

Limon v Air & Liquid Sys. Corp.

2013 NY Slip Op 32304(U)

September 19, 2013

Sup Ct, New York County

Docket Number: 190217/12

Judge: Sherry Klein Heitler

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. SHERRY KLEIN HEITLER
Justice

PART 30

Index Number : 190217/2012
LIMAN, PETER C.
vs
AIR & LIQUID SYSTEMS
Sequence Number : 003
SUMMARY JUDGMENT
(CRANE)

INDEX NO. 190217/12
MOTION DATE _____
MOTION SEQ. NO. 003

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is *denied*

*as per the decision
of 9.19.13.*

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

Dated: 9.19.13


_____, J.S.C.
HON. SHERRY KLEIN HEITLER

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

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

----- X
PETER C. LIMAN and REGINA FEINSTEIN,

Index No. 190217/12
Motion Seq. 003

Plaintiffs,

DECISION & ORDER

- against -

AIR & LIQUID SYSTEMS CORP., et al.,

Defendants.

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

In this asbestos personal injury action, defendant Crane Co. (“Crane”) moves pursuant to CPLR 3212 for summary judgment dismissing the complaint and all other claims asserted against it on the ground that there is no evidence to show that plaintiff Peter C. Liman was exposed to asbestos from Crane valves. Crane also argues it is not liable for asbestos-containing products it neither manufactured, supplied nor specified for use with its valves. Plaintiffs’ position is that Mr. Liman’s testimony is sufficient to show that he was exposed to asbestos used in conjunction with Crane valves and that Crane had a duty to warn against the use of asbestos-containing products because it knew or should have known that they would be integrated with its valves for their intended use.

Mr. Liman was deposed on June 22, 2012 and July 26, 2012.¹ Relevant to this motion is Mr. Liman’s testimony that he was exposed to asbestos by reason of work performed on valves in his presence while working as a Reserve Officer Training Candidate aboard the USS Kearsarge during the summer of 1959 and while serving in the United States Navy as a Supply Officer aboard the USS Cascade from 1960 to 1962. It is undisputed that Mr. Liman did not personally work on such valves.

¹ Copies of his deposition transcripts are submitted as defendant’s exhibit C (“Deposition”).

What plaintiffs allege is that other naval workers installed insulation on Crane valves in Mr. Liman's presence causing him to be exposed to asbestos-laden dust.

Mr. Liman testified that as a ROTC Midshipman he worked throughout the USS Kearsage while maintenance was being performed in his presence. However, he did not testify to exposure from maintenance on valves aboard the USS Kearsage, nor could he recall ever seeing a valve installed, repaired, or replaced on that ship. (Deposition pp. 110, 309-310). With respect to the USS Cascade, Mr. Liman testified that he ordered Crane valves for that ship and that other workers insulated valves in his presence. (Deposition pp. 310-11, 312-13, 315-17, 319, 322-23, 486-87, objections omitted):

Q. Let's talk about the Cascade, you ordered valves for the Cascade?

A. We ordered a lot of components for the Cascade.

Q. Okay. I want to talk about valves.

A. Okay.

Q. You never worked on a valve on the Cascade. Correct?

A. Me, myself?

Q. Yes.

A. Correct.

Q. And there were gangs that did that kind of work. Correct?

A. Uh-huh. Correct.

Q. Do you know where the valves were on the Cascade?

A. I would say they would have been multiple places and multiple locations, knowing where the valve is is a connective device.

Q. Correct.

A. So they were ... They were not only in the repair shops, they were not only in the engineering area, but they would have been in the commissary, they would have been in the laundry, in a lot of places.

* * * *

Q. Now, earlier you mentioned a company called Crane.

A. Uh-huh.

Q. In the way you answered the question, I'm not sure I understand what you're saying. Was your answer that you did or did not know or you may have thought there were

Crane valves used on either the Kearsarge or the Cascade?

A. It's one of the names that I know was ordered for the ship.

Q. Okay. Do you know what kind of Crane valves were ordered?

A. I'm sorry, that would be a stretch for me to say exactly.

Q. Did you ever see a catalog for Crane valves?

A. I know it was in the catalogs.

* * * *

Q. Do you know whether there were any asbestos components of any Crane valves that you encountered on the Kearsarge or anyplace else?

A. Other than what I know now?

Q. Yeah. I mean, tell me what you think contained asbestos.

A. Well, I know that they would have been some insulation, some -- not insulation, but, you know, some protective coating over certain types of valves. That's all I know.

Q. Okay. Did you know whether Crane valves had that kind of coating?

A. Some might have.

Q. Do you know? Do you have a recollection, a knowledge, today as you sit here today that they did? . . .

A. I honestly don't know. . . .

Q. So the only time you would have been in the presence of a Crane valve, if, in fact, you were, was when they came in and you stocked them. Correct?

A. Stocked them and/or if I was in the proximity to anybody working on it and I didn't knowingly know it was Crane, then, yes, I could have been exposed.

Q. As you sit here today, you can't point to an instance and say, yeah, I was in the presence of this guy putting in or taking out or working a Crane valve; is that fair?

A. Sure, that's right.

* * * *

Q. Do you have a recollection as you sit here today of being around somebody working on a Crane valve?

A. Working on valves.

Q. It's more specific than that. Do you have a recollection as you sit here today of seeing a man work on a Crane valve?

A. I can't exactly remember exactly that.

* * * *

Q. Do you remember seeing Crane valves anyplace else?

A. I don't remember.

* * * *

Q. During your time aboard the Cascade, did you work in the vicinity of people who repaired, serviced and maintained valves that were in the systems aboard the Cascade?

A. Yes.

Q. All right. Can you articulate exactly what these people were doing in the performance of their repair work on valves?

A. Well, if they were insulated and something was wrong with part of that, then they would have had to take out what was not good, and repair it with whatever they needed to use materials to refurbish it. . . .

Q. The valves aboard the Cascade, were they insulated?

A. Yes.

Q. Do you believe that the insulation on the exterior valves was asbestos?

A. Yes.

Q. When you observed people removing insulation from valves, could you describe what the air looked like in the vicinity of that insulation being removed?

A. If it was being chipped away or grinded or sanded, something like that, then obviously it would have been very dusty.

Q. Do you believe that you were exposed to asbestos as a result of insulation being removed from valves that were part of the Cascade's physical structure?

A. I think so.

Q. All right. Were the valves that were part of the Cascade's physical structure only located in one part of the Cascade or valves throughout the ship?

A. Throughout the ship.

Summary judgment is a drastic remedy that must not be granted if there is any doubt about the existence of a triable issue of fact. *Tronlone v Lac D'Amiante Du Quebec, Ltee*, 297 AD2d 528, 528-529 (1st Dept 2002). To obtain summary judgment, the moving party must establish its cause of action or defense sufficiently to warrant a court's directing judgment in its favor as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. *Zuckerman v City of New York*, 49 NY2d 557, 562 (1980); CPLR 3212(b).

In an asbestos-related personal injury action, should the movant establish its *prima facie*

entitlement to summary judgment, the plaintiff is then required to demonstrate that there was actual exposure to asbestos fibers released from the defendant's product. *See Cawein v Flinkote Co.*, 203 AD2d 105, 106 (1st Dept 1994). In this regard, the plaintiff need only "show facts and conditions from which defendants' liability may reasonably be inferred." *Reid v Georgia-Pacific Corp.*, 212 AD2d 462, 463 (1st Dept 1995). Where the facts are disputed but are susceptible to more than one permissible inference, the choice between those inferences should not be made as a matter of law, but should be submitted to the trier of fact. *Ace Wire & Cable Co. v Aetna Casualty & Surety Co.*, 60 NY2d 223, 231 (1978). All reasonable inferences should be resolved in the plaintiff's favor. *Dauman Displays, Inc. v Masturzo*, 168 AD2d 204, 205 (1st Dept 1990).

In this case, Crane is the only valve manufacturer identified by Mr. Liman with respect to his service aboard the USS Cascade. Whether or not Mr. Liman specifically recalled whether the valves he observed being maintained in his presence were manufactured by Crane or anyone else, the entirety of his testimony raises an issue of fact in this regard that should be decided by the jury. *See Ace Wire & Cable Co.*, *supra*; *Reid*, *supra*; *Henderson v New York*, 178 AD2d 129, 130 (1st Dept 1991)

The court addressed Crane's duty to warn argument in *Sawyer v A.C. & S., Inc., et al.*, Index No. 111152/99 (Sup. Ct. NY Co. June 24, 2011), in which I held that Crane had an affirmative duty to warn consumers against the hazards associated with asbestos because it recommended the use of asbestos-containing products in conjunction with its valves. As in *Sawyer*, Crane's assertions herein that its valves did not require asbestos-containing insulation to operate properly and that it did not specify the use of asbestos on said valves are belied by plaintiffs' submissions which show that Crane designed and supplied valves to be used with asbestos-containing gaskets, packing, insulation, and cement. Accordingly, for the same reasons stated in *Sawyer*, *supra*, I find that Crane had a duty to warn Mr. Liman of the hazards associated with asbestos. *See Liriano v Hobart Corp.*, 92 NY2d 232,

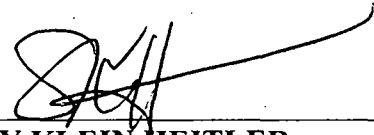
237 (1998); *Berkowitz v A.C. & S., Inc.*, 288 AD2d 148, 149 (1st Dept 2001).

In light of the foregoing, it is hereby

ORDERED that Crane Co.'s motion for summary judgment is denied in its entirety.

This constitutes the decision and order of the court.

DATED: 9.19.13



SHERRY KLEIN HEITLER
J.S.C.