

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

PEDRO RIVERA, JR,)
)
Plaintiff,)
) C.A. No. 04C-04-144 MJB
v.)
)
DIAMOND STATE PORT)
CORPORATION, a Delaware)
Corporation, AMERIBROM, INC.,)
A foreign corporation,)
GREAT LAKE CHEMICAL)
CORPORATION, a Delaware)
Corporation, and MINE SAFETY)
APPLIANCES COMPANY, a)
Foreign corporation,)
)
Defendants.)

Submitted: March 13, 2006
Decided: April 6, 2006

On Motion for Summary Judgment by
Defendant Diamond State Port Corporation. **DENIED.**

OPINION AND ORDER

Robert Pasquale, Esquire, Cynthia H. Pruitt, Esquire, Doroshow, Pasquale,
Krawitz & Bhaya, Wilmington, Delaware, Attorneys for Plaintiff Pedro
Rivera, Jr.

Donald E. Reid, Esquire, Jason A. Cincilla, Esquire, Morris, Nichols, Arsht
& Tunnell, LLP, Wilmington, Delaware, Attorneys for Defendant Diamond
State Port Corporation.

BRADY, J.

Procedural History

This action was filed on April 14, 2004. This is a Motion for Summary Judgment filed by Diamond State Port Corporation (“Diamond State”) against Plaintiff Pedro Rivera, Jr. (“Rivera”).

Facts

The instant dispute arises from injuries Rivera sustained allegedly due to harmful exposure to methyl bromide while he was employed by defendant Royal Fumigation, Inc. as a fumigation supervisor. Diamond State owned the building in which the fumigation took place during the time Rivera alleges the harmful exposure to methyl bromide occurred. The allegations against Diamond State include: “that it negligently maintained the warehouse on which the fumigation took place; and that it failed to remedy a dangerous condition.”¹ The “dangerous condition” is alleged to have existed during the ventilation process. Rivera alleges he had to stay inside the warehouse while the fumigation took place to ensure the fans drawing the methyl bromide out of the warehouse would continue to run because sometimes the fans would shut off and the electrical breaker would have to be reset by Rivera. Rivera attributes the alleged problem with the fans and electrical breaker to Diamond State.

¹ *Plaintiff’s Response to Defendant Diamond State Port’s Motion for Summary Judgment* at *1.

Standard of Review

The standard for granting summary judgment is high.² Summary judgment may be granted where the record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.³ “In determining whether there is a genuine issue of material fact, the evidence must be viewed in a light most favorable to the non-moving party.”⁴ When taking all of the facts in a light most favorable to the non-moving party, if there remains a genuine issue of material fact requiring trial, summary judgment may not be granted.⁵

Applicable Law

Diamond State argues Rivera has failed to develop sufficient evidence in the record upon which reasonable jurors could find in his favor. Diamond State further argues the record shows Diamond State did not maintain “active control” of the premises, as required to find Diamond State liable. Therefore, summary judgment should be granted in favor of Diamond State. Rivera counters by stating the failure of Diamond State to properly maintain the electrical system at the warehouse necessitated Rivera staying in the

² *Mumford & Miller Concrete, Inc. v. Burns*, 682 A.2d 627 (Del. 1996).

³ Super.Ct.Civ.R. 56(c).

⁴ *Muggleworth v. Fierro*, 877 A.2d 81, 83-84 (Del. Super. Ct. 2005).

⁵ *Gutridge v. Iffland*, 889 A.2d 283 (Del. 2005).

warehouse during the fumigation process to ensure the fans would continue drawing the methyl bromide outside and caused him injuries due to exposure to methyl bromide. Rivera further counters that Diamond State maintained adequate “active control” of the premises to be found liable for his injuries.

At the time this Motion was filed there was no applicable case scheduling order in place. On March 13, 2006 this Court set a discovery deadline of September 29, 2006. The Court is unwilling to grant summary judgment based on a factual record that may be further developed before the discovery deadline. The Motion for Summary Judgment by Diamond State is premature.

Conclusion

For the reasons set forth herein, the Motion for Summary Judgment is hereby **DENIED** without prejudice.

IT IS SO ORDERED.

_____/s/_____
M. Jane Brady
Superior Court Judge

