

Matter of New York City Asbestos Litig.

2014 NY Slip Op 32705(U)

October 8, 2014

Supreme Court, New York County

Docket Number: 190278/13

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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IN RE: NEW YORK CITY ASBESTOS LITIGATION

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CATHY PALAZZO, AS EXECUTRIX FOR THE
ESTATE OF JACK P. SCAINETTI, AND MARGARET
SCAINETTI, INDIVIDUALLY,

Index No. 190278/13
Mot. Seq. 001

Plaintiffs,

DECISION & ORDER

- against -

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

Defendants.

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SHERRY KLEIN HEITLER, J.:

In this asbestos personal injury action, defendant The Fairbanks Company (“Fairbanks”) moves for summary judgment pursuant to CPLR 3212 to dismiss plaintiffs’ complaint and all cross-claims against it on the ground that plaintiffs have failed to come forward with any proof that decedent Jack Scainetti was exposed to an asbestos-containing product manufactured, distributed, sold, or installed by Fairbanks. For the reasons set forth below, Fairbanks’ motion is denied.

Plaintiffs’ decedent Jack Scainetti was diagnosed with malignant mesothelioma in July of 2013. He and his wife brought this action against defendant Fairbanks on or about August 12, 2013. Mr. Scainetti was deposed on August 30, 2013, September 4, 2013, and September 9, 2013, during which time he testified¹ that he worked at the Astoria, Kent Avenue, Waterside, East River, and Ravenswood powerhouses between 1948 and 1978 as a junior draftsman, field superintendent, and field engineer for M.H. Detrick (Deposition pp 152-54).² Mr. Scainetti testified that he was exposed to asbestos from other workers in his vicinity “performing duties with all kinds of products

¹ Copies of Mr. Scainetti’s deposition transcripts are submitted as defendant’s exhibit A (“Deposition”).

² Mr. Scainetti succumbed to his illness on September 18, 2013.

that had to do with valves and other types of equipment....[T]hey would break open the valve...and they would actually go in there and rip out the asbestos that had been used up....And I would stand there and watch how they dug it all out and then would just form a ball and just let it lay there. And then they would go to a bag where there was asbestos material that would be added to the material that was being used in the...process of cleaning up the valve and the equipment.” (Deposition pp.

197-98). Mr. Scainetti further testified (*id.* at 250-51, objection omitted):

Q: While you worked at the different powerhouses for M.H. Detrick, do you recall seeing men perform work on equipment in your presence?

A: Oh, yes, quite often.

Q: And what type of equipment would that involve?

A: Valves and pumps. I was involved with building the incinerator.

Q: Correct. And you told us about that.

A: Yeah.

Q: The men that were working on pumps and valves in your presence, do you recall them using asbestos products?

A: Yeah, I don't—I can't say that I recall them using asbestos products.

Q: Did the men –

A: But, you know, in replacing asbestos in repairing those units, I would say that I was exposed to asbestos like any of the other men working there.

As set forth in *Gibson v American Export Isbrandtsen Lines, Inc.*, 125 AD2d 65 (1st Dept 1987), “the remedy of summary judgment is a drastic one, which should not be granted where there is any doubt as to the existence of a triable issue...or where the issue is even arguable...since it serves to deprive a party of his day in court.” *Id.* at 74. To determine if a triable issue exists, 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).

While Mr. Scainetti did not specifically identify Fairbanks as a manufacturer of the valves at issue, this does not mandate summary judgment in its favor as Fairbanks urges. If a defendant's product can be

shown to have been “in use at the relevant work site during the relevant time, [and] that various asbestos products were interchangeable in the work site at the time, and that [plaintiff] was heavily exposed to asbestos dust...during that time,” summary judgment is inappropriate. *Reid v Georgia-Pacific Corp., et al.*, 212 AD2d 462, 462-63 (1st Dept 1995). In this regard, “the plaintiff is not required to show the precise causes of his damages, but [may] show facts and conditions from which defendant’s liability may be reasonably inferred.” *Id.*

Here, plaintiffs have produced the deposition transcripts of Germano Kuhn, Joseph Daly, and Leonard Gropper from their own asbestos personal injury actions, all of whom identified Fairbanks valves in use at the same locations where Mr. Scainetti worked during the same time period.³ Their testimonies show that various valve products, including Fairbanks’ valves, were commonly used at these sites.

Mr. Kuhn worked particularly at the Con Edison East River powerhouse from 1966-1973 and identified Fairbanks valves as a popular steam valve in use there (plaintiffs’ exhibit 4, pp. 83, 230-31):

Q: How long in total were you at the 14th Street powerhouse? How many years did you work at 14th Street total?

A: Approximately seven years.

Q: So, from 1966 to about 1973?

A: '72, '73 Yeah.

Q: How do you believe you were exposed to asbestos if this steam valve was leaking?

A: From the packing.

Q: In what way?

A: That was blowing through, through the valve. The valve stem.

Q: Do you know the manufacturer of any of those steam valves?

A: Yes.

Q: Can you tell us them?

A: Yarways. You had Edwards. You had Rockwell. Fairbanks....

³ Plaintiffs’ exhibits 4-6.

Mr. Daly, who worked at a number of Con Edison powerhouses including Ravenswood, Astoria, and East River from the 1960s through the 1980s, testified that Con Edison used the same valves at all of its powerhouses, and Fairbanks was one of the valves most often seen at these sites (plaintiffs' exhibit 5, p 240):

Q: ...With Astoria powerhouse, how many of the valves would you say Mr. Gilroy was working on or in the vicinity of?

A: Same as Ravenswood.

Q: Couple hundred?

A: Whatever I said about Ravenswood. Yeah. Same.

Q: How many of those valves would have been Crane Co. valves?

A: Same thing with Ravenswood. They would be the same as any other powerhouse. Powerhouse are all Con Edison. They primarily used the same products. One other company, if it wasn't Con Ed, was some other form. They used a different valve maybe. Maybe Fairbanks, maybe Jenkins, Crane.

Mr. Gropper, who also worked at the Astoria powerhouse in the 1960s, identified Fairbanks valves as among the valves used at this powerhouse at that time (plaintiffs' exhibit 6, p 37):

Q: Did you ever see Mr. Gilroy connecting any valves while he was at Astoria?

A: Yes.

Q: Do you know the brand name or manufacturer of the valves that he worked on at Astoria?

A: I know we had a lot of Fairbanks. We had Crane....

These identifications, in conjunction with Mr. Scainetti's testimony that he was exposed to asbestos from valves at these sites during the same time periods, create a reasonable inference that Fairbanks' valves were a source of Mr. Scainetti's asbestos exposure. This is sufficient to preclude summary judgment.

Reid, supra.

This decision is not contrary to *Cawein v Flintkote Co.*, 203 AD2d 105 (1st Dept 1994), relied on by Fairbanks. In *Cawein*, there was no proof that opened packages of defendant's asbestos were in plaintiffs' area of exposure. *Id.* at 106. Concerning Mr. Scainetti, three individuals have specifically identified Fairbanks' valves as being at the relevant sites during the relevant times, in respect of which Mr. Scainetti

recalled, “actually handling that asbestos like it was Playdough or some other material” while working at said sites (Deposition p. 250-51).

Accordingly it is hereby

ORDERED that The Fairbanks Company’s motion for summary judgment is denied.

This constitutes the decision and order of the court.

DATED: *Oct 8, 2014*



SHERRY KLEIN HEITLER, J.S.C.