

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: July 30, 2015)

NANCY SANTOS as Executrix of the Estate of JOHN JOSEPH SOUZA, Plaintiff, v. A.C. MCLOON OIL CO., et al., Defendants.

C.A. No. PC-09-5475

DECISION

GIBNEY, P.J. The Defendants—Soo Locks Boat Tours (Soo Locks), Fire Island Ferries, Inc. (Fire Island), Lake Champlain Transportation Co. a/k/a Lake Champlain Ferries (LCT), Champion’s Auto Ferry, Inc. (Champion), Fishers Island Ferry District (Fishers Island), and Casco Bay Lines a/k/a Casco Bay Island Transit District (CBITD)—move for summary judgment in the above-entitled case. Plaintiff objects to the motion. Jurisdiction is pursuant to G.L. 1956 § 8-2-14.

I

Facts and Travel

The basic facts of this matter were previously recounted by this Court in its Decision of February 22, 2013, regarding Defendants’ motions to dismiss for failure to state a claim and for lack of personal jurisdiction.<sup>1</sup> Accordingly, the Court will supplement the facts as necessary to decide the instant motion.

John Joseph Souza (Mr. Souza) worked at Blount Marine Corporation (Blount Marine or Blount Boat or Blount) in Warren, Rhode Island from approximately 1952 to 1993. Generally,

<sup>1</sup> Santos v. A.C. McLoon Oil Co., 2013 WL 861548 (R.I. Super. Feb. 22, 2013) (Gibney, P.J.).

Blount Marine built, maintained, and repaired passenger boats or ships. Defs.’ Mot. for Sum. J., Ex. B (Pl.’s Exposure Chart). While at Blount Marine, Mr. Souza worked in various capacities, inter alia, as a carpenter, welder, finishing crane operator, and yard foreman. Id. In February of 2008, Mr. Souza was diagnosed with mesothelioma. Pl.’s Answer to Defs.’ Interrog. ¶ 30. Mr. Souza died on March 16, 2008, at the age of 83. Id. at ¶ 2.

Each of the instant Defendants has set forth affidavits describing its relationship with Blount Marine. Hr’g Tr., 2:3-5, July 15, 2015. The affidavits, for the purposes of this motion, are factually identical.<sup>2</sup> To wit, the Defendants purchased large, commercial passenger vessels from Blount Marine. However, the Defendants’ affidavits each state that they never: (1) provided instructions to Blount Marine regarding the means and methods of constructing the vessels, nor specified the use of any asbestos-containing materials;<sup>3</sup> (2) employed Mr. Souza;<sup>4</sup> or (3) produced or manufactured asbestos-containing products.<sup>5</sup>

## II

### Parties’ Arguments

Plaintiff filed an Amended Complaint against the respective Defendants asserting claims of (1) failure to warn; (2) negligence; (3) strict product liability; (4) breach of implied warranty and merchantability; and (5) wrongful death. Defendants allege that all of the Plaintiff’s claims

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<sup>2</sup> This Court notes that CBITD is factually distinct because, in addition to purchasing commercial vessels from Blount Marine, CBITD also contracted to have Blount Marine install “a smokestack and a new pilothouse on” one of its vessels. Mavodones Aff. ¶ 34, Jan. 27, 2012. However, for the purposes of this motion, such a factual distinction is immaterial.

<sup>3</sup> Mavodones Aff. ¶¶ 24, 25, 26; Bryson Aff. ¶¶ 23, 24, 25, July 12, 2011; Anderson Aff. ¶¶ 22, 23, 24, Aug. 15, 2011; Doherty Aff. ¶¶ 23, 24, 25, July 11, 2011; Welch Aff. ¶¶ 24, 25, 26, July 12, 2011; Sorrell Aff. ¶¶ 26, 27, 28, Aug. 12, 2011.

<sup>4</sup> Mavodones Aff. ¶ 22; Bryson Aff. ¶ 21; Anderson Aff. ¶ 20; Doherty Aff. ¶ 21; Welch Aff. ¶ 22; Sorrell Aff. ¶ 24.

<sup>5</sup> Mavodones Aff. ¶ 37; Bryson Aff. ¶ 36; Anderson Aff. ¶ 35; Doherty Aff. ¶ 35; Welch Aff. ¶ 37; Sorrell Aff. ¶ 39.

fail as a matter of law and thus summary judgment is appropriate. First, Defendants state that they owed no legally recognized duty to the Plaintiff or Mr. Sousa, and therefore, Plaintiff's failure to warn and negligence claims must fail.<sup>6</sup> Regarding the Plaintiff's claims of strict products liability and breach of implied warranty of merchantability, Defendants allege that as "buyers," they fall outside the scope of liability. Finally, Defendants contend that because the negligence and failure to warn claims fail, Plaintiff's wrongful death claim also fails as a matter of law.

Plaintiff alleges that summary judgment is not appropriate because pertinent issues of fact remain. Specifically, Plaintiff states that although the Defendants' affidavits state that they "have no knowledge of supplying asbestos-containing products[.]" such "conclusive statements" do not "eliminate an issue of fact[.]" Hr'g Tr. 7:11-16. For instance, Plaintiff points to documents "from Blount Boats" that state "owner supply builder to install[.]"<sup>7</sup> *Id.* at 8:7-10. In essence, Plaintiff contends that Defendants controlled the products that were used in the construction of the vessels that they purchased, and thus summary judgment is not appropriate.

### III

#### Standard of Review

"Summary judgment is 'a drastic remedy,' and a motion for summary judgment should be dealt with cautiously." Estate of Giuliano v. Giuliano, 949 A.2d 386, 390-91 (R.I. 2008) (quoting Ardente v. Horan, 117 R.I. 254, 256-57, 366 A.2d 162, 164 (1976)). "The summary judgment papers filed by the movant must seek to establish that there exists no genuine dispute

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<sup>6</sup> Additionally, Defendants state that proximate cause is lacking and thus Plaintiff's negligence claim must fail.

<sup>7</sup> Defendants' counsel noted on the record that the document that Plaintiff's counsel referenced was applicable only to Defendant Champion. Hr'g Tr. 9:19-22. Furthermore, this Court notes that the document referenced at the hearing was not attached to the Plaintiff's memorandum in opposition to summary judgment.

with respect to the material facts of the case. If the movant satisfies that requirement, the nonmovant must point to evidence showing that a genuine dispute of material fact does exist.” Id. at 391. “The nonmovant must, by competent evidence, prove the existence of a disputed issue of material fact.” Id. (citing Benaski v. Weinberg, 899 A.2d 499, 502 (R.I. 2006)). The nonmovant may not rely upon “mere allegations or denials in the pleadings, mere conclusions or mere legal opinions.” Tanner v. Town Council of E. Greenwich, 880 A.2d 784, 791 (R.I. 2005) (internal quotation marks omitted). Moreover, a “complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” Lavoie v. North East Knitting, Inc., 918 A.2d 225, 228 (R.I. 2007).

“A hearing justice who passes on a motion for summary judgment ‘must review the pleadings, affidavits, admissions, answers to interrogatories, and other appropriate evidence from a perspective most favorable to the party opposing the motion.’” Estate of Giuliano, 949 A.2d at 391 (quoting Steinberg v. State, 427 A.2d 338, 340 (R.I. 1981)). The hearing justice may grant the motion for summary judgment only if, after conducting that required analysis, he or she determines that “no issues of material fact appear and the moving party is entitled to judgment as a matter of law . . . .” Id. (quoting Steinberg, 427 A.2d at 340).

#### IV

#### Analysis

The instant litigation hinges upon whether the Defendants were merely passive purchasers of commercial vessels or, as the Plaintiff alleges, they had input and control over how the vessels were to be constructed.<sup>8</sup> The Defendants have submitted affidavits attesting that they

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<sup>8</sup> At the hearing, Plaintiff’s counsel admitted that “[i]f the owner [or Defendants] just sa[id] - - I want a 77-passenger vessel and deliver it to me, if that’s the case with Blount Boats then I would agree with my brother and I[] [would] let him out of the case.” Hr’g Tr. 8:2-5.

did not provide instructions to Blount Marine regarding the means and methods of constructing the vessels, nor did they specify the use of asbestos-containing products. In response, Plaintiff's memorandum states that product identification depositions with Blount Marine are currently being scheduled and such "testimony will allow Plaintiff to ascertain the extent of the involvement that the vessel Defendants had in specifying equipment and materials to be used on the boats that [Mr. Souza] worked on." Pl.'s Obj. to Defs.' Mot. for Sum. J. 4. Furthermore, Plaintiff states that the "testimony of Blount's representative will also provide information about the products, used in the specifications that contained asbestos." Id.

Defendants have provided evidence that no genuine issue of material fact exists; i.e., they were merely passive purchasers of various commercial vessels. Here, Plaintiff may not rely upon mere allegations or denials; rather, Plaintiff must, through competent evidence, demonstrate that a genuine issue of material fact does exist. Estate of Giuliano, 949 A.2d at 390-91. At this time, Plaintiff has failed to do so. However, in light of the 'drastic' nature of summary judgment and Plaintiff's assertions that competent evidence is forthcoming, this Court shall allow the Plaintiff time to conduct additional discovery. See Arden, 117 R.I. at 256-57, 366 A.2d at 164 (noting that "[s]ummary judgment is a drastic remedy and should be cautiously applied"). Accordingly, without disposing of any other issues raised by the parties, this Court stays the motion for summary judgment pending the completion of the relevant discovery. See Mill Factors Corp. v. L. S. Bldg. Supplies, Inc., 103 R.I. 675, 678, 240 A.2d 720, 722 (1968) (noting that "summary judgment is a drastic remedy, and the courts have been liberal in exercising their discretion under rule 56(f) and giving the party opposing the motion full opportunity to show any genuine issue which may exist"); Triton Realty Ltd. P'ship, 2004 WL 1769144, at \*3 (R.I. Super. July 21, 2004) (Gibney, P.J.) (staying the summary judgment motion

so that “the non-moving parties [would have] the opportunity to engage in meaningful discovery”).

## V

### **Conclusion**

For the reasons set forth above, this Court, without disposing of any other issues raised by the parties, stays the motion for summary judgment so that Plaintiff may have the opportunity to complete relevant discovery. Specifically, Plaintiff shall be given three months, from the date of this Decision, to complete any remaining depositions with Blount Marine as it relates to whether the Defendants specified the use of equipment and materials, including asbestos-containing products, in the construction of the vessels they ultimately purchased. Counsel shall submit an appropriate order for entry.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**COURT:** Providence County Superior Court

**DATE DECISION FILED:** July 30, 2015

**JUSTICE/MAGISTRATE:** Gibney, P.J.

**ATTORNEYS:**

**For Plaintiff:** John E. Deaton, Esq.

**For Defendant:** Andrew R. Ferguson, Esq.