

173 Conn. App. 630

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Girolametti v. Michael Horton Associates, Inc.

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*Opinion*

BISHOP, J. These seven appeals arise from disputes regarding the construction of an expansion to a Party Depot Store (store) located in Danbury. The owners of the store, the plaintiffs John Girolametti, Jr., and Cindy Girolametti, brought actions against the general contractor, Rizzo Corporation (Rizzo), and seven subcontractors and sub-subcontractors who worked on the construction project, on various claims relating to the quality of the work provided. All eight defendants filed motions for summary judgment.<sup>1</sup> The owners of the store appeal from the court's judgment granting Rizzo's motion for summary judgment. The subcontractors and sub-subcontractors appeal from the court's judgment denying all of their motions for summary judgment.<sup>2</sup>

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<sup>1</sup> In AC 38098, there are two defendants that filed a combined motion for summary judgment: BlueScope Buildings North America, Inc. (BlueScope) and Steven Oakeson. Therefore, while there are eight defendants, there are only seven appeals.

In addition, for the purposes of this summary, we will count the defendant Test-Con, Inc., as among the subcontractors. As will be discussed in this opinion, however, Test-Con, Inc., contracted with the plaintiffs directly.

<sup>2</sup> In AC 38208, Girolametti appeals from the decision granting summary judgment in favor of defendant general contractor Rizzo. In AC 38093, the defendant subcontractor Lindade Corporation appeals from the denial of its motion for summary judgment. In AC 38094, the defendant sub-subcontractor Domenic Quaraglia Engineering, Inc., appeals from the denial of its motion for summary judgment. In AC 38095, the defendant subcontractor Michael Horton Associates, Inc., appeals from the denial of its motion for summary judgment. In AC 38097, the defendant Test-Con, Inc., appeals from the denial of its motion for summary judgment. In AC 38098, the defendant sub-subcontractor BlueScope and its employee, Oakeson, appeal from the denial of their motion for summary judgment. In AC 38099, the defendant subcontractor Pat Munger Construction Company, Inc., appeals from the denial of its motion for summary judgment.

In his brief, Girolametti also claims that the court erroneously barred his warranty transfer claim in which he argues that Rizzo failed to comply with its obligations to deliver third-party warranties. At oral argument before this court, however, the plaintiff's counsel acknowledged that Girolametti did in fact receive the warranties from third parties in March, 2013, during discovery while the cases were pending in trial court. Accordingly this claim is moot and we need not address it further.

NOTE: These pages (173 Conn. App. 635 and 636) are in replacement of the same numbered pages that appear in the Connecticut Law Journal of 6 June 2017.

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Although each appeal involves some unique facts and implicates the interests of parties specific to that appeal, the factual backdrop to these appeals is sufficiently common to enable us, on review, to set forth the facts that underlie them in one background statement. Additional facts will be noted, as appropriate, in our discussion of each appeal.

## I

## FACTS AND PROCEDURAL HISTORY

In 2007, the plaintiffs, John Girolametti, Jr., and Cindy Girolametti, were the owners of property located at 43 South Street in Danbury. Later, on March 4, 2008, the Girolamettis transferred title to that property to 43 South Street, LLC, an entity of which they are the sole members. The Girolamettis are also the sole shareholders of Party Depot, Inc., an entity that leased the property from 43 South Street, LLC, on February 27, 2008. Although the Girolamettis and all of their foregoing entities are parties to these appeals, John Girolametti, Jr., has acted on behalf of all such parties in regard to the Party Depot project since its inception. Accordingly, for economy of language, we refer to the Girolamettis and their entities as Girolametti throughout our discussion of the appeals unless otherwise appropriate. Similarly, we refer to the Party Depot project simply as the project.

## A

## The Project

In June of 2007, Girolametti submitted a proposed building contract to the defendant Rizzo, a Connecticut corporation located in Danbury, under which Rizzo would serve as the general contractor for the construction of an expansion of the store. The project was to be designed by architect Russell J. Larrabee and structurally engineered by Richard Marnicki of Marnicki Associates, LLC. Between the date on which the contract was first proposed by Girolametti, June 22, 2007,

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and the date on which it was signed by Rizzo, November 12, 2007, several changes were made to the project. Most notably, the parties agreed to alter the project's original design by using a pre-engineered building (PEB), which was to be added to the existing structure. Due to this change, Girolametti and Marnicki could not come to terms as to Marnicki's services for the value engineering requirements of the anticipated PEB, and Marnicki left the project. As a result of his departure, Marnicki, whose design specifications for the project had previously been submitted to Danbury's municipal authorities, contacted the city with instructions not to use his structural drawings for permitting purposes.

The contract ultimately signed by Rizzo and Girolametti was on an American Institute of Architects "Standard Form of Agreement Between Owner and Contractor" and provided for a contract price of \$2,435,100. The agreement included, inter alia, a provision requiring the submission of all disputes regarding the project between the owner and the contractor to binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. The contract also had an article concerning subcontractors, which provided in relevant part: "By an appropriate agreement, written where legally required for validity, [Rizzo] shall require each subcontractor, to the extent of the work to be performed by the subcontractor, to be bound to [Rizzo] by the terms of the contract documents and to assume toward [Rizzo] all the obligations and responsibilities which [Rizzo], by these documents, assumes toward [Girolametti] and [Larrabee]. Said agreement shall preserve and protect the rights of [Girolametti] and [Larrabee] under the contract documents with respect to the work to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the subcontractor, unless specifically provided otherwise in the [Rizzo]-subcontractor agreement, the benefit of all rights, remedies and

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redress against [Rizzo] that [Rizzo], by these documents, has against [Girolametti]. Where appropriate, [Rizzo] shall require each subcontractor to enter into similar agreements with his sub-subcontractors. [Rizzo] shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the contract documents to which the subcontractor will be bound by this paragraph 5.3, and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the contract documents. Each subcontractor shall similarly make copies of such documents available to his sub-subcontractors.”

As plans were evolving from an architect designed and individually engineered building to the purchase of a PEB for the project addition, Rizzo, in July of 2007, entered into a subcontract with the defendant Michael Horton Associates, Inc. (Horton), a Branford corporation engaged in the business of providing professional structural engineering services. Under this contract, Horton was to design the lower level parking garage structure and the supported floor slab at grade level with the understanding that the superstructure of the building above grade level would be designed by the PEB manufacturer. Horton also agreed to develop a snow drift load plan for the existing building roof structure, to include an analysis of the existing roof framing and a design for any needed framing reinforcement in this area. The contract amount for Horton’s services was \$23,000.

Consistent with the understanding between Girolametti and Rizzo that the project would involve a PEB, Rizzo entered into a \$402,000 subcontract with the defendant Pat Munger Construction Company, Inc. (Munger), a Connecticut corporation located in Branford, for the purchase and erection of a pre-engineered steel building for the project. The subcontract provided,