

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART 13

Justice

DOUGLAS ANN ABRAMOW,
Plaintiff,
- v -

INDEX NO. 190091/2020
MOTION DATE 12/06/2023
MOTION SEQ. NO. 005

AERCO INTERNATIONAL, INC., AMEC CONSTRUCTION MANAGEMENT, INC., INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO MORSE DIESEL INTERNATIONAL, INC., MORSE DIESEL, INC., AND MORSE-DIESEL CONSTRUCTION CO., INC., ARCONIC INC., BMCE INC., IN ITSELF AND AS SUCCESSOR TO UNITED CENTRIFUGAL PUMP CO., CBS CORPORATION, A DELAWARE CORPORATION F/K/A VIACOM INC. SUCCESSOR-BY-MERGER TO CBS CORPORATION, A PENNSYLVANIA CORPORATION F/K/A WESTINGHOUSE ELECTRIC CORPORATION, CONWED CORPORATION, CRANE CO., CROWN CORK & SEAL COMPANY, INC., FOSTER WHEELER ENERGY CORPORATION, GENERAL ELECTRIC COMPANY, INDUSTRIAL HOLDINGS CORPORATION F/K/A THE CARBORUNDUM COMPANY, INGERSOLL-RAND COMPANY, JOHN CRANE, INC., KAISER GYPSUM COMPANY, INC., MARIO & DIBONO FIREPROOFING CORP., MARIO & DIBONO PLASTERING CO. INC., MORSE-DIESEL CONSTRUCTION CO., INC., PFIZER INC., SIMPSON TIMBER COMPANY, TISHMAN LIQUIDATING CORPORATION, TISHMAN REALTY & CONSTRUCTION CO., INC., TURNER CONSTRUCTION COMPANY, UNION CARBIDE CORPORATION, VANDERBILT MINERALS LLC, JOHN DOE 1 THROUGH JOHN DOE 75 (FICTITIOUS), PORT AUTHORITY OF NEW YORK AND NEW JERSEY D/B/A PATH,

DECISION + ORDER ON MOTION

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338

were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL

Upon the foregoing documents, it is ORDERED that plaintiff's motion for a joint trial of this action, Index No. 190091/2020 ("action #1") with another asbestos action, Index No.

190002/2021 (“action #2”), commenced by plaintiff Susan Horvath against various defendants, is denied.

CPLR §602(a) states that “[w]hen actions involving a common question of law or fact are pending before a court, the court, upon motion ... may order the actions consolidated.”

Additionally, under New York law, a “joint trial should be denied where (1) individual issues predominate over common issues in the cases sought to be joined, or (2) the party opposing the joint trial demonstrates substantial prejudice”. (*In re New York City Asbestos Litigation*, *12, 2013 NY Slip Op 32548 (U) [Sup. Ct. N.Y. Cty. Oct. 17, 2013]). To meet their burden, plaintiffs must establish more than generalized categorizations (*C.K.S. Ice Cream Co., Inc. v. Frusen Gladje Franchise, Inc.*, 172 A.D.2d 206 [1st Dept 1991][finding that “[w]here lawsuits arise out of the same transactions, but the proof with respect to each lawsuit does not overlap, the identity of facts is not sufficient to merit consolidation or a joint trial of the lawsuits”]).

Plaintiff argues that consolidation of actions #1 and #2 is proper because plaintiffs in actions #1 and #2 were both exposed to asbestos-containing products while working with defendants Mario & DiBono Plastering Co., Inc, Tishman Liquidating, and Tishman Realty and Construction. Plaintiff further states that both plaintiffs were diagnosed with pleural mesothelioma, shared common worksites, and were exposed during the same period. Plaintiff also notes that both cases are trial ready. The Court finds that plaintiff has failed to meet its burden of demonstrating that these two specific cases within the proposed trial group have sufficient commonalities warranting consolidation. Defendants oppose.

Joinder in NYCAL is governed by *Malcolm v National Gypsum Company*, 995 F.2d 346 [2d Cir. 1993], which held that in deciding whether joinder is appropriate for multiple asbestos matters, courts focus on several factors, including: “(1) common worksites; (2) similar

occupation; (3) similar time of exposure; (4) type of disease; (5) whether plaintiffs were living or deceased; (6) status of discovery in each case; (7) whether all plaintiffs were represented by the same counsel; and (8) type of cancer alleged” (Id. at 350-51).

Here, plaintiff has failed to sufficiently demonstrate that the plaintiffs share commonalities that would warrant a joint trial. Preliminary, the Court notes that the two plaintiffs had different occupations, as Mr. Abramow worked as a union sheet metal mechanic and Mr. Horvath worked as a plumber. Further, there is minimal overlap, as Mr. Abramow worked from 1957 through 1974, whereas Mr. Horvath worked from 1962 through 1999. In addition, the two plaintiffs share at most, two common worksites. Finally, only three defendants are common in both cases. As a joint trial would create an undue burden on the defendants and could lead to juror confusion, the plaintiff’s motion is denied.

Accordingly, it is

ORDERED that the motion to consolidate for joint trial is denied; and it is further

ORDERED that within 30 days of entry, opposing defendants shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

2/9/2024
DATE


ADAM SILVERA, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE