

Richards v Passarelli
2008 NY Slip Op 32730(U)
September 12, 2008
Supreme Court, Richmond County
Docket Number: 100417/2006
Judge: Judith N. McMahon
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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MARGARET RICHARDS,

Plaintiff(s),

-against-

GUIDO PASSARELLI, LUCY PASSARELLI, THE
PASSARELLI FAMILY PARTNERSHIP, L.P.,
A NEW YORK LIMITED PARTNERSHIP, AND
PIER I IMPORTS,

Defendant(s).

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GUIDO PASSARELLI, LUCY PASSARELLI, THE
PASSARELLI FAMILY PARTNERSHIP, L.P.,
A NEW YORK LIMITED PARTNERSHIP,

Third-Party Plaintiff(s)

-against-

ARROW LINE STRIPING CO.,

Third-Party Defendant(s),

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GUIDO PASSARELLI, LUCY PASSARELLI, THE
PASSARELLI FAMILY PARTNERSHIP, L.P.,
A NEW YORK LIMITED PARTNERSHIP,

Second Third-Party Plaintiff(s),

-against-

CALVANICO ASSOCIATES, INC.,

Second Third-Party Defendant(s).

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DCM PART 5

Present:

HON. JUDITH N. MCMAHON

DECISION AND ORDER

Index No. 100417/2006

Motion No. 003, 004

Index No. A100417/2006

Index No. B100417/2006

**GUIDO PASSARELLI, LUCY PASSARELLI, THE
PASSARELLI FAMILY PARTNERSHIP, L.P.,
A NEW YORK LIMITED PARTNERSHIP,**

Third Third-Party Plaintiff(s), Index No. C100417/2006

-against-

EIP LEASING SERVICES, INC.,

Second Third-Party Defendant(s).

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The following papers numbered 1 to 8 were used on this motion this 9th day of September, 2008.

Notice of Motion [Plaintiffs](Affirmation in Support).....	1
Notice of Motion [Arrow Line](Affirmation in Support)	2
Affirmation in Opposition to Plaintiff’s Motion [EIP Leasing].....	3
Affirmation in Opposition to Arrow Line’s Motion [EIP Leasing]	4
Affirmation in Opposition to Arrow Line’s Motion (Guido Passarelli, et. al)	5
Supplemental Affirmation to Arrow Line’s Motion (Guido Passarelli et. al)	6
Affirmation in Support of Plaintiff’s Motion (Guido Passarelli et. al).....	7
Reply Affirmation [Arrow Line].....	8

On April 9, 2005, the plaintiff sustained injuries when she was caused, allegedly by the negligence of the defendants, to drive her vehicle over a retaining wall in the parking lot of Pier I Imports, located at 2194 Richmond Avenue, Staten Island, New York. The plaintiff commenced this action on or about February 2, 2006. The defendants Guido Passarelli, Lucy Passarelli, The Passarelli Family Partnership, L.P., A New York Limited Partnership (hereinafter “Passarelli”), thereafter commenced three third party actions against Arrow Line Stripping (hereinafter “Arrow Line”), as the parking lot stripping/painting company, Calvanico Associates (hereinafter “Calvanico”), as the architect’s providing design services to the defendants, and against EIP Leasing (hereinafter “EIP”), as the company who repaved the parking lot in 2003.

At present, plaintiff Richards is moving to add Arrow Line, EIP and Calvanico as

direct defendants and permitting plaintiff to serve the amended complaint on the aforementioned proposed direct defendants without prejudice. Proposed defendant Arrow Line opposes the motion and is also moving for summary judgment against the plaintiff on the ground the they did not owe her any duty.

It is undisputed that Arrow Line and EIP were added as third party and third-third party defendants, respectively, during the course of this litigation in a timely manner. As such, both Arrow Line and EIP have been aware of the action and have participated in discovery to this point. Therefore, this Court finds no prejudice against Arrow Line or EIP in permitting the plaintiff to add them as direct defendants (see Schuler v. Grand Metro Building Corp., 118 AD2d 633, 635 [1986][finding that even when a statute of limitations period is involved, where a party “is fully aware that a claim is being made against him with respect to the transaction or occurrence involved in the suit, and is, in fact, a participant in the litigation” courts may exercise judicial discretion regarding prejudice of the parties]).

With respect to Arrow Line’s motion for summary judgment, it is well settled that summary judgment is a drastic remedy that should not be granted where there is any doubt as to the existence of triable issues of fact (see Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]; Herrin v Airborne Freight Corp., 301 AD2d 500, 500-501 [2d Dept 2003]). The party moving for summary judgment bears the initial burden of establishing its right to judgment as a matter of law (see Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 [1985]), and in this regard “ the evidence is to be viewed in a light most favorable to the party opposing the motion, giving [it] the benefit of every favorable inference” (Cortale v

Educational Testing Serv., 251 AD2d 528, 531 [2d Dept 1998]). Nevertheless, upon a prima facie showing by the moving party, it is incumbent upon the party opposing the motion to produce “evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (Alvarez v Prospect Hosp., 68 NY2d at 324; see Zuckerman v City of New York, 49 NY2d 557, 562 [1980]).

Here, Arrow Line has failed to establish its entitlement to summary judgment as a matter of law (Herrin v Airborne Freight Corp., 301 AD2d 500, 500-501 [2d Dept 2003]). The defendant Arrow Line has failed to meet its burden, viewing all evidence in the light most favorable to the nonmoving party, that plaintiff’s injuries were not proximately caused by negligence on its part (Bloechle v. Ranieri, 21 AD3d 435, 435 [2d Dept., 2005][holding that where a party failed to meet their burden to summary judgment, the burden never shifts to the opposing side and summary judgment is inappropriate]). It is undisputed that Arrow Line stripped the parking lot in 2003 and repainted the arrows, pursuant to Calvanico’s plan, in an unsupervised fashion, in the Pier I parking lot. This Court, therefore, is not persuaded that Arrow Line met its burden showing that it did not paint the arrows in a negligent fashion, which would substantially contribute to causing the plaintiff to drive off the retaining wall. As a result, summary judgment is inappropriate.

Accordingly, it is

ORDERED that the plaintiff, Margaret Richards’ motion to amend the complaint to add Arrow Line Striping, Calvanico Associates and EIP Leasing Inc., as direct defendants is hereby granted, and it is further

ORDERED that the plaintiff, Margaret Richards’ serve the proposed amended

**complaint on Arrow Line Striping, Calvanico Associates and EIP Leasing Services, Inc.,
within 10 days of the date of this order, and it is further**

**ORDERED that defendant Arrow Line Striping's motion for summary judgment is
hereby denied, and it is further**

**ORDERED that all parties return to this Court on October 29, 2008, for a pre-trial
conference.**

THIS IS THE DECISION AND ORDER OF THE COURT.

Dated: September 12, 2008

E N T E R,

**Hon. Judith N. McMahon
Justice of the Supreme Court**