

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[Filed: February 25, 2019]

IN RE: RHODE ISLAND ASBESTOS LITIGATION

DEBRA JOHNSON as Executrix of the Estate of :
RAYMOND JOHNSON, JR. and as Surviving :
Spouse :
(Probate Pending), :
Plaintiff, :

v. :

3M COMPANY, et al., :
Defendants. :

C.A. No. PC-2015-2932

DECISION

GIBNEY, P.J. Defendant CPI Controls, Inc. (CPI or Defendant) moves for summary judgment contending that Plaintiff Debra Johnson (Plaintiff) has failed to produce any evidence supporting her complaint against CPI. Plaintiff objects to the within motion. This Court exercises jurisdiction pursuant to Super. R. Civ. P. 56.

I

Facts and Travel

On June 23, 2015, Plaintiff filed a Complaint alleging that her husband, Raymond Johnson, Jr. (Johnson), died as a result of exposure to asbestos or asbestos-containing products sold, manufactured, or distributed by the defendants. Johnson was a career electrician from 1967 to 2007 and worked at various job sites including Hoechst Chemical Incorporation (Hoechst), where he worked from 1991 to 2007. Plaintiff alleges that Hoechst purchased asbestos-

containing products from CPI, and that Johnson was exposed to these products during his employment at Hoechst.

On July 19, 2018, CPI moved for summary judgment arguing Plaintiff has failed to produce evidence that Johnson was exposed to any asbestos-containing product manufactured, sold, or distributed by CPI. In response, Plaintiff argues that genuine issues of fact exist regarding Johnson's exposure precluding summary judgment.

II

Standard of Review

It is well-settled that “[s]ummary 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 (R.I. 2008) (citing *Ardente v. Horan*, 117 R.I. 254, 256-57, 366 A.2d 162, 164 (1976)). “Summary judgment is appropriate when, viewing the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party, the court determines that there are no issues of material fact in dispute, and the moving party is entitled to judgment as a matter of law.” *Quest Diagnostics, LLC v. Pinnacle Consortium of Higher Educ.*, 93 A.3d 949, 951 (R.I. 2014) (internal quotation marks omitted) (alterations in original).

“The moving party bears the initial burden of establishing the absence of a genuine issue of fact.” *McGovern v. Bank of Am., N.A.*, 91 A.3d 853, 858 (R.I. 2014) (quoting 1 Robert B. Kent et al., *Rhode Island Civil and Appellate Procedure* § 56:5 at 520 (2018-19 ed.)). Once this burden is met, the burden shifts to the nonmoving party to prove by competent evidence the existence of a genuine issue of fact. *Id.* The nonmoving party may not rely on “mere allegations or denials in the pleadings, mere conclusions or mere legal opinions” to satisfy its burden. *D’Allesandro v. Tarro*, 842 A.2d 1063, 1065 (R.I. 2004) (quoting *Santucci v. Citizens Bank of*

R.I., 799 A.2d 254, 257 (R.I. 2002) (per curiam)). “Rather, the nonmoving party must affirmatively assert facts that raise a genuine issue to be resolved.” *Avco Corp. v. Aetna Cas. & Sur. Co.*, 679 A.2d 323, 327 (R.I. 1996) (quoting *Hydro-Mfg., Inc. v. Kayser-Roth Corp.*, 640 A.2d 950, 954 (R.I. 1994)).

III

Analysis

In order to establish liability in an asbestos action, a plaintiff must provide both “identification of the specific defendant responsible for the injury” and evidence of the plaintiff’s exposure. *Gorman v. Abbott Labs.*, 599 A.2d 1364 (R.I. 1991); *see also Thomas v. Amway Corp.*, 488 A.2d 716, 721-22 (R.I. 1985) (“[t]he plaintiff is not bound to exclude every other possible cause of her condition but she is required to show that the probable cause was the [product]”). At summary judgment, the nonmoving party “must assert ‘sufficient facts to satisfy the necessary elements of his [or her] negligence claim’ and if a ‘plaintiff fails to present evidence identifying defendants’ negligence as the proximate cause of his [or her] injury or from which a reasonable inference of proximate cause may be drawn,’ then summary judgment becomes proper.” *Splendorio v. Bilray Demolition Co., Inc.*, 682 A.2d 461, 467 (R.I. 1996) (granting summary judgment based on an insufficiency of factual allegations in an asbestos action) (citing *Russian v. Life-Cap Tire Servs., Inc.*, 608 A.2d 1145, 1147 (R.I. 1992)).

Defendant argues that this Court should grant summary judgment in its favor because Plaintiff has produced no such evidence supporting the Complaint against CPI. Defendant states that despite Plaintiff’s production of eighty-six pages of invoices and purchase orders from Hoechst to CPI (the Purchase Orders), Plaintiff has not disclosed a specific product sold or distributed by CPI that caused Johnson’s damages. Defendant specifically asserts that none of

the products in the Purchase Orders contained asbestos, as supported by the affidavit of CPI's Chief Operating Officer, James F. McMenemy. (McMenemy Aff. ¶ 9, Nov. 7, 2018.)

Plaintiff argues that genuine issues of fact exist with respect to her claims against CPI. *See McGovern*, 91 A.3d at 858 (“the nonmoving party has an affirmative duty to demonstrate . . . a genuine issue of fact”). Specifically, Plaintiff asserts that she has met her initial burden of proof through the presentation of evidence, including Plaintiff's signed affidavit describing Johnson's career as an electrician and his work at Hoechst from 1991 to 2007 (Pl.'s Aff. ¶¶ 4-5 Ex. 3); Plaintiff's production of the Purchase Orders (Pl.'s Resp. to CPI's Req. Produc. 6 Ex. 4); and through interrogatories answered by Flowserve Corporation, formerly known as Durco International, Inc. (Durco) (Def.'s Resp. to Pl.'s Interrog. 5 Ex. 5). Plaintiff maintains that Hoechst purchased Durco valves from CPI that contained asbestos, and that Johnson was exposed to the valves as an electrician at Hoechst. In support thereof, Plaintiff references Flowserve's interrogatories which state that “[Durco] purchased limited quantities of asbestos containing pre-cut gaskets [from] gasket manufacturers and installed them in some of its pumps” until 1986. *Id.* Plaintiff additionally notes Flowserve's statement that until the late 1970s to early 1980s, Durco “also purchased asbestos containing packing from packing manufacturers and installed the packing in some of its pumps” and “offered asbestos containing gaskets and packing as replacement parts.” *Id.* Moreover, Plaintiff maintains that summary judgment is not “ripe at this time” as discovery depositions have yet to be conducted.

On a motion for summary judgment, the Court must view all facts in the light most favorable to the non-moving party. *Quest Diagnostics, LLC*, 93 A.3d at 951. This Court therefore accepts as true all evidence presented by Plaintiff, who has demonstrated—for the purpose of this motion—that CPI sold Durco-branded valves to Hoechst, and that Johnson was

employed at Hoechst from 1991 to 2007. However, Plaintiff has failed to demonstrate that Durco manufactured valves containing asbestos, that Durco manufactured or distributed any products containing asbestos during the time Johnson was employed at Hoechst, or that Hoechst purchased asbestos-containing products from CPI. *See Splendorio*, 682 A.2d at 467 (“one resisting summary judgment must assert ‘sufficient facts to satisfy the necessary elements of his [or her] negligence claim’”). Plaintiff has produced no evidence that CPI manufactured or distributed asbestos-containing products that caused Johnson’s damages. *Thomas*, 488 A.2d at 721-22.

IV

Conclusion

Viewing all facts in the light most favorable to the Plaintiff, this Court finds that the Plaintiff has failed to demonstrate that a genuine issue of material fact exists with respect to whether CPI exposed Johnson to asbestos or asbestos-containing products. Accordingly, CPI’s motion for summary judgment is granted. Counsel shall present the appropriate order for entry.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Debra Johnson v. 3M Company, et al.

CASE NO: PC-2015-2932

COURT: Providence County Superior Court

DATE DECISION FILED: February 25, 2019

JUSTICE/MAGISTRATE: Gibney, P.J.

ATTORNEYS:

For Plaintiff: John E. Deaton, Esq.

For Defendant: Scott C. Baer, Esq.