

Vazquez v J. Mullen & Sons, Inc.
2022 NY Slip Op 35250(U)
April 28, 2022
Supreme Court, Orange County
Docket Number: Index No. EF004431-2017
Judge: Robert A. Onofry
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SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: HON. ROBERT A. ONOFRY, J.S.C.

SUPREME COURT : ORANGE COUNTY

-----X
RAYMOND VAZQUEZ,

Plaintiff,

-against--

J. MULLEN & SONS, INC. and CENTRAL HUDSON
GAS & ELECTRIC CORPORATION,
Defendants.

To commence the statutory time
period for appeals as of right
(CPLR 5513[a]), you are advised
to serve a copy of this order, with
notice of entry, upon all parties.

-----X
J. MULLEN & SONS, INC.,

Third-Party Plaintiff,

-against--

ETHAN ALLEN PERSONNEL GROUP, INC.,

Third-Party Defendants.

Index No. EF004431-2017

**DECISION AND ORDER
ON MOTION IN LIMINE ON
ISSUE OF BIFURCATION/
UNIFIED TRIAL**

Motion Date: April 20, 2022

Introduction

Upon reargument, and by Decision and Order dated October 28, 2021, the Plaintiff, based upon the holding in the Court of Appeals case of *Rodriguez v. City of New York* [31 N.Y.3d 312 (2018)], was awarded summary judgment as against Defendants J. Mullen & Sons, Inc. and Central Hudson Gas & Electric Corporation, on his common law negligence claim and on his Labor Law §241(6) claim, leaving the issue of Plaintiff's comparative fault, if any, to be determined at trial.

In so concluding the Court determined, as a matter of law, that on the evidence presented there could be no valid line of reasoning, nor any permissible inferences derived therefrom, that

would lead a rational person or reasonable jury to conclude that the Plaintiff's conduct was the sole proximate cause of the accident or occurrence of May 13, 2016. *Cohen v. Hallmark Cards, Inc.*, 45 N.Y.2d 493 (1978); *Goldblatt v. Seaman*, 225 A.D.2d 585 [2nd Dept. 1996]; *Killon v. Parrotta*, 28 N.Y.3d 101 (2016).

Based upon the same, and in pre-trial arguments and submissions, the parties disagree on the procedural posture of the impending case; the Plaintiff asserting that the trial should be conducted as a unified trial and the Defendants seeking bi-furcation (i.e. determination of the remaining issues on liability/comparative fault and then proceeding to the damage phase).

Both cite *Rodriguez, supra*, as controlling precedent which dictates the manner in which the trial is to proceed.

Here, having considered the arguments of counsel, and the guidance afforded under *Rodriguez*, the Court concludes, and so finds, that bi-furcation (with the same jury), addressing the remaining issues on liability and comparative fault, with the second phase limited to, and addressing, the issues of damages, is the preferred, if not the required, procedural posture for the case.

Discussion/Legal Analysis

In so concluding, the Court notes that while the direction as to whether a trial proceeds on a unified or bi-furcated basis, lies within the discretion of the trial, there is a decided preference for bi-furcation in the Second Department in negligence cases such as this, absent good cause shown.

It is well settled that bi-furcation is to be encouraged in any action for personal injuries where it appears that bifurcation may assist in the clarification and simplification of the issues,

and result in a more fair and expeditious resolution of the case. 22 NYCRR §202.42(a); *Castro v. Malia Realty*, 177 A.D.3d 58 [2nd Dept. 2019]. This is particularly so where, as here, the severity of plaintiff's injuries may serve to blur clarity of the record with regard to the remaining issues of liability and comparative fault, invoke sympathy for the plaintiff, and result in undue prejudice to the defendants. *Smerechniak v. Hempstead*, 77 A.D.2d 944 [2nd Dept. 1980]; *Patino v. Nassau*, 124 A.D.3d 738 [2nd Dept. 2015].

Furthermore, support for bi-furcation is to be found in *Rodriquez* itself.

As the Court noted in its decision and order of October 28, 2021, the entire thrust of the Court of Appeals decision in *Rodriquez* was the reconciliation of CPLR §3212 with Article 14-A of the CPLR (specifically §§1411 and 1412), and that partial summary judgment served the useful purpose of narrowing the number of issues to be presented to the jury. Relevant to the same, this Court does not interpret *Rodriquez*, and its reference that a plaintiff's comparative fault is to be considered in "mitigation of damages" only, as a mandate for a unified trial.

Notably, and as a bi-product of partial summary judgment, the *Rodriquez* Court specifically referenced PJI 1:2B (Split Liability), not PJI 1:2A(Unified Trial), in providing guidance to the trial court. Based upon the same, this Court does not interpret this reference by the Court of Appeals as one of omission, but as intentional, further noting that in a typical comparative negligence trial, the jury is asked to answer five questions:

1. Was the defendant negligent?
2. Was defendant's negligence a substantial factor in causing (the injury or the accident)?
3. Was plaintiff negligent?
4. Was plaintiff's negligence a substantial factor in causing (his or her) own injuries?

5. What was the percentage of fault of the defendant and what was the percentage of fault of the plaintiff?

The Court further noted that where, as here, a plaintiff has already established defendant's liability as a matter of law, granting plaintiff partial judgment merely eliminates the first two questions submitted to the jury, thereby serving the beneficial purpose of focusing the jury on questions and issues that are in dispute.

Here, and as noted *supra*, the severity of Plaintiff's injuries will inevitably, in a unified trial format, invoke sympathy in favor of the plaintiff, result in corresponding prejudice to the defendants, and have the practical effect of diverting the jury's attention away from the threshold decision of determining the degree of Plaintiff's contributory negligence, if any, and the issues of comparative fault.

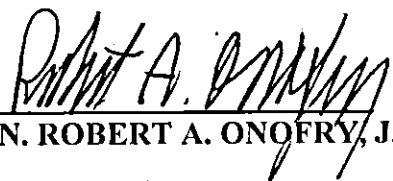
Accordingly, and for the reasons cited herein, it is hereby,

ORDERED, that the trial is directed to proceed on a bi-furcated basis regarding the issues of comparative fault and then damages and all such jury instructions shall be structured to effectuate the same.

The foregoing constitutes the Decision and Order of the Court.

Dated: April 28, 2022
Goshen, New York

ENTER


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VIA NYSCEF

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