

Caradonna v A.W. Chesterton Co., Inc.

2007 NY Slip Op 34363(U)

April 25, 2007

Supreme Court, New York County

Docket Number: 0106785/2006

Judge: Helen E. Freedman

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT.

PART 39

Index Number : 106785/2006

CARADONNA, JOSEPH

vs

TENNECO

Sequence Number : 002

SUMMARY JUDGMENT

C

INDEX NO. 106785/06

MOTION DATE _____

MOTION SEQ. NO. 002

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

*is decided accordy to accompany
memo of law*

FILED

MAY 01 2007

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 4/25/07

H. J. J.
J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 39

-----X

JOSEPH CARADONNA,

Plaintiff,

-against-

A.W. CHESTERTON CO., INC. (GRIFFIN WHEEL CO.)
et al.

Index No. 106785/06

FILED

MAY 01 2007

NEW YORK
COUNTY CLERKS OFFICE

Defendants.

-----X

HELEN E. FREEDMAN, J:

In this asbestos personal injury action, Griffin Wheel (Griffin Wheel) moves for summary judgment dismissing the Complaint against it on the ground that common law product liability claims are preempted by the Locomotive Boiler Inspection Act (BIA) a/k/a (LIA), 49 U.S.C. §20701 et seq., and the Federal Safety Standards Act (SAA), 49 U.S.C. 20301 et seq. and that negligence claims are limited by the Federal Employers Liability Act (FELA) 45 U.S.C. §. 1 et seq. Defendant also moves based on the fact that the Federal Railroad Administration's study determined that there were no hazardous asbestos emissions from the railroad brake shoes produced by Griffin Wheel. Plaintiff cross moves to amend its Complaint to allege negligence by defendant(s) based on failure to comply with standards set forth in the SAA and the BIA.

This Court has addressed the very issues here both in *Seaman v. a.P. Green Industries, Inc., et al.*, 184 Misc.2d 603, 707 N.Y.S.2d 299 (Sup. Ct. N.Y. Co. 2000) and in this case in *Caradonna v. A.W.Chesterton et al.* motion sequence 003 in which it granted summary judgment to American Standard Inc. and its division, Westinghouse Air Brake. In *Caradonna* 003, the Court found that the product liability claims are preempted by the BIA which occupies

the entire field of locomotive regulation, and by the SAA which occupies the entire field of rail car safety appliance regulation. See *Napier v. A. Coast Line R.R. Co.*, 272 U.S. 605 (1926).

As previously stated, all common law tort claims are preempted by the BIA including those against locomotive equipment manufacturers. See *Oglesby v. Delaware & Hudson Ry. Co.*, 180 F.3d 458.; *Darby v. A-Best Products Company, et al; Viad Corporation, et al.*, 102 Ohio St. 3d 410, 811 N.E.2d 1117(2004). The Darby case specifically dealt with state tort claims against manufacturers of asbestos containing or using equipment or parts used by railroads or locomotives. That court, as did this court and the *Napier* court, also found that the intent of the BIA was to occupy the entire field of railway and locomotive regulation. Similarly, courts in West Virginia and Alabama have cited to and followed this Court's decision in *Seaman v. a.P. Green Industries, Inc., et al.*, 184 Misc.2d 603, 707 N.Y.S.2d 299 (Sup. Ct. N.Y. Co. 2000)holding that the BIA preempted claims against a manufacturer of asbestos containing brake parts used in locomotives. See *In re West Virginia Asbestos Litigation*, 215 W. Val 39, 592 S.E.2d 818 and *General Motors Corp. V. Kilgore*, 853 So.2d 171 (S.Ct. Ala. 2002).

Plaintiff's motion to amend his complaint to add negligence claims or claims that defendant failed to comply with the standards set forth by the BIA and SAA based on *Feldman v. CXS Transp., Inc*, 31 A.D.3d 698, 821 N.Y.S.2d 85 (2d Dept. 2006) is denied. In, *Feldman* the Second Department held that while the SAA preempted strict product liability claims, the defendant rail car manufacturer could be charged with negligence for failing to provide guardrails on a rail car running board. The claim was apparently limited to failure to comply with a federal safety (SAA) regulation. Plaintiff here seeks to amend his complaint to add a negligence claim grounded in failure to comply with federal safety regulations.

However, in *Feldman*, the plaintiff was not a railroad employee. Thus, the *Feldman* Court recognizing that the Federal Employees Liability Act, 45 U.S.C. §51 et seq. (FELA) provided a negligence remedy for federal employees injured as a result of a violation of the SAA, asserted that a non employee like *Feldman* was relegated to common law tort claims. In this case, plaintiff *Caradonna* is a railroad employee and may bring the FELA cause of action that *Feldman* could not bring. It has long been held that FELA is the exclusive remedy for personal injuries to railroad employees incurred in the course of employment. *New York Central R.R. Co. v. Winfield*, 244 U.S. 147 (1917). FELA provides the only remedy available for railroad employees both as against employers and against third parties. *Winfield*, id at 149-150. Thus, a negligence claim would be futile inasmuch as it would be barred by FELA.

Based on the foregoing, it is hereby

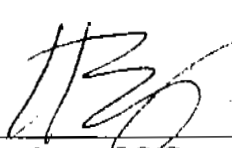
ORDERED that the motion for summary judgment by Griffin Wheel is granted, and the complaint as against defendant Griffin Wheel is severed and dismissed, and it is further

ORDERED that the cross-motion for leave to amend the complaint is denied, and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: April 25, 2005

Enter:



Helen E. Freedman, U.S.C.

FILED
MAY 01 2007
NEW YORK
COUNTY CLERK'S OFFICE