

THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, PHILADELPHIA COUNTY
IN THE COURT OF COMMON PLEAS

ANTHONY and DOLORES BUCCI, h/w : TRIAL DIVISION-CIVIL
VS. :
HONEYWELL INTERNATIONAL, INC. et al. : December Term, 2005
: No. 3399
:

ORDER

This matter comes to this Court as a result of the Order entered by the Superior Court which remanded this matter for a “reconsideration in light of our Supreme Court’s recent decision in *Summers v. Certaineed Corp.*, (citation omitted) Order of November 9, 2010.”

In reconsidering this Court’s original decision which was entered on August 6, 2008, this Court had the benefit of the comprehensive Supplemental Briefs of the parties, addressing the effect, if any, *Summers* had on the granting of Summary Judgment in this action.

For purposes of this review, it is necessary first to identify what was the basis for the decision on the issues presented in the underlying Summary Judgment Motion.

In the instant case . . . Plaintiffs have failed to demonstrate that Bucci suffers from more than asbestos-related bilateral pleural plaques and some limited shortness of breath. There is no evidence of any pulmonary asbestosis or other damage to the parenchyma (or body) of the lung. Plaintiffs’ expert did not diagnose Bucci with anything more than pleural plaques. *See* Report of Stanley L. Altschuler, Plaintiffs’ Opposition, Exhibit B. In addition, Bucci’s shortness of breadth could easily have been caused by either his history of hypertension, irregular heartbeat, prostate surgery, chronic cough, sinus condition and elevated cholesterol.

Moreover as discussed previously, Bucci’s own testimony reveals that his lifestyle has not been

adversely impacted by his condition. Therefore, the ruling in *Cauthorn* is clearly distinguishable because in that case, Plaintiff “ testified that his shortness of breadth harms his daily lifestyle.” *Cauthorn, supra* at 1037. By all accounts, Bucci leads the relaxed life of an eighty-three year old retired gentleman “with no pain or suffering, no loss of an organ function, and no disfigurement due to scarring.” *Lonasco, supra* at 372. Thus, the entry of Summary Judgment was proper as Plaintiffs have failed to show that Bucci suffers disabling consequences or manifest physical symptoms from his asbestos exposure and he therefore does not have a cognizable claim in this Commonwealth. *Giffear, 632 A.2d* at 884.

Opinion of 8/6/2008.

The testimony of the Plaintiff supported this conclusion:

In the case *sub judice*, the record fails to show that Bucci’s pleural disease adversely affects his lifestyle. Bucci’s own testimony reveals that he has not changed his daily routine as an eighty three year old retired gentleman. *See* Deposition of Anthony Bucci, 08/30/07, pp. 206-207. Mr. Bucci has not changed his hobbies, recreational activities, work-schedule or vacation plans because of his asbestos-related disease. *Id.* At 204-205. Bucci decided to stop working on carpentry projects around the house because when he reached eighty he felt, “I had put my time in.” *Id.* At 204. He still mows the lawn and is able to play poker. *Id.* at 208. In short, Bucci is, by desire, not an active man because, “I just don’t feel like doing this stuff any more.” *Id.* at 206.

Moreover, Bucci explains that his relaxed lifestyle was not the result of his asbestos-related condition because he “would have felt this way even without this problem.” *Id.* at 206. The main complaint Bucci mentions is if he goes up stairs more than once he gets “out of breadth” but “[n]othing hurts.” *Id.* at 204. Given Bucci’s own description of his overall health and his retired lifestyle it is difficult to conclude that his asbestos related pleural disease causes him to suffer from “disabling consequences or manifest physical symptoms” such that he can maintain a cognizable claim. *See Giffear, supra.*

Plaintiffs argue that Bucci's testimony about hiring other people to install a patio demonstrates Bucci's "inability to do certain activities anymore" and thus under Pennsylvania law he has "suffered a compensable lung injury." *See* Plaintiffs' Opposition, p.2. A close look at Bucci's testimony shows that he no longer took on large projects because he had neither the desire nor determination to handle them.

Q. Do you exercise on a regular basis?

A. No, no. I was a carpenter and I was always doing something. I got four daughters, putting rec rooms, bathrooms, all that kind of stuff in ... and I figured when I got to be eighty, I put my time in, so I'm backing off.

* * * *

Q. Has there been any changes in your life as a result of the diagnosis of your asbestos-related disease?

A. Well, I'll tell you, I probably would have felt this way even without this problem, but I used to depend on myself that I was going to do whatever had to be done in that house to keep it up to snuff.... I just don't feel like doing this stuff anymore.

* * * *

Q. Did he [Mr. Bucci's doctor, Dr. Altschuler] place any restrictions or limitations on your activities?

A. No.

Q. Are there activities that you used to do, you talked about playing poker and so on, but are there any other social activities or hobbies that you used to do that you no longer do since your diagnosis of an asbestos-related condition?

A. That would be since '04?

Q. Yes.

A. No.

See Deposition of Anthony Bucci, 08/30/07 pp 204, 206-207, 212.

Opinion of 8/6/2008.

In *Summers*, our Supreme Court reversed evenly a divided Superior Court panel which had affirmed the lower Court's decision to grant summary judgment. In doing so, the Court reviewed the Opinion in Support of Affirmance (OISA) which it found had:

. . . extensively relied upon the Superior Court’s panel decision in *Quate v. American Standard, Inc.*, 2003 PA Super 64, 818 A.2d 510 (Pa. Super. 2003), for the proposition that Appellants’ cigarette smoking and obstructive lung diseases “may have caused [their] shortness of breath upon exertion and therefore [the medical conditions] cannot be causally related to asbestos exposure sufficient to sustain a compensable injury. *Id.*

The specific holding of the Superior Court *Quate* Panel that was inconsistent with Pa. Law, was identified by our Supreme Court in *Summers*:

...we hold that where a Plaintiff suffers from a non-asbestos-related medical condition, the symptoms of which are consistent with medical conditions arising from exposure to asbestos, the existence of those non-asbestos-related medical conditions negate his ability to establish the necessary causal link between his symptoms and asbestos exposure. Under these circumstances, summary judgment is proper.

This holding of the *Quate* Panel was disapproved by the Supreme Court in *Summers*:

. . . where it is clear that reasonable minds could differ on the issue of causation, precluding asbestos litigants from pursuing causes of action, supported by competent medical evidence, merely because of the existence of competing health conditions, is unsustainable. Accord *Vattimo*, 465 A.2d at 1234. To that end, the *Quate* analysis defies the scores of cases decided over the decades by the appellate courts of this Commonwealth holding that disputed issues of causation are for the jury and jury alone. Accordingly, after careful consideration, to the extent *Quate* states or holds otherwise, it is explicitly disapproved.

Clearly, the issue in *Summers* was the compelling nature of disputed issues of causation based upon competent medical evidence (emphasis added).

That was not the issue before this Court. The issue was the asymptomatic nature of Mr. Bucc’s illness. This is what this Court focused on and it is what its

decision turned on. This Court did exactly what our Supreme Court said the *Quate* panel should have done to be in compliance with Pa. Law.

Mr. Quate's shortness of breath, however, did not restrict his daily activities, nor prevent normal functioning. *Id. At 514.* Rather than concentrating on Mr. Quate's condition being asymptomatic in nature, the Superior Court panel instead decided that Mr. Quate's myriad of medical conditions, all of which may cause shortness of breath, precluded Mr. Quate from establishing the necessary causal connection between the breathlessness and asbestosis to survive a motion for summary judgment:

17. To be sure, had the Quate panel denied recovery on this basis, such a holding would have been wholly consistent with this Court's decision in *Simmons, supra pp.14-15.*

The decision by this Court to grant Summary Judgment was based upon the *Giffear, Lonasco, Simmons* line of cases which was undisturbed and in fact, reinforced by the Supreme Court *Summers* decision. *Id.* Therefore, affirmance in the instant case is appropriate.

BY THE COURT:

6-21-2011

DATE

ALLAN L. TERESHKO, J.