were granted summary judgment and not limited to Litemakers.

Without addressing any of the alleged procedural deficiencies in the motions, the motions for leave to reargue is allegedly based upon this court overlooking existing facts. While this court believes that the motion papers argue the very question previously decided, this court, nevertheless, grants reargument and, upon reargument, adheres to the prior order.

(1) *The Owner: Seminary*

Seminary acted solely as a passive owner and did not direct, control or supervise the work of Scorcia or its subcontractors. The fact that the accident occurred approximately 4 ½ years after the hanging of the fixture is not evidence of owner's negligence, especially, where as here, plaintiffs own expert in his report states this accident was the result of Bohemia hanging the chandelier with a die-cast zinc coupling, which over time failed, instead of a steel pipe, which would have prevented this accident.

(2) *The General Contractor: Scorcia*

Scorcia's argument that this court is incorrect in finding that it was the general contractor of the Project, which included the installation of the subject chandelier, is not supported by the evidence. In any event, Scorcia subcontracted with Bohemia to hang the chandelier and under its contract with Seminary was responsible for supervising and

directing the work of its subcontractors. Additionally, for at least one of three days, it was present and supervised Bohemia's work in hanging the chandelier.

(3) The Lighting Designer and Manufacturer: Focus and Litemakers

Focus and Litemakers did provide proper drawings and specifications for hanging the chandelier. The fact that the drawings and specifications did not indicate the material the pipe should be made of is immaterial as it has been established that industry practice is to use steel when no material is specified. These defendants were not contracted to furnish the supporting hardware for hanging the chandelier and there is no duty to provide the hardware merely because the general contractor contracted with an electrical subcontractor allegedly unfamiliar with industry standards. Neither Scorgia nor Bohemia ever consulted with the above defendants concerning the hanging of the chandelier.

The argument that the weight of the chandelier was underestimated by 20 pounds, even if true, is irrelevant. Plaintiffs expert conceded that the chandelier would not have fallen if a steel pipe had been used in the installation. Bohemia only requested the chandelier's weight in order to have the proper equipment available necessary to raise the chandelier to the ceiling and its deviation by using a zinc coupling, instead of a steel pipe, was not based upon its lack of knowledge of the actual weight of the chandelier.

(4) The Architect: Venezia Bishop

There is no evidence that Venezia Bishop supervised or controlled any operation by Scorgia or its subcontractors. As reflect in the agreement between Seminary and Scorgia, the general contractor was solely responsible for and had control over construction, methods, techniques, sequences and procedures, and for coordinating all portions of the

Work under the Contract.

Even if Venezia Bishop was obligated under section 2.4.11 of its agreement with Seminary to exercise due care in approval of shop drawings, there is no evidence that Scorcia submitted the shop drawings, concerning the chandelier, to the architects for approval.

With respect to plaintiff and Scorcia seek leave to renew, such is based upon the report of plaintiffs expert Steven Kane, a professional safety engineer, dated June 17, 2003. This report was prepared while the original motion was *subjudice*. A review of this report does not differ significantly in substance from the affidavit Mr. Kane, submitted on the original motion, dated May 16, 2003. There is no justification for failing to present this report on the original motions, this action having been commenced in the year 2000, approximately three years prior to the motions for summary judgment. In any event, after reviewing this report, the court grants renewal and upon renewal adheres to the prior order.

This decision constitutes the order of the court.

Dated: November 17, 2003



J.S.C.