

Woloszyn v 834 Fifth Ave. Corp.

2020 NY Slip Op 30464(U)

February 21, 2020

Supreme Court, New York County

Docket Number: 153505/2014

Judge: Carol R. Edmead

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL R. EDMEAD

PART IAS MOTION 35EFM

Justice

-----X

INDEX NO. 153505/2014

ARTUR WOLOSZYN,

MOTION DATE 01/28/2020

Plaintiff,

MOTION SEQ. NO. 004

- v -

834 FIFTH AVENUE CORPORATION, PHILIPPE LAFFONT, BROWN HARRIS STEVENS RESIDENTIAL MANAGEMENT, LLC, SMI CONSTRUCTION MANAGEMENT INC.,

DECISION + ORDER ON MOTION

Defendant.

-----X

PHILIPPE LAFFONT, SMI CONSTRUCTION MANAGEMENT INC.

Third-Party Index No. 595474/2014

Plaintiff,

-against-

N. PAGANO PLUMBING AND HEATING CONTRACTORS, LTD

Defendant.

-----X

834 FIFTH AVENUE CORPORATION, BROWN HARRIS STEVENS RESIDENTIAL MANAGEMENT, LLC

Second Third-Party Index No. 595453/2016

Plaintiff,

-against-

SMI CONSTRUCTION MANAGEMENT, INC., N. PAGANO PLUMBING & HEATING CONTRACTOR, LTD.

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 004) 183, 184, 185, 186, 187, 188, 189, 190, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209 were read on this motion to/for BIFURCATE.

Upon the foregoing documents and the memorandum decision below, it is

ORDERED that defendants/third-party plaintiffs, SMI Construction Management Inc. and Phillipe Laffont's motion to bifurcate trial is denied; and it is further

ORDERED that Plaintiff's cross motion for a clarification, as well as alternative relief, and to reverse-bifurcate trial is denied in its entirety.

NON-FINAL DISPOSITION

In this Labor Law action, defendants/third-party plaintiffs, SMI Construction Management Inc. (SMI) and Phillippe Laffont (Laffont) move, pursuant to CPLR 603, to bifurcate the liability and damages portions of the trial of this matter. Plaintiff Artur Woloszyn (Plaintiff) cross-moves for a clarification of the Court's order dated September 5, 2018 (NYSCEF doc No. 196) (September 2018 decision). More specifically, Plaintiff seeks a statement from the Court that the September 2018 decision included a finding that, as matter of law, Plaintiff was free from comparative fault. Alternatively, Plaintiff seeks an order dismissing defendants' affirmative defenses based on Plaintiff's alleged comparative fault, and precluding defendants from raising any arguments at trial as to Plaintiff's alleged comparative fault. Finally, Plaintiff seeks an order reverse bifurcating the liability and damages portions of the trial.

BACKGROUND

Plaintiff was injured on a jobsite while operating an unguarded table saw. For a fuller discussion of the facts, see the September 2018 decision.

Among other things, the September 2018 decision granted Plaintiff's application for summary judgment as to liability under Labor Law § 241 (6) as against SMI and defendant 834 Fifth Avenue (834 Fifth). The Court reasoned that SMI and 834 Fifth violated 12 NYCRR 23-1.12 (c) (2), 12 NYCRR 23-9.2 (a), 12 NYCRR 23-1.5 (c) (3) by failing to provide Plaintiff with a guarded table saw (NYSCEF doc No. 196 at 6-11). Moreover, the Court held that SMI and 834 Fifth failed to raise an issue fact as to whether Plaintiff was the sole proximate cause of his own accident, and that Plaintiff had shown, as a matter of law, that the violations of the Industrial Code were "a proximate cause" of his injuries (*id.*). Plaintiff did not move, on the underlying motion, for dismissal of defendants' affirmative defense of comparative negligence.

ANALYSIS

COMPARATIVE NEGLIGENCE

The September 2018 decision plainly did not determine the issue of comparative negligence. That is reflected by the Court's use of an indefinite article in determining that the Industrial Code violations were "a proximate cause" of Plaintiff's injuries. As Plaintiff concedes that he did not move for dismissal of defendants' comparative negligence claims, it is unsurprising that the Court did not determine the issue.

Plaintiff, however, contends that the Court necessarily decided the issue, as a corollary of granting him summary judgment as to liability on his section 241 (6) claim. This claim is undercut by the Court of Appeals ruling in *Rodriguez v City of New York*, which held that an issue of fact as to plaintiff's comparative fault relates to damages and, thus, does not preclude a plaintiff from being granted summary judgment (31 NY3d 312 [2018]). "When," the Court of Appeals held, "a defendant's liability is established as a matter of law before trial, the jury must still determine whether the plaintiff was negligent and whether such negligence was a substantial factor in causing plaintiff's injuries" (*id.* at 324).

While the Court of Appeals framed its holding in *Rodriguez* as an "answer [to] a question that has perplexed courts for some time" (*id.* at 315), Plaintiff treats it as a reversal of an unequivocal point of law. That is, Plaintiff maintains that, prior to *Rodriguez*, courts routinely found, as a matter of law, that there was no issue of comparative negligence simply by granting a plaintiff summary judgment as to liability on a negligence claim.¹ Thus, it argues that the

¹ In support of this position, Plaintiff cites, among others, to *Parris v Gonzalez-Martinez* (129 AD3d 519 [1st Dept 2015] [holding, in a motor vehicle action, that denial of summary judgment was proper where issues of comparative negligence remained]).

September 2018 decision necessarily decided the issue of comparative negligence despite the language in the opinion suggesting that it did not.

Here, the September 2018 decision plainly did not determine the issue of comparative negligence. *Rodriguez* was decided on April 3, 2018, five months before the September 2018 decision. Moreover, the motion was not fully submitted until months after the Court of Appeals decision was published. If Plaintiff thought that failure to determine comparative negligence was a mistake, he could have, but did not, bring a motion to reargue. Similarly, if Plaintiff felt that the holding in *Rodriguez* required the Court to make a determination on an issue on which it had not moved, comparative negligence, he could have brought a motion to renew.

Plaintiff did neither, and instead brings a cross motion, almost two years after the Court of Appeals' decision in *Rodriguez*, asking the Court to make a ruling that would fly against the holding in that case. Plaintiff's reliance on *Castillo v Shupecki* (63 Misc 3d 325 [Sup Ct, Bronx County 2019]) is unavailing as that case involved a motion to reargue, and is not, in any event, binding on this Court. As Plaintiff asks the Court to clarify the September 2018 decision to insert a determination that it did not contain, the application for such relief is denied.

Moreover, the Court declines to dismiss defendants' claims of comparative negligence in the interest of justice, as this would be procedurally improper. The Court makes no determination as to the substance of Plaintiff's arguments against these claims. Nor has Plaintiff provided a basis on which the Court could grant its application for an order precluding defendants from putting on evidence of Plaintiff's comparative negligence at trial.

Bifurcation

CPLR 603, entitled "Severance and separate trials," provides that "[i]n furtherance of convenience or to avoid prejudice the court may order a severance of claims, or may order a

separate trial of any claim, or of any separate issue. The court may order the trial of any claim or issue prior to the trial of the others.” The First Department has held that “[b]ifurcated trials are encouraged unless the nature of the injuries are such as to have important bearing on liability” (*Faber v New York City Hous. Auth.*, 227 AD2d 248 [1st Dept 1996]).

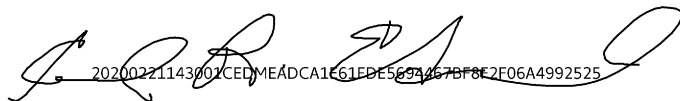
Here, SMI and Laffont argue that bifurcation would simplify and clarify the issues. Specifically, SMI and Laffont argue that remaining liability issues, including Plaintiff’s comparative negligence, should be determined before damages. However, this logic runs afoul of the Court of Appeals holding in *Rodriguez*. That is, Rodriguez explicitly states that comparative negligence is an element of damages. Thus, granting bifurcation would require two separate trials, each of which would necessarily explore the levels of fault relating to Plaintiff’s injuries. This would not serve the purpose efficiency. Thus, SMI and Laffont’s motion to bifurcate must be denied. Plaintiff’s application for reverse bifurcation must be denied for the same reason.

CONCLUSION

Accordingly, it is

ORDERED that defendants/third-party plaintiffs, SMI Construction Management Inc. and Phillipe Laffont’s motion to bifurcate trial is denied; and it is further

ORDERED that Plaintiff’s cross motion for a clarification, as well as alternative relief, and to reverse-bifurcate trial is denied in its entirety.



20200221143001CEDMEADCA1E61E6E5693467DF8E2F06A4992525

2/21/2020
DATE

CAROL R. EDMEAD, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: