

Hockler v 3M Co.

2014 NY Slip Op 32283(U)

August 25, 2014

Supreme Court, New York County

Docket Number: 190235/13

Judge: Sherry Klein Heitler

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

----- X
 BRYAN HOCKLER,

Plaintiff,

- against -

3M COMPANY, et al.,

Defendants.

Index No. 190235/13
 Motion Seq. 001

DECISION & ORDER

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

In this asbestos personal injury action, defendants Crane Co.¹ and Stockham Valves & Fitting, Inc.² (collectively “Crane”) move pursuant to CPLR 3212 for summary judgment dismissing the complaint and all other claims asserted against them on the ground that they are not liable for asbestos-containing insulation installed by third-parties on Crane pumps and valves. Plaintiff’s position is that Crane knew or should have known that asbestos would be integrated into its products for their intended use and had a duty to warn of the hazards associated with same.

Plaintiff Bryan Hockler commenced this action on July 8, 2013. He was deposed for three days in November and December of 2013. For most of his career Mr. Hockler worked in shipping and plant operations. He did however spend approximately two years during the early 1980’s working as a salvager at commercial locations throughout New York City. As part of his duties he ripped out valves and pumps manufactured by Crane and others. Mr. Hockler testified that this process caused him to be exposed to asbestos-laden dust (defendant’s exhibit C, pp. 234-235, 370-371, 386; defendant’s exhibit D, pp. 23-24, 27-28, 29-30; objections omitted):

Q. A minute ago you said the stuff had been there for years. When you say stuff --

A. Pumps, insulation, all the mechanicals.

¹ Sued herein as “Crane Co., individually and as successor-in-interest to Thatcher Furnace”

² Sued herein as “Stockham Valves & Fitting., Inc., a Crane Valve Group Company”

Q. Okay. What is your basis for the belief that the old insulation contained asbestos?

A. From what I've heard that the old insulation contained asbestos.

* * * *

Q. Okay. Understanding that, based on your observations of what new systems looked like versus old systems, and based on your observation of how old these buildings were, would you say that this -- the systems that -- the insulation on them were more than 20 years old?

...

A. Yes.

* * * *

Q. ... Sir, out of the brands that you've listed in your Answers to Interrogatories, are there one or two that jump out at you as being the manufacturers of things that you saw the most of?

...

A. Yes.

Q. What are those?

A. Crane and Johnson Control.

* * * *

Q. Do you believe you were exposed to asbestos doing this work?

A. I do.

Q. Can you explain how to the jury, please.

A. A lot of this stuff was very old stuff, covered in -- what I know now is asbestos. We would rip it off, smash it off, cut it off. Any way we could get it off these valves and pumps, cut or smash, break, any way we could get them out.

* * * *

Q. Okay. I want to go back to your work removing pumps and valves. Can you explain to the jury what is involved in removing a valve from a steam system? . . .

A. We would, like we said, we would remove all the insulation, identify, you know, flange, or whatever needed to be cut, and just like I said, get them out, remove them as best and as quickly as possible.

Q. Did you take all the insulation off of them?

A. Yes.

Q. The same thing for the pumps, how did you remove those pumps?

A. The same way. We would remove the insulation, either cut, break, smash. Most of the time it was cutting with a cut-off saw. . . .

Q. Did that dust get on your clothes?

A. Yes, it did.

Q. Did you breathe that dust?

A. Yes, I did.

* * * *

Q. Sir, how do you -- or what makes you believe that this insulation contained asbestos?

A. It was old, and just, you know, through the years, hearing all the stories about it, I just know that it was asbestos. . . .

Q. Sir, do you know what fiberglass looks like?

A. Yes, I do.

Q. Was any of that fiberglass?

A. No.

The defendants assert that there is no evidence to show that Crane manufactured or supplied the insulation to which Mr. Hockler was exposed or that Crane specified, recommended, or advised consumers to insulate its pumps and valves with asbestos.³ In opposition plaintiff refers to almost twenty of this court's prior decisions on this issue⁴, including *Sawyer v A.C.&S., Inc., et al.*, Index No. 111152/99 (Sup. Ct. NY Co. June 24, 2011). In each of those cases I found that Crane had in fact recommended the use of asbestos in conjunction with its products and therefore did have an affirmative duty to warn consumers against its hazardous properties.

The First Department recently examined Crane's duty to warn in *Matter of New York City Asbestos Litig. [Dummit]*, 2014 NY App. Div. LEXIS 4964 (1st Dept July 3, 2014). In *Dummit* Crane appealed from a judgment entered against it after trial on several grounds, including that "it had no legal duty pertaining to any asbestos-containing . . . components manufactured and sold by others." *Id.* at *29. The court explicitly rejected this argument, finding that *Berkowitz v A.C. & S., Inc.*, 288 AD2d

³ Crane also argues that Mr. Hockler does not have a sufficient knowledge base to support his belief that the insulation at issue actually contained asbestos. The court disagrees and finds that there is enough admissible evidence to raise a material issue of fact in this regard. See *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 (1957); *Angeles v Aronsky*, 105 AD3d 486, 488-89 (1st Dept 2013); *Matter of New York City Asbestos Litig. [Kestenbaum]*, 116 AD3d 545 (1st Dept 2014).

⁴ Plaintiff's exhibit 1.

148, 149 (1st Dept 2001) and *Rogers v Sears, Roebuck & Co.*, 268 AD2d 245 (1st Dept 2000), on which the plaintiffs relied, “demonstrate that where a manufacturer does have a sufficiently significant role, interest, or influence in the type of component used with its product after it enters the stream of commerce, it may be held strictly liable if that component causes injury to an end user of the product.”

Id. The cases relied on by Crane⁵, on the other hand, “together stand for the rather unremarkable proposition that where there is no evidence that a manufacturer had any active role, interest, or influence in the types of products to be used in connection with its own product after it placed its product into the stream of commerce, it has no duty to warn.” *Dummit, supra*, at *33. Applying this standard, the court determined that “there was sufficient evidence to tie [Crane] directly to the injurious agent.” *Dummit, supra*, at *34.

The catalogs, brochures, and submissions presented in opposition to this motion and in opposition to Crane’s prior motions on this issue plainly demonstrate that it designed and supplied its products to be used with asbestos-containing gaskets, packing, insulation, and cement. Thus, as in *Dummitt*, it would be “entirely appropriate for the jury to find that Crane had the burden of warning workers . . . of the hazards of asbestos exposure.” *Id.* at *36.

Accordingly, it is hereby

ORDERED that this motion for summary judgment by defendants Crane Co. and Stockham Valves & Fitting Inc. is denied.

This constitutes the decision and order of the court.

DATED: *Aug. 25, 2014*



 SHERRY KLEIN HEITLER, J.S.C.

⁵ See *Rastelli v Goodyear Tire & Rubber Co.*, 79 NY2d 289 (1992); see also *Matter of Eighth Jud. Dist. Asbestos Litig.*, 92 AD3d 1259 (4th Dept 2012); *Tortoriello v Bally Case*, 200 AD2d 475 (1st Dept 1994); *Surre v Foster Wheeler LLC*, 831 F Supp 2d 797 (SDNY Dec. 20, 2011).