

Westlaw

788 N.Y.S.2d 92
 14 A.D.3d 392, 788 N.Y.S.2d 92, 2005 N.Y. Slip Op. 00213
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Supreme Court, Appellate Division, First
 Department, New York.
 Elvin VINCENTY, Plaintiff-Respondent,

v.

CINCINNATI INCORPORATED,
 Defendant-Respondent,
 ABCO Fire Door Company, Inc.,
 Defendant-Appellant,
 Wilfred Realty Corporation, Defendant.
 Cincinnati Incorporated, Third-Party
 Plaintiff-Respondent,

v.

ABCO Door Industries, Inc., Third-Party
 Defendant-Appellant-Respondent.

Jan. 13, 2005.

Background: Claimant, whose pinky and ring fingers were amputated in workplace accident, filed action alleging he sustained a "grave injury" within the meaning of Workers' Compensation Law. Third-party complaint and cross claims were filed against employer. The Supreme Court, Bronx County, Nelson S. Roman, J., which granted employer's motion for summary judgment dismissing third-party complaint and cross claims. Appeal was taken.

Holding: The Supreme Court, Appellate Division, held that claimant, whose fingers were surgically reattached so that he partially regained their use, did not sustain a "grave injury" within the meaning of Workers' Compensation Law. Affirmed as modified.

West Headnotes

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Claimant did not sustain a "grave injury" within the meaning of Workers' Compensation Law, as was required to assert viable third-party complaint or cross claim against employer, even though claimant's pinky and ring fingers were completely

amputated in workplace accident, where fingers were shortly after accident surgically reattached so that claimant regained their use, at least partially. McKinney's Workers' Compensation Law § 11.

*93 Lester Schwab Katz & Dwyer, LLP, New York (Harry Steinberg of counsel), for appellant-respondent.

Furey & Furey, P.C., Hempstead (Valerie Froehlich of counsel), for appellant.

Law Offices of Michael Weinberger, New York (Allan R. Pearlman of counsel), for Elvin Vincenty, respondent.

Gerald Neal Swartz Law Offices, New York (Nancy Ledy-Gurren of counsel), for Cincinnati Incorporated, respondent.

MAZZARELLI, J.P., MARLOW, ELLERIN,
 GONZALEZ, CATTERSON, JJ.

Order, Supreme Court, Bronx County (Nelson S. Roman, J.), entered August 2, 2004, which granted third-party defendant's motion for summary judgment dismissing the third-party complaint and cross claims against it, only insofar as to dismiss defendant ABCO Fire Door Company's cross claim on procedural grounds, unanimously modified, on the law, to grant the motion in its entirety, and otherwise affirmed, without costs. The Clerk is directed to enter judgment accordingly.

Plaintiff's pinky and ring fingers, although completely amputated in the underlying workplace accident, were shortly after the accident surgically reattached so that plaintiff regained their use, at least partially. Accordingly, because the fingers and their use were not permanently and totally lost, plaintiff did not sustain a "grave injury" within the meaning of Workers' Compensation Law § 11 (see *Castro v. United Container Mach. Group, Inc.*, 96 N.Y.2d 398, 401, 736 N.Y.S.2d 287, 761 N.E.2d 1014 [2001]; *Bradt v. Lustig*, 280 A.D.2d 739, 741, 721 N.Y.S.2d 114 [2001], *appeal dismissed* 96 N.Y.2d 823, 729 N.Y.S.2d 442, 754 N.E.2d 202

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[2001]; Minkowitz, Supp. Practice Commentaries, McKinney's Cons. Laws of N.Y., Book 64, Workers' Compensation Law § 11, 2004 Pocket Part, at 80). In the absence of a "grave injury," neither the third-party complaint nor the purported cross claim against plaintiff's employer was viable.

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