

Cunico v Chiarenza

2007 NY Slip Op 33623(U)

November 7, 2007

Supreme Court, Wayne County

Docket Number: 0057422/2006

Judge: Dennis M. Kehoe

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STATE OF NEW YORK
SUPREME COURT COUNTY OF WAYNE

ROBERT CUNICO,

Plaintiff,

-vs-

DECISION

Index No. 57422

RICHARD CHIARENZA d/b/a
ARROWHEAD MOBILE HOME PARK

Defendant

Sugarman Law Firm, LLP
Sandra L. Holihan, Esq.

Phillips Lytle, LLP
Jodie L. Ryan, Esq.

The Defendant, Richard Chiarenza, has moved for an order compelling the Plaintiff to provide a Bill of Particulars as to affirmative defenses to the Defendant's Counterclaim and further compelling the Plaintiff to provide specific information regarding his medical providers, together with a request for a protective order regarding certain discovery demands made by the Plaintiff. The Plaintiff, Robert Cunico, has filed a cross-motion, seeking an order striking the Defendant's Counterclaims, as well as an Order directing the Defendant to respond to the Plaintiff's Notice

to Produce and Article 31 Demands, or in the alternative an Order of Preclusion, together with a request for counsel fees.

The Plaintiff seeks money damages for personal injuries he allegedly sustained in a series of falls through the floor of his bathroom, located in a mobile home leased by the Defendant to the Plaintiff, initially on July 16, 2004, and again on July 21, 2004. The Plaintiff alleges that the Defendant failed to maintain the premises in a safe condition, that the Defendant had notice of the condition, and that the Defendant was negligent in failing to remedy the condition. The Defendant has filed Counterclaims against the Plaintiff, based on an indemnification provision in the lease which requires the Plaintiff to maintain adequate insurance to cover claims arising from accidents on the premises.

Since the time of the making of the original motions, the parties have resolved many of the issues without intervention by the Court, including the Plaintiff's demand for oral statements, accident reports, addresses for listed witnesses and insurance information. Subsequent correspondence from respective counsel indicates that the remaining issues are limited to the following:

- 1) Plaintiff's motion to dismiss the Defendant's Counterclaims,

based on the Plaintiff's contention that the indemnity provision of the lease, which purports to waive the landlord's liability for the landlord's own negligence, is void and unenforceable.

2) Defendant's motion for a Protective Order as to Paragraphs #6 and #9 in the Plaintiff's Notice to Produce, in which the Plaintiff requests production by the Defendant of all leases regarding the subject trailer for the period two years before and two years after the incident, and of all time records of maintenance workers and/or independent contractors who made any repairs to the premises in question during the three months before and three months subsequent to the Plaintiff's accident.

As to the Defendant's application for a Protective Order regarding the information requested in Paragraphs #6 and #9 of the Plaintiff's Notice to Produce, the Court agrees that such information falls outside the scope of permitted disclosure insofar as those paragraphs seeking post-accident discovery. The Plaintiff argues that he is entitled to records relevant to post-accident maintenance "to determine the condition of the premises at the time of the injury." However, under these factual circumstances, the Court finds that there has been an insufficient showing to warrant a departure from the line of New York cases which have traditionally held

that evidence of post-accident repairs is not relevant to issues of maintenance, control or notice presently before the Court. (See, e.g. Steinel v 131/93 Owners Corp., 240 AD2d 301 (1st Dept, 1997), Montes v Long Island College Hospital, 175 AD2d 681 (4th Dept, 1991)). Therefore, the Court finds that the Petitioner is entitled to copies of leases relating to the premises for one year prior to the accident, as well as repair records for the three month period preceding the injury. A Protective Order is granted as to all other relief requested in the relevant paragraphs.

Finally, the Court agrees with the Plaintiff that GOL §5-321 prohibits a landlord's attempt to exempt himself from liability for his own acts of negligence. Such indemnification clauses have been found to violate both statutory authority and public policy. (See, e.g. Breakaway Farm, LTD v. Ward, 15 AD3d 517 (2nd Dept, 2005). Therefore, the Plaintiff's motion to dismiss the Defendant's Counterclaims with prejudice is granted.

Counsel for the Plaintiff is hereby directed to submit the appropriate order for signature, in accordance with this Decision.

Dated: November 7, 2007
Lyons, New York


Honorable Dennis M. Kehoe
Acting Supreme Court Justice

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SUPREME AND APPELLATE COURT