

221 A.D.2d 607, 634 N.Y.S.2d 185
(Cite as: 221 A.D.2d 607, 634 N.Y.S.2d 185)

FIND Request: 221 A.D.2d 607

Supreme Court, Appellate Division, Second Department,
New York.

James P. MORRISSEY, Appellant,

v.

CITY OF NEW YORK, et al., Respondents, et al.,
Defendant (and a third-party action).

Nov. 27, 1995.

Plaintiff sued city and individual and corporate defendants to recover for personal injuries. The Supreme Court, Queens County, Milano, J., granted motion of city for judgment as matter of law and entered judgment on verdict finding defendant contracting company not liable. Plaintiff appealed. The Supreme Court, Appellate Division, held that: (1) plaintiff could not raise objection to jury charge for first time on appeal; (2) pretrial statements made by one codefendant to plaintiff could not be used at trial against other codefendants merely because they were joined in same action; and (3) trial court's exclusion of certain evidence was not error or improvident exercise of discretion.

Affirmed.

West Headnotes

[1] Appeal and Error 30 ↪ 215(1)

30 Appeal and Error

30V Presentation and Reservation in Lower Court of Grounds of Review

30V(B) Objections and Motions, and Rulings Thereon

30k214 Instructions

30k215 Objections in General

30k215(1) k. Necessity of Objection in General. Most Cited Cases

Plaintiff's challenge to trial court's jury charge was not preserved for appellate review, as he failed to object to charge at trial.

[2] Evidence 157 ↪ 222(2)

157 Evidence

157VII Admissions

157VII(B) By Parties or Others Interested in Event

157k221 Parties of Record

157k222 In General

157k222(2) k. Statements as to Particular Facts in General. Most Cited Cases

Pretrial statements by one codefendant to plaintiff in suit to recover for personal injuries, concerning cause of accident at issue, constituted admissions that could be used against that codefendant at trial.

[3] Evidence 157 ↪ 222(10)

157 Evidence

157VII Admissions

157VII(B) By Parties or Others Interested in Event

157k221 Parties of Record

157k222 In General

157k222(10) k. Coparties. Most Cited Cases

Pretrial statements by one codefendant to plaintiff in suit to recover for personal injuries concerning cause of accident at issue could not be used against other codefendants merely because they happened to be joined in action.

[4] Evidence 157 ↪ 318(4)

157 Evidence

157IX Hearsay

157k315 Statements by Persons Other Than Parties or Witnesses

157k318 Writings

157k318(4) k. Reports. Most Cited Cases

Resident engineer's report was inadmissible hearsay in action against others for personal injuries.

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151 Evidence 157 358

157 Evidence

157X Documentary Evidence

157X(C) Private Writings and Publications

157k358 k. Maps, Plats, and Diagrams.

Most Cited Cases

Exclusion of accident reconstructionist's diagram from evidence in action for personal injuries was not error or improvident exercise of discretion on part of trial court, where plaintiff failed to demonstrate that diagram fairly and accurately depicted scene at time accident occurred.

****185** J. Bruce Byrne, New York City (Mark J. Hanlon, of counsel), for appellant.

Fiedelman & Hoefling, Jericho (Ross P. Masler and Andrew Zajac, of counsel), for respondent City of New York.

Gordon & Silber, P.C., New York City (David Henry Sculnick, of counsel), for respondent Willets Point Contracting Corp.

Before O'BRIEN, J.P., and PIZZUTO, SANTUCCI and JOY, JJ.

MEMORANDUM BY THE COURT.

***607** In an action to recover damages for personal injuries, the plaintiff appeals from so much of a judgment of the Supreme Court, Queens County (Milano, J.), entered April 7, 1993, as amended January 3, 1994, as, after a jury trial on the issue of liability finding the defendant Willets Point Contracting Corp. not at fault in the happening of the accident, and upon granting the motion of the defendant City of New York for judgment as a matter of law, is in favor of the defendants City of New York and Willets Point Contracting Corp. and against him dismissing the complaint insofar as it is asserted against those defendants.

ORDERED that the judgment, as amended, is affirmed insofar as appealed from, with one bill of costs payable to the respondents appearing separately and filing separate briefs.

[1][2][3] The plaintiff's challenge to the trial court's charge to the jury that admissions made by the defendant Peter C. Bonanno regarding the cause of the accident could not ****186** be considered when assessing the liability of any of the codefendants is unpreserved for appellate review as he never objected to the charge (*see, Harris v. Armstrong*, 64 N.Y.2d 700, 485 N.Y.S.2d 523, 474 N.E.2d 1191; *Up-Front Inds. v. U.S. Inds.*, 63 N.Y.2d 1004, 484 N.Y.S.2d 505, 473 N.E.2d 733; *Waddle v. Snyder Co.*, 149 A.D.2d 696, 540 N.Y.S.2d 489). In any event, the contention that the trial court's charge was improper is without merit. The pretrial statements made by Bonanno to the plaintiff concerning the cause of the accident constituted admissions that could be used as evidence against Bonanno at trial (*see, Richardson, Evidence* § 209 [Prince 10th ed.]). However, these statements were not admissible against the codefendants Willets Point Contracting Corp. and the City of New York merely because they happened to be joined in the action (*see, Richardson, Evidence* § 232 [Prince 10th ed.]; *Stevens v. Parker*, 99 A.D.2d 649, 472 N.Y.S.2d 225; *Ellis v. Allstate Ins. Co.*, 97 A.D.2d 970, 468 N.Y.S.2d 776; *Jamison v. Walker*, 48 A.D.2d 320, 369 N.Y.S.2d 469).

[4][5] Finally, the trial court did not err or improvidently exercise its discretion in excluding the resident engineer's report and the accident reconstructionist's diagram from evidence. The resident engineer's report constituted inadmissible hearsay, and the plaintiff failed to demonstrate that the accident reconstructionist's diagram fairly and accurately depicted the scene at the time the accident occurred (*see, Schuster v. Town of Hempstead*, 130 A.D.2d 481, 515 N.Y.S.2d 64; *Mooney v. Turner*, 35 A.D.2d 674, 314 N.Y.S.2d 878).

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