

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
MIDDLESEX COUNTY
DOCKET NO. MID-L-965-16 (AS)
APP. DIV. NO. _____

JOHN BURTON,	:	
	:	
Plaintiff,	:	TRANSCRIPT
v.	:	OF
	:	SUMMARY JUDGMENT
AMERICAN INDUSTRIAL SUPPLY	:	MOTION DECISION
CORP., et al.,	:	
	:	
Defendants.	:	

Place: Middlesex County Courthouse
56 Paterson Street
New Brunswick, NJ 08903

Date: January 10, 2017

BEFORE:

HONORABLE ANA C. VISCOMI, J.S.C.

TRANSCRIPT ORDERED BY:

STEPHANIE A. DiVITA, ESQ.
(Pascarella DiVita, PLLC)

APPEARANCES:

ROBERT E. LYTLE, ESQ. (Szaferman, Lakind,
Blumstein & Blader, PC)
Attorney for the Plaintiff
(Via telephone)

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1 (Hearing commenced at 10:35 a.m.)

2 THE COURT: Good morning, everyone. We're
3 here with regard to the matter of John Burton v.
4 American Industrial Supply, docket number 965-16.
5 Could I have appearances, please, on behalf of the
6 plaintiff.

7 MR. LYTLE: Good morning, Your Honor. Robert
8 Lytle with the law firm of Szaferman Lakind on behalf
9 of plaintiff.

10 THE COURT: Thank you. And on behalf of the
11 defendant Ingersoll Rand?

12 MS. DiVITA: Good morning, Your Honor.
13 Stephanie DiVita, Pascarella DiVita on behalf of
14 Ingersoll Rand.

15 THE COURT: Thank you. This is a ruling on
16 the record with regard to the motion for summary
17 judgment by the defendant Ingersoll Rand.

18 The Court heard oral argument last Friday
19 which was January 6, and as a result of that oral
20 argument, the Court indicated it was reserving its
21 decision, wanting an opportunity to again review the
22 pleadings and all relevant exhibits that were attached
23 to the motion in support of and in opposition to
24 summary judgment.

25 The Court had issued a tentative decision on

1 Thursday, January 5, to deny the within motion.
2 Request for oral argument was made and there was oral
3 argument indeed on Friday.

4 So, just by way of background, Mr. Burton
5 worked at the Kaiser Aluminum facility in the State of
6 New Jersey. It was subsequently purchased by
7 Continental Can. The business of Kaiser Aluminum was
8 the manufacture of cans.

9 For a brief time period, I believe
10 approximately six months, Mr. Burton worked in the
11 production area. His duties thereafter became of
12 maintenance supervisor for a significant period of
13 time, and he ended his career at Kaiser Aluminum I
14 believe as plant manager.

15 Mr. Burton was diagnosed with mesothelioma.
16 This matter is scheduled for trial later on this month.

17 These motions were timely filed. The Court
18 could not hear them earlier than the time period that
19 they were ultimately scheduled.

20 As it relates to the defendant moving party,
21 Ingersoll Rand, Mr. Burton generally testified to the
22 production of aluminum cans required a washing system
23 and a painting system. A washing of the cans
24 incorporated acid. There were two, for lack of a
25 better term, washing machines for the cans. The

1 washing machines were connected to a then decorated
2 which decorated the cans and then by a system of a
3 conveyor belt then went into an oven to be finished.

4 So, he described these washing machines as
5 having 12 pumps. He testified generally that there
6 were three manufacturers of pumps. One of them
7 included Ingersoll Rand, one was Haskel, and one was
8 Goulds.

9 He maintained a journal and had notes of a
10 journal, and for purposes of this motion the Court
11 considers the notes made therein to have been
12 contemporaneous with his employment at Kaiser Aluminum.

13 With regard to Ingersoll Rand, the journal
14 entry did indicate Ingersoll Rand pumps. It had a name
15 of an individual and it had a phone number.

16 It is undisputed I think with regard to all
17 of the pumps, although -- no, I shouldn't say all the
18 pumps, because as to Haskel, he did have a serial, a
19 model number with regard to one of the pumps. But as
20 to certainly the moving party herein, Ingersoll Rand,
21 it is undisputed he did not know any model numbers, he
22 did not know any serial numbers. I believe cross-
23 examination by Ingersoll Rand counsel did indicate that
24 the pumps were about the size of a spare tire, but I
25 don't believe that that was unique to Ingersoll. He

1 could not describe coloring, any markings, any
2 nameplates with regard to that. That in and of itself
3 is not what would defeat -- or what would cause a
4 motion for summary judgment to be granted, not having
5 that knowledge some 30 years after that fact.

6 But we get to the issue, and that of the
7 pumps themselves, and where any potential exposure
8 might be, and that exposure would be with regard to any
9 gaskets that contained asbestos.

10 Generally, Mr. Burton testified that there
11 was a storeroom and that the storeroom would generally
12 be stocked with what he believed to be original
13 equipment manufactured gaskets.

14 With regard to the removal of the gaskets and
15 how often, he was not specifically asked at deposition
16 how often, but he testified that generally as part of
17 preventive maintenance, gaskets would be removed every
18 two months, but with regard to any other maintenance,
19 as needed.

20 He testified he was a hands-on individual.
21 His supervisor, a Mr. Vendetti, was very particular
22 with regard to how things were operated at Kaiser
23 Aluminum and Mr. Burton testified that he did not want
24 anything protruding into the area of flow.

25 The bulk of that testimony seemed to be with

1 regard to sheet gaskets. If the storeroom did not have
2 OEM parts, then they would order or go out and obtain
3 sheet metal, the gasketing material -- sheet gasketing
4 material, excuse me, not sheet metal, sheet gasketing
5 material in order to form a gasket.

6 Let's consider the area of specific concern
7 to the Court in the resolution of this motion, and I'm
8 going to read that testimony into the record. And this
9 comes from the cross-examination by Mr. Savoth
10 representing Ingersoll Rand, but there's also testimony
11 that the Court is going to refer to from counsel for
12 Goulds Pumps who was -- who cross-examined earlier.
13 And if you just give me one moment to get to that
14 point. Okay.

15 So this is attached as -- testimony attached
16 as Exhibit A to the certification of Joseph Mandia,
17 plaintiff's counsel in opposition to the motion,
18 beginning at the bottom of page 408.

19 "Question: Because in the process" -- oh, I
20 apologize. Question, line 22.

21 Q "Do you know that these particular pumps were
22 made by the manufacturer that I'm talking about?"

23 A Because in the process of repairing the washer
24 pumps, we would have to go to Gould, or we would have
25 to go to Ingersoll Rand, or we would have to go to

1 these various companies to get the parts, to get the
2 packings, to get the seals, to get whatever it was they
3 needed. So for that reason, I know that there were
4 Gould pumps on the washers."

5 So the specific area that are focused on, he
6 is mentioning, whoever it was, we would have to go to
7 get these various companies' parts. And he does
8 include Ingersoll Rand in that.

9 When we get to the actual cross-examination
10 by Mr. Savoth, I'm going to read this into the record.
11 This begins at page 611, line 21, and continuing beyond
12 there.

13 Q "Did you ever go to an Ingersoll Rand
14 facility for packings or seals yourself?"

15 A I think I said yesterday no, I did not."

16 Q "I think you said earlier today as well. I
17 just wanted to make sure I got that syllogism. You
18 don't know of any particular location in New Jersey
19 that at the time you were with Kaiser was an actual
20 Ingersoll Rand facility?"

21 A That is correct, I do not."

22 Q "You don't have any information that any of
23 your men ever went to an Ingersoll Rand facility during
24 your Kaiser tenure to get either packings or sealing or
25 other materials, correct?"

1 A None of my men would ever have left the building
2 to get parts."
3 Q "So are you saying then, invariably you were
4 the only person that physically left the building but
5 the storeroom fellow is the guy I would call and it
6 would be delivered?
7 A That is correct."
8 Q "And those are the only two options?
9 A The other option would have been that the other
10 maintenance supervisor, while he was there, Kenny Watt,
11 would have also gone out as needed to do the same kind
12 of thing that I did."
13 Q "So based on all of this, you don't have any
14 information that either you or anyone from Kaiser
15 Aluminum ever ordered an asbestos-containing product
16 from a New Jersey based Ingersoll Rand facility?"
17 There's an objection to the form.
18 "John, you can answer."
19 A "That is correct."
20 We then go on to page 615.
21 Q "Would that also be true with regard to an
22 Ingersoll Rand pump when you went out to get gasketing
23 material in an emergency?"
24 So this is asking about gasketing material.
25 A "It would be true of any pump."

1 Q "Okay. Would it also be true with regard to
2 what your supply room fellow would get when you ordered
3 gasketing material that you would use for an Ingersoll
4 Rand pump, would it be that kind of same gasketing?
5 A If he ordered from the storeroom for an Ingersoll
6 pump, he would probably get OEM gaskets."
7 Q "Do you know he did that?
8 A I would say he would have had to."
9 Q "Are you assuming that?"
10 "Objection to form."
11 A "That's not an assumption."
12 Q "Well, if that's not an assumption" -- and
13 the question is never continued because the witness
14 interrupts.
15 A "That's what he would have done."
16 Over on page 616.
17 Q "Did you ever see him do that?
18 A I never saw him do anything."
19 Q "All right."
20 A He was in the storeroom and I was doing my job. I
21 mean, you know it was his job to get these, to get the
22 appropriate things if they were a storeroom item."
23 Q "All right. And if that particular pump
24 manufacturer actually made those items, correct?
25 A Of course."

1 Q "And even if they didn't, you wouldn't,
2 correct?"

3 A I would have to say that's true."

4 Q "And this wasn't something that he
5 specifically discussed with you regarding Ingersoll
6 Rand, correct?"

7 A That is correct."

8 Q "All right. And that wouldn't be the kind of
9 conversation that you would have in running a factory
10 because that would be the minutia you didn't need to
11 know about, correct?"

12 "Objection to form."

13 A "That is correct."

14 So, it's really the, what this comes down to
15 in the Court's opinion, and the Court did consider the
16 certification of Mr. Burton which I will read portions
17 of in the record. That certification was attached to
18 the certification of Mr. Mandia at Exhibit F, wherein
19 he swears at number 6.

20 "I also testified that Kaiser Aluminum in its
21 storeroom stocked replacement gaskets from each of the
22 manufacturers of the pumps which I referred to as OEM,
23 original equipment manufacturer gaskets. As I
24 testified, if there was a breakdown of a pump, we
25 needed gasket materials, or if we ran out of gaskets in

1 the storeroom while we performed preventative
2 maintenance, I would then obtain asbestos sheet gaskets
3 from the local supply house. I also obtained sheet
4 gaskets from the local supply house for the replacement
5 of gaskets on vials. While I was not asked at my
6 deposition as to whether the OEM replacement gaskets
7 where the pumps contained asbestos had I been asked, I
8 would have testified the OEM replacement gaskets were
9 asbestos-containing."

10 We look at the first sentence in that portion
11 of the certification wherein Mr. Burton states, "I also
12 testified that Kaiser Aluminum in its storeroom stocked
13 replacement gaskets from each of the manufacturer of
14 the pumps which I referred to as OEM gaskets," he
15 refers back to that earlier testimony that I indicated
16 which was from counsel for Goulds which says that they,
17 he believes they had the OEM parts in the stockroom.
18 And that was his testimony.

19 But when you look at, as Mr. Savoth broke it
20 down and actually asked him with regard to Ingersoll
21 Rand and how he was certain of that information, the
22 Court concludes in evaluation of that testimony that
23 it's speculation on his part. And so the Court cannot
24 use that as the basis to grant a liberal inference to
25 the plaintiff in that regard, to give a reasonable

1 inference, excuse me, in that regard.

2 Even in considering the portions of the
3 testimony in opposition which appeared at Exhibit M and
4 N, and these were testimonies of Ingersoll Rand
5 representatives in connection with other matters, but
6 there were general questions in that regard, and
7 Ingersoll Rand was represented by counsel at both of
8 those depositions, and that was with regard to the
9 pumps, whether they supplied OEM, although they were
10 not the manufacturer, but there certain suppliers of
11 gaskets, asbestos-containing gaskets. Even with that
12 there, it's this particular testimony of Mr. Burton
13 that is key in the Court's mind, and the Court views
14 that testimony as speculative, because there was no one
15 else that went out. It would have been him, and he
16 testified that in terms of ordering an asbestos product
17 from New Jersey based Ingersoll Rand facility, that he
18 just doesn't know. Again, key.

19 So based upon all of this, "You don't have
20 any information that either you or anyone from Kaiser
21 Aluminum ever ordered an asbestos-containing product
22 from a New Jersey based Ingersoll Rand facility?"

23 "That is correct," is the response.

24 And even in his insistence early on at page
25 615, that if he ordered from the storeroom, referring

1 to the gentleman that worked in the storeroom, for an
2 Ingersoll pump, he probably got OEM gaskets.

3 Q "Do you know he did that?"

4 A I would have to say he would have had to."

5 Q "Are you assuming that?"

6 A That's not an assumption."

7 And Mr. Savoth painstakingly broke down that
8 testimony and inquired further.

9 Q "Well, if it's not an assumption, that's what
10 he would have done. Did you see him do it?"

11 A I never saw him do it. He was in the storeroom
12 and I was doing my job" -- referring to himself -- "and
13 he was doing his job."

14 So there's no testimony that the Court's been
15 pointed to where the Court could give the reasonable
16 inference which said well, the storerooms were
17 generally stocked with the OEM parts, this was what was
18 recommended, and part of that is because I believe from
19 reviewing the testimony as a whole that while he does
20 recall that those pumps, be it Ingersoll Rand, Goulds,
21 were there, because of a notation in the journal entry,
22 he can't go beyond that as to some. Certainly he had
23 more of a recollection as it related to Haskel, but
24 it's simply not there.

25 And for those reasons, the Court is granting

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the motion for summary judgment. We'll provide you a copy with the order, Mr. Lytle.

Thank you so much for your participation today.

MR. LYTLE: Thank you, Your Honor, have a good day.

THE COURT: You too. Bye.

MS. DiVITA: Thank you, Judge.

THE COURT: Thank you. And we're off the record.

(Hearing concluded at 10:54 a.m.)

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CERTIFICATION

I, SANDRA CARBONARO, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on CourtSmart, Index No. from 10:35:25 to 10:54:41 is prepared to the best of my ability and in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings, as recorded.

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