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

KEITH BAKER	:	CIVIL ACTION
v.	:	
WAYNE-DALTON CORP., et al.	:	
v.	:	
C.P. ALLSTAR CORPORATION	:	NO. 02-1772

MEMORANDUM AND ORDER

Fullam, Sr. J. January , 2004

Plaintiff Keith Baker was injured in an industrial accident in the course of his employment by C.P. Allstar Corporation; plaintiff's hand was crushed in a press which he was operating. Plaintiff originally brought this action against the firms believed to have been involved in the design and manufacture of the press and various components of the machine which were thought to have played a role in his injuries. These include Foremost Manufacturing Company, believed to be the manufacturer of the device; Linemaster Switch Corporation, the alleged manufacturer of one of the component parts; and Wayne-Dalton Corporation, which sold the press to plaintiff's employer. Linemaster Switch Corp. has been dismissed from the action, plaintiff having consented to the grant of its motion for summary judgment. Thus, the remaining defendants are Foremost and Wayne-Dalton. Wayne-Dalton filed a third-party complaint against

plaintiff's employer, C.P. Allstar Corporation, asserting that Allstar is contractually obliged to indemnify Wayne-Dalton against claims such as plaintiff's, and that whatever damages plaintiff has suffered were caused by Allstar. Now pending are the following motions: (1) cross-motions for summary judgment with respect to the third-party action; (2) plaintiff's motion to have the third-party claim tried separately; (3) Wayne-Dalton's motion for postponement of the trial (now scheduled for January 20, 2004); and (4) various discovery motions.

I. The Third-Party Action

Defendant and third-party plaintiff Wayne-Dalton was engaged in the manufacture and sale of garage-door openers, at a plant in New Jersey. One type of garage door opener it manufactured was known as the "Challenger" model. In May 1999, Wayne-Dalton sold to third-party defendant C.P. Allstar Corporation all of the assets involved in the manufacture of the Challenger line of garage door openers, including work-in-progress, inventory, orders not yet filled, and the right to use the "Challenger" name. The terms of the transaction are set forth in a lengthy and detailed "Sale of Assets Agreement," which contains the indemnification provisions upon which the third-party complaint is based.

Paragraph 7.4 of the Agreement provides, in pertinent

part:

> "Indemnification by the Buyer [Allstar]. The buyer agrees to indemnify and defend Wayne-Dalton, its successors and assigns, from any and all losses, liabilities, claims, demands, judgments and expenses (including, without limitation, reasonable legal fees, expenses and other out-of-pocket costs) for causes of action or suits which will arise against Wayne-Dalton ... (ii) out of the operation of the Business on or after the Effective Date ... [May 17, 1999]."

Another paragraph of the Agreement, paragraph 7.5, covers product liability claims. Wayne-Dalton assumes liability for all such claims related to products shipped before the effective date, and Allstar is to be responsible for product liability claims for products shipped after the effective date. Specifically, Allstar is to indemnify Wayne-Dalton "for causes of action or suits which arise against Wayne-Dalton in connection with any product liability claims for which the buyer is responsible hereunder."

I conclude that neither of these provisions suffices to prevent dismissal of the third-party complaint. Under Pennsylvania law, employers are generally immune from personal injury claims asserted by their employees, in view of the statutory protection afforded by the workers' compensation statute 77 P.S. §481(b). The protection thus afforded may be abrogated by an express written agreement for indemnification, but (1) there must be a clear expression of intent to indemnify, and (2) there can be no indemnification against the indemnitee's own negligence, unless there is specific language to that effect.

See generally Szymanski-Gallagher v. Chestnut Realty Co., 597 A.2d 1225 (Pa. Super. 1991). The only claims being asserted by plaintiff against Wayne-Dalton charge negligence, and there is no provision for indemnity against claims based on Wayne-Dalton's own negligence.

The product-liability indemnification provisions in paragraph 7.5 simply do not apply in this case, since the offending press machine was not a "product," and Wayne-Dalton was not in the business of selling presses. Plaintiff does not assert a strict-liability claim against Wayne-Dalton under Restatement of Tort § 402A.

It is thus entirely clear that, under Pennsylvania law, Allstar is not obliged to indemnify Wayne-Dalton. And I am of the view that Pennsylvania law applies in this situation. Although the Sale of Assets Agreement states that it is to be interpreted under the law of the State of Ohio, Allstar is a Pennsylvania corporation, plaintiff is a Pennsylvania resident, and the Pennsylvania workers' compensation statute governs. The Ohio workers' compensation law applies only to Ohio employers, and plainly does not warrant the conclusion that the Pennsylvania statute does not apply to Pennsylvania employers and Pennsylvania employees.

For all of these reasons, I conclude that the third-party claim asserted by Wayne-Dalton must be dismissed.

II. Severance

Since there will no longer be a third-party action, plaintiff's motion for severance is moot.

III. Continuance of the Trial

This case was originally scheduled for trial in July 2003, but was continued, on plaintiff's unopposed motion, until October 2003, and again was similarly continued until the present scheduled trial date, January 20, 2004. On December 29, 2003, defendant Wayne-Dalton requested a further 60-day postponement of the trial; this request was joined in by defendant Foremost Manufacturing, but is opposed by plaintiff. The stated reason for the requested continuance was Wayne-Dalton's difficulty in obtaining from third-party defendant Allstar the correct address of a former employee of Allstar who, according to other Allstar witnesses, caused the removal of a safety device on the press after it came into Allstar's possession. In opposing the postponement, plaintiff's counsel points out that the alleged difficulty in locating the witness was removed some time ago, and that defendants have had, and will continue to have, ample opportunity to obtain the witness' deposition and trial testimony if desired.

I conclude that no further continuance should be granted. The missing witness has apparently been located, or

could readily be. And it is not likely that his testimony would be significant in any event, given the availability of other testimony on the same subject. Moreover, it should be noted that, to establish liability under § 402A, plaintiff will need to show that the device was in the same condition at the time of plaintiff's injury as it was when it left the hands of whoever designed or manufactured it; on this record, it would seem that Wayne-Dalton is merely a former user/consumer of the product (which, according to the Sale of Assets Agreement, was sold to Allstar on an "as is, where is" basis).

IV. Discovery Issues

On May 21, 2003, I resolved certain outstanding discovery disputes. By Order dated May 27, 2003, I directed the parties to submit pretrial memoranda which would specify any further discovery disputes which needed to be resolved. My review of the parties' memoranda filed pursuant to that Order leads me to believe that all discovery issues have been satisfactorily resolved.

An Order reflecting the foregoing conclusions will now be entered.

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ORDER

AND NOW, this day of January 2004, IT IS ORDERED:

1. The motion of third-party defendant C.P. Allstar Corporation for summary judgment is GRANTED. The third-party complaint of Wayne-Dalton Corporation is DISMISSED WITH PREJUDICE.

2. Plaintiff's motion for a separate trial of the third-party action is DENIED AS MOOT.

3. To the extent that there are any outstanding discovery motions, they are all DENIED AS MOOT.

4. Defendants' motion for continuance of the trial is DENIED. The trial will commence on January 20, 2004.

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John P. Fullam, Sr. J.