

ASB-FBT-CV23-6120092-S : SUPERIOR COURT
:
CONRAD JOHNS AND :
ELIZABETH JOHNS : JUDICIAL DISTRICT OF FAIRFIELD
:
VS. : AT BRIDGEPORT
:
ALFA LAVAL, INC.; ET UX. ET AL. : May 24, 2023

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS’ OBJECTION TO
DEFENDANT INTERNATIONAL BUSINESS MACHINES CORPORATION’S
MOTION TO STRIKE**

BACKGROUND

Plaintiffs Conrad Johns and his wife, Elizabeth, commenced this action through a Summons and Complaint dated December 13, 2022, with a return date of January 3, 2023. International Business Machines Corporation (“IBM” or “the Defendant”) was named as a defendant and filed an appearance in this action on December 22, 2022. The Defendant then filed a motion to strike Counts I, II, and III of Plaintiff’s complaint against IBM on March 3, 2023, and after some direction from the Court, refiled its motion to strike on May 3, 2023. The sole ground for IBM’s motion to strike is that Mr. Johns worked for IBM and the exclusivity provision of the Connecticut Workers’ Compensation Act prohibits it from being pursued in litigation. Pursuant to Connecticut Practice Book § 10-40, Plaintiffs object to IBM’s Motion to Strike.

To date, Mr. Johns has provided three days of deposition testimony and expects to provide additional testimony in the near future. According to his deposition testimony, Mr. Johns worked for IBM for more than 25 years and was likely exposed to asbestos during his employment at several

IBM facilities including, but not limited to a plant located in Austin, TX. Despite the provisions of § 31-284(a) of the Connecticut Workers' Compensation Act, Plaintiffs have grounds to pursue a cause of action against IBM under the laws of the State of Texas. Specifically, Texas Workers' Compensation Act § 408.001(b) allows for a Plaintiff to name her husband's employer when said employee passes away due to an intentional act or omission by the employer or by the employer's gross negligence. IBM has an interest in this matter, and in the hopes of avoiding duplicative litigation and expenses, it should continue to remain as a defendant in this case. Accordingly, the Court should deny Defendant's motion to strike.

STANDARD OF LAW

Pursuant to Connecticut Practice Book § 10-8,

Commencing on the return day of the writ, summons and complaint in civil actions, pleadings, including motions and requests addressed to the pleadings, shall advance within thirty days from the return day, and any subsequent pleadings, motions, and requests shall advance at least on step within each successive period of thirty days from the preceding pleading or the filing of the decision of the judicial authority thereon if one is required

P.B. § 10-8. Pursuant to Practice Book § 10-61, “when any pleading is amended the adverse party may plead thereto within the time provided by Section 10-8 . . .”. *P.B. § 10-61.*

A motion to strike may be used to contest the legal sufficiency of the allegations of the complaint, or the legal sufficiency of any prayer for relief in any complaint. *P.B. § 10-39; Sturm v. Harb Dev., LLC*, 298 Conn. 124, 130 (2010). The trial court should “construe the complaint in the

manner most favorable to sustaining its legal sufficiency,” should take the facts to be those alleged in the complaint and should not make any factual findings. *Sturm v. Harb Dev., LLC*, 298 Conn. 124, 130 (2010). “[I]f facts provable in the complaint would support a cause of action, the motion to strike must be denied.” *Id.*

Further, “[w]hat is necessarily implied [in an allegation] need not be expressly alleged. . . . It is fundamental that in determining the sufficiency of a complaint challenged by a defendant's motion to strike, all well-pleaded facts and those facts necessarily implied from the allegations are taken as admitted. . . . Indeed, pleadings must be construed broadly and realistically, rather than narrowly and technically.” *Geysen v. Securitas Sec. Servs. USA, Inc.*, 322 Conn. 385, 398 (2016).

Although “...it is well settled that the failure to include a necessary allegation in a complaint precludes a recovery by the plaintiff under that complaint if the complaint puts the defendant on notice of the relevant claims, then a plaintiff's failure specifically to allege a particular fact or issue is not fatal to his claim unless it results in prejudice to the defendant.” *Strum* at 130-131.

ARGUMENT

A. Elizabeth Johns has a Cause of Action Against IBM under the Laws of the State of Texas

The matter at hand is properly filed in Connecticut since the State has jurisdiction. That said, Mr. Johns was not employed by IBM in the State of Connecticut, but rather in several other states, including Texas.

Texas Workers' Compensation Act § 408.001(a) provides that, "[r]ecover of workers' compensation benefits is the exclusive remedy of an employee ... or a legal beneficiary against the employer for the death of ... the employee." *Tex. Lab. Code Ann.* § 408.001(a). Paragraph (b) goes on to state that "[t]his section does not prohibit the recovery of exemplary damages by the surviving spouse or heirs of the body of a deceased employee whose death was caused by an intentional act or omission of the employer or by the employer's gross negligence." *Id.* § 408.001(b). Section 408.002 provides, "A right of action survives in a case based on a compensable injury that results in the employee's death." *Id.* § 408.002. While generally states prohibit an employee, or his beneficiaries, from bringing suit against the employer for actual damages, these provisions of the Texas Workers' Compensation Act actually permit the spouse of a deceased employee to bring suit for the death of the employee and to recover exemplary damages from the employer for its gross negligence. See *Wright v. Gifford-Hill & Co.*, 725 S.W.2d 712, 714 (Tex.1987); *City of Dallas v. Gatlin*, 329 S.W.3d 222, 226 (Tex. App.—Dallas 2010, no pet.); *Goodyear Tire & Rubber Co. v. Rogers*, 538 S.W.3d 637 (Tex. App. – Dallas 2017).

Texas law clearly provides a cause of action for a spouse when the death of her husband can be traced back to the actions, omissions, or gross negligence of his employer. Mr. Johns described in his deposition testimony how he was potentially exposed to asbestos-containing dust during his employment with IBM at the plant in Austin, Texas, by specifically highlighting how he:

- (1) built and wired the Selectric Composing Machine;
- (2) built relay gates;

- (3) performed final tests on the interior components of MT/ST typewriters;
- (4) worked with equipment power supplies, cables, wires, electronics packages, and framing/housing;
- (5) oversaw a team of fifteen employees while they assembled relay gates; and eventually
- (6) oversaw a group of employees performing final test on the MT/ST typewriters.

See Excerpt from Volume 2 & 3 of Conrad Johns' Deposition Testimony, dated 3/7/2023 & 5/1/2023, attached hereto as "Exhibit A", at Pgs. 311-324, 385-399, & 531-541.

While Texas law allows for Elizabeth Johns to pursue a case against IBM, it should be apparent that doing so requires the death of her husband. As of today, Conrad Johns is luckily still living; however, Mr. Johns was diagnosed with malignant mesothelioma on or about October 24, 2022, and he is currently 83 years old. Seeing that mesothelioma is a terminal illness without a known cure, it should go without question that Mr. Johns will likely pass away from this disease in the not-so-distant future.

Assuming arguendo that this Court grants IBM's motion to strike, doing so will have a negative impact on the legal system since repetitive litigation will likely ensue. If this Court decides to grant the motion to strike and requires this issue to eventually be filed in Texas, that subsequent case will involve (1) the same Plaintiffs, (2) the same Defendant, and (3) the same testimony that Mr. Johns has already perpetuated for three full days; three full days during which IBM counsel was in attendance and afforded the opportunity of questioning Mr. Johns about his potential asbestos exposure.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.