

Ussbasy Garcia v, Robert Cohen: Slip and Fall, Application of the General Verdict Rule (SC 20285)

s Ussbasy Garcia was injured in a slip and fall incident at the apartment she was renting. During the winter, she was exiting her second floor apartment carrying a basket of laundry, while on the rear exit staircase of the building she fell. Garcia testified that she fell because the fourth step was covered in sand which caused her to slip. She subsequently brought a premise liability lawsuit against her landlords, Robert and Diane Cohen, alleging they negligently and carelessly: (1) failed to assure the steps were clean, clear and free of dirt and sand; (2) allowed the surface of the steps to become pitted, worn and uneven, and; (3) failed to post a notice or otherwise warn of the slippery condition of the steps.

The defendant asserted a special defense containing four specifications of contributory negligence alleging that the plaintiff: (1) failed to exercise reasonable care; (2) failed to watch where she stepped; (3) failed to step over a dangerous condition and; (4) failed to be attentive. Furthermore, Robert Cohen testified that three or four people help him remove snow and place sand and salt after snowstorms at the property. In response to the testimony the plaintiff requested the court to instruct the jury that the defendants had a nondelegable duty to maintain the safety. Furthermore, in response to the contributory negligence specifications the plaintiff requested three interrogatories be submitted to the jury that addressed grounds in which they could determine liability. They asked whether the fall and injuries were (1) caused by defendants' negligence and carelessness in failing to maintain the steps clean, clear and free of dirt and sand? (2) caused by the defendants' negligence in allowing the steps to become pitted, worn, and uneven? or (3) caused by the plaintiff's failure to exercise care under the circumstances? Prior to the second and last day of trial the court asked if the attorneys had any preliminary matters to discuss. The plaintiff's attorney responded "just the fact that I had filed

jury instructions—proposed jury instructions and jury interrogatories, and my understanding is, the court is going to disallow those.” The court denied both and the jury found neither party negligent, thus, rendering a verdict in favor of the defendants.

The plaintiff appealed, arguing that the trial court improperly rejected her request to charge and improperly failed to instruct the jury on the defendants’ nondelegable duty to maintain the premises. The Appellate court affirmed the trial court’s ruling and stated that the general verdict rule applied because the plaintiff did not object when the court denied the interrogatory request and did not specifically claim on appeal that the court improperly failed to submit her interrogatories. Thus, rendering the instructional error non-reviewable. The case was then argued in the Supreme Court of Connecticut to decide the following issues: (1) whether the general verdict rule applies when a plaintiff’s proposed jury interrogatories are rejected by the trial court and the plaintiff thereafter does not state “I object” when the case is submitted to the jury and; (2) whether the plaintiff did not claim on appeal that the trial court improperly failed to submit her interrogatories to the jury.

Under the general verdict rule if a jury renders a general verdict (a decision without listing specific findings on any disputed issues) and the party making a claim of error did not request interrogatories an appellate court will presume that the jury found in favor of the prevailing party on every issue. Thus, if any ground of the verdict is proper, it must stand unless every ground is improper. Parties can avoid this rule by submitting interrogatories to the jury that elicit specific grounds for the verdict. However, *Malaguit v. Ski Sundown* demonstrates that a plaintiff failing to object to jury deliberation without interrogatories is equivalent to failing to request interrogatories. The party seeking to avoid application of the general verdict rule must

make every reasonable effort to protect themselves from the consequences of such a verdict by seeking to use interrogatories.

The defendants argued that the general verdict rule applies because (1) the plaintiff failed to object when the trial court declined to submit her interrogatories and (2) even if she had objected, she failed to submit properly framed interrogatories. The court rejected both arguments.

First, the court distinguished this case from *Gajewski* (the case *Malaguit* quoted regarding the failure to object rule) as unlike in this case the parties in *Gajewski* failed to submit interrogatories and did not object to the jury's deliberation without any interrogatories at all. The court also distinguished this case from *Tetreault* where the defendants filed interrogatories but the plaintiffs sought to avoid application of the general verdict rule. The difference is salient because unlike in *Tetreault* the plaintiff here made every reasonable effort to protect herself from the rule by filing interrogatories herself. Furthermore, the court held that the plaintiff did object to the denial of interrogatories on the record because when asked if they had any matters to discuss the plaintiff's attorney brought up the instructions and interrogatories. Although, the plaintiff did not precisely say "I object" she alerted the court to her claim of error (denying the instructions) and the court explained its reasoning at a time when it could have been corrected. Furthermore, the plaintiff brought the denial issue again when asked if the parties had any exceptions to the charge. Thus, the court concluded that this was a functional objection and the plaintiff made every reasonable effort to avoid application of the rule by filing interrogatories, eliciting the court's justification for the denial on record and renewing the objection.

Next, the court rejected the defendant's arguments that the interrogatories were improperly framed because they (1) failed to address each specification of their special defense

and (2) would not have shed light on the verdict and could not have provided the jury with an untainted route to find the defendants not liable.

The defendants' first argument would require the plaintiff to submit a separate interrogatory for each of the four specifications of contributory negligence. The court rejected this notion as the plaintiff's interrogatory contained the four factual allegations that could have led to a finding of contributory negligence. Thus, the entire special defense was covered by the interrogatory. The court declined to expand the rule to require the plaintiff to submit an interrogatory for each element because it would confuse jurors and make trial management unnecessarily difficult.

The court rejected the defendant's argument that the interrogatory and instruction would not have shed light on the verdict because the nondelegation instruction would have instructed the jury that the defendant cannot avoid liability by hiring others to remove snow and spread salt—as the defendants did in this case. Thus, the absence of this instruction meant that the jury could have found that the workers acted negligently not the defendant, and for that reason found that the defendant was not negligent or less negligent than the plaintiff. Under the nondelegation doctrine the negligence of the workers would be attributable to the defendant, the absence of the instruction precluded this—thus, the jury had no untainted route to the verdict as their allocation of negligence is intertwined with the doctrine. Additionally, the interrogatories would have shed light on the verdict because the first two addressed the complaint (negligence) and the last question addressed the special defense (contributory negligence). Thus, the court concluded that the direct verdict rule does not bar review of the instructional error because (1) the interrogatories would have shed light on the jury's basis for the verdict and (2) the instructional error on appeal is intertwined with the cause of action and defense.

Lastly, in response to the issue of whether the plaintiff did not claim on appeal that the trial court improperly failed to submit her interrogatories the court stated that because she made every reasonable effort to prevent the application of the general verdict rule she had no reason to anticipate that the rule would thwart review. Consequently, her failure to assign an independent claim of error for denying the interrogatories did not preclude the court from reviewing her instructional claim. Thus, the court reversed and remanded the decision with instructions to consider the plaintiff's claim of instructional error.

This case demonstrates the judicial value of fairness as not allowing the plaintiff's appeal to be heard because her attorney didn't say "I object" would be a fairly harsh consequence considering the nondelegation instructions may have changed the verdict in favor of the plaintiff.