

Citron v A.O. Smith Water Prods.

2014 NY Slip Op 33030(U)

November 25, 2014

Supreme Court, New York County

Docket Number: 190069/13

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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STEVE CITRON and MARTIN CITRON, Individually
and as co-administrators for the estate of ROSLYN CITRON,

Index No. 190069/13
Motion Seq. 004

Plaintiffs,

DECISION & ORDER

-against-

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

Defendants.

----- X

SHERRY KLEIN HEITLER, J.:

In this asbestos personal injury action, defendant Trane U.S., Inc., f/k/a American Standard, Inc. ("American Standard" or "Defendant") moves pursuant to CPLR 3212 for summary judgment dismissing the complaint against it on the ground that there is insufficient evidence to raise a triable issue of fact whether plaintiffs' decedent Roslyn Citron was exposed to asbestos from an American Standard product. For the reasons set forth below, the motion is denied.

Plaintiffs allege that Ms. Citron developed lung cancer and mesothelioma as a result of smoking Kent cigarettes during the 1950's and from laundering her husband's and sons' clothing during the approximately 15 year period during the 1970's and early 1980's that they worked at the family recycling business, Bell Scrap Metal.

Particularly relevant to this motion is the testimony by Michael Citron, the decedent's son, that he removed insulation and gaskets from old boilers when they first came into the yard (plaintiffs' exhibit 5, pp. 39-40, 240, objections omitted):

- Q. Would you have to take apart the boiler?
- A. Not necessarily take it apart, because -- but separate...If it had a jacket on it, sometimes it would come in with no light sheet metal jacket on it. Other times it would come in with a sheet metal jacket on it with the insulation and everything. You would have to

separate that. If you're selling cast iron, it has to be just cast iron.

Q. What would you do to remove the insulation to sell it?

A. Just basically hit it with a hammer, break it up and just pull it off and separate it, and you put it in a different location.

Q. Can you describe the insulation on the boilers that you had to break off? . . .

A. It was basically just what I remember it being is white, because it would be stuff all over the yard and just dusty, because we would try to just like let the dust settle. . . .

* * * *

Q. You mentioned the word seal when you were giving your testimony. Is that...Do you equate that to a gasket, or is that a term you used to refer to something different?

A. No, it's basically the same. To me, it's the same thing. It's basically on different products and different things. It has all rubber, and it could be clay, it could be rope . . .

Q. The rope type gasketing, what equipment do you associate that with that you dealt with at Bell Scrap Metal?

A. That would come off of valves, off of cast iron, off of some of the boilers. It would come off of several different things.

Notably, Mr. Citron testified that American Standard was one boiler manufacturer whose products he encountered frequently (*id.* at 41, 192-193):

Q. Do you know the manufacturer or brand name of any of the boilers that you dealt in?

A. I just remember a lot of the dealers that we had...Well, the Weil-McLain I remember because that was one of the things that we researched before we put one into the home. I remember the jackets and you had some...Sterling, I think it was. I'm trying to picture it in my mind because it's been so many years. You had, I think...American Standard was big back then that we did a lot with. . . .

* * * *

Q. And one of the manufacturers you recalled or you testified to recalling was American Standard. Do you recall that, sir?

A. Yes.

Q. Are you able to tell me the first...first and/or the last year or time that you encountered or saw an American Standard boiler being brought to Bell Scrap Metal?

A. I don't recall the first nor the last. I know it was throughout my tenure there.

Q. When you say "throughout," you mean that during occasional times or --

A. Frequently, American Standards was one of the bigger ones that we had with equipment that came in. So it sticks in my mind as well as the other ones.

One of the decedent's other sons, Marty Citron, also worked at Bell Scrap Metal, although less frequently than his brother Michael. Nonetheless he confirmed that he and his brothers removed insulation from large boilers and that the dust therefrom dirtied their clothing (plaintiffs' exhibit 6, pp. 114-15, objections omitted):

- Q. And what parts of the boilers came in to Bell Scrap Metal for, you know, sale?
- A. Sometimes it was entire boiler, so it had skins on it, you know, a finished product. Other times it was just the raw sections, the core of the boiler, you know, these big cast-iron pieces that the boiler manufacturers would typically stack or build on top. They were chained three or four together.
- Q. Do you recall ever seeing any insulation on any of those boilers or boiler parts that came into Bell Scrap Metal?
- A. Only when the larger boilers came in and they had to be torn down.
- Q. So, the answer is yes?
- A. Yes.
- Q. Did you ever have to take off any of that insulation from the boilers?
- A. Yes, at times. . . .
- Q. And how did you personally remove the insulation from the boilers?
- A. Shears, wrenches, hammers, brute force. . . .
- Q. When you did that, dust was emitted? . . .
- A. Sure.
- Q. And did that dust get on your clothes? . . .
- A. Yes.

The Defendant's argument that the Citron brothers had no knowledge whether the boilers they encountered utilized asbestos components or whether their mother was exposed to dust therefrom¹ does not accurately reflect the evidence in this case. The Defendant's responses to NYCAL's Standard Set of Liability Interrogatories clearly provide that American Standard manufactured boilers which contained a range of asbestos components from 1920 through 1974, including

¹ See defendant's exhibit B, pp. 201-202.

asbestos insulation and asbestos rope gasketing.² Equally important, Ms. Citron testified³ that she was exposed to dust while laundering her husband's and sons' work clothing (plaintiffs' exhibit 2, pp. 52, 54, 56-57; plaintiffs' exhibit 4, pp. 56, 152-54):

Q. Who did the laundry at the family?

A. I did.

Q. Were you the only person who did the laundry for the family?

A. Yeah.

* * * *

Q. So you separated your husband's --

A. I separated his work clothes from his regular clothes, put it that way.

Q. Why would you do that?

A. Because his work clothes were extremely dirty, and that had to be a separate wash.

Q. Can you describe that for us?

A. They were full of dust, there was grease on there, there was smudges. It was from the workplace. They were work clothes.

* * * *

Q. What if anything would happen when you would shake the clothes?

A. Nothing happened.

Q. Okay. You said that there was dust on the clothes?

A. There was dust.

Q. Okay.

A. Then I would sweep the floor.

Q. Why would you be sweeping the floor?

A. Because there was dust.

Q. So where was the dust coming from that you would be sweeping?

A. From the clothes . . .

Q. And did you breathe in that dust?

² Plaintiffs' exhibit 10, Attachment 1, pp. 32-35.

³ Ms. Citron was deposed in March of 2013 (plaintiffs' exhibit 4). She also sat for a videotaped deposition in May of 2013 (plaintiffs' exhibit 2).

A. Yes. Well, I had to. I had no choice. I didn't realize what I was doing.

* * * *

Q. . . . How often did you wash the Bell Scrap clothes?

A. I would say about twice a week.

* * * *

Q. . . . Did you shake out the clothes to get rid of the dust before putting them into the --

A. I shook them out, yes. . . .

Q. And would that dust fall onto the ground?

A. Yes. . . .

Q. How did you go about cleaning up that dust?

A. Take a broom and sweep.

Q. Dry sweeping?

A. Dry sweeping.

Q. And when you did that was some of that dust generated -- excuse me -- was some of that dust brought up into the air again?

A. Yes, yes.

Q. Do you believe that you inhaled that dust?

A. Yes.

Q. And when you were shaking out the clothes, do you believe that you inhaled at least some of that dust?

A. Yes.

Summary judgment is a drastic remedy that should be granted only if there are no triable issues of fact. *See Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 (2012); *Zuckerman v City of New York*, 49 NY2d 557, 562 (1980). 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).

To avoid summary judgment plaintiffs must present evidence which creates a reasonable inference that the decedent was exposed to asbestos fibers released from the defendant's product. *Cawein v Flintkote Co.*, 203 AD2d 105, 106 (1st Dept 1994); *see also Reid v Georgia-Pacific Corp.*, 212 AD2d 462, 463 (1st Dept 1995). This burden may be met through the use of circumstantial evidence. *Schneider v Kings Highway Hospital Center, Inc.*, 67 NY2d 743, 744 (1986) (quoting *Ingersoll v Liberty Bank of Buffalo*, 278 NY 1, 7 (1938) ("To establish a prima facie case of negligence based wholly on circumstantial evidence, '[it] is enough that [plaintiff] shows facts and conditions from which the negligence of the defendant and the causation of the accident by that negligence may be reasonably inferred.'"); *DeSilva v City of New York*, 15 AD3d 252, 254 (1st Dept 2005) (circumstantial evidence provided sufficient link between defendant and the hazardous condition that caused plaintiff's injury to preclude summary judgment); *Abramo v Pepsi-Cola Buffalo Bottling Co.*, 224 AD2d 980, 981 (4th Dept 1996) ("A determination based on circumstantial evidence is essentially one to be made by the fact-finder, guided by the legal principles appropriate to such a determination."); *see also Kreppein v Celotex Corp.*, 969 F2d 1424, 1426 (2d Cir 1992); *O'Brien v National Gypsum Co.*, 944 F2d 69, 72 (2d Cir 1991); *Jamieson v A.C. & S., Inc., et al.*, 1998 U.S. Dist. LEXIS 14451, 1998 WL 635549, No. 93-cv-7957, at *3 (SDNY Sept 16, 1998).

Pieced together, the collective testimony in this case would permit the trier of fact to reasonably infer that the Citron brothers removed asbestos insulation and rope gasketing from the Defendant's boilers at the Bell Scrap Metal yard, that dust therefrom landed on their clothing, and that their mother was exposed to such dust while doing their laundry. Read in conjunction with the uncontroverted evidence that the Defendant's boilers utilized asbestos components, plaintiffs have

demonstrated a causal nexus between the Defendant's boilers and the decedent's injuries.

Schneider, supra; Reid, supra; Kreppein, supra.

Accordingly, it is hereby

ORDERED that defendant Trane U.S., Inc., f/k/a American Standard, Inc.'s motion for summary judgment is denied.

This constitutes the decision and order of the court.

DATED: 11.25.14  _____
SHERRY KLEIN HEITLER, J.S.C.