

Uhovski v Kadan Prods., Inc.

2012 NY Slip Op 32007(U)

July 25, 2012

Sup Ct, NY County

Docket Number: 109868/09

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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VALENTINE UHOVSKI,

Plaintiff,

Index No. 109868/09

-against-

DECISION/ORDER

KADAN PRODUCTIONS, INC., OBO, LLC, JKLD,
INC., PRODUCTION RESOURCE GROUP, LLC,
MICHAEL BROWN, MICHAEL BROWN d/b/a
LOT71, LLC, LOT71, LLC, ADIDAS AMERICA,
INC. and NADINE JOHNSON & ASSOCIATES, INC.,

FILED

Defendants.
-----X

JUL 30 2012.

HON. CYNTHIA KERN, J.S.C.

NEW YORK
COUNTY CLERK'S OFFICE

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1
Answering Affidavits and Cross Motion.....	_____
Affirmations in Opposition.....	2
Replying Affidavits.....	3
Exhibits.....	4

Plaintiff Valentine Uhovski commenced the instant action seeking damages for personal injuries he allegedly sustained while he was a reporter covering the W-3 Adidas Fashion Show during New York Fashion Week held at Hunter College, New York, New York, on February 7, 2007. Defendant Production Resource Group, LLC ("PRG") now moves for an Order pursuant to Civil Practice Law and Rules ("CPLR") § 3212 granting it summary judgment (1) dismissing plaintiff's complaint; (2) dismissing all cross-claims asserted against it; and (3) for full contractual indemnification from JKLD, Inc. ("JKLD") including attorneys' fees and legal

expenses. For the reasons set forth below, PRG's motion is granted in part and denied in part.

The relevant facts are as follows. Plaintiff allegedly sustained personal injuries while he was a reporter covering the W-3 Adidas Fashion Show (the "Fashion Show") at Hunter College, New York, New York on February 7, 2007. At the time of his accident, plaintiff was employed by IMG as a staff writer. Prior to the start of the Fashion Show, plaintiff alleges that he was directed to climb over one of the bleachers at the Fashion Show by Lehua Chong, an employee of defendant Nadine Johnson & Associates, Inc. ("Nadine Johnson"), in order for plaintiff to be in the correct spot to take interviews of celebrities sitting in the front row. However, Ms. Chong disputes that she gave any such direction to plaintiff. Plaintiff allegedly climbed over the bleacher set up at the event, over a barricade set up between the runway and the bleacher and onto the runway. Once over the railing, plaintiff alleges he was "standing on a very fragile platform" and that it was very dark. Plaintiff alleges that his accident took place when he stepped backwards to allow photographers to take photographs of celebrities and he stepped off the platform and fell onto the gymnasium floor below, sustaining injuries.

JKLD was hired by defendant OBO, LLC ("OBO") to do the lighting set-up for the Fashion Show. JKLD entered into a rental agreement (the "Contract") for the equipment with PRG in or around January 2007. Mr. Kroeze, the president of JKLD, testified that JKLD is a lighting production company that services the luxury sector for events such as fashion shows. Mr. Kroeze further testified that he served as the lighting designer for the Fashion Show, along with a creative director from a company called Etienne Russo and a lighting designer from a company called Villa Eugenie. A PRG representative was also present at the event. However, PRG alleges that it "had no role in the pre-show ambient lighting" and that its only role was to

control the media server which streamed video clips at the Fashion Show. JKLD rented equipment from PRG which included Versatubes, or LED devices about a meter long that look like fluorescent tubes and display one pixel by 16 pixels of video. JKLD installed the Versatubes on the runway prior to the Fashion Show. JKLD testified that the Versatubes on the runway were placed there as an accent to transmit images and not to provide lighting to the area. Specifically, the Versatubes were set up to display “patterns of light going into the audience.” Lighting was also provided in overhead trusses and the overall responsibility for when the overhead lighting would be illuminated was that of Villa Eugenie but the command would come from Mr. Kroeze.

This matter was resolved at private mediation between some of the parties on March 6, 2012. Pursuant to the settlement, plaintiff is to receive a total of \$235,000.00, which is inclusive of a \$30,000.00 Erisa-based lien. The breakdown of the settlement is as follows: Nadine Johnson is to pay \$90,000.00, JKLD is to pay \$60,000.00, OBO is to pay \$50,000.00 and defendant Adidas America, Inc. (“Adidas”) is to pay \$35,000.00. PRG did not participate in the mediation.

On a motion for summary judgment, the movant bears the burden of presenting sufficient evidence to demonstrate the absence of any material issues of fact. *See Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). Summary judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *See Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). Once the movant establishes a prima facie right to judgment as a matter of law, the burden shifts to the party opposing the motion to “produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim.” *Id.*

The court first turns to PRG's motion for summary judgment dismissing plaintiff's complaint. PRG has established its prima facie right to summary judgment dismissing plaintiff's complaint as it has shown that it was not negligent in the operation of the lighting equipment on the date the plaintiff's accident occurred. Specifically, PRG alleges that it did not play an active role in the lighting of the Fashion Show on the date of plaintiff's accident, but that it only operated the media server at the event which streamed video clips through the Versatubes. In response, plaintiff has failed to raise an issue of fact as to whether PRG was negligent in the performance of its lighting duties on the date of plaintiff's accident. In fact, plaintiff has asserted no opposition to PRG's motion for summary judgment dismissing his complaint. Thus, PRG's motion for summary judgment dismissing plaintiff's complaint is granted without opposition.

The court next turns to PRG's motion for summary judgment dismissing all cross-claims asserted against it. As an initial matter, PRG's motion for summary judgment dismissing any and all cross-claims asserted against it by defendants Kadan Productions, Inc. ("Kadan"), OBO, Adidas, Michael Brown, Michael Brown d/b/a Lot 71, LLC, Lot 71, LLC and Nadine Johnson is granted without opposition.

PRG is entitled to summary judgment dismissing JKLD's cross-claim for contribution as JKLD has settled with plaintiff in the instant action. Pursuant to General Obligations Law § 15-108(c), "[a] tortfeasor who has obtained his own release from liability shall not be entitled to contribution from any other person." Further, pursuant to GOL § 15-108(d),

[a] release or a covenant not to sue between a plaintiff or claimant and a person who is liable or claimed to be liable in tort shall be deemed a release or covenant for the purposes of this section only if: (1) the plaintiff or claimant receives, as part of the agreement, monetary consideration greater than one dollar; (2) the release or

covenant completely or substantially terminates the dispute between the plaintiff or claimant and the person who was claimed to be liable; and (3) such release or covenant is provided prior to entry of judgment.

Pursuant to the settlement agreement reached at the mediation in March 2012, JKLD is to pay plaintiff \$60,000.00. Thus, pursuant to GOL § 15-108, JKLD is precluded from receiving contribution towards this amount from PRG. Accordingly, JKLD's cross-claim against PRG for contribution is dismissed.

Further, PRG has established its prima facie right to summary judgment dismissing JKLD's cross-claim for indemnification as there is no evidence that PRG is required to indemnify JKLD. Further, even if PRG was obligated to indemnify JKLD, which it is not, PRG has shown that it was not negligent in the performance of its services on the date of plaintiff's accident and that it did not play a role in plaintiff's accident. Thus, JKLD's cross-claim for indemnification must be dismissed.

The court next turns to PRG's motion for summary judgment on its cross-claim for full contractual indemnification from JKLD. PRG has failed to establish as a matter of law that it is entitled to full contractual indemnification from JKLD under the Contract. The Contract states

[JKLD] expressly agrees to indemnify, defend and hold harmless PRG, any division of Production Resource Group, L.L.C. and its subsidiaries, and each of their officers, directors and employees (the Indemnified Entities) from any and all claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description (including attorney fees and litigation expenses) which may be brought or made or incurred by the Indemnified Entities or any of them on account of loss of or damage to any property or for injuries to or death of any person, or for any other reason caused by, or arising out of, or contributed to, in whole or in part, by any alleged act or failure to act by [JKLD], its employees, agents or representatives.

As PRG has failed to establish as a matter of law that JKLD acted or failed to act, which caused or contributed to plaintiff's accident, PRG's motion for summary judgment on its cross-claim for full contractual indemnification from JKLD must be denied. Further, the fact that JKLD settled with plaintiff for \$60,000.00 is inadmissible as proof of liability or negligence. See CPLR § 4547.

Finally, as PRG has not shown that it is entitled to contractual indemnification from JKLD in the instant action, PRG's motion for an Order requiring that JKLD reimburse PRG for legal expenses and attorneys' fees incurred by PRG in the defense of this lawsuit is denied.

Accordingly, PRG's motion for summary judgment dismissing plaintiff's complaint is granted, PRG's motion for summary judgment dismissing any and all cross-claims asserted against it is granted, PRG's motion for summary judgment granting it full contractual indemnification from JKLD is denied and PRG's motion for an Order requiring JKLD to reimburse PRG for legal expenses and attorneys' fees incurred by PRG in the defense of this lawsuit is denied. Plaintiff and movant should notify the Clerk of Part 55 as to whether they intend to proceed to trial on any of the issues left in this case. This constitutes the decision and order of the court.

Dated: 7/25/12

Enter: PRG **FILED**
J.S.C. JUL 30 2012

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