

MICHAEL PULLARO, SINGLE, Plaintiff-Appellant/Cross-Respondent,
v.
PIER VILLAGE and PIER VILLAGE DEVELOPMENT I, LLC, Defendants-Respondents/Cross-Respondents, and
AJD CONSTRUCTION COMPANY, INC., Defendant/Third-Party Plaintiff-Respondent/Cross-Respondent,
FREDDY'S DRYWALL, INC., Defendant/Third-Party Defendant-Respondent/Cross-Appellant, and
POWER ELECTRIC COMPANY, INC., Third-Party Defendant.

No. A-6275-08T1.

Superior Court of New Jersey, Appellate Division.

Argued January 24, 2011.

Decided March 3, 2011.

Andrew M. Zapcic, Sr., argued the cause for appellant/cross-respondent (Maybruch & Zapcic, attorneys; Mr. Zapcic and Matthew R. Goode, on the briefs).

Mark S. Kundla argued the cause for respondents/cross-respondents Pier Village, Pier Village Development I, LLC and AJD Construction Company, Inc. (Hardin, Kundla, McKeon & Poletto, attorneys; Paul Daly, of counsel and on the brief; Kenneth Hayes, on the brief).

Martin R. McGowan argued the cause for respondent/cross-appellant (**Methfessel & Werbel**, attorneys; Mr. McGowan, on the brief).

Before Judges Lisa, Sabatino and Alvarez.

Not for Publication without the Approval of the Appellate Division.

PER CURIAM.

Plaintiff, Michael Pullaro, claimed that he suffered a workplace injury on July 9, 2004 when he tripped over debris left in an unlighted hallway that was commonly used by workers on the job. He sued various parties whom he claimed were liable to him because of the unsafe condition of the property, namely, Pier Village and Pier Village Development I, LLC (collectively, Pier Village), the property owner, AJD Construction Company, Inc. (AJD), the general contractor, and Freddy's Drywall, Inc. (Freddy's Drywall), the sheetrock subcontractor. After a three-day liability-only trial on May 20, 21 and 26, 2009, the jury returned a verdict finding that none of the three defendants were negligent. Final judgment was entered on June 15, 2009, dismissing the complaint with prejudice against all three defendants.^[1]

Plaintiff now appeals and raises these arguments:

I. THE LOWER COURT ERRED IN DENYING PLAINTIFF'S UNOPPOSED MOTION TO EXTEND THE DISCOVERY DATE AS WELL AS NOT PERMITTING PLAINTIFF'S LATE AMENDMENTS AND NOT PERMITTING PLAINTIFF'S EXPERTS TO TESTIFY.

II. THE LOWER COURT ABUSED ITS DISCRETION UNDER N.J.R.E. 609 IN PERMITTING THE JURY TO HEAR TESTIMONY ABOUT PLAINTIFF'S THREE PRIOR CRIMINAL CONVICTIONS.

III. THE TRIAL COURT ERRED IN REFUSING TO MODIFY THE JURY VERDICT SHEET.

IV. THE TRIAL COURT ERRED IN FAILING TO INCLUDE PLAINTIFF'S REQUEST FOR A SPECIFIC CHARGE RELATING TO GENERAL CONTRACTOR LIABILITY.

V. THE JURY QUESTION C-2 RELATING TO "PROXIMATE" CAUSE INDICATED JURY CONFUSION, WHICH

SHOULD HAVE NULLIFIED THE VERDICT.

VI. PLAINTIFF WAS FORCED TO REQUEST A BIFURCATION OF THE CASE, REQUIRING THE JURY TO SPECULATE AS TO PLAINTIFF'S INJURIES WITHOUT AN OPPORTUNITY FOR MEDICAL EXPLANATION FROM PLAINTIFF'S TREATING DOCTORS.

VII. THE COURT ERRED IN FAILING TO ORDER A NEW TRIAL BECAUSE THE VERDICT AS TO EACH DEFENDANT WAS AGAINST THE WEIGHT OF THE EVIDENCE.

We reject plaintiff's arguments and affirm.^[2]

I

On the date of the accident, plaintiff was an electrician employed by Power Electric and was working on a large multi-building commercial and residential construction project on Pier Village's property in Long Branch. Plaintiff was installing wiring in building one, a four-story building. The ground floor contained a corridor approximately 100 to 120 feet long and about five feet wide. On one side of the corridor there were five or six apartments, each with exterior windows and with one door opening into the corridor. The other side contained only utility rooms with no windows. Plaintiff and other workers routinely used this corridor as a means of ingress and egress to the building from the parking lot. Prior to the day of the accident, the corridor was lit naturally by sunlight shining through the windows of the apartments.

On the day of the accident, July 9, 2004, plaintiff followed his usual routine. He reported to the site at about 7:00 a.m. and went to the work trailer, which is outside, to obtain his work assignment. He was assigned to the fourth floor, and he ascended stairs to that location to look over the work to be done. At about 7:30 a.m., he obtained supplies from the electrical supply room on the first floor, after which he returned to the fourth floor and worked for a time. He then returned downstairs for more supplies. In particular, he picked up a large, heavy spool of wire. He began ascending the stairs carrying the wire, when he was advised by other workers that it was time for their 9:00 a.m. break.

Plaintiff descended the stairs carrying the wire. He intended to return to his car for the break, but first wanted to hide the wire in apartment 137, along the corridor we have described, which was close to his parking space. He wanted to make sure the wire was still there after his break, because "everybody takes everyone's stuff."

Plaintiff opened the door to the corridor and claims it was dark except for the sunlight that was coming through the apartment doorways. Apparently, since the day before, workers had installed sheetrock on the corridor walls, thus closing it up except for the door openings. According to plaintiff, there were streams of sunlight coming through each open doorway, but the intervening spaces were dark. Plaintiff contended there was no artificial lighting in the corridor.

Plaintiff decided to adhere to his plan and thought he could make it to apartment 137. He made it safely past the first apartment doorway, but claims that before he reached the second one he "hit something," kicking it with his foot and falling to the ground with the wire. He said the wire landed on his neck. At trial, he said when he picked himself up he observed white dust on his hands and knees, which he attributed to sheetrock. He said he felt around in the darkness to see what he had hit, and it felt like the corner of some sheetrock. Plaintiff proceeded to apartment 137 and placed the wire there as he intended, after which he continued down the corridor and went on his break.

In his deposition testimony, plaintiff did not say he detected the corner of some sheetrock after he fell. He said he tripped on "something" and was "assuming" it was sheetrock. He never went back later the day of the accident or the next day to try to confirm his assumption.

Plaintiff contended that the corridor had been clean of debris the day before. Plaintiff lived close to the job site, and claimed he sometimes saw sheetrock installers working on the site into the evening hours. This testimony was contradicted by Baldemar Balderas, the supervisor on this job for Freddy's Drywall, who said his employees never worked at night. Balderas also explained that sheetrock is lifted into the apartment windows by booms and stored in the apartments. Workers would then carry the sheetrock through the unit doors to bring it into the corridor, but only one sheet at a time when that sheet is ready for installation. Balderas continued that at the end of the work day, all sheetrock was stored in the apartment units. Any small scraps or debris would be swept up throughout the work day and disposed of in a dumpster.

Because Freddy's Drywall had not been notified of plaintiff's injury or of this litigation until July 2008, four years after the accident,^[3] Balderas did not have a specific recollection of the job site conditions on July 8 and 9, 2004. However, he described the standard practices the company followed, namely, those we have described in the preceding paragraph. Balderas further had no specific recollection of whether any temporary lighting had been in place in that corridor, but he stated with certainty that his workers needed light to do their work and could not have installed sheetrock in a hallway without artificial lighting.

The foreperson on the job for plaintiff's employer, Power Electric, was Peter Colvin. He testified that temporary lights would have been strung in the first floor corridor before any sheetrock installation was done, and he remembered walking in that corridor with the temporary lights on.

Plaintiff's liability expert, Wayne F. Nolte, an engineer, testified that the first floor corridor was a common corridor or foreseeable route for workers to use. Therefore, the Occupational Safety and Health Administration (OSHA) rules required that the general contractor ensure that the corridor be kept clear of debris. Although he did not make specific reference to Freddy's Drywall, Nolte also testified that subcontractors are required to clean up in addition to the general contractor. Nolte opined that AJD, as the general contractor, failed to maintain the passageway in a safe condition and therefore caused plaintiff's accident.

Because of the lateness of his supplemental report, Nolte was precluded from rendering a similar opinion specifically directed at Freddy's Drywall. Nevertheless, Freddy's Drywall admitted that it was responsible for cleaning up its construction debris. In summation, its attorney recounted that "Balderas, the representative of Fredd[y]'s, did say, 'Well, yeah, we're all supposed to clean up after ourselves.'" Counsel continued: "And I think Dr. Nolte put it in terms of the subcontractors are also to clean up in addition to the general contractor, but that's common sense. Everybody knows that and we admit it."

Patrick Cahill, AJD's project manager, testified that AJD's superintendents would walk the site daily to inspect for debris and would instruct subcontractors regarding any areas that needed cleaning. He said that typically temporary lighting would be installed before sheetrock was installed and would remain in place until the permanent lighting was installed. Cahill said temporary lighting would remain on all the time for an area that was not adequately lit without it. Cahill agreed that the first floor corridor was a common corridor which should have had temporary lights turned on.

Cahill testified that AJD was never advised of plaintiff's accident until plaintiff filed this law suit, nearly two years after the accident. Cahill said AJD was never informed that debris had been left in the corridor or that the corridor had inadequate lighting. Had he been told, he would have acted upon that information at one of the mandatory weekly safety meetings. Cahill was familiar with the corridor and believed that the light coming through the apartment doorways during daylight hours after the sheetrock was installed provided sufficient natural light to illuminate the corridor without temporary lighting.

II

In Point I, plaintiff argues that the court erred by denying his unopposed motion to extend discovery, not permitting his late discovery amendments, and not permitting his experts to testify. In a related argument, in Point VI, he argues that the court erred by conducting a bifurcated trial.

The discovery extension and disallowance of expert testimony pertains to both liability and medical experts. Plaintiff argues that the criteria for allowing an extension of discovery were satisfied because critical depositions that plaintiff's liability expert, Nolte, needed to prepare an updated report were not available within the discovery period, as previously extended. With respect to the medical expert, plaintiff contends that because of delays in his workers' compensation proceeding in obtaining authorization for treatment, he was precluded from obtaining an updated evaluative report within the discovery period. Plaintiff contends that these were factors beyond his control and satisfied the "exceptional circumstances" requirement for extension of discovery pursuant to Rule 4:24-1(c).

Suit was filed on May 22, 2006. The original discovery end date was extended until May 8, 2008. It was further extended on motions by defendants to August 8, 2008, and then to November 18, 2008. When the last extension occurred, arbitration was scheduled for September 18, 2008, but later rescheduled for November 20, 2008.

Because of the injury to plaintiff's cervical spine, he underwent a cervical fusion at the C4-5 and C5-6 levels in May 2006. The surgery included the insertion of a titanium plate and titanium screws.

In August 2008, plaintiff made known that he would require a second surgical procedure to address the problems that ensued as a result of compromised hardware at the fusion site. In response to that information, Pier Village and AJD moved in early September 2008 for an extension of the discovery period. By order of September 26, 2008, the court denied the motion. At that point, the discovery end date was set, as we stated, at November 18, 2008, and the arbitration was scheduled for November 20, 2008.

On October 30, 2008, plaintiff moved for an extension of the discovery end date. His motion was unopposed. In support of the motion, plaintiff's counsel argued that plaintiff was continuing under the care of Dr. Gordon Donald and others "to determine how to rectify the critical defect in the plaintiff's cervical spine caused by the failed cervical surgery."

A May 1, 2007 report, which was prepared by Dr. Lambro Demetriades, explained that plaintiff's post-operative checkups and x-rays showed good healing for the first couple of months, but that plaintiff complained of increased pain in September 2006. The report noted good positioning of the plate and screws, but that the top two screws had broken. Nevertheless, the plate was still attached to the bottom four screws. The doctor did not recommend any further surgery and discharged plaintiff from active care with instructions to return on an as-needed basis. The doctor concluded that plaintiff's prognosis was good, that his surgery had gone well without any complications, and his fusion had healed. Although the top two screws had broken, "[t]his did not adversely affect the fusion." The doctor opined that plaintiff would have some mild degree of permanent neck pain "secondary to the surgery as well as the degenerative changes in his neck."

On November 18, 2008, after hearing argument, the court denied plaintiff's motion and issued an order to that effect on November 21, 2008. The court noted that the November 20 arbitration date had been set on August 1, when the court had granted an adjournment and extended the discovery end date to allow for depositions, and for plaintiff to submit a final evaluative report. At that time, the court, knowing that plaintiff required further ongoing treatment, nevertheless insisted that a final evaluative report needed to be obtained in order to move the case forward. The court noted that it had denied defendants' previous motion for an extension of discovery for the same reasons, and it was now acting consistently with that disposition. The court was satisfied that the August 1 order had given plaintiff ample notice and time to obtain a final evaluative report before the November 20 arbitration date. The court therefore found an absence of exceptional circumstances.

On November 20, 2008, two days after the discovery end date, plaintiff's counsel furnished defendants with a May 27, 2008 report that had been issued by Dr. Donald. On December 4, 2008, plaintiff's counsel furnished defendants with an updated report by Nolte, which was dated November 13, 2008. Defendants moved to bar plaintiff's use of these updated reports.

Plaintiff responded with a cross-motion to allow the use of these experts and to bifurcate the trial pursuant to Rule 4:38-2. In support of the motion, plaintiff's counsel described the ongoing medical evaluation and anticipated subsequent surgery necessitated by the hardware failure. With respect to the liability expert, Nolte had prepared a December 9, 2008 report which addressed depositions of plaintiff and three others. Those depositions were held on August 2 and 8 and September 17, 2008.

On December 19, 2008, the court entered two orders barring the late expert reports by Dr. Donald and Nolte. The court also denied plaintiff's motion for bifurcation. However, prior to the commencement of trial in May 2009, the parties stipulated to bifurcation, and a liability-only trial was conducted.

Our review of a denial of a request to extend discovery based on an absence of exceptional circumstances is guided by the abuse of discretion standard. Bender v. Adelson, 187 N.J. 411, 428 (2006). A "precise explanation" detailing the cause of the delay and the actions taken during the elapsed time is required to prove exceptional circumstances. *Id.* at 429. Counsel must explain why discovery was not completed within the applicable discovery period and demonstrate counsel's diligence in pursuing discovery during that time. *Ibid.* (quoting Vitti v. Brown, 359 N.J. Super. 40, 49 (Law Div. 2003)).

Although the term "exceptional circumstances" is not defined in Rule 4:24-1(c), the term is commonly understood to mean "something unusual or remarkable." Rivers v. LSC P'ship, 378 N.J. Super. 68, 78 (App. Div.) (quoting Vitti, *supra*, 359 N.J. Super. at 50), certif. denied, 185 N.J. 296 (2005)). Furthermore, a party seeking to extend discovery on the basis of "exceptional circumstances" must satisfy four inquiries:

- (1) why discovery has not been completed within time and counsel's diligence in pursuing discovery during that time;
- (2) the additional discovery or disclosure sought is essential;
- (3) an explanation for counsel's failure to request an extension of the time for discovery within the original time period; and
- (4) the circumstances presented were clearly beyond the control of the attorney and litigant seeking the extension of time.

[Id. at 79 (citing Vitti, supra, 359 N.J. Super. at 51).]

The Vitti court anticipated issues arising with unexpected continuing medical treatments, describing those as potentially simple cases involving exceptional circumstances:

There may be any number of situations in which one may be able to establish exceptional circumstances relatively simply. There is one problem often encountered in personal injury litigation that illustrates that point. It is not unusual for a personal injury claimant to be involved in ongoing medical treatment or diagnosis, as litigation is proceeding through discovery, which might result in some sudden and unexpected change in the claimant's condition. Typically, a claimant may be presented with the need for surgery which had not been anticipated. To the extent those developments were reasonably anticipated during the discovery period, one would expect an application to extend the time for discovery to be filed before discovery ends. Assuming the additional treatment or new diagnosis truly requires discovery or disclosure, good cause could easily be established. Similarly, it would not be difficult to establish exceptional circumstances, if the treatment or diagnosis could not have been anticipated during the discovery period. In that circumstance, it could presumably be established that the attorney and litigant had no control over the situation. The failure to complete the discovery at issue within the original discovery period and the failure to file the motion to extend within that time could be easily explained. Assuming the new treatment or diagnosis presents substantial issues, one could consider the additional discovery or disclosure essential to the proper presentation of the matter, justifying the conclusion that exceptional circumstances had been established.

[Vitti, supra, 359 N.J. Super. at 52.]

The case before us is more complicated. Based on the information presented to the court on October 30, 2008, this case seemingly appears to match the Vitti description for a case in which exceptional circumstances would be established. The record shows that plaintiff had continuing pain, perhaps related to broken screws that had been inserted into his neck in the original surgery, which would require additional surgery. The key difference, however, is that by the time plaintiff was arguing to that effect on November 18, 2008, two days before the scheduled arbitration, the court had already thrice extended the discovery period. By the time of the final extension, granted in August 2008, the court already understood that plaintiff was asserting additional and ongoing medical issues, and the court expected plaintiff to obtain the necessary medical information and reports by the November 18, 2008 deadline.

Thus, in this situation, the Vitti rationale does not aid in establishing exceptional circumstances. Applying the Bender abuse of discretion review standard, we find no fault in the court's conclusion that plaintiff failed to adequately explain why he could not gather information about his medical condition within the extended discovery period.

With respect to the late amendments to Nolte's prior report, the purported reason for the delay was that Nolte had to consider depositions conducted in August and mid-September 2008. We cannot fault the court for rejecting that as an exceptional circumstance that would have precluded Nolte from completing his updated report prior to the November 18, 2008 discovery end date.

Finally, plaintiff takes issue with having been "forced" to proceed with a bifurcated trial. He argues that he was prevented from presenting to the jury medical evidence detailing the severity of his injuries. We find this argument unpersuasive. Plaintiff had earlier moved for bifurcation. After that motion was denied, plaintiff agreed by stipulation to proceed with a bifurcated trial. "A party who consents to, acquiesces in, or encourages an error cannot use that error as the basis for an objection on appeal." Spedick v. Murphy, 266 N.J. Super. 573, 593 (App. Div.), certif. denied, 134 N.J. 567 (1993); see also N.J. Div. of Youth & Family Servs. v. M.C. III, 201 N.J. 328, 340-42 (2010). Further, there is no basis upon which to conclude that the jury would have reached a different result on the liability issues if the trial had not been bifurcated.

III

We next address plaintiff's argument that the court erred by admitting evidence of his three prior criminal convictions, the first of which had occurred twenty-two years prior to trial. This evidence was allowed for the limited purpose of impeaching plaintiff's credibility, and an appropriate limiting instruction was given. Plaintiff does not take issue with the adequacy of that instruction. He argues, however, that because of the remoteness of the convictions, they should not have been admitted. We note that in

arguing the issue before the trial court, plaintiff's counsel seemingly acquiesced in the admission of the two more recent convictions. He said: "I'm okay with the latter two. The first one was so long ago, he was so young at that time, that one just seems so much more prejudicial than probative."

In the colloquy between counsel and the trial court, it was represented that the earliest conviction, in 1987, was for robbery. However, at trial, plaintiff testified that he committed a burglary in 1987. No contrary evidence was presented. The other two convictions were for possession with intent to distribute cocaine in 1993, and possession of cocaine in 2004.

N.J.R.E. 609 allows evidence of prior convictions to affect a witness's credibility, "unless excluded by the judge as remote or for other causes." Evidence of prior convictions should ordinarily be admitted, and the burden is on the party seeking exclusion to demonstrate a basis for exclusion. State v. Sands, 76 N.J. 127, 144 (1978), modified by State v. Brunson, 132 N.J. 377 (1993). Trial courts are granted broad discretion on this issue, and are primarily guided by considerations of remoteness and the nature of the crimes. *Id.* at 144-45. Most important to our consideration here is that "intervening convictions" are appropriately considered in the remoteness analysis, because "[i]f a person has been convicted of a series of crimes through the years, then conviction of the earliest crime, although committed many years before, as well as intervening convictions, should be admissible." *Ibid.*; cf. State v. Murphy, 412 N.J. Super. 553, 565 (App. Div.) (finding a mistaken exercise of discretion in allowing evidence of a seventeen-year-old conviction "when defendant had no intervening prior convictions"), certif. denied, 203 N.J. 440 (2010).

We find no mistaken exercise of discretion here. Under the Sands rationale, the intervening convictions bridged the gap that might have rendered the probative value of the oldest conviction too low to outweigh its prejudicial effect. We also note that because this was not a criminal trial the potential for prejudice was diminished. Part of the inherent prejudice with this kind of evidence when it is presented against a defendant in a criminal trial is that the jury might be led to believe that the person is guilty of the crime for which he or she is on trial because he or she has been previously convicted of one of more other crimes.

IV

Plaintiff contends that the court erred in refusing to modify questions on the jury verdict sheet inquiring whether each defendant was negligent "during" the accident. Plaintiff had asked the court to modify the questions to ask whether the defendants were negligent "for" the accident. Plaintiff argued that jurors might be confused because they might believe that to be found negligent a defendant had to have done something improper at the very instant that plaintiff fell. The trial court rejected the argument, commenting that "everybody knows we are talking about whether someone was responsible for the accident."

"[A] trial court's interrogatories to a jury are not grounds for a reversal unless they were misleading, confusing, or ambiguous." Sons of Thunder, Inc. v. Borden, Inc., 148 N.J. 396, 418 (1997). We agree with the court that no reasonable juror could have been misled by the word "during" used in these interrogatories. The context of the trial as a whole framed the bases upon which how plaintiff claimed defendants could be held responsible for his tripping on the hallway debris, leaving open no factual issue about whether those defendants were present "during" his fall.

Plaintiff also takes issue with the jury charge, contending that the court erred by denying his request for a specific charge relating to general contractor liability. Specifically, plaintiff asked the court to charge the following:

The general contractor is the one who has single responsibility for the performance of the entire project with all specialty trades being performed by subcontractors. The role of the general contractor carries with it certainly the relationships which are unique to the general contract. Among others, the contractor has a duty to maintain the premises on which it performs work in a reasonable [sic] safe condition for persons who the contractor may reasonably expect to come onto the site.

Plaintiff argues that this language followed the Court's holding in Alloway v. Bradlees, Inc., 157 N.J. 221 (1999). Plaintiff further contends that OSHA regulations, state statutes, and case law impose a specific duty of care upon the general contractor, which the court's charge did not explain, as a result of which the failure to give the requested charge was reversible error.

The court gave the general negligence charge regarding the duty to exercise reasonable care for an invitee's safety. See generally Model Jury Charge (Civil), 5.20F, "Duty Owed — Condition Of Premises," ¶¶ 5-10.

In reviewing a trial court's jury instruction, a reviewing court must read the charge as a whole, and "should not reverse a trial court when the charge adequately conveys the law and does not confuse or mislead the jury." Sons of Thunder, supra, 148 N.J. at 418. "Courts uphold even erroneous jury instructions when those instructions are incapable of producing an unjust result or prejudicing substantial rights." Fisch v. Bellshot, 135 N.J. 374, 392 (1994).

In Alloway, the Court explained that generally the traditional common law rule relieves a general contractor from liability for the negligence of a subcontractor, such that although the general contractor is obliged to ensure that the workplace premises are in a reasonably safe condition, the general contractor "is not required to eliminate all the potential hazards of the job performed by the subcontractor." Alloway, supra, 157 N.J. at 229 (quoting O'Keefe v. Sprout-Bauer, Inc., 970 F.2d 1244, 1251 (3d Cir. 1992)). The Court noted three recognized exceptions to that general rule "based on such considerations as the retention of control over the manner of performing the work, the knowing hiring of an incompetent contractor, or the inherent danger of the work performed by the subcontractor." Ibid. None of those exceptions apply to the facts in this case. We find no error in the instruction given or in the court's decision to refuse to give the instruction requested by plaintiff.

Finally with respect to jury instruction issues, plaintiff contends that the jury's question relating to proximate cause indicated jury confusion, which should have nullified the verdict. Plaintiff asserts that the trial court's mere rereading of the model jury charge on proximate cause was inadequate because it was "the same instruction that was causing juror confusion."

Upon a request by a jury for clarification, a trial court "is obligated to clear the confusion." State v. Savage, 172 N.J. 374, 394 (2002) (quoting State v. Conway, 193 N.J. Super. 133, 157 (App. Div.), cert. denied, 97 N.J. 650 (1984)). We have held that repeating the same instruction does not constitute a mistaken exercise of discretion. State v. Scher, 278 N.J. Super. 249, 271 (App. Div. 1994), cert. denied, 140 N.J. 276 (1995). Plaintiff has provided no basis that persuades us to reach a contrary conclusion in this case. The judge acted within his discretion by repeating the correct charge that he had previously given.

V

In his final argument, plaintiff contends that, in view of the uncontroverted facts in his favor, the court erred by failing to grant his motion for a new trial. Plaintiff argues that reasonable minds could not have reached the result found by the jury, because no one disputed the following: that the accident happened; that the sheetrock work was in progress the day before; plaintiff's allegation that the lighting was off at the time; that the hallway was a common corridor that plaintiff was entitled to be in, and that it should have been clear of debris; that AJD was in charge of supervising and inspecting the hallway; that AJD was responsible for maintaining a safe work site and for overseeing the other tradespersons' work site actions; that Freddy's Drywall was responsible for cleaning up its construction debris; and that plaintiff was injured during the course of his employment for Power Electric on July 9, 2004.

Plaintiff's portrayal of the evidence as entirely one-sided in his favor is inaccurate. Power Electric's temporary foreman Colvin thought that the temporary lighting would have been installed before the sheetrocking, and he remembered walking in that corridor with the temporary lighting installed. Balderas, the supervisor for Freddy's Drywall, testified as to that company's practices in keeping debris out of the hallways, and its need to have temporary lighting in place to do its sheetrocking work. Cahill from AJD testified that natural light, even after the sheetrocking was installed, would have sufficiently illuminated the corridor. From this testimony, a reasonable jury could have concluded that Pier Village, AJD, and Freddy's Drywall were not negligent at the time of plaintiff's accident. Indeed, plaintiff admitted at trial that he was negligent and responsible in part for his injury.

When reviewing a motion for a new trial, "[t]he trial court's decision on such a motion shall not be reversed unless it clearly appears that there was a miscarriage of justice under the law." R. 2:10-1. There has been no clear showing that there was a miscarriage of justice under the law in the jury's verdict or in the trial court's denial of the motion for a new trial.

Affirmed.

[1] Defendant AJD brought a contractual indemnification claim against plaintiff's employer, Power Electric Company, Inc. (Power Electric), that was ultimately dismissed by summary judgment. That claim is not implicated in this appeal.

[2] Freddy's Drywall has filed a cross-appeal from orders denying its motions for summary judgment and seeking dismissal based on the statute of limitations. In light of our affirmance, the cross-appeal issues are moot, and we will not address them.

[3] Freddy's Drywall was made a third-party defendant after the litigation had progressed for a time, and then, by leave granted, plaintiff joined Freddy's Drywall as a direct defendant.

Save trees - read court opinions online on Google Scholar.