

Logan v A.P. Moller-Maersk, Inc.
2013 NY Slip Op 31571(U)
July 9, 2013
Supreme Court, New York County
Docket Number: 190203/12
Judge: Sherry Klein Heitler
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. SHERRY KLEIN HEITLER

PART 30

Justice

John LOGAN

INDEX NO. 190203/12

MOTION DATE _____

MOTION SEQ. NO. 008

A.P. MOLLER-MAERSK, INC.

MOTION CAL. NO. _____

(BLACKMER)

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

is decided in accordance with the memorandum decision dated 7.9.13

Dated: 7.9.13

[Signature]
HON. SHERRY KLEIN HEITLER ^{s.c.}

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

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

-----X
JOHN LOGAN and GAIL LOGAN,

Index No. 190203/12
Motion Seq. 008

Plaintiffs,
-against-

DECISION & ORDER

A.P. MOLLER-MAERSK, INC., et al.,

Defendants.

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

In this asbestos-related personal injury action, defendant Blackmer Pump Company (“Blackmer”) moves pursuant to CPLR 3212 for summary judgment dismissing all claims and cross-claims against it on the ground that federal admiralty law controls in this case, and thus as a matter of law it cannot be held liable for alleged asbestos-containing components that plaintiffs associate with Blackmer pumps herein. For the reasons set forth below, the motion is denied.

On April 18, 2012 John Logan and his wife Gail Logan (“plaintiffs”) commenced this action to recover damages for personal injuries caused by Mr. Logan’s alleged exposure to asbestos. Mr. Logan passed away from mesothelioma on March 18, 2013. Prior to his death, he was deposed over the course of three days in May 2012.¹

During his deposition, Mr. Logan testified that he served as a fireman, oiler and electrician in the United States Merchant Marines from 1945 until 1957. Over the course of his career Mr. Logan worked aboard as many as twenty commercial vessels where he was responsible for maintaining and repairing a wide variety of equipment, including pumps. Mr. Logan described such work and his exposure to asbestos in this regard as follows (plaintiffs’ exhibit 1, pp. 64-65,

¹ Mr. Logan’s deposition transcripts are submitted collectively as defendant’s exhibit B.

objections omitted):

- Q. Okay. Let me ask you this, with respect to your work on pumps, can you describe that for us or tell us what that entailed?
- A. Well, if a gasket associated with a pump where the pump joined a pipe blew, started leaking, we would have to open that joint and remove the gasket material and make a new gasket to put in place of that for the one we removed. And, likewise, the packing which is in constant need of changing in the packing glands which keep, keeps the pump from leaking where the shaft of the pump goes into the liquid, it needs to be sealed, and we would have to remove packing from the gland and put new packing in. We would get coil of packing, some of it came in small boxes, some of it came in coils, and cut a length of it and insert it into the gland.
- Q. Okay. Did you come into contact with any form of asbestos from that work on the pumps?
- A. Invariably, you disturb the insulation on the pipe associated with it on the joints, and there invariably would be some asbestos disturbed.
- Q. Is that the only way you came in contact with asbestos with respect to the pumps? . . .
- A. Well, I think I already mentioned that the packing material for the glands contained asbestos and the sheets of material for the gaskets contained asbestos.

Although Mr. Logan was unable to associate any specific pump manufacturer with any specific type of pump, he testified generally that Blackmer was among the brands of pumps he encountered (*Id.* at 66):

- A. There was a variety of service pumps and other pumps that were used for various purposes and they're manufactured by different people. They had their names emblazoned all over them. So we worked on whatever kind of pump there was, a Blackmer, Borg-Warner, Worthington, Roper, Ingersoll-Rand, DeLaval, Buffalo. I think that's the ones that come to mind at the moment.

Blackmer argues that it is entitled to summary judgment because plaintiffs have not shown that the asbestos-containing packing and gaskets Mr. Logan associated with Blackmer pumps were manufactured or distributed by Blackmer, and that under controlling federal admiralty law an equipment manufacturer is not liable for component parts that it did not manufacture, sell or

distribute. Plaintiffs argue that New York State law governs this dispute, and that under either New York State law or federal admiralty law Blackmer is liable for Mr. Logan's injuries. With respect to New York State law, plaintiffs assert that Blackmer had a duty to warn Mr. Logan against latent dangers resulting from foreseeable uses of its pumps. With respect to federal admiralty law, plaintiffs assert that Blackmer is liable because it sold asbestos-containing replacement parts that were necessary for its pumps to function properly.

To obtain summary judgment, the movant must establish a cause of action or defense sufficient to warrant a court's directing judgment in its favor as a matter of law, and must tender sufficient evidence to demonstrate the absence of any material issues of fact. *Zuckerman v City of New York*, 49 NY2d 557, 562 (1980). A conclusory statement by an individual without personal knowledge of the facts does not establish the movant's *prima facie* burden. *JMD Holding Corp. v Cong. Fin. Corp.*, 4 NY3d 373, 384-85 (2005). In asbestos-related cases the defendant must, in the first instance, unequivocally establish that its product could not have contributed to the causation of the plaintiff's injury. *Reid v Georgia Pacific Corp., et al.*, 212 AD2d 462 (1st Dept. 1995). The failure to make such a *prima facie* showing requires a denial of the motion regardless of the sufficiency of the opposing papers. *Ayotte v Gervasio*, 81 NY2d 1062, 1063 (1993).

Blackmer's initial burden on this motion is to show, *prima facie*, that its pumps did not contain asbestos to which plaintiff may have been exposed, and that it did not recommend the use of asbestos in connection with the maintenance or operation of such pumps. Blackmer fails to meet this initial burden.

On this issue, the only evidence submitted by Blackmer in support of its motion is a copy of its 2012 interrogatory responses in this case, which at best set forth blanket conclusory

statements concerning the presence of asbestos-containing Blackmer products on the ships on which Mr. Logan served. In particular, Blackmer's interrogatory responses are that "it has no information indicating that it sold, shipped, contracted for, distributed and/or manufactured any asbestos-containing products that were present at any of the sites" where Mr. Logan worked during the relevant time period, and that "it has no information indicating that any asbestos-containing product manufactured, sold, delivered, shipped, rebranded, contracted for, distributed, installed and/or retailed by Blackmer were present at any of the sites" where Mr. Logan worked during the relevant time periods. (Defendant's exhibit C at pp. 3-4). There is nothing else produced by the defendant on this motion, either by affidavit, deposition transcript, internal memoranda, catalog, manuals or correspondence, to show whether or not Blackmer's pumps integrated asbestos-containing components as sold, whether or not Blackmer specified that its pumps be insulated with asbestos, or whether or not Blackmer recommended that asbestos-containing replacement parts be used in maintaining its pumps.

By the same token, in opposition plaintiffs provide Blackmer's comprehensive 2010 "First Amended Responses to Plaintiffs' First Standard Request for Production of Documents" (plaintiffs' exhibit 2) which sets forth at page 91 thereof that Blackmer has manufactured pumps since 1903, and that "[b]y May and June, 1986, no Blackmer pumps were manufactured with any asbestos-containing component." One might infer from this statement that until 1986 at least some of Blackmer's pumps contained asbestos components.² Plaintiffs also submitted the September 1, 2011 deposition testimony of William A. Kennedy who worked for Blackmer from

² See also plaintiff's exhibit 2, p. 10, wherein it is set forth that Blackmer was "primarily engaged in the manufacture and distribution of pumps, and that encapsulated asbestos-containing component parts that were manufactured or produced by third-parties may have been associated with some Blackmer pumps."

1989 until 2008. (Plaintiffs' exhibit 3). Mr. Kennedy testified that "looking at the schematics" of any one of Blackmer's pumps would allow one to tell if the gaskets associated therewith contained asbestos.³ (*Id.* at 49). This would contradict Blackmer's assertion that it "has no information" concerning whether its products contained asbestos as sold or contracted for.

In the face of these submissions alone it would appear that Blackmer has failed in the first instance to unequivocally show that its product could not have contributed to plaintiff's injury. *Reid, supra*. In this regard, this court need not reach the choice of law issue raised by Blackmer or the sufficiency of plaintiffs' opposition. *Ayotte, supra*.

Accordingly, it is hereby

ORDERED that Blackmer's motion for summary judgment is denied.

This constitutes the decision and order of the court.

DATED:

7.9.13



SHERRY KLEIN HEITLER
J.S.C.

³ Mr. Kennedy's deposition was taken in connection with an unrelated personal injury case venued in Los Angeles County, California.