

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

<u>IN RE ASBESTOS LITIGATION:</u>)	
)	
022012 DB TRIAL GROUP)	C.A. No. N10C-08-085 ASB
)	
FRANCIS RUGGERI,)	

MEMORANDUM OPINION

Appearances:

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JOHN A. PARKINS, JR., JUDGE

Plaintiff alleges that he was exposed to asbestos when he used joint compound manufactured by the moving defendant, Georgia Pacific, at its Milford, Virginia plant. That exposure allegedly occurred in 1969 or 1970 when Plaintiff renovated his home in Upper Marlboro, Maryland and again in late 1977 when he renovated his newly constructed home in Derwood, Maryland. Defendant argues that there is no evidence that Plaintiff used its product during the 1969-70 renovation and that it ceased manufacturing asbestos-containing spackling compound in May, 1977.

The court agrees with Georgia Pacific that there is no evidence in the record that Plaintiff was exposed to asbestos from Georgia Pacific products during the 1969-70 renovations. Plaintiff testified he used Georgia Pacific sheet rock and wood paneling during those renovations, but it is undisputed that Georgia Pacific never manufactured sheet rock or wood paneling containing asbestos. The evidence also shows that Plaintiff does not recall who manufactured the joint compound used by Plaintiff in the 1969-70 renovations. Therefore, the court finds that there is no evidence Plaintiff was exposed to an asbestos containing product of Defendant during the 1969-70 renovations.

In September, 1977, Plaintiff moved into a new home in Derwood, Maryland which, according to Plaintiff, was about three quarters complete at the time. Plaintiff often worked "side by side" with the contractor on the home prior to moving in. There is no evidence that Plaintiff was exposed to Georgia Pacific products containing asbestos while doing so.

After Plaintiff moved in to the new home, he constructed living space in his walk out basement. He hung drywall and used Georgia Pacific ready mixed joint compound to finish the joints and create a “swirl effect” on the walls. Plaintiff testified he purchased the joint compound in five gallon white plastic buckets with a pine tree logo.

The unrebutted evidence shows that Georgia Pacific stopped producing asbestos-containing joint compound on May 4, 1977—at least five months before Plaintiff began renovation work in his basement. Defendant urges that it is therefore probable that Plaintiff used asbestos-free product. In response, Plaintiff points to notations on the Milford plant formulary for product V-975, which is described as “Ready Mix Joint Compound.” He notes that the January 12, 1977 recipe for the Milford plant includes asbestos and that this formula was not replaced until January, 1978 when a formula for V-975 not containing asbestos first appeared. He next cites to the affidavit of Howard Schutte, a former Georgia Pacific executive, that V-975 production at Milford ceased on May 3, 1977 and did not resume until 1978 when the non-asbestos version of V-975 was introduced. Plaintiff asserts this shows he must have purchased asbestos-containing compound in the fall of 1977 which was in existing inventory.

Plaintiff’s argument overlooks the fact that the Milford plant also produced another “Ready Mix” joint compound labeled V-978, which has been asbestos free since 1976. The plant continued to produce V-978 during the

period when V-975 was not being produced. Plaintiff has not shown that he used V-975, as opposed to V-978.

In considering a motion for summary judgment the court views the facts in the light most favorable to the nonmoving party and will only grant summary judgment when “the moving party has demonstrated that there are no material issues of fact in dispute and that the moving party is entitled to judgment as a matter of law.”¹ Taking the evidence in the light most favorable to Plaintiff, he has shown at most that he could have used joint compound containing asbestos or used joint compound which was asbestos free. In the oft cited *Stigliano v. Westinghouse*², Judge Slight ruled:

When the record reveals that a defendant manufactured both asbestos-containing and non asbestos-containing versions of a product during the time period of alleged exposure, in the absence of evidence directly or circumstantially linking the plaintiff to the asbestos-containing product, the Court cannot draw the inference of exposure and summary judgment on product nexus must be granted.³

Plaintiff has adduced no evidence that he was exposed to the asbestos-containing version of Ready Mix as opposed to the asbestos-free variety. The trier of fact would therefore be left to speculate. Accordingly, Defendant’s motion for summary judgment is **GRANTED**.

IT IS SO ORDERED.

Dated: January 10, 2012

Judge John A. Parkins, Jr.

¹ *Bantum v. New Castle County Co-Tech Educ. Ass’n*, 21 A.3d 44, 48 (Del. 2011) (citations omitted).

² C.A. No. 05C-06-263 ASB, Slight, J., (Del. Super. Oct. 18, 2006) (ORDER).

³ *Id.* at 2 (citing *Lipsomb v. Champlain Cable Corp.*, 1988 WL 102966 (Del. Super)).