

Murray v A.O. Smith Water Prods. Co.

2014 NY Slip Op 32297(U)

August 25, 2014

Supreme Court, New York County

Docket Number: 190554/12

Judge: Sherry Klein Heitler

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 30

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MARY MURRAY, as Administratrix for the Estate of
JOHN MURRAY, and MARY MURRAY, Individually,

Index No. 190554/12
Motion Seq. 010

Plaintiffs,

DECISION & ORDER

-against-

A.O. SMITH WATER PRODUCTS CO., et al.,

Defendants.

----- X
SHERRY KLEIN HEITLER, J.:

In this asbestos personal injury action, defendant Honeywell International, Inc. (“Honeywell”) moves pursuant to CPLR 3212 for summary judgment dismissing the complaint as against it on the ground that it did not manufacture, supply, or specify the use of asbestos components with the Honeywell valves described by plaintiffs’ decedent John Murray as a source of his exposure. The defendant moves in the alternative to preclude plaintiffs at trial from “supporting its claims against Honeywell by presenting or relying on evidence of products not manufactured, supplied, sold, distributed, placed in the stream of commerce, recommended and/or specified by Honeywell Inc. related to its control valves”¹ For the reasons set forth below, the defendant’s motion is denied in its entirety.

From the late 1950’s through the 1990’s Mr. Murray worked as a steamfitter and then steamfitter supervisor at hundreds of locations throughout New York City. He was deposed over

¹ Affirmation of Joshua Lichtenstein, Esq., dated May 1, 2014.

six days during which he testified² that he was exposed to asbestos from, among other things, external insulation, internal packing, and gaskets associated with Honeywell control valves. Mr. Murray described such Honeywell valves and his alleged exposure therefrom in detail,³ but did not testify to the specific valve series to which they belonged.

Relying on an affidavit by mechanical engineer and former Honeywell employee Ralph Morrisett ("Morrisett Affidavit"), and the instruction manuals and bulletins annexed thereto, the defendant argues that the Honeywell valves described by Mr. Murray most closely resemble its Series V5000⁴ commercial control valves which utilized threaded and flanged connections and pneumatic actuators. Honeywell argues that it is entitled to summary judgment because it did not manufacture, sell, distribute, supply, recommend, or specify asbestos-containing gaskets, packing, or external insulation to be used with such valves.

Plaintiffs question whether Mr. Murray encountered Series V5000 valves as opposed to one of its many asbestos-containing valves, and in support submit manuals for a number of Honeywell control valves whose type, shape, and design generally comport with Mr. Murray's testimony. These manuals provide that Honeywell's Series 800, 1400, 4800, 9100, and 9200 cast iron pneumatic control valves specified the use of various forms of asbestos gaskets and packing, including Teflon Asbestos, Blue African Teflon Asbestos, Graphite Asbestos, and Aluminum Asbestos.⁵ Notably, the defendant does not adequately explain why any of these asbestos-

² Mr. Murray was deposed in March and April of 2013. Copies of his deposition transcripts are submitted as defendant's exhibits C-H ("Deposition").

³ Deposition pp. 79, 471-493, 796-800, 918-933.

⁴ Morrisett Affidavit ¶ 10.

⁵ Plaintiffs' exhibit 4, 6-8, 9-12.

containing control valves could not have been the valves at issue.

But even assuming that Mr. Murray did work exclusively with Honeywell's Series V5000 control valves, they were clearly not always asbestos-free. In fact, as of 1959 Honeywell specified the use of "Asbestos Sheet" gasket material as the "STANDARD GASKET MATERIALS FOR SERIES V5000".⁶ While the record does not indicate the year in which Honeywell modified its Series V5000 valves to be asbestos-free, it is evident that Honeywell continued to use asbestos in its control valves in some form or another into the 1980's.⁷

Summary judgment is a drastic remedy that should be granted only if there are no triable issues of fact. *Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 (2012). In deciding a summary judgment motion the court's role is to determine if any triable issues exist, not the merits of any such issues. *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 (1957). In doing so, the court views the evidence in the light most favorable to the nonmoving party and gives the nonmoving party the benefit of all reasonable inferences that can be drawn from the evidence. *Angeles v Aronsky*, 105 AD3d 486, 488-89 (1st Dept 2013).

In this case there are several unresolved material issues which preclude summary judgment. As set forth above, it is questionable whether Mr. Murray encountered Series V5000 valves or one of Honeywell's many other asbestos-containing valves. As such Honeywell cannot demonstrate as a matter of law that such valves did not require the use of asbestos-containing components. Quite the opposite, these issues will necessarily require a jury to weigh competing evidence and make credibility determinations at trial. See *Anderson v Liberty Lobby, Inc.*, 477

⁶ Plaintiffs' exhibit 4, p. 3.

⁷ See Honeywell's October 25, 2000 "Supplemental Answers to Plaintiffs' Standard Interrogatories To All Defendants" filed in the California Superior Court, San Francisco County, p. 23, submitted as plaintiffs' exhibit 5 ("Honeywell used encased asbestos containing gaskets and packing in the manufacture of Honeywell control valves from approximately 1949 through the early 1980s").

US 242, 255 (1986); *Asabor v Archdiocese of N.Y.*, 102 AD3d 524, 527 (1st Dept 2013); *Alvarez v NY City Hous. Auth.*, 295 AD2d 225, 226 (1st Dept 2002); *Dollas v W.R. Grace & Co.*, 225 AD2d 319, 321 (1st Dept 1996).


Honeywell's application to preclude plaintiffs from introducing certain evidence at trial is really in the nature of a motion *in limine* and should be raised before the trial judge assigned to this matter.

Accordingly, it is hereby

ORDERED that the branch of Honeywell's motion which seeks summary judgment is denied; and it is further

ORDERED that the branch of Honeywell's motion which seeks to preclude plaintiffs from introducing certain evidence at trial is denied without prejudice to renew at trial.

This constitutes the decision and order of the court.

DATED: Aug 25, 2014 _____

SHERRY KLEIN HETTLER, J.S.C.