

SUPREME COURT - STATE OF NEW YORK

PRESENT: HON. JACK L. LIBERT,
Justice.

DOREEN RAFFA-ROSLAN,

Plaintiff,

-against-

ALLSTATE INSURANCE COMPANY,

Defendant.

TRIAL PART 25
NASSAU COUNTY

MOTION # 02 ✓
INDEX # 605398/14
MOTION SUBMITTED:
SEPTEMBER 12, 2018

The following papers having been read on this motion:

- Notice of Motion/Order to Show Cause.....1**
- Cross Motion/Answering Affidavits.....2**
- Reply Affidavits.....3**

Plaintiff moves to set aside a jury verdict pursuant to CPLR 4404 (a).

In this action plaintiff sought enforcement of a contract of insurance in connection with a fire at her residence. The fire occurred after plaintiff’s home sustained significant flood damage as a result of superstorm Sandy. Plaintiff did not have flood insurance. Defendant denied coverage for the fire damage on the grounds that the fire was the result of arson committed by plaintiff or on her behalf and that defendant made fraudulent misrepresentations in violation of provisions of the policy. The jury rendered a defendant’s verdict on both the arson and fraud defenses. Plaintiff moves to set aside the verdict, proffering three reasons why the verdict should be set aside.

First, plaintiff asserts that the defendant “failed to prove that plaintiff had exclusive opportunity to cause the fire” (pg. 8, Friedman affirmation¹). Plaintiff cites *People v. Marin*, 102 AD2d 14, 478 N.Y.S 2d 650 (Second Dept. 1988) in support of its position that a finding of civil arson requires proof of “exclusive opportunity.” Defendant’s argue that “exclusive opportunity”

¹ All page references are to Friedman affirmation.

need not be proved citing *Maier v. Allstate Ins. Co.*, 41 AD3d 1098, 838 N.Y.S. 2d 715 (Third Dept., 2007). *Maier* succinctly sets forth the standard in civil arson cases: “direct proof of arson is seldom available and, therefore, can be established in civil cases by circumstantial evidence.” Applying this standard, the Third Department upheld the lower court’s finding of civil arson even though plaintiff did not have “exclusive opportunity” (*Maier*, internal citations omitted). In the case at bar, the jury verdict was supported by direct evidence including the testimony of expert fire investigators and circumstantial evidence including the trial testimony of plaintiff that contradicted her EUO testimony (concerning the holders of keys and whether she secured the house after leaving it) and plaintiff’s financial motive because she did not have flood insurance. The totality of the evidence warranted the jury’s finding of arson.

Second, plaintiff asserts that “plaintiff was improperly restricted in establishing others who had a motive to commit arson” (pg. 9). This assertion arises out of plaintiff’s proffer of evidence that her ex-husband had motive to set the 2012 fire. The evidence plaintiff proposed to submit included prior physical confrontations between the former spouses, violation of protective orders issued during the matrimonial proceedings and statements made by her ex-husband to their infant children. The divorce proceeding commenced in 2003 and concluded in 2007, five years before the fire. The undersigned ruled that alleged prior “bad acts” of the husband were not admissible, were a collateral issue and lacked sufficient probative value to outweigh the potential prejudice. There was no improper restriction on plaintiff’s testimony.

Third, plaintiff asserts that evidence of financial assistance from “NY Rising and other governmental agencies providing assistance to plaintiff unfairly tainted the jury” (pg. 12). One of the principal fraud defenses was that plaintiff deliberately submitted overstated claims to defendant by reporting as fire damage items which were damaged by flood (which plaintiff’s insurance policy did not cover). For example, plaintiff testified that her builder estimated the cost of flood restoration at \$200,000. Despite this estimate plaintiff filed a claim for and received the sum of \$400,000 from NY Rising. Plaintiff’s application to NY Rising contained internal inconsistencies and contradicted information contained in other documents submitted by plaintiff to other government agencies.

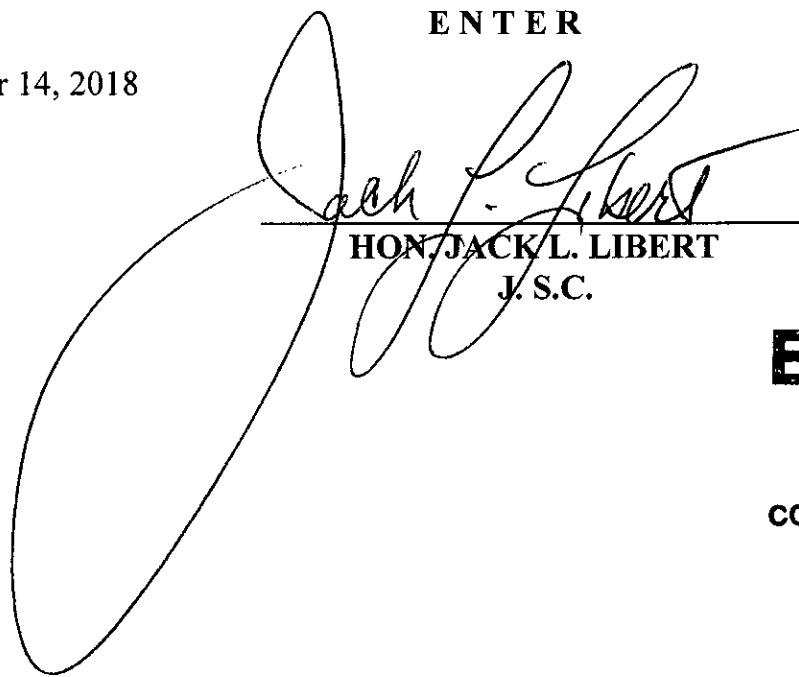
Although plaintiff offered explanations for these inconsistencies, her direct testimony “opened the door” for defendant to further inquire into this area.

The jury verdict was supported by clear and convincing evidence in all respects. The challenged trial rulings were made correctly. The motion is **denied**.

This constitutes the decision and order of the court.

DATED: November 14, 2018

ENTER



A large, stylized handwritten signature in black ink, appearing to read 'Jack L. Libert', is written over a horizontal line. The signature is highly cursive and loops around the line.

**HON. JACK L. LIBERT
J.S.C.**

ENTERED
NOV 16 2018
NASSAU COUNTY
COUNTY CLERK'S OFFICE