

Filosi v. Ingersol-Rand Co.

Superior Court of Connecticut, Judicial District of Fairfield at Bridgeport

July 19, 2016, Decided; July 19, 2016, Filed

CV126028153S

Reporter

2016 Conn. Super. LEXIS 2008

Katherine Filosi, Individually and as Executor of the Estate of Donald Filosi v. Ingersol-Rand Co.

Notice: THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

Judges: [*1] Barbara N. Bellis, J.

Opinion by: Barbara N. Bellis

Opinion

MEMORANDUM OF DECISION RE MOTION FOR SUMMARY JUDGMENT NO. 283

On March 22, 2013, the plaintiff, Katherine Filosi, individually and as executor of the estate of Donald Filosi, filed the operative complaint in this action against multiple defendants, including the defendant American Crane & Equipment Corporation (ACECO). The operative complaint, labeled as the second amended complaint, contains four counts: (1) a products liability claim pursuant to General Statutes §52-572m et seq., (2) a fraudulent concealment and/or fraudulent misrepresentation claim as to the defendant Metropolitan Life Insurance Company only, (3) a loss of consortium claim pursuant to General Statutes §52-555, and (4) a claim for exemplary or punitive damages pursuant to General Statutes §52-240b. Only counts one, three, and four are relevant here, as count two is not directed at ACECO.

In count one, the plaintiff alleges that the plaintiff's decedent, Donald Filosi, was exposed to asbestos from the defendants' products while he was employed by Boat Corporation (Electric Boat) as a rigger from 1961 until 1998. The plaintiff alleges that the plaintiff's decedent suffered multiple injuries, including lung cancer and/or asbestos-related lung disease, and died

as a result [*2] of the exposure.

In count three, the plaintiff incorporates counts one and two in their entirety. The plaintiff additionally alleges that she was deprived of comfort, support, service, and consortium from the plaintiff's decedent prior to his death due to the illness and injuries which he suffered as a result of asbestos exposure from the defendants' products.

In count four, the plaintiff incorporates the allegations from counts one through three and alleges that the defendants failed or refused to notify the plaintiff's decedent of the dangers of asbestos exposure and conspired to keep their knowledge of the dangers from the public. The plaintiff alleges that the defendants also failed to protect the plaintiff's decedent from the known dangers of asbestos even after learning of such dangers.

On April 18, 2016, ACECO filed a motion for summary judgment on the grounds that there are no genuine issues of material fact and that ACECO is entitled to judgment as a matter of law. In support of its motion, ACECO filed a memorandum of law and the following exhibits: (1) the plaintiff's original complaint, (2) the plaintiff's responses to the defendant's interrogatories and requests for production, [*3] (3) the plaintiff's supplemental response to the defendant's interrogatories and requests for production, (4) deposition testimony of the plaintiff's decedent taken on June 15 and 18, 2012, and (5) the affidavit of David S. Hope, dated January 24, 2013.

On May 12, 2016, the plaintiff filed a memorandum in opposition to multiple defendants' motions for summary judgment, including that of ACECO. The plaintiff submitted the following exhibits in support of her opposition memorandum: (1) deposition testimony of the plaintiff's decedent taken on June 7, 2012, (2) a New London Cancer Center initial office consult note for the plaintiff's decedent, dated February 14, 2012, (3) United States Department of Labor hearing testimony of the plaintiff taken on August 5, 2013, (4) medical reports by

Laura Welch, M.D., (5) deposition testimony of Laura Welch, M.D., taken on July 11, 2013, and (6) deposition testimony of Arthur DeGraff, M.D., taken on August 20, 2013.

ACECO filed a reply to the plaintiff's opposition on May 23, 2016. At the June 1, 2016 hearing on asbestos matters, the court took ACECO's motion on the papers.¹

DISCUSSION

"Practice Book §17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party . . . The party moving for summary judgment has the burden of showing the absence of any genuine issue of material fact and that the party is, therefore, entitled to judgment as a matter of law." (Internal quotation marks omitted.) *Grimm v. Fox*, 303 Conn. 322, 329, 33 A.3d 205 (2012). Connecticut imposes a heavier burden on the moving party than that which has been imposed upon a movant at the federal level. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) (concluding Rule 56 does not require moving party to support motion with affidavits or similar materials negating opponent's claim). "To satisfy [this] burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact." (Internal quotation marks omitted.) [*5] *Rompney v. Safeco Ins. Co. of America*, 310 Conn. 304, 320, 77 A.3d 726 (2013). "When documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving party has no obligation to submit documents establishing the existence of such an issue . . . Once the moving party has met its burden, however, the opposing party must present evidence that demonstrates the existence of some disputed factual issue . . . It is not enough, however, for the opposing party merely to assert the existence of such a disputed issue. Mere assertions of fact . . . are insufficient to establish the existence of a material fact and, therefore, cannot refute evidence properly presented to the court

under Practice Book §[17-45]." (Internal quotation marks omitted.) *Ramirez v. Health Net of the Northeast, Inc.*, 285 Conn. 1, 11, 938 A.2d 576 (2008).

In support of its motion for summary judgment, ACECO argues that the plaintiff has been unable to produce any evidence from which a jury could reasonably conclude that the plaintiff's decedent was ever exposed to respirable asbestos from any asbestos-containing product manufactured, distributed, or sold by ACECO. In addition, ACECO argues that the cranes mentioned by the plaintiff's decedent during his deposition on June 15 and 18, 2012, bearing the name "American" were [*6] not manufactured by ACECO, and the evidence submitted by ACECO establishes that it did not cause the plaintiff's decedent's injuries. In opposition, the plaintiff argues that ACECO's motion for summary judgment fails because it has not proven that genuine issues of material fact do not exist as to whether the plaintiff's decedent was injured by asbestos. The plaintiff does not direct its argument to any of ACECO's arguments but instead addresses several motions for summary judgment simultaneously.

"In a products liability action, the plaintiff must plead and prove that the product was defective and that the defect was the proximate cause of the plaintiff's injuries." (Internal quotation marks omitted.) *Battistoni v. Weatherking Products, Inc.*, 41 Conn.App. 555, 562, 676 A.2d 890 (1996). Proximate causation requires a determination as to "whether the defendant's conduct is a substantial factor in bringing about the plaintiff's injuries . . . That is, there must be an unbroken sequence of events that tied [the plaintiff's] injuries to the [defendant's conduct] . . . This causal connection must be based upon more than conjecture and sunrise." (Citation omitted; internal quotation marks omitted.) *Stuart v. Freiberg*, 316 Conn. 809, 833, 116 A.3d 1195 (2015). "[T]he question of proximate causation generally belongs to the trier of fact [*7] because causation is essentially a factual issue . . . It becomes a conclusion of law only when the mind of a fair and reasonable [person] could reach only one conclusion; if there is room for a reasonable disagreement the question is one to be determined by the trier as a matter of fact." (Internal quotation marks omitted.) *DeOliveira v. PMG Land Associates, L.P.*, 105 Conn.App. 369, 378, 939 A.2d 2 (2008).

Based on the evidence presented by ACECO in support of its motion, ACECO has met its initial burden of proof with its submission of David S. Hope's affidavit (the affidavit). In the affidavit, Hope identifies himself as "the

¹ Also on that date, this court granted Daniel M. Filosi's motion to substitute [*4] himself as the party plaintiff for the estate of Donald Filosi in place of Katherine Filosi.

Vice President, Chief Financial Officer, and General Counsel and records custodian of American Crane & Equipment Corporation (known by its trade name 'ACECO'), a Pennsylvania corporation formed in 1972" and notes that he is "authorized to make this declaration on ACECO's behalf." Hope states that his statements are based upon his personal knowledge and personal examination of relevant corporate records and that he could and would testify competently thereto if called as a witness. Hope then states the following: "ACECO was founded in May 1972 and commenced the manufacture and sale of electric overhead cranes in that year. ACECO did not conduct [*8] business as a sole proprietor or in any other business form prior to 1972, and had no predecessor. ACECO has no parent, subsidiaries, or affiliates engaged in the manufacture and sale of overhead cranes . . .

"ACECO has never manufactured boom cranes, such as those used at outdoor construction sites typically described by plaintiffs who were formerly employees of Electric Boat in Groton, Connecticut in this litigation. Examination by the undersigned of ACECO's billing and shipping records establishes that the only crane ACECO sold to Electric Boat was a highly specialized small crane used for lifting munitions onto a submarine. This crane did *not* contain asbestos or any asbestos-containing component parts . . .

"Many manufacturers of cranes use 'American' and 'Crane' in their corporate and business names. However, American Crane & Equipment Corporation's trade name is 'ACECO.' The words 'American' and 'Crane' never appeared anywhere on any of ACECO's cranes. In the context of litigation, ACECO has been confused with other crane manufacturers, in particular, with 'American Crane Corporation,' a company which has no affiliation whatsoever with ACECO. American Crane Corporation was acquired [*9] by Terex Corporation, and operated under the name 'Terex American Crane' at 202 Raliegh Street, Wilmington, North Carolina 28412. Terex Corporation is represented by separate counsel in the Bridgeport Asbestos Litigation . . ." (Emphasis in original.)

The affidavit negates the plaintiff's claim that the injuries of the plaintiff's decedent were caused by his exposure to asbestos through contact with ACECO's products while working as a rigger at Electric Boat. The affidavit states that the only crane ACECO ever sold to Electric

Boat "was a highly specialized small crane used for lifting munitions onto a submarine," and "[t]his crane did *not* contain asbestos or any asbestos-containing component parts." (Emphasis in original.) Furthermore, the affidavit provides that ACECO began its manufacturing business in 1972 and that ACECO does not have a predecessor, a parent, a subsidiary, or an affiliated corporation engaged in the manufacture and sale of overhead cranes. The only reasonable conclusion that could be made by a jury on the basis of these statements is that the alleged injuries of the plaintiff's decedent were not a result of his exposure to asbestos from a product that was designed, manufactured, or sold by ACECO [*10] while the plaintiff's decedent worked at Electric Boat. In other words, the affidavit establishes the absence of a genuine issue of material fact that a causal connection between ACECO's conduct and the injuries of the plaintiff's decedent is nonexistent. The evidentiary burden, thus, shifts to the plaintiff to present evidence to demonstrate that a genuine issue of material fact exists with respect to causation.

The evidence submitted by the plaintiff fails to demonstrate a genuine issue of material fact with respect to causation. The deposition testimony of the plaintiff's decedent, while the most supportive in this regard, fails to address the specific statements made by Hope in his affidavit. For example, though the plaintiff's decedent testified that he recalled seeing cranes labeled with the word "American" while working at Electric Boat, the affidavit dispels any factual discrepancy that may have existed with respect to this particular recollection as it states that ACECO never placed the word "American" on its cranes. Furthermore, the plaintiff has failed to submit any evidence disputing the affidavit's assertions that ACECO sold just one particular crane to Electric Boat and [*11] that this one crane did not contain asbestos or asbestos-containing parts. Accordingly, the plaintiff has failed to demonstrate the existence of a genuine issue of material fact with respect to causation.

CONCLUSION

On the basis of the evidence presented by both parties, no genuine issue of material fact exists, and ACECO is entitled to judgment as a matter of law. Accordingly, ACECO's motion for summary judgment is granted.

BELLIS, J.