

Dorfman v Air & Liquid Sys. Corp.

2014 NY Slip Op 32780(U)

October 23, 2014

Supreme Court, New York County

Docket Number: 190214/13

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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LISETTE DORFMAN, as Executrix for the Estate of
LINTON DORFMAN, and LISETTE DORFMAN, Individually,

Index No. 190214/13
Motion Seq. 007

Plaintiffs,

DECISION & ORDER

-against-

AIR & LIQUID SYSTEMS CORP., et al.,

Defendants.

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SHERRY KLEIN HEITLER, J.:

In this asbestos personal injury action, defendant United Conveyor Corporation (“UCC”) moves pursuant to CPLR 3212 for summary judgment dismissing the complaint and all cross-claims asserted against it on the ground that plaintiffs’ decedent Linton Dorfman failed to identify a UCC product as a source of his alleged asbestos exposure. For the reasons set forth below, UCC’s motion is denied.

Mr. Linton commenced this action in June of 2013¹ and was deposed in July and December of 2013.² Relevant to this motion, Mr. Linton worked as a laborer at Con Edison’s Astoria powerhouse for approximately eight months during the early 1960’s on the initial construction of Units 4 and 5. Among other things Mr. Linton testified that he was exposed to asbestos from debris left behind by other trades who insulated the pipes and equipment using asbestos blankets, gaskets, and cement. UCC’s *prima facie* case is that Mr. Linton did not explicitly identify any UCC product as a source of his exposure (Deposition pp. 63-66, 67-68, objections omitted):

¹ Mr. Linton was diagnosed with mesothelioma in May of 2013. He succumbed to his illness on May 16, 2014.

² Copies of Mr. Linton’s deposition transcripts are submitted as defendant’s exhibits B-D (“Deposition”).

- Q. Do you recall any of the insulation contractors?
- A. Well, I know that . . . Treadwell was wrapping pipe, wrapping the machines, all those machines that they had, insulating them.
- Q. Was this in both Units 4 and 5?
- A. Yes.
- Q. Do you ever recall a company by the name of Robert A. Keasbey?
- A. Yes.
- Q. What do you recall them doing?
- A. They were also handling pipe.
- Q. Do you recall them doing insulation work?
- A. Yes, yes. . . .
- Q. You used the word, gaskets?
- A. Um-hum.
- Q. What did you mean by that?
- A. Gaskets. When they were joining the pipes together, they were trimming these pads, these gaskets that go between the two joints.
- Q. Were those workers doing that in your vicinity?
- A. Yes. . . .
- Q. You indicated that these pipes also had to be -- I believe your phrase was wrapped?
- A. Yes.
- Q. Could you describe for me what you mean by wrapping?
- A. Like wrapped the fabric around the asbestos fabric, around the pipes and banded it to hold it.
- * * * *
- Q. Did you ever see any of these contractors using any cement or bagged products for insulation?
- A. There was a . . . kind of a cement insulator. I just saw them doing that, but I guess it was an asbestos, but I'm not sure.
- Q. Do you know who manufactured that product?
- A. No, I don't.
- Q. Did you ever have to clean up any debris from that product?
- A. Whatever was on the ground or whatever was around that was left, that was my job.
...

Q. What other equipment do you recall being in the Astoria Powerhouse at the time that you were there?

A. Oh, there was these stacks, precipitators.

Q. Can you describe for me what a precipitator is?

A. Precipitators, stacks, and they were cleaning the air, that's all I understood.

Plaintiffs oppose in light of UCC's admission³ that it supplied ash conveying equipment to Astoria Unit 5 and UCC product schematics⁴ which show that it shipped such equipment to the Astoria powerhouse during the exact time period in question which contained asbestos cement and asbestos gaskets. Taking this into account, it is of no moment that Mr. Linton's testimony was generalized or that there was no specific identification of ash conveying equipment. What is important for summary judgment purposes is that Mr. Linton cleaned up debris from all of the work being performed at Astoria Unit 5 and testified that such debris included dust from asbestos gasket material and asbestos cement. The weight to be given to such testimony must now be decided by a jury at trial. See *Anderson v Liberty Lobby, Inc.*, 477 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).

The defendant misplaces its reliance on this court's prior decisions in *Wubbe*⁵ and *Fischer*⁶. Mr. Wubbe worked as an electrician aboard several destroyers at the Brooklyn Navy Yard but spent only three days on average aboard each ship. The defendant supplied valves to some of those ships,

³ Plaintiffs' exhibit 5, p. 2

⁴ Plaintiffs' exhibit 4, *passim*.

⁵ *Wubbe v A.W. Chesterton Co., Inc.*, Index No. 116162/05 (Sup. Ct. NY Co. June 27, 2013, Heitler, J.)

⁶ *Fischer v Aerco International, Inc.*, Index No. 190462/12 (Sup. Ct. NY Co. Sept. 19, 2013, Heitler, J.)

but plaintiffs were unable to show that they were installed or maintained in Mr. Wubbe's presence. Mr. Fischer, a civilian draftsman who designed radar systems, also worked aboard various ships at the Brooklyn Navy Yard. The defendant pump manufacturer sought dismissal on the ground that Mr. Fischer did not identify it as a source of his exposure even though he explicitly identified eleven other pump manufacturers as such. While plaintiffs' opposition papers revealed that one of the ships upon which Mr. Fischer worked contained eight of the defendant's pumps, the mere presence of such pumps somewhere aboard the ship in question was not sufficient to create a reasonable inference of exposure.

Here, to the contrary, the plaintiff testified that he worked exclusively on the construction of Astoria's 4th and 5th boiler units for over eight months and that he was exposed to asbestos on a daily basis from debris left over by the various trades. The documentary evidence plainly shows that the defendant's asbestos-containing equipment was installed at this exact location during this exact time period. Given these facts and circumstances a jury could reasonably infer that Mr. Linton was exposed to asbestos from the defendant's products. *See Reid, supra; Cawein, supra.*

Accordingly, it is hereby

ORDERED that United Conveyor Corporation's motion for summary judgment is denied.

This constitutes the decision and order of the court.

DATED:

Oct 23, 2014


SHERRY KLEIN HEITLER, J.S.C.