

Chapin v Asbestos Corp., Ltd.

2016 NY Slip Op 33131(U)

May 25, 2016

Supreme Court, Erie County

Docket Number: 802850/2015

Judge: Deborah Chimes

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT : STATE OF NEW YORK
EIGHTH JUDICIAL DISTRICT

In Re: EIGHTH JUDICIAL DISTRICT ASBESTOS LITIGATION

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

MERLE C. CHAPIN AND IRENE CHAPIN, his spouse

Plaintiffs

DECISION AND ORDER

vs.

Index No. 802850/2015

ASBESTOS CORPORATION , LTD., et al.,

Defendants

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

NANCY A. MATIKOSH, Executrix o the Estate of
SAMUEL MATIKOSH, JR., Deceased and Individually
as the Surviving Spouse of Samuel Matikosh, Jr.,

Plaintiffs

Index No. 809946/2015

vs.

ASBESTOS CORPORATION , LTD., et al.,

Defendants

Defendant Gulf & Western, Inc. (Gulf & Western) , alleging that it is now known as TCI Pacific Communications, Inc. (TCI), moves to dismiss the second amended complaint in *Merle Chapin* and the complaint in *Samuel Matikosh, Jr.*, on the ground that this court lacks personal jurisdiction over it.

Plaintiffs oppose the jurisdictional motions and cross-move for leave to serve and file

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a supplemental summons and amended complaint in *Matikosh* and to serve and file a supplemental summons and third amended complaint in *Chapin*.

In support of its motion in *Chapin*, defendant Gulf & Western submitted its Notice of Motion dated October 23, 2015, the Affirmation in Support of Mitchell J. Banas Jr., Esq., with attached exhibit, dated October 23, 2015, the Affidavit in Support of Marna Salimena, with attached exhibits, sworn to October 20, 2015; the Affidavit in Support of Susan Fancy, with attached exhibits, sworn to October 22, 2015; the Reply Affirmation in Further Support of Mitchell J. Banas, Esq., with attached exhibit, dated March 28, 2016 and the Supplemental Affirmation of Mitchell J. Banas, Jr., Esq., with attached exhibit, dated April 19, 2016.

In opposition to the motion in *Chapin*, plaintiffs submitted the Attorney Affidavit of Zachary James Woods, Esq., with attached exhibits, sworn to March 14, 2016.

In support of the cross-motion in *Chapin*, plaintiffs submitted their Notice of Cross-Motion, the Attorney Affidavit of Zachary James Woods, Esq., with attached exhibits, sworn to March 14, 2016 and the Reply Attorney Affidavit of Zachary James Woods, Esq., with attached exhibits, sworn to April 1, 2016.

In support of its motion in *Matikosh*, defendant Gulf & Western submitted its Notice of Motion dated October 23, 2015, the Affirmation in Support of Mitchell J. Banas Jr., Esq., with attached exhibit, dated October 23, 2015, the Affidavit in Support of Marna Salimena, with attached exhibits, sworn to October 20, 2015, the Affidavit in Support of Susan Fancy, with attached exhibits, sworn to October 22, 2015, the Reply Affirmation in further support of Mitchell J. Banas, Esq., with attached exhibit, dated March 28, 2016 and the supplemental affirmation of Mitchell J. Banas, Jr., Esq., with attached exhibit, dated April 19, 2016.

In opposition to the motion in *Matikosh*, plaintiff submitted the Attorney

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Affidavit of Zachary James Woods, Esq. , with attached exhibits, sworn to March 14, 2016.

In support of the cross-motion in *Matikosh*, plaintiff submitted her Notice of Cross-Motion, the Attorney Affidavit of Zachary James Woods, Esq. , with attached exhibits, sworn to March 14, 2016 and the Reply Attorney Affidavit of Zachary James Woods, Esq., with attached exhibits, sworn to April 1, 2016.

Background

Both plaintiffs herein allege injury caused by exposure to asbestos at their place of employment, Durez Plastics in North Tonawanda, New York. The complaints herein allege that defendant Hedman Resources Ltd. (Hedman) was a supplier of raw asbestos fibers to Durez and responsible for plaintiffs' injuries.

Allegations at issue

The complaint in *Matikosh* alleges that, from March 1967 through August 1979, Gulf and Western was the parent corporation and majority stockholder of defendant Hedman. It is further alleged that Gulf & Western appointed Hedman's officers, directors and managers and directed and controlled Hedman. The second amended complaint in *Chapin* echoes the complaint in *Matikosh*.

Motions to dismiss

In support of Gulf & Western's motions, defendant submits the affidavit of Marna Salimen, Assistant General Counsel of Comcast, parent of TCI, who states that TCI has succeeded to the interests of Gulf & Western. Defendant moves, pursuant to CPLR 301, for dismissal on general jurisdictional grounds because TCI does not have its principal place of business in New York , does not operate or have any assets in New York and is not incorporated in New York. It also moves, pursuant to CPLR § 302, for dismissal on long arm jurisdictional grounds. Defendant maintains that Gulf & Western, did not own any shares of Hedman. It asserts that those shares were held by Gulf & Western (Canada)Ltd. another

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subsidiary of Gulf & Western, Inc. The affidavit of Susan Fancy, Manager, Corporate Legal Services of CBS Canada Holdings Co., which states that CBS Canada is the successor to Gulf & Western (Canada) Ltd., is submitted in support of the long-arm jurisdictional motion.

Among other arguments, plaintiffs argue that TCI lacks standing to pursue these motion, that the motions should have been brought by Viacom International Services (Viacom). Plaintiffs assert that Viacom is the actual successor in interest to Gulf & Western and has a place of business in New York.

Plaintiffs request that the Court deny the motions or, in the alternative , allow them to conduct discovery on the issue of the true successor to Gulf & Western.

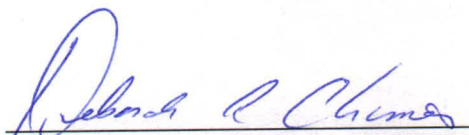
In reviewing the material submitted on this motion, there is a preliminary question as to which entity is the successor to Gulf & Western and whether TCI conducts business in New York. Therefore, this Court grants plaintiffs' discovery request. If necessary, a hearing on the issue will be conducted.

The parties shall have until June 7, 2016 to submit a proposed discovery schedule to the Court.

The motion and cross- motion are held in abeyance until the discovery ordered herein is completed.

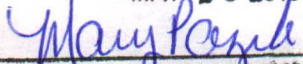
SO ORDERED:

DATED: Buffalo, New York
May 25, 2016


HON. DEBORAH A. CHIMES
Justice of the Supreme Court

GRANTED

MAY 25 2016

BY 
MARY PAZIK
COURT CLERK