

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION**

Dale Gillespie, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Robert Edmier, Thomas Edmier, Trail Quest, Inc., )  
 and East Manufacturing Corporation, )  
 )  
 Defendants. )  
 East Manufacturing Corporation, )  
 )  
 Third-Party Plaintiff, )  
 )  
 v. )  
 )  
 Barge Terminal Trucking, Inc., )  
 )  
 Third-Party Defendant. )

No. 21 L 7563

**MEMORANDUM OPINION AND ORDER**

A motion to reconsider should be granted if the court failed to apply properly the law to the facts. Here, this court did not err when it correctly applied the law based on the factual record. The motion to reconsider must, therefore, be denied.

**Facts**

This court's December 6, 2022, memorandum opinion and order sets out the facts relevant to Barge Terminal Trucking's motion to reconsider; consequently, they need not be repeated here. At this point, Barge Terminal's motion to reconsider is based on two arguments, that: (1) East Manufacturing Corporation failed to substantiate the allegations supporting its third-party complaint against Barge Terminal; and (2) East Manufacturing cannot seek contribution from Barge Terminal through negligence allegations because the only remaining claim is one for strict products liability. East Manufacturing filed a response brief opposing Barge Terminal's motion to reconsider.

**Analysis**

The purpose of a motion to reconsider is to bring to the trial court's attention a change in the law, an error in the trial court's previous application of existing law, or newly discovered evidence that was not available at the time of the prior hearing or decision. *Evanston Ins. Co. v. Riseborough*, 2014 IL 114271, ¶ 36. The decision to grant or deny a motion to reconsider lies within a trial court's discretion. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 347 (2002). In this instance, as in most, the motion to reconsider is based on this court's alleged misapplication of the law.

As to the first argument, Barge Terminal relies on the deposition testimony of Fred Monick, East Manufacturing's retained expert witness, who, when asked, did not identify any negligent conduct by Barge Terminal. Although Monick, indeed, said that, this court did not previously focus on Monick's opinion testimony because Dale Gillespie's factual testimony raised sufficient material questions to defeat the summary judgment motion. As this court previously pointed out, Gillespie's testimony raised questions as to whether Barge Terminal should have instructed Gillespie on how to enter and exit the trailer from the front or provide a different access point, for example, at the rear of the trailer. Such testimony goes to both Barge Terminal's alleged duty as well as proximate cause. Even acknowledging Monick's deposition testimony, two of his disclosed written opinions—numbers eight and 15—plainly infer comparative negligence by Barge Terminal. Further, Gillespie testified that no one at Barge Terminal demonstrated to him the correct way to get into or out of the trailer or informed him about how to maintain a three-point method of control while stepping on a ladder.

As to the second argument, Barge Terminal relies on *De Anda v. Midland-Ross Corp.*, for the proposition that third-party contribution is unavailable against a strict liability cause of action if the third-party complaint is based solely on negligence. 644 F. Supp. 263, 268 (N.D. Ill 1986). While *De Anda* states that proposition, neither the case nor its holding has ever been cited by a single Illinois court. Further, the Illinois Supreme Court subsequently and plainly inferred that *De Anda* does not state Illinois law. See *Frazer v. A.F. Munsterman, Inc.*, 123 Ill. 2d 245, 267 (1988) (comparative fault applies if one tortfeasor's liability rests on strict liability and another's on simple negligence). In other words, a third-party comparative negligence claim can stand against strict liability claim even if there are no claimed misuse or assumption of risk allegations.

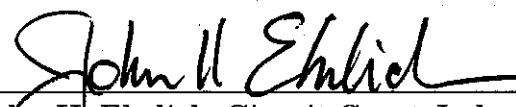
### Conclusion

For the reasons presented above, it is ordered that Barge Terminal's motion to reconsider is denied.

Judge John H. Ehrlich

DEC 19 2023

Circuit Court 2075

  
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John H. Ehrlich, Circuit Court Judge