

Granite State Ins. Co. v Ardsley Curling Club, Inc.

2023 NY Slip Op 33589(U)

October 12, 2023

Supreme Court, New York County

Docket Number: Index No. 160832/2017

Judge: Arlene P. Bluth

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

GRANITE STATE INSURANCE COMPANY AS
SUBROGEE OF THE ARDSLEY COUNTRY CLUB, INC.,

Plaintiff,

- v -

ARDSLEY CURLING CLUB, INC., C.R.P. SANITATION,
INC., MURPHY BROTHERS CONTRACTING, INC., ALARM
SPECIALISTS, INC.,

Defendant.

-----X

ALARM SPECIALISTS, INC.

Plaintiff,

-against-

THE ARDSLEY COUNTRY CLUB, INC.

Defendant.

-----X

C.R.P. SANITATION, INC.

Plaintiff,

-against-

ALARM TECH CENTRAL SERVICES, INC.

Defendant.

-----X

ARDSLEY CURLING CLUB, INC.

Plaintiff,

-against-

ALARM TECH CENTRAL SERVICES, INC.

Defendant.

-----X

INDEX NO. 160832/2017

MOTION DATE 10/06/2023

MOTION SEQ. NO. 003 004 005
006

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595025/2018

Second Third-Party
Index No. 595085/2021

Third Third-Party
Index No. 595374/2021

The following e-filed documents, listed by NYSCEF document number (Motion 003) 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 307, 312, 327, 328, 329, 330, 331, 332, 333, 334, 335, 353, 354, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 398, 399, 400, 404, 408, 412, 416, 420, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 308, 311, 313, 316, 320, 321, 322, 323, 324, 325, 326, 355, 356, 401, 405, 409, 413, 417, 421, 443

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 309, 314, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 402, 403, 406, 410, 414, 418, 422, 444, 445

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 310, 315, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 357, 358, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 407, 411, 415, 419, 423, 437, 438, 439, 440, 441, 442

were read on these motions for SUMMARY JUDGMENT.

Motion Sequence Numbers 003, 004, 005 and 006 are consolidated for disposition.

Defendant Murphy Brothers Contracting, Inc.'s ("Murphy") motion (MS003) for summary judgment is granted. Defendant Ardsley Curling Club Inc.'s ("Ardsley Curling") motion (MS004) for summary judgment is granted. Second third-party/third third-party defendant Alarm Tech Central Services Inc.'s ("Alarm Tech") motion (MS005) for summary judgment is granted. Defendant C.R.P. Sanitation, Inc.'s ("CRP") motion (MS006) for summary judgment is granted.

Background

This subrogation action arises out of a fire that originated in a dumpster and spread at the Ardsley Country Club (the “Country Club”) on December 13, 2014. Plaintiff had previously issued an insurance policy to the Country Club and paid out insurance claims arising out of the fire. It brought this case to recover the funds it paid on theories of negligence, breach of contract and gross negligence.

The cause of the fire is not disputed. In the early morning hours of December 13, 2014, Magsimiano Munguia was cleaning up at Ardsley Curling. Defendant Ardsley Curling leased space from the Ardsley Country Club—the leased space comprised a separate indoor curling building on the grounds. Mr. Munguia’s cleaning duties included disposing of ashes created from a wood burning fireplace in the curling building. He testified that his normal practice to clean the fireplace was to put ice in the ashes and then shovel the debris into a plastic garbage bag (NYSCEF Doc. No. 196 at 27). He would then load the garbage into his car and dump it in the dumpster by the Country Club (*id.* at 29).

At his deposition, Mr. Munguia acknowledged (while looking a video from that night) that he placed garbage in a dumpster located near the Country Club at 3:23 a.m. (*id.* at 37). About eleven minutes later there was a fire coming from the dumpster (NYSCEF Doc. No. 196 at 37), although he apparently did not see the fire first-hand that night. Mr. Munguia admitted that he put remnants from the fire place in the dumpster that night (*id.* at 37-38). The fire then spread to the kitchen at the County Club and then throughout the clubhouse; plaintiff says it paid about \$11 million in damages.

Plaintiff commenced this lawsuit on behalf of the Country Club against Ardsley Curling, Murphy (the general contractor in charge of an ongoing renovation project at the Country Club),

CRP (the sanitation company that provided the dumpster) and Alarm Specialists Inc. (“ASI”). However, plaintiff discontinued its claims against ASI, the entity responsible for installing the fire alarm system (*see* NYSCEF Doc. Nos. 87, 72). Various defendants commenced third-party actions against Alarm Tech, a contractor hired by ASI to monitor the fire alarm system.

Murphy’s Motion- MS003

Murphy was hired by the Country Club as the general contractor to renovate the men’s locker room on the second floor of the clubhouse; the renovation began in November 2014, the month before the fire. Murphy insists that there was a fire alarm system in the clubhouse that was installed by defendant ASI and that ASI hired Alarm Tech to monitor this alarm system. Apparently, Alarm Tech would be alerted if a fire alarm was triggered and would contact the fire department.

According to Murphy, there were a lot of false alarms when it was working on the renovation so, purportedly, ASI suggested that the fire alarm system be placed in test mode during construction hours (8 a.m. to 4:30 p.m.). However, on the night of the fire, the alarm was in active mode: at the deposition of Alarm Tech, Robert Spetta testified that the fire alarm was in active mode (and not in test mode) at the time of the fire (NYSCEF Doc. No. 195 at 165).

Murphy argues that plaintiff’s claims against it must be dismissed because there is no evidence that it ever directed that the alarm system be set in test mode while renovations took place. It points to testimony from Mr. Spetta that only ASI could direct that the fire alarm system be put in test mode and, in any event the alarm system was actually active at the time of the fire. Murphy claims that this means there is no basis for liability against Murphy as plaintiff’s theory relied on the fact that Murphy had directed the fire alarm be put in test mode

(which thereby prevented the fire department from being promptly called when the fire happened) and it was not in test mode.

In opposition, plaintiff blames Murphy for not complying with the applicable regulations of the fire code and the contract between the Country Club and Murphy (which directed Murphy to comply with all applicable laws and regulations). It insists that this exacerbated the fire and that Murphy should have notified the local fire department that the alarm system would be placed on test mode due to the ongoing construction. Plaintiff also maintains that Murphy should have implemented a fire watch. Plaintiff attaches the affidavit of a certified fire investigator, Gerard Neylis, who claims that Murphy's failure to take the necessary steps to protect the premises exacerbated the extent of the fire damage (NYSCEF Doc. No. 329).

Alarm Tech also opposes and points out that Murphy had the Country Club reach out to the alarm company and remove the smoke and heat detectors from the construction zone. Alarm Tech insists it followed the instructions provided to it by ASI and that it did not receive a fire alarm that would have notified Alarm Tech about the existence of an actual fire. It claims it only received trouble signals, which apparently indicates there is something wrong with the panel and not a fire. It concludes that the request to remove smoke and heat detectors from the construction zone caused the fire to spread and so Murphy's motion should be denied.

Ardley Curling offers opposition and adds that Murphy did not file for permits for the fire sprinkler and alarm work and the removal of the fire detection devices violates the fire code.

CRP submits opposition in which it makes similar arguments about Murphy's failure to notify the local fire department about the removal of fire protection devices as required by the fire code.

In reply, Murphy argues that the removal of smoke detectors was not negligent and that there were other smoke detectors in other parts of the building. It argues that it cannot be held liable for the negligence of other entities who were hired by the Country Club. Murphy points to the affidavit of its expert, who claims that Murphy is not liable because it was not designated as the impairment coordinator or fire prevention program superintendent. It also insists that defendants cannot raise alleged violations of the fire code for the first time in opposition to a summary judgment motion.

To be clear, there is no assertion that Murphy or one of its employees started the fire. Instead, the allegation is that Murphy exacerbated the fire by not following various requirements of the fire code and that it should not have requested that the fire prevention devices be removed.

At his deposition, Mr. Zito (Murphy's witness) testified that before demolition began, he "needed to have the club contact the alarm company and have them come and remove the smoke and heat detectors" (NYSCEF Doc. No. 328 at 18). He admitted that during the construction job, there were many false alarms (*id.* at 21) and that someone from ASI suggested that the alarms be put on test mode during work hours (*id.* at 23).

The applicable New York State fire code provisions state that "Systems out of service. Where a required fire protection system is out of service, the fire department and the fire code official shall be notified immediately and, where required by the fire code official, the building shall be either evacuated or an approved fire watch shall be provided for all occupants left unprotected by the shutdown until the fire protection system has been returned to service" (Fire Code § 901.7 [adopted by reference under 19 NYCRR § 1219.1]).

However, it also provides that "Impairment coordinator. The building owner shall assign an impairment coordinator to comply with the requirements of this section. In the absence of a

specific designee, *the owner* shall be considered the impairment coordinator” (Fire Code § 901.7.1 [emphasis added]).

Nothing in the fire code or the contract between the Country Club and Murphy suggests that it was Murphy’s obligation to inform the fire department about the removal of fire protection devices, to establish a fire watch, or take any steps to provide additional protection. No evidence was submitted to show that Murphy was designated as the impairment coordinator by the Country Club. Murphy was also not designated to be a Fire Prevention Program Superintendent under section 1408.1 of the fire code. And, at least on these papers, the issue of placing the alarm system on test mode is irrelevant because the fire occurred around 3:30 a.m. (outside of the test mode time period) and Alarm Tech’s witness swore that the system was not in test mode at the time of the fire.

As noted above, the fire code rules obligated the Country Club to specifically assign Murphy the task of impairment coordinator or fire prevention program superintendent under the fire code and the Country Club did not. And while Murphy’s contract with the Country Club required Murphy to comply with all applicable laws (NYSCEF Doc. No. 331, § 2.1.9), there is no mention of any fire codes. Put another way, this provision merely required Murphy to follow the law and the code provisions cited above did not obligate Murphy to take the actions about which plaintiff complains (such as notifying the fire department about the removal of certain fire protection devices).

Simply pointing to a general obligation in the contract is not sufficient to create an affirmative duty on behalf of Murphy to take all manner of steps related to the fire code. Nor did the contract directly put Murphy in the shoes of the building owner during the renovation period. The fire code makes clear that this responsibility ordinarily lies with the building owner unless

another entity is designated. Plaintiff did not cite any basis for how it could shift that responsibility to Murphy.

That Murphy requested that something be done with the smoke detectors and the alarm system so they could complete their work is not a theory of liability upon which plaintiff could recover against Murphy. “Generally, a party that hires an independent contractor cannot be held liable for the negligence of that independent contractor. The primary justification for this rule is that one who employs an independent contractor has no right to control the manner in which the work is to be done and thus, the risk of loss is more sensibly placed on the contractor” (*Linder v United Metro Energy Services Corp.*, 193 AD3d 513, 141 NYS3d 854 (Mem) [1st Dept 2021] [internal quotations and citations omitted]). There is no testimony that Murphy removed the smoke detectors themselves, controlled the manner in which ASI removed the smoke detectors or the operation (or monitoring) of the overall alarm system. The testimony shows that the constant false alarms were disruptive and so Murphy asked the Country Club to reach out to ASI to figure out a solution.

MS004

Ardsley Curling seeks summary judgment dismissing the claims against it on the ground that the person who placed the garbage bags in the dumpster was an independent contractor. It points out that Mr. Munguia worked for the Country Club as a locker room attendant and only worked for Ardsley Curling as an independent contractor where he maintained his own after-hours work schedule. He typically completed his work in the early morning hours. Ardsley Curling argues it did not supervise or control his work and only gave Mr. Munguia tasks to complete.

In opposition, plaintiff claims that at the time the fire occurred, Mr. Munguia had been laid off from his job for the Country Club (since it was the winter months). It argues that his testimony raises issues of fact about whether he was an employee of Ardsley Curling and not an independent contractor.

CRP also opposes and claims that Ardsley Curling club did direct, supervise and provide all of the cleaning supplies for Mr. Munguia.

Alarm Tech submits partial opposition as well and insists there is an issue of fact as to whether Mr. Munguia was an employee.

In reply, Ardsley Curling insisted that Mr. Munguia set his own schedule and was simply allotted three to four hours to do the cleaning work. It argues that no one trained him how to perform his tasks and no one was present to supervise him when he did his work.

“[T]he critical inquiry in determining whether an employment relationship exists pertains to the degree of control exercised by the purported employer over the results produced or the means used to achieve the results. Factors relevant to assessing control include whether the worker (1) worked at his own convenience, (2) was free to engage in other employment, (3) received fringe benefits, (4) was on the employer's payroll and (5) was on a fixed schedule” (*Bynog v Cipriani Group, Inc.*, 1 NY3d 193, 198, 770 NYS2d 692 [2003]).

The Court finds that Mr. Munguia was an independent contractor. In the affidavit of the treasurer for Ardsley Curling, he insists that Ardsley Curling never issued a W-2 to Mr. Munguia, did not provide him any fringe benefits, did not provide any tax withholdings or deductions, and did not have a payroll at the time of the accident (NYSCEF Doc. No. 229 at 2). Moreover, Mr. Munguia testified that he set his own hours and that no one was ever present at the curling club while he did his work (NYSCEF Doc. No. 225 at 105-06). He also insisted that

no one from Ardsley Curling trained him how to do his work or clean the fireplace (*id.* at 133-34). Mr. Munguia even admitted that he would record his hours by simply writing it down and placing a small piece of paper on a bulletin board at the curling club (*id.* at 72-73).

The record shows that Mr. Munguia worked at his own convenience by setting his own hours, he was free to engage in other employment (he worked for the Country Club during the warmer months), did not receive any fringe benefits, was not on Ardsley Curling's payroll and did not have a set or fixed schedule. In other words, every factor cited above compels the conclusion that Mr. Munguia was an independent contractor for Ardsley Curling. That sometimes he would be asked to do certain additional tasks (like change a lightbulb) does not transform him into an employee. There is no basis to find an issue of fact about whether Mr. Munguia was an employee for Ardsley Curling, an entity that (according to the treasurer) did not have any employees at the time of the fire (NYSCEF Doc. No. 229, ¶ 6).

CRP's Motion (MS006)

CRP, the contractor hired to remove waste, argues that the claims against it should be dismissed because it was not responsible for the placement of its dumpsters nor did it place the hot ashes inside the dumpster that caused the fire. In fact, CRP observes that the dumpster had a warning sign on it that read "NO HOT ASHES." It also argues that the Country Club was responsible for the placement of the dumpsters according to the service agreement.

CRP insists that the fire spread from the dumpster to the Country Club's building because the Country Club allowed piles of cardboard boxes, 2 jugs of solvent and other cleaning items to be placed along the walkway leading to the kitchen in the Country Club. It also observes that

investigators found burnt Sterno cans in the dumpster debris, another possible source of fuel for the fire.

In opposition, plaintiff claims that the dumpster was placed within five feet of an overhang consisting of a copper rain gutter attached to wood framing in violation of various fire code provisions. It points to its expert affidavit, who states that the fire spread because the flames reached the copper overhang which allowed the combustible wood framing to ignite (NYSCEF Doc. No. 341 at 3-4). Plaintiff argues that the fire code requires that dumpsters exceeding a capacity of 1.5 cubic yards must be stored more than five feet from the building, which did not happen here. It blames CRP for not knowing that the dumpsters were too close to the overhang, in violation of applicable fire code regulations. Plaintiff argues that there are issues of fact about whether CRP had a duty to plaintiff about the placement of the dumpster, regardless of the fact that the service agreement required plaintiff to determine the location of the dumpster.

Also offering opposition to this motion were Alarm Tech and Ardsley Curling.

In reply, CRP argues that its expert concluded that there was no eave (or overhang) at the top of the wall where it meets the slate roof, contrary to the assertions of plaintiff's expert. It observes that a copper roof is not combustible and so there is no basis to find that there was a heat transfer to the wood. CRP argues that the dumpster was in compliance with applicable fire code regulations. It directs the Court to look at the pre-construction photos which it claims show there was no eave and so the distance requirement (from the building) cited by plaintiff is not applicable.

The Court's analysis must begin with the service agreement, which provides that "Placement of containers. You [the customer] are responsible for the placement of the container(s). You are also responsible for maintaining the container(s) and the area around the

container(s) in a sanitary condition” (NYSCEF Doc. No. 286 at 2, ¶ 8). This language compels the Court to grant summary judgment in favor of CRP.

Plaintiff did not raise an issue of fact in opposition for how this Court can overlook this clear and unambiguous contractual language. In the parties’ contract, they agreed that the Country Club would bear the obligation of placing the dumpster. Plaintiff cannot blame CRP by claiming CRP should have known about various fire code provisions. That would be tantamount to rewriting the contract by deleting this provision. Plaintiff did not cite any binding caselaw for the proposition that a garbage removal company is always liable for the placement of its dumpsters regardless of contractual provisions.

And this is not a situation in which CRP caused the fire—plaintiff’s theory of recovery against CRP is only based on its purported exacerbation of the fire. Moreover, the dumpster contained a warning that no hot ashes were to be placed in it, which is exactly what caused the subject fire.

MS005- Alarm Tech’s Motion

Having granted summary judgment in favor of the remaining defendants, the Court grants Alarm Tech’s motion for summary judgment dismissing the third-party claims against it as plaintiff did not have any direct claims against this entity.

Summary

The circumstances surrounding this fire yield the conclusion that it was started by the placement of hot ashes in the dumpster by Mr. Munguia, a longtime employee of the Country Club who was doing a few hours of work in the off season for Ardsley Curling. That work

consisted of cleaning up, alone and in the middle of the night. There is no basis to find that Mr. Munguia was an employee of Ardsley Curling—an entity that had no employees. And so, there is no basis to find that Ardsley Curling is vicariously liable for causing the fire.

Plaintiff's theories against the other defendants seek recovery not for starting the fire but for exacerbating the extent of the fire. Clearly, something went wrong here: there was a fire in a dumpster, the dumpster was close enough to the building that it spread there and the fire alarm either did not pick up the heat and smoke soon enough or sent incorrect signals to the monitoring company.

But the evidence does not show that any of the remaining defendants exacerbated the fire. Preliminarily, the alarm company (ASI), the company responsible fire alarm system, is no longer in this case and so even if there was something wrong with the system and related hardware, it is not the remaining defendants' fault. And even if the alarm monitoring company (Alarm Tech) caused a delay by allegedly misinterpreting signals, plaintiff has no direct claims against the monitoring company.

The remaining defendants against which plaintiff has direct claims are the contractor (Murphy) and the dumpster company (CRP). The Country Club assumed responsibility for the placement of the dumpster in its service agreement with CRP and so the Country Club was responsible for the placement of the dumpster; it cannot blame CRP for it being allegedly too close to the building. As for the contractor, Murphy, the evidence submitted shows that the Country Club never designated Murphy with the responsibilities under the fire code to handle the disruption in the fire alarm system, which the law places squarely on the owner in the first instance. In other words, it was the Country Club's obligation for the safe placement of the

dumpster and to ensure that there was an adequate fire prevention system in place given the ongoing construction.

Accordingly, it is hereby

ORDERED that defendant Murphy Brothers Contracting, Inc.'s motion (MS003) for summary judgment is granted; and it is further

ORDERED that defendant Ardsley Curling Club Inc.'s motion (MS004) for summary judgment is granted; and it is further

ORDERED that second third-party/third third-party defendant Alarm Tech Central Services Inc.'s motion (MS005) for summary judgment is granted; and it is further

ORDERED that defendant C.R.P. Sanitation, Inc.'s motion (MS006) for summary judgment is granted; and it is further

ORDERED that the complaint is dismissed and all claims against the aforementioned movants are severed and dismissed, and the Clerk is directed to enter judgment accordingly along with costs and disbursements upon presentation of proper papers therefor.

10/12/2023

DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: