In "Case" You Missed It: 27-35 Jackson Ave., LLC v. Samsung Fire & Marine Inc. Co.

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In a recent published decision, *27-35 Jackson Ave., LLC v. Samsung Fire & Marine Inc. Co.*, 469 N.J. Super. 200 (App. Div. 2021), the Appellate Division considered whether a plaintiff could establish proximate cause in its negligent destruction of evidence claim against a defendant who had lost important evidence regarding the cause of property damage on the plaintiff's property. The Appellate Division affirmed summary judgment in favor of the defendant, holding that the plaintiff failed to provide sufficient evidence of a viable claim against potentially responsible third parties who might be liable for the property damage.

The underlying facts are fairly unusual. Plaintiff 27-35 Jackson Avenue LLC owned commercial property in New York. For no apparent reason, a sprinkler head discharged water on the second floor of the premises, damaging the property. Plaintiff's principal tenant then served written notice that it was terminating the lease because the premises were "untenantable." Plaintiff reported the claim to its property insurance carrier, Samsung Fire & Marine Inc. Co. ("Samsung" or "defendant"). Upon receiving the claim, Samsung retained an engineer to inspect the property. Samsung also retained subrogation counsel to assist with the investigation. The engineer conducted his site investigation and removed the sprinkler head for further inspection. After investigating the sprinkler head, he ultimately opined that the cause of the sprinkler discharge could not be determined. Samsung's subrogation counsel advised plaintiff that based on the engineer's analysis, there was no responsible third party for purposes of subrogation. After completing testing, the engineer lost the sprinkler head.

Several weeks later, plaintiff's counsel sent Samsung a written notice requesting that all items removed from the premises be preserved in their original condition. The notice expressed plaintiff's intention to seek recovery for any property damage or other loss not covered by insurance. Samsung initially informed plaintiff's counsel that the sprinkler head was in the adjuster's possession and that testing had not yet been completed. Nearly a year later, Samsung finally informed plaintiff that the engineer had lost the sprinkler head, which was perhaps the most important piece of evidence for discovering the cause of the property damage. As a result, plaintiff filed a complaint against Samsung, alleging negligent spoliation of evidence, and arguing that Samsung's loss of the sprinkler head proximately caused its inability to pursue a claim against a responsible third party and recoup any losses not covered by the insurance policy.

In discovery, plaintiff produced an expert engineer who opined that the cause of the sprinkler discharge was probably related to one of three causes: (1) a manufacturing defect, (2) improper installation, or (3) improper maintenance. After discovery, Samsung filed a motion for summary judgment. Plaintiff filed a cross-motion seeking an adverse inference due to defendant's alleged spoliation of evidence. The trial court granted defendant's summary judgment motion, and plaintiff appealed.

In its written opinion, the Appellate Division first addressed plaintiff's cross-motion for an adverse or negative inference for the alleged spoliation. Although it acknowledged that New Jersey courts often issue negative inferences as a remedy for spoliation of evidence, the panel held that a negative inference is available as a remedy only against the party alleged to be responsible for the underlying cause of action. Because Samsung played no role in causing the underlying property damage, it could not be subject to an adverse inference.

As to defendant's summary judgment motion, the panel began by acknowledging that New Jersey courts recognize an independent cause of action for negligent destruction of evidence, even if the responsible party is not a party to the underlying claim. The panel explained that plaintiff was required to demonstrate that defendant's negligence in losing the sprinkler head proximately caused plaintiff to lose its opportunity to pursue a case against the third party responsible for the sprinkler head's malfunction, and that it suffered actual damages because of defendant's negligence. With regard to damages, the panel held that plaintiff was not required to demonstrate that the underlying suit would have succeeded.

Nevertheless, the panel held that plaintiff could not establish proximate cause. The panel explained that plaintiff needed to present more than an expert's opinion identifying three possible reasons for the sprinkler head's failure and three possible defendants. Because plaintiff could not put forward a more precise theory of liability, it also could not establish damages. Accordingly, the Appellate Division affirmed summary judgment for defendant.

Perhaps more than anything, the panel's holding clarifies that, in order to prevail in an independent lawsuit for negligent destruction of evidence against a party not responsible for the underlying cause of action, a plaintiff must do more than merely suggest a cause of action against a number of possible defendants. Although the plaintiff is not required to prove that it would have likely succeeded in the underlying claim, it must do more than merely speculate as to what the underlying claims will be and the defendants against whom the action will be brought. Although establishing such a claim without the most important piece of evidence is extremely difficult, the panel's holding in this case makes clear that courts will adhere to an exacting standard of precision for plaintiffs attempting to establish an underlying cause of action when bringing negligent destruction of evidence claims.