

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BURGER KING CORPORATION : CIVIL ACTION
 :
 v. :
 :
 NEW ENGLAND HOOD AND DUCT :
 CLEANING COMPANY, :
 TILLEY FIRE EQUIPMENT COMPANY, :
 INC. and :
 AIR-VENT DUCT CLEANING, INC. : NO. 98-3610

MEMORANDUM AND ORDER

BECHTLE, J. OCTOBER , 2000

Presently before the court is defendant New England Hood and Duct Cleaning Company's ("New England") Amended Motion to Alter or Amend Judgment or for a New Trial and plaintiff Burger King Corporation's ("Burger King") and defendant Tilley Fire Equipment Company's ("Tilley") responses thereto. For the reasons set forth below, said motion will be denied.

I. BACKGROUND

Burger King instituted the instant action seeking to recover damages sustained in a fire that occurred in one of its restaurants on February 8, 1998.¹ Burger King brought the action against New England under both negligence and contract theories.²

¹ The court incorporates by reference its Memorandums and Orders dated August 23, 1999 and February 4, 2000, which set forth, inter alia, a description of the facts and the course of events in this case.

² At trial, Burger King argued that New England's failure to clean the restaurant's hood and duct system on a quarterly basis and failure to provide an Ansul-certified inspector to inspect the fire suppression system constituted negligence that caused the fire. Additionally, Burger King asserted that New

(continued...)

New England filed cross-claims against Tilley.³ Following a three day jury trial, the jury assessed comparative negligence against all parties as follows: 70% for New England, 20% for Tilley and 10% for Burger King.

Since the entry of the verdict, a number of motions have related to its apportionment, as does New England's instant motion under Rule 59(a) and (e) of the Federal Rules of Civil Procedure to alter or amend judgment, or for a new trial.

II. LEGAL STANDARD

The Federal Rules of Civil Procedure allow a party to move the court for a new trial or to alter or amend a judgment. Fed. R. Civ. P. 59(a) & (e). A court may alter or amend a judgment "only if the movant clearly establishes either a manifest error of law or fact or presents newly discovered evidence." Diebitz v. Arreola, 834 F. Supp. 298, 302 (E.D. Wis. 1993) (citations and internal quotations omitted) (stating standard for Rule 59(e)); Evans, Inc. v. Tiffany & Co., 416 F. Supp 224, 244 (N.D. Ill. 1976) (stating standard for Rule 59(a)). The decision to alter or amend is left to the sound discretion of the trial court. Diebitz, 834 F. Supp. at 302-03 (citations and internal

²(...continued)

England breached its contract with Burger King by not timely cleaning the hood and duct system and by failing to provide an Ansul-certified inspector.

³ New England hired Tilley to perform one fire protection system inspection at Burger King's restaurant.

quotations omitted). Such motions "are not intended merely to relitigate old matters nor are such motions intended to allow the parties to present the case under new theories." Id. at 302 (citations and internal quotations omitted); Evans, Inc., 416 F. Supp. at 244.

III. DISCUSSION

In its motion to alter or amend judgment, New England contends that it should be relieved from paying any amount of the verdict by virtue of the jury's finding in its favor on its cross-claim against Tilley for breach of contract. New England raised the same issue in its motion to mold the verdict. The court has fully addressed this argument and will not revisit it.⁴ See Orders dated August 23, 1999 and February 4, 2000.

In the alternative, New England seeks a new trial on four separate grounds. New England asserts that the court erred: (1) in determining that Tilley was New England's agent for purposes of Paragraph 9.2 of the contract between New England and Burger King; (2) in determining that New England was negligent as a matter of law; and (3) by denying New England's request for a jury instruction on indemnification. Finally, New England argues

⁴ Three extraordinary circumstances warrant a court's reconsideration of a prior decision: "(1) new evidence is available; (2) a supervening new law has been announced; or (3) the earlier decision was clearly erroneous and would create manifest injustice." McLaughlin v. Rose Tree Media School Dist., 52 F. Supp. 2d 484, 490 (E.D. Pa. 1999) (quoting Public Interest Research Group of N.J., Inc. v. Magnesium Elektron, Inc., 123 F.3d 111, 117 (3d Cir. 1997)). No such circumstances exist here.

that there was not sufficient evidence from which the jury could conclude that New England's acts and omissions were a substantial factor in causing Burger King's damages. The court will address each argument in turn.

The court determined that Tilley was New England's agent for purposes of Paragraph 9.2 of the contract between New England and Burger King.⁵ New England asserts that this was an error of law because "Tilley was an independent contractor and therefore, not an employee or agent of New England." (Am. Mot. to Alter or Amend J. or for New Trial ("Am. Mot. to Alter") ¶ 21.) However, it is clear that Tilley's independent contractor status as to New England does not preclude Tilley from being an agent of New England with respect to third parties such as Burger King. Commonwealth v. Minds Coal Mining Corp., 60 A.2d 14, 20-21 (Pa. 1948) (stating "agent may be an independent contractor"); Cohen v. Salick Health Care, Inc., 772 F. Supp. 1521, 1527 (E.D. Pa. 1991) (stating that independent contractor "may . . . be an agent"). In an effort to fulfill its obligations to Burger King under the Service Agreement, New England hired Tilley to perform a fire protection system inspection at Burger King's restaurant. Based on the evidence, the court found that in inspecting Burger King's system, Tilley acted as New England's agent. As the facts

⁵ Under the contract, New England warranted to Burger King "that its employees and agents are (i) manufacturer-certified to perform the Services by Ansul, Kiddie and Range Guard, (ii) authorized to disarm fire systems, and (iii) factory trained and licensed suppression inspectors." (Mem. of Law. in Supp. of Am. Mot. to Alter or Amend J. or for New Trial at 6.)

of the relationship between New England and Tilley were not in dispute, the question of the nature of their relationship was properly determined by the court. Juarbe v. Philadelphia, 431 A.2d 1073, 1076 (Pa. Super. Ct. 1981) (citations omitted).

Second, New England asserts that the court erred in determining as a matter of law that New England was negligent in failing to ensure that Tilley's employee was Ansul-certified. (Am. Mot. to Alter ¶ 24.) The record reflects that New England had a non-delegable duty to send an Ansul-certified inspector and that New England made no effort to determine whether Tilley was Ansul-certified before hiring and sending Tilley to inspect Burger King's fire protection system. Thus, the court properly determined that New England was negligent as a matter of law.

Third, New England asserts that the court erred by denying New England's request for a jury instruction on indemnification. Id. ¶ 25. The court has fully addressed this issue in open court on June 14, 1999 and in its Orders dated August 23, 1999 and February 4, 2000. It will not revisit the issue yet again.

Finally, New England argues that there was not sufficient evidence from which the jury could conclude that New England's acts and omissions were a substantial factor in causing Burger King's damages. (Am. Mot. to Alter ¶ 27.) The evidence showed that New England failed to provide quarterly hood and duct systems cleaning before the fire and that the fire was fueled by excessive grease accumulation in the duct equipment. The record showed that New England also failed to have an Ansul-certified

contractor inspect Burger King's fire protection system. Based on the evidence presented, the jury could reasonably find that New England's negligence in failing to ensure that Burger King's hood and duct system were cleaned on a quarterly basis and that its negligence in failing to ensure that its subcontractor was Ansul-certified were substantial factors in causing Burger King's loss.

III. CONCLUSION

For the reasons set forth above, New England's Amended Motion to Alter or Amend Judgment or for a New Trial will be denied.

An appropriate Order follows.

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ORDER

AND NOW, TO WIT, this day of October, 2000, upon
consideration of defendant New England Hood and Duct Cleaning
Company's Amended Motion to Alter or Amend Judgment or for a New
Trial and plaintiff Burger King Corporation's and defendant
Tilley Fire Equipment Company's responses thereto, IT IS ORDERED
that said motion is DENIED.

LOUIS C. BECHTLE, J.