

Devore v New York Verizon, Inc.

2008 NY Slip Op 31624(U)

June 12, 2008

Supreme Court, New York County

Docket Number: 0115598/2004

Judge: Jane S. Solomon

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

PRESENT: HON JANE S. SOLOMON
Justice

PART 55

Index Number : 115598/2004
DEVORE, ESTHER
vs.
VERIZON
SEQUENCE NUMBER : 002
SUMMARY JUDGMENT

INDEX NO. 115598/04
MOTION DATE 4-14-08
MOTION SEQ. NO. 002
MOTION CAL. NO. _____

this motion to/for _____

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1-3
4-7
8-10

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion is decided in accordance with the annexed memorandum decision and order.

NB Pretrial on Monday July 21, 2008
at 2:00 PM in Part 55
60 Centre Street.

FILED

JUN 13 2008

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 6-12-08

JANE S. SOLOMON
JANE S. SOLOMON 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):

[* 2]
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 55

-----X
ESTER DEVORE,

Plaintiff,

-against-

INDEX NO. 115598/2004

NEW YORK VERIZON, INC.,

Defendant.
-----X

VERIZON NEW YORK INC. i/s/h/a
NEW YORK VERIZON, INC.,

TP INDEX NO. 590709/2005

Third-Party Plaintiff,

-against-

DECISION and ORDER

ALLIED SECURITY LLC,

Third-Party Defendant.
-----X

JANE S. SOLOMON, J.

In this personal injury action, defendant and third-party plaintiff Verizon New York Inc. ("Verizon") moves under CPLR § 3212 for summary judgment for contractual indemnification against third-party defendant Allied Security LLC ("Allied"). Allied cross-moves for summary judgment dismissing the third-party action. The motion and cross-motion are decided as follows.

Plaintiff Ester Devore ("Devore") claims that on July 24, 2004, she was injured while working for Allied as a "building evacuation supervisor" at a building that was owned by Verizon

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NEW YORK

and located at 370 East 150th Street in the Bronx. Devore claims that during the course of her inspection of the building, she became locked inside a room due to a defective doorknob. She states that, in attempting to get out, she then climbed on a sink and fell off twice, and was injured as a result.

Allied provided security to the building pursuant to a contract its predecessor, Effective Security Systems, Inc., entered into with Verizon's predecessors, Bell Atlantic and its affiliate Telesector Resources Group, Inc. Under the contract, Allied was to provide and train employees to work in various positions including "building evacuation supervisors" at several Verizon buildings, including the one relevant to this action. The contract has an indemnification provision, which states in pertinent part:

17.0 Indemnification Supplier agrees to indemnify, defend and hold BELL ATLANTIC and BELL ATLANTIC affiliates harmless against any losses, damages, liabilities, claims or demands (including all costs, expenses and reasonable attorneys' fees on account thereof or in connection with any investigation or preparation related thereto or the enforcement of the indemnification provisions of this agreement) (collectively, the "Indemnified Amounts") that may be made as a result of Supplier's actual or alleged acts or omissions including, but not limited to, claims made ... (ii) by anyone for injuries (including death) to persons or damage to property (including theft) or other cause of action resulting from Supplier's acts or omissions or those of persons furnished by Supplier while performing work for BELL ATLANTIC pursuant to this agreement or in

connection with materials furnished by Supplier pursuant to this Agreement; (iii) by persons furnished by Supplier or any subcontractors based on employment contract, or federal, state or local laws prohibiting discrimination in employment, or (iv) by persons furnished by supplier or any subcontractors under worker's compensation or similar acts; (v) in connection with the Services and materials contemplated by this Agreement, or resulting directly or indirectly form the Services under this Agreement whether caused by the negligence of Supplier or anyone acting on behalf of Supplier ...

Under New York law, parties may obtain contractual indemnity from liability, even where such liability is incurred in whole or in part through their own negligence, through express, unequivocal agreements to that effect. See Margolin v. Park and Estate Maintenance, 32 N.Y.2d 149 (1973). Moreover, the contribution bar set out in New York General Obligations Law § 15-108(c) (McKinney 2001) does not apply to a party's claim for indemnity -- as opposed to contribution -- under an express contractual provision that shifts liability in its entirety to another party. See Gibbs-Alfano v. Burton, 281 F.3d 12 (2d Cir. 2002). In addition, "a contract of indemnity need not explicitly state an intention that the undertaking extend to the indemnitee's own negligent acts" (New York Tel. Co. v. Gulf Oil Corp., 203 A.D.2d 26 [1st Dep't 1994]), but rather a court should look to the parties intentions under the agreement (see Gibbs-Alfano, supra).

Although this indemnification provision does not specifically require Allied to indemnify Verizon for Verizon's own negligence, the broad language of the provision indicates that the parties intended Allied to indemnify Verizon for all claims arising from Allied's services under the contract. Thus, whether Verizon was negligent in the maintenance of the door handle is irrelevant. Allied assigned Devore to work at the building, and regardless of whether she was supposed to roam through the building or remain at her station, it is clear that her claims arose out of the services provided by the contract. Thus, Verizon is entitled to indemnification, with the issue of the amount of legal fees reasonably expended in Verizon's defense of this action to be determined after trial of the main action and a subsequent hearing.

Accordingly, it hereby is

ORDERED that Verizon's motion under CPLR § 3212 is granted and Verizon is entitled to summary judgment against Allied for full indemnification and defense costs and fees, and the cross-motion accordingly is denied; and it further is

ORDERED that the counsel shall appear for a pre-trial conference in Part 55, 60 Centre Street, Room 432, New York, New York, at 2:00 PM on July 21, 2008

Dated: June 12, 2008

ENTER:

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 NEW YORK


 J.S.C.
JANE S. SOLOMON