

Roland's Elec., Inc. v USA Illumination, Inc.
2010 NY Slip Op 33932(U)
December 8, 2010
Sup Ct, NY County
Docket Number: 109510/2008
Judge: Louis B. York
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 2

ROLAND'S ELECTRIC, INC.,
 Plaintiff,

-against-

USA ILLUMINATION, INC. and PHILIPS
 LIGHTING ELECTRONICS, NORTH AMERICA
 A DIVISION OF PHILIPS ELECTRONICS
 AMERICA CORPORATION,
 Defendants.

INDEX NO. 109510/2008
 Motion Sequence 003
DECISION & ORDER

FILED

DEC 15 2010

USA ILLUMINATION, INC.,
 Third-Party Plaintiff,

-against-

ADVANCE TRANSFORMER,
 Third-Party Defendant.

NEW YORK
 COUNTY CLERK'S OFFICE

Third-Party Index No. 590818/2009

LOUIS B. YORK, J.:

Defendant and third-party defendant Advance Transformer, sued here as Philips Lighting Electronics, North America a Division of Philips Electronics America Corporation, moves for leave to reargue its motion for summary judgment, denied on April 14, 2010. Defendant and third-party plaintiff USA Illumination, Inc. (USA), cross-moves for leave to reargue its cross motion for summary judgment, also denied on April 14, 2010.

Factual Background

This action arises from a personal injury case, *Daniel Hernandez & Rosalina Pichardo v Ten Ten Company a/k/a 1010 Company, 1010 Company, Prudential Securities, Inc., Schmergel Construction Corp. & USA Illumination, Inc.*, New York County Index No. 125067/2000, in which Hernandez was injured by an electrical shock that caused him to be thrown off a ladder at a construction project. Plaintiff Roland's Electric, Inc. (Roland's), subcontractor to Schmergel

Construction Corp. (Schmergel), the general contractor, was responsible for installing the wiring and lighting fixtures on the project. When some of the lighting fixtures did not work properly, Roland's complained to USA, their supplier. USA, in turn, hired non-party Knight Electrical Services Corp. (Knight) to fix the problem. Hernandez, an electrician, was employed by Knight and was allegedly shocked by contact with a lighting fixture.

On or about April 21, 2008, Roland's filed the instant action for common-law indemnification, contribution, breach of warranty, and strict products liability against USA. In September 2009, USA brought the instant third-party action against Advance Transformer, manufacturer of a ballast which is a component of the lighting fixture that shocked Hernandez, asserting causes of action for common-law indemnification, contribution, breach of contract, contractual indemnification, strict products liability, and breach of warranty.

A jury found Hernandez 46.67% liable for his injuries and Roland's 53.33% liable, on November 3, 2008. Hernandez was found to be comparatively negligent when he chose to work on the fixtures without having the electrical power cut off. Roland's was liable, because, according to the jury verdict sheet (Ex. G, attached to Notice of Motion), it failed to exercise reasonable care when it violated 12 NYCRR § 23-1.13 (b) (4):

"No employer shall suffer or permit an employee to work in such proximity to any part of an electric power circuit that he may contact such circuit in the course of his work unless the employee is protected against electric shock by de-energizing the circuit and grounding it or by guarding such circuit by effective insulation or other means."

On December 24, 2009, the court decided several motions that emerged from the trial, including denying applications for judgment notwithstanding the verdict or to reduce the verdict as excessive (except for a 14% reduction for lack of evidence regarding a certain insurance policy). The court responded to defendants' contentions that there was no evidence as to what caused the electrical shock by stating, "[q]uite simply and directly, what caused the shock as testified to by plaintiff, an experienced electrician, was the ungrounded circuit line with the power turned on." Additionally, the court found Roland's responsible for contractual and

common-law indemnification to the contracting tenant and Schmergel.

On February 19, 2010, Advance Transformer moved to dismiss all claims as against it in the instant action on the grounds of res judicata and collateral estoppel, the claims of strict products liability on the grounds of the lapsing of the statute of limitations, and/or the warranty and contract claims pursuant to Section 2-725 of the Uniform Commercial Code (UCC). On or about April 2, 2010, Roland's served an amended complaint adding Advanced Transformer as a direct defendant, asserting the same causes of action as against USA. On April 14, 2010, USA cross-moved for summary judgment dismissing all claims as against it on the ground of collateral estoppel and res judicata, and/or as time-barred under the statute of limitations. The motion and cross motion, which both relied significantly on the December 24, 2009 decision in the *Hernandez* action, were denied on April 14, 2010.

Advance Transformer's Motion to Reargue/USA's Cross Motion to Reargue

According to CPLR 2221 (d) (2), a motion for leave to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion." *See 300 West Realty Co. v City of New York*, 99 AD2d 708, 709 (1st Dept 1984) ("For reargument, [movant] had to show that the court had either overlooked or misapprehended relevant facts, or misapplied controlling principles of law").

The challenged decision of April 14, 2010 addressed Advance Transformer's motion and USA's cross motion, which made similar arguments that the December 24, 2009 decision resolved the cause of Hernandez's accident. They argued that Roland's was barred from asserting claims of liability against them, because it had been found responsible for Hernandez's injuries at trial. Defendants contended that summary judgment in their favor was, therefore, warranted by the doctrines of res judicata¹ and collateral estoppel². However, the court held that

¹"Under res judicata, or claim preclusion, a valid final judgment bars future actions between the same parties on the same cause of action." *Parker v Blauvelt Volunteer Fire Co.*, 93 NY2d 343, 347 (1999).

²"Collateral estoppel precludes a party from relitigating in a subsequent action or proceeding an issue raised in a prior action or proceeding and decided against that party or those in privity." *Buechel v Bain*, 97 NY2d

"Roland's cannot be bound on the issue of a defective ballast because it was prevented from litigating that issue in the prior action by the court's severance order which they did raise in opposition to the motion for severance. Therefore, they can go forward on that issue. They cannot be bound by res judicata when they did not have an adequate opportunity to litigate that issue."

In motion sequence 008 in the *Hernandez* action, USA's cross motion to have the complaint and all counterclaims and cross claims dismissed as against it was granted without opposition, on October 7, 2004. The complaint as against USA was accordingly severed and dismissed. Roland's motion to implead USA as a third-party defendant (motion sequence 014) was denied by the court, on April 16, 2008. On June 17, 2008, the court severed and dismissed Roland's third-party complaint against USA, which had been filed and served prior to Roland's application for leave to implead USA, without prejudice to the commencement of a new action (motion sequence 018).

Advance Transformer's motion and USA's cross motion to reargue are denied, because none of the court's decisions in the *Hernandez* action address the safety of the product(s) they manufacture and distribute. There is no law of the case on strict products liability, breach of warranty or breach of contract. While USA was properly dismissed as a direct defendant in the *Hernandez* action, there was no concomitant determination about the safety of the product at issue. That is the subject of the instant action, which shall now proceed to resolution.

Accordingly, it is

ORDERED that the motion by defendant and third-party defendant Advance Transformer for leave to reargue its motion for summary judgment is denied; and it is further

ORDERED that the cross motion by defendant and third-party plaintiff USA Illumination, Inc., for leave to reargue its cross motion for summary judgment is denied.

DATED: December 8, 2010

DEC 15 2010

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295, 303 (2001).

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