

Fuller-Mosley v Union Theological Seminary

2005 NY Slip Op 30168(U)

June 21, 2005

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

PRESENT: DIANE A. LEBENDEFF
Justice

PART 8

0105149/2000

FULLER-MOSELY, JANESIA
VS
UNION THEOLOGICAL SEMINARY

SEQ 16
RENEWAL

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

is motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits _____
Replying Affidavits _____

PAPERS NUMBERED
1-14

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

*Motions decided in accordance with
attached Memorandum Decision.*

FILED
AUG 01 2005
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 6/21/05 _____
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

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. 016

UNION THEOLOGICAL SEMINARY; SCORCIA
& DIANA ASSOCIATES, INC.; BOHEMIA
ELECTRIC CORP.; MIRO VOJAR; FOCUS
LIGHTING, INC.; ARCHITECTURAL LIGHTING
DESIGN; LITEMAKERS, INC.; VENEZIA
BISHOP & PARTNERS, P.C.; JEFF VENEZIA;
THOMAS BISHOP; and THOMAS BISHOP
ARCHITECTS,

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 and IP GROUP,
CONSULTING ENGINEERS,

Third-Party Defendants.

-----X

DIANE A. LEBEDEFF, J.:

Following a six-week trial, the omnibus post-trial motion of defendant/third-party

plaintiff Scordia & Diana Associates, Inc. ("Scordia"), is before the court, as well as the motion of co-defendant Bohemia Electric Corp. ("Bohemia") to set aside and reduce the jury award for past and future pain and suffering. In addition, defendants/third-party defendants Focus Lighting, Inc. ("Focus"), and Venezia Bishop & Partners PC, Jeff Venezia, Thomas Bishop, and Thomas Bishop Architects ("Venezia Bishop"), who the jury determined were not negligent, now move for summary judgment against Scordia on their claims for contractual indemnification.

As relevant here, plaintiff sought damages for injuries she suffered on July 26, 1999, when a chandelier, suspended from the ceiling of the lecture hall in the building owned by defendant Union Theological Seminary, fell from a height of approximately 30 feet and hit her. Defendant Scordia had been retained to supervise the project, and defendant Bohemia and its principal owner, defendant Miro Vojar, had installed the fixture. Plaintiff also asserted claims against the Seminary, the architectural firm and its principals (Venezia Bishop), the lighting designer (Focus), and the manufacturer of the chandeliers (Litemakers, Inc.).

On March 24, 2005 the jury rendered a total verdict of \$5,870,000 in favor of plaintiff Jancia Fuller-Mosley, and against defendants Scordia & Diana Associates, Inc. ("Scordia"), Bohemia Electric Corp. ("Bohemia"), and Miro Vojar. The jury apportioned liability 70% against Scordia, and 30% against Bohemia and Vojar, finding the remaining defendants were not negligent. In essence, the verdict appears to have rested upon the evidence that Bohemia and Vojar (the electrical contractor and its principal, a licensed electrician) violated Administrative Code provisions in the manner chosen to hang and install the fixture, as well as that Bohemia and Vojar had asked a number of questions relevant to proper installation to the entity which contracted for Bohemia to do the work which entity had a duty to communicate with other

defendants but which failed to do so or answer such questions either adequately or at all, Scortia. Scortia had also failed to make inquiries or comments on the shop drawings to secure further details.

The branch of the motion requesting a collateral source hearing pursuant to CPLR 4545 and a CPLR Art. 50 B hearing, was withdrawn on the record on April 26, 2005.

Scortia's Motion to Set Aside the Verdict

The court may set aside a verdict and direct judgment as a matter of law (CPLR 4404[a]), if it concludes that there is “no valid line of reasoning and permissible inferences which could possibly lead rational men to the conclusion reached by the jury on the basis of the evidence presented at trial” (*Cohen v. Hallmark Cards*, 45 N.Y.2d 493, 499 [1978]). Here, the court finds a valid line of reasoning based on sufficient evidence supports the jury verdict against Scortia, and that the verdict is supported by a fair interpretation of the evidence. As argued by plaintiff and the other prevailing defendants, there was evidence from which a jury could rationally find that Scortia was not only liable but actively negligent in connection with the improper installation of the chandelier.

In particular, there was evidence that Bohemia repeatedly requested information from Scortia's foreman, Ron Costello, on what hardware to use to install the chandeliers and that six inquiries by the electrician were ignored. Evidence was presented which could support a finding that Scortia failed to supervise the hanging of the chandelier, to obtain its weight, and to review the shop drawings, and that these departures were substantial factors in causing the accident. The jury was entitled to reject the testimony of Scortia's expert that Scortia was not a general

contractor, and to accept the definition of Scorcia as a general contractor in the contract drafted by Scorcia. Moreover, in light of the evidence from which the jury could find that Scorcia was actively negligent, the issue of whether Scorcia should be considered a general contractor was not determinative.

Scorcia's contentions concerning the indemnification issues are incorrect. The issue of contract interpretation is for the court, and there was nothing in the summation given on behalf of the architect defendants that could have confused the jury, especially since the architect's counsel appropriately referred to the portion of the subcontract related to Scorcia's duties at the site, not indemnification. The reference was fair comment and no objection was made.

Scorcia's complaints that plaintiff's counsel attacked Scorcia's counsel are surprising, as plaintiff's counsel acted appropriately as an advocate on behalf of his client and made no unwarranted or unfair attacks. Scorcia's numerous other points, including its argument that evidence of post-accident repairs was improperly excluded, are similarly without merit and do not warrant the relief requested.

The request for additional time to obtain the full trial transcript so that the instant motion may be based on the full record, is denied as moot. The time provided for post-trial motions was sufficient within the court's discretion. The record does not address the fact that daily copy was ordered for some of the time of the trial and already available to counsel.

Finally, given the jury finding that Scorcia was negligent in contributing to the accident, and the indemnification clause provides for full, not partial, indemnification, in violation of General Obligations Law §5-322.1, Scorcia's request for contractual indemnification against Bohemia must be denied.

Scorcia and Bohemia's Requests for Remittitur

As for the requests by Scorcia and Bohemia for reduction of the award, the court determines that the amount of the verdict does not deviate materially from what would be considered reasonable compensation. The jury award included \$750,000 for past pain and suffering, and \$4,000,000 for future pain and suffering. Defendants argue plaintiff has not had surgery, and had a pre-existing degenerative arthritic condition with chronic neck pain. Plaintiff submitted evidence that plaintiff suffered aggravation of pre-existing injuries, new injuries, including post-traumatic stress disorder, scars, herniated and bulging discs impinging her spinal cord and nerve roots. She has had extensive therapy and five surgeries, is still taking anti-inflammatory and pain medications, her activities are limited, and she may have to undergo a fusion operation in the future; her condition is such that it has not responded positively to therapy on a continuing basis and may not be alleviated by future treatment (see opposition, exhibit B).

The award of future damages, based on a 34-year period, may have been on the high end of the expected range, but has a rational basis in the evidence and may be considered reasonable compensation. The jury was entitled to assess the misery and pain related by the plaintiff, assess her credibility, and set damages as they did. The court has carefully reviewed the cases cited and is not persuaded to reach a contrary result on this branch of the motion. Accordingly, the motions for remittitur are denied.

Contractual Indemnification

Union, Focus and Venezia Bishop rely on the indemnification provision in the contract between Union Theological and Scorcia (section 3.18.1), which provides:

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, the Architect, Architect's consultants, ... from and against any ... expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work, provided that such ... expense is attributable to bodily injury ... but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, [and/or] a Subcontractor...

Given the jury's finding that Scorcia and its subcontractor, Bohemia, were negligent, and that the owner and architect were not, the indemnification provision is triggered.

Union submits evidence supporting its claim for reimbursement of actual expenses in the amount of \$126,664.30, Focus submits evidence supporting its claim for \$110,000, and Venezia Bishop submits evidence supporting its claim for \$283,499.20.

Conclusion

The post-trial motions of Scorcia and Bohemia are denied, and the judgment submitted on behalf of plaintiff has been signed.

The motions of Union, Focus and Venezia Bishop for judgment on their claims for contractual indemnification against Scorcia are granted. No sooner than five days after service of a copy of this order with notice of entry and a proposed judgment upon Scorcia, the clerk shall enter judgment, upon the presentation of appropriate papers, for Union in the amount of \$126,664.30, for Focus in the amount of \$110,000, and for Venezia Bishop in the amount of \$283,499.20.

This decision constitutes the order of the court.

Dated: June 21, 2005

FILED
AUG 01 2005
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NEW YORK



J.S.C.