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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. SHERRY KLEIN HEITLER PART 30
Justice

Crane, Paul & Arlene

- v -

Crane Co.

INDEX NO. 190082/11

MOTION DATE

MOTION SEQ. NO. 09

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for Summary Judgment

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

is decided in accordance with the memorandum decision dated 2.7.13

FILED
FEB 11 2013
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 2.7.13

HON. SHERRY KLEIN HEITLER J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Check one: ☐ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

☐ SUBMIT ORDER/ JUDG. ☐ SETTLE ORDER/ JUDG.

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

----------X

ARLENE G. CRANE, Individually and as Executrix of the Estate of PAUL J. CRANE, deceased,

Plaintiffs,

-against-

CRANE CO., et al.

Defendants,

----------X

Index No.: 190082/2011
Motion Seq. 009

DECISION & ORDER

SHERRY KLEIN HEITLER, J:

In this asbestos personal injury action, defendant National Grid Generation, LLC, sued herein as Long Island Lighting Company ("LILCO"), moves pursuant to CPLR 2221(d) for leave to reargue the prior decision of this court, dated September 5, 2012 and entered September 6, 2012, and upon reargument, granting its underlying motion for summary judgment. LILCO's motion for leave to reargue is granted, and upon reargument, the underlying motion for summary judgment is hereby granted in part and denied in part.

Plaintiffs' decedent Paul Crane ("Crane") developed mesothelioma. Crane and his wife commenced the underlying action against LILCO and others to recover for personal injuries arising from Crane's exposure to asbestos-containing materials. Crane testified that from 1975 to 1979 he worked for steamfitting subcontractor Courter & Co. ("Courter") at LILCO's Shoreham facility ("Shoreham") and was responsible for wrapping pipes in pure asbestos blankets, among other tasks. He testified that he was later trained as a welder and continued to use pure asbestos blankets in that capacity to protect himself while he worked. In or about 1977, LILCO replaced the pure asbestos blankets with Novatex asbestos-containing blankets. It is alleged that under Labor Law §§ 200 *et*

seq. and the common law, LILCO is liable to plaintiffs for failure to provide a safe workplace and that Crane was injured by reason of his exposure to such products.

By notice of motion dated January 12, 2012, LILCO moved for summary judgment on the ground that it was not liable because it did not supervise or control the work that led to Crane's injuries. LILCO argued that Crane took direction from a Courter employee, not LILCO, and that LILCO controlled the use of the asbestos-containing blankets at Shoreham only after receiving notice that improper use of such blankets could be a health hazard. LILCO further alleged it was not liable to plaintiffs pursuant to Labor Law § 241(6). Plaintiffs did not oppose LILCO's Labor Law § 241(6) argument in the underlying motion and this court did not then address it. Accordingly, LILCO's motion is hereby granted insofar as it seeks dismissal of plaintiffs' Labor Law § 241(6) claim. LILCO's motion is denied, however, insofar as it seeks dismissal of plaintiffs' Labor Law § 200 and common law claims.

Plaintiffs argued that LILCO was liable pursuant to Labor Law § 200 because it exercised supervision and control over the steamfitters' use of asbestos-containing products at Shoreham. Plaintiffs pointed to, among other things, the facts that LILCO's contracts with its subcontractors show that it retained managerial and supervisory control over the construction site; that the contracts show that LILCO controlled the furnishing of the materials used at Shoreham; that LILCO implemented the switch from pure asbestos blankets to Novatex asbestos-containing blankets; that based on recommendations to LILCO from a National Institute for Occupational Safety and Health ("NIOSH") investigation, LILCO advised its site supervisors that unnecessary uses of Novatex blankets should be discontinued; and that LILCO's later implementation of safety handling and disposal guidelines for Novatex were provided to all of the steamfitters, including Crane.

By decision dated September 5, 2012, this court denied LILCO's motion for summary judgment because there were issues of fact regarding its supervision and control at Shoreham. LILCO now seeks to reargue that decision.

"Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided . . . or to present arguments different from those originally asserted." *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 (1st Dept 1992) (Internal citations omitted). CPLR 2221(d) provides that a motion for leave to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion." Motions to reargue are addressed to the sound discretion of the trial court. *William P. Pahl Equip. Corp.*, *supra*, at 27.

On this motion, LILCO emphasizes that Crane took direction from Courter employees, not LILCO employees, and that LILCO's choice of blankets used at Shoreham does not establish sufficient supervision and control to trigger the provisions of Labor Law § 200, particularly because LILCO owned the facility and would have been responsible for furnishing equipment to the construction site in any event.

LILCO's position with respect to Labor Law § 200 is without merit. To reiterate, it was LILCO that directed the switch from pure asbestos blankets to Novatex asbestos-containing blankets in 1977 without taking precautions for the safety of the workers during the replacement process. It was not until 1980 that LILCO even began to implement safety features with respect to its asbestos blankets in an attempt to alleviate the unsafe conditions created by these hazardous products, and only then in response to NIOSH's involvement. Contrary to LILCO's contentions, clear inferences can be drawn that LILCO did in fact exercise supervision and control over the

materials that are alleged to have caused Mr. Crane's injuries and the steamfitters' use of those materials.

Accordingly, it is hereby

ORDERED that LILCO's motion for leave to reargue is granted, and upon such reargument, LILCO's motion for summary judgment is granted in part only with respect to plaintiffs' Labor Law § 241(6) claim against it, and is otherwise denied; and it is further

ORDERED that plaintiffs' Labor Law § 241(6) claim is hereby dismissed as against LILCO; and it is further

ORDERED that, as set forth in this court's decision and order dated September 5, 2012, LILCO's motion for summary judgement in respect of the plaintiffs' claims against it under Labor Law § 200 and the common law is denied; and it is further

ORDERED that the Clerk is directed to enter judgement accordingly.

This constitutes the decision and order of the court.

ENTER:

DATED: 2.7.13

SHERRY KLEIN HEITLER
J.S.C.