

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Filed Nov. 5, 2007

PROVIDENCE, SC

SUPERIOR COURT

JOSEPH LAPOINTE AND  
YVETTE LAPOINTE

v.

3M COMPANY, et al.

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C.A. No. PC 06-2418

DECISION

GIBNEY, J. Before the Court is a Motion for Summary Judgment pursuant to Super. R. Civ. P. 56 filed by defendant Laars Heating Systems Co., as Parent to Teledyne Laars (Laars). The Plaintiffs, Joseph LaPointe (Mr. LaPointe), and his wife, Yvette LaPointe (collectively, “Plaintiffs”), object to the motion.

Facts/Travel

On May 3, 2006, Plaintiffs filed a complaint in Providence County Superior Court against various defendants alleging, inter alia, that Mr. LaPointe suffered asbestos-related injuries as a result of his occupational exposure to asbestos and asbestos-containing materials during his forty-year career as a boiler and furnace repairman. He alleges that those exposures caused him to develop malignant mesothelioma, which was diagnosed in 2005. Mrs. LaPointe alleges loss of consortium stemming from Mr. LaPointe’s injuries.

The Plaintiffs assert that some of the asbestos-containing products that caused Mr. LaPointe’s injuries were manufactured, distributed, or sold by Laars. However, Laars contends that Plaintiffs have no reasonable expectation of identifying at trial any asbestos-containing products that it sold, manufactured or distributed. To support this contention, Laars has

submitted the affidavit of James Teague, a Laars employee of thirty-two consecutive years. Mr. Teague stated that none of the component parts and gaskets of boilers manufactured under the Laars brand ever has contained asbestos.

### **Standard of Review**

It is axiomatic that “[s]ummary judgment is a proceeding in which the proponent must demonstrate by affidavits, depositions, pleadings and other documentary matter . . . that he or she is entitled to judgment as a matter of law and that there are no genuine issues of material fact.” Palmisciano v. Burrillville Racing Association, 603 A.2d 317, 320 (R.I. 1992). During a summary judgment proceeding, “the [C]ourt does not pass upon the weight or credibility of the evidence but must consider the affidavits and other pleadings in a light most favorable to the party opposing the motion.” Id. at 320.

Moreover, the Court “must look for factual issues, not determine them. The [court’s] only function is to determine whether there are any issues involving material facts.” Steinberg v. State, 427 A.2d 338, 340 (R.I. 1981). The Court’s purpose during the summary judgment procedure is always “issue finding, not issue determination.” Gliottone v. Ethier, 870 A.2d 1022, 1028 (R.I. 2005).

### **Analysis**

Laars maintains that its motion for summary judgment should be granted because Mr. LaPointe has been unable to identify his contact with any asbestos-containing products that were sold, manufactured, or distributed by Laars. The Plaintiffs object, contending that the motion is “premature.” They assert that Laars has failed to fully comply with the Court-Approved Master Interrogatories and Requests for Production, and that until such time as Laars is in full compliance, there exist genuine issues of material fact concerning the existence of asbestos in

Laars products. The Plaintiffs also question the propriety of Mr. Teague's affidavit, contending that it is self-serving and not subject to cross-examination. Accordingly, they have filed a motion to compel Laars to fully respond to the Court-Approved Master Interrogatories and Requests for Production.

Super. R. Civ. P. 26 (b) establishes the scope of discovery in a civil action. It provides:

“Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” Super. R. Civ. P. 26(b)(1).

“Rule 37(d) of the Superior Court Rules of Civil Procedure affords a trial justice wide discretion to enforce its discovery orders . . . .” The Travelers Ins. Co. v. Builders Resource Corp., 785 A.2d 568, 569 (R.I. 2001); see also State v. LaChapelle 638 A.2d 525, 531 (R.I. 1994) (“The duty to make an honest and candid response to discovery requests should not be diluted by semantic gymnastics.”).

Relying upon the Court-Approved Master Interrogatories, Plaintiffs asked Laars questions such as whether it ever had manufactured or distributed any products containing asbestos fibers, and if so, the trade or brand name of such products, their chemical composition, and whether they were accompanied by any kind of written health warnings. In response, Mr. Teague stated in his affidavit that he had been employed by Laars since 1974, and that “no component of any Laars boiler (domestic or pool) has ever contained asbestos.” Affidavit of Mr. Teague at 1. He further stated that Laars boilers never contained asbestos-containing gaskets,

because “[t]he use of an asbestos or any other kind of fiber gasket would have been inappropriate in light of the intended function of the gaskets, i.e., to prevent water leakage.” Id. at 2. However, Mr. Teague did not provide any documentation in support of these unsubstantiated corporate statements.

Furthermore, although Mr. Teague stated that his statements concerned matters within his personal knowledge, a genuine issue of material fact exists as to whether Laars used asbestos in its products before Mr. Teague entered his employment with the corporation. Furthermore, similar products from other corporations apparently contained asbestos, thus raising another genuine issue of material fact with respect to whether Laars products also contained asbestos. However, Plaintiffs have no way of finding out such information until Laars gives responsive answers to the Court-Approved Master Interrogatories and Requests for Production. See Super. R. Civ. P. 26 (b)(1).

### **Conclusion**

In view of the foregoing, the Court concludes that the Motion for Summary Judgment is “premature” and should be denied. The Court orders Laars to provide more responsive answers to the Court-Approved Master Interrogatories and Requests for Production, and it grants Plaintiffs more time for purposes of reviewing said answers.

Counsel shall submit an appropriate order for entry.