LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
JOURNAL ENTRY
Hon. D. Chris Cook, Judge

Date April 11, 2018 Case No. 16CV190343

EDWARD SHAFFER, ET AL.
Plaintiff

J. Grunda, C. Stern, G. Henderson
Plaintiff's Attorney

VS

A. W. CHESTERTON CO., ET AL.
Defendant

M. Mendoza, B. Rimmel - FOR USSC
Defendant's Attorney

This matter is before the Court on Plaintiff's Motion to Reconsider The Order Granting separate Defendant, United States Steel Corporation's, Motion For Summary Judgment on Plaintiffs' Federal Claims, filed March 12, 2018 and Defendant, United States Steel Corporation's Brief In Opposition To Plaintiff's Motion To Reconsider, filed March 30, 2018.

THE COURT RULES THAT: The Motion For Reconsideration is not well-taken and hereby DENIED.

See Judgment Entry. No Record.

IT IS SO ORDERED.

JUDGE D. CHRIS COOK

THE COURT FINDS NO JUST CAUSE FOR DELAY

cc: All Counsel of Record

Pursuant to Civ. R. 54(B), this court enters final judgment as to the issue decided herein, which is less than all the claims in the case and makes the express determination that there is no just reason for delay.

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J. Grunda, C. Stern, G. Henderson — Plaintiff's Attorney

VS

A. W. CHESTERTON CO., ET AL. — Defendant
M. Mendoza, B. Rimmel – FOR USSC — Defendant's Attorney

INTRODUCTION

This matter is before the Court on Plaintiff's Motion to Reconsider The Order Granting separate Defendant, United States Steel Corporation's, Motion For Summary Judgment on Plaintiffs' Federal Claims, filed March 12, 2018 and Defendant, United States Steel Corporation's Brief In Opposition To Plaintiff's Motion To Reconsider, filed March 30, 2018.

Telephonic conference had on March 15, 2018.

THE MOTION FOR RECONSIDERATION

It is axiomatic that the Ohio Rules of Civil Procedure do not allow for motions for reconsideration after a *final judgment* of the trial court.

"Succinctly stated, the Rules of Civil Procedure specifically limit relief from judgments to motions expressly provided for within the same Rules. A motion for reconsideration is conspicuously absent within the Rules. Rather the Civil Rules do allow for relief from final judgments by means of Civ.R. 50(B) (motion notwithstanding the verdict), Civ.R. 59 (motion for a new trial), and Civ.R. 60(B) (motion for relief from judgment)." *Pitts v. Ohio Dept. of Trans.* (1981), 67 Ohio St.2d 378, 380.

The Supreme Court noted further, "Without a specific prescription in the Civil Rules for a motion for reconsideration, it must be considered a nullity. Furthermore, App.R. 4(A) expressly provides that a notice of appeal must be filed within 30 days of the filing of the entry of judgment appealed from." *Id.*

And, "Practical considerations also mandate and support our determination herein. Once again, this court as well as the lower courts are left in a procedural quagmire of trying to elevate a motion for reconsideration **after a final judgment** to the status of a motion for a new trial or as a motion for a directed verdict or the like. The courts have had the arduous task of trying to inspect each and every reconsideration motion which is filed in the trial court after a final judgment, and try to decipher form over substance." *Id.* at 381, emphasis added.

The application for a motion for reconsideration after a final judgment is simply a legal fiction created by counsel, which has transcended into a confusing, clumsy and "informal local practice." See Kauder, supra, and Kent, Odds & Ends, 49 Cleve.Bar J. 280. *Id.*

That noted, the Court agrees with Plaintiff that given the interlocutory nature of its dispositive ruling granting summary judgment to separate Defendant, United States Steel Corporation ("USSC"), this Court has authority to consider the Motion on the merits as that ruling is not a "final judgment."

ANALYSIS

In support of their Motion For Reconsideration, Plaintiffs, Edward Shaffer and Diane Shaffer "("Shaffer"), raise a number of issues for consideration which will be addressed by the Court *seriatim.*

The main arguments raised by Shaffer are: 1) USSC did not raise a causation defense as to Shaffer's Jones Act claims; 2) USSC relied exclusively on federal law interpreting the causation standard relative to Shaffer's general maritime law unseaworthiness claim; 3) the Ohio Supreme Court's landmark decision in *Schwartz v. Honeywell,* 2018-Ohio-474 ("*Schwartz*") is applicable to cases involving " . . . land based exposures under Ohio law . . ."; and 4) this Court relied ". . . almost exclusively . . ." on *Schwartz* in granting judgment in favor of USSC on Shaffer's Federal Claims.

In addition, Shaffer urges that reconsideration is appropriate given that 5) this Court *sua sponte* applied state law rather than federal maritime law where the parties agreed that federal maritime law is controlling; and 6) Shaffer was not given an opportunity to brief the issues of *Schwartz* application to this case.

These arguments, while all compelling, do not support the position that the Court should set-aside its ruling, order re-briefing, and as posited by USSC, give Shaffer "another bite at the apple."

USSC DID NOT RAISE A CAUSATION DEFENSE AS TO SHAFFER'S JONES ACT CLAIMS

"Trial judges are at the front lines of the administration of justice in our judicial system, dealing with the realities and practicalities of managing a caseload and responding to the rights and interests of the prosecution, the accused, and victims." *State v. Busch,* (1996), 76 Ohio St.3d 613 at ¶ 2.

A court has the "inherent power to regulate the practice before it and protect the integrity of its proceedings." *Royal Indemn. Co. v. J.C. Penney Co.* (1986), 27 Ohio St.3d 31, 33-34. "Trial courts deserve the discretion to be able to craft a solution that works in a given case." *Busch, supra.* See also: *Northland Ins. Co. v. Poulos,* 2007 WL 4696839, 7th Dist. CA No. 06 MA 160, "We note that *sua sponte* dismissals . . . are permissible." Citing, *State ex re. Edwards v. Toledo City Schools* (1995), 72 Ohio St.3d 106, 109.

Shaffer essentially argues that as USSC failed to raise a causation defense relative to the Jones Claims, they have waived it and the Court is constrained to adjudicate the merits based solely on the arguments raised by the parties. This Court disagrees.

First, the undeniable objective of any court when ruling on a motion, or on any issue for that matter, is to get it right! To suggest that a trial court is constrained to reach a decision based only on the arguments raised by the parties would emasculate the court's primary purpose, authority, and mandate to do justice. Should a trial court ignore a clear and obvious legal analysis that definitively resolves a matter simply because the parties failed to raise it? I think not. If nothing more, a court's equity powers provide the discretion to consider issues and/or cases not raised by the parties.

As noted above, if a trial court has the discretion to "craft a solution that works in a given case," (*Busch, supra*) and a trial court can even *sua sponte* dismiss an action (*State ex rel. Edwards*), surely a court can consider issues or cases not raised by the parties to resolve a dispositive motion.

Moreover, as urged by USSC, Shaffer did have a meaningful opportunity to address the substantial factor issue as it related to the maritime seaworthiness claim. While admittedly, Shaffer did not address the issue relative to the Jones Act claims directly, the distinction is meaningless.

In the case at bar, Shaffer posited no evidence that his alleged exposure to asbestos while on USSC's ships caused injury to him, however slight.[1] At best, Shaffer's expert opined that the cumulative exposure to asbestos over a lifetime contributed to Shaffer's illness. Putting aside *Schwartz* for a moment[2], no expert affirmatively opined that Shaffer's exposure to asbestos on any USSC ship directly caused his illness.

Further, when considering the holding in *Schwartz,* Shaffer's claims under the Jones Act relative to causation become even more attenuated. Simply put, even when viewed through a lens most favorable to Shaffer, there is no evidence that exposure to asbestos on USSC's ships was a substantial factor in causing Shaffer's illness and no amount of re-briefing or subsequent argument will alter this fact.

USSC RELIED EXCLUSIVELY ON FEDERAL LAW INTERPRETING THE CAUSATION STANDARD RELATIVE TO SHAFFER'S GENERAL MARITIME LAW UNSEAWORTHINESS CLAIM

As conceded by Shaffer, USSC did raise a defense based upon causation relative to Shaffer's unseaworthiness claim. The gravamen of this argument, in its defense, is that USSC relied solely on federal law but the Court considered state law (*Schwartz*) in reaching its decision.

This argument is misplaced.

First, as argued *infra,* this Court was well within its province to rely on the Ohio Supreme Court's decision in *Schwartz* and apply it to this case. Second, and more importantly, the legal analysis posited by the federal cases relied upon by USSC and the Court, to wit: *Lindstrom, Stark, Kirk*, and *Shelton*[3] are almost identical to the reasoning supporting the decision in *Schwartz.* In other words, even if this Court did not consider *Schwartz* at all, it would have reached the same conclusion given the federal cases cited.

Accordingly, because Shaffer did reply and argue contra the federal cases, and the rationale in *Schwartz* is essentially identical – Shaffer did, for all practical purposes, argue contra *Schwartz.*

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[1] Element two of the Jones Act.
[2] That debunks the cumulative exposure theory.
[3] Citations omitted.

SCHWARTZ IS APPLICABLE TO CASES INVOLVING LAND-BASED EXPOSURE UNDER OHIO LAW

Shaffer next argues that the Court should grant reconsideration because the *Schwartz* decision addresses the causation standard applicable to mesothelioma cases ". . . involving land-based exposures . . ." under Ohio law and that it makes no reference to general federal maritime law.

This argument is not convincing.

First, nothing in the *Schwartz* decision limits its application to "land-based" exposure nor is there any reason, logical, practical, or otherwise, why this Court should do so.

Second, this Court went to some length to determine whether substantive Ohio law, to wit; *Schwartz* and RC 2307.96, applies to this case or whether federal law preempted application of Ohio law. After review of the pertinent federal and state statutes regarding preemption, this Court concluded that state law was applicable.

As such, and given that there are no reasons articulated by *Schwartz,* the Jones Act, or general maritime law that exclude application of *Schwartz* or mandate application of federal law only, *Schwartz* and RC 2307.96 are applicable and controlling.

THE COURT RELIED ALMOST EXCLUSIVELY ON *SCHWARTZ* IN GRANTING JUDGMENT IN FAVOR OF USSC ON SHAFFER'S FEDERAL CLAIMS

This argument is simply incorrect.

As noted, *supra,* this Court relied on at least four (4) federal decisions (all in harmony with *Schwartz*) in addition to *Schwartz* when it granted judgment to USSC, together with numerous other federal decisions.

In addition to *Lindstrom, Stark, Kirk,* and *Shelton,* this Court considered *Gallick, Cook, Mitchell, Mitchell Miller,*[4] and other federal cases to reach the conclusion that Shaffer could not establish causation under either Ohio or federal law for both the Jones Act and general maritime unseaworthiness claims.

[4] Citations omitted.

THE COURT *SUA SPONTE* APPLIED STATE LAW RATHER THAN FEDERAL MARITIME LAW WHERE THE PARTIES AGREED THAT FEDERAL MARITIME LAW IS CONTROLLING

First, this Court is not convinced that the parties ever "agreed" that federal maritime law is controlling. That well may have been how the briefs were argued and legal analysis framed, but there is nothing in the record to suggest that USSC "agreed" or concedes that only federal law is applicable.

In fact, USSC urges that this Court deny Shaffer's Motion as Plaintiffs had a full opportunity to provide a meaningful response to the issues raised by USSC regarding the substantial factor test and how it relates to the identical legal theories advanced by federal law (*Lindstrom, Stark,* and Kirk) and state law (Schwartz).

In addition, and as noted *supra,* the Court explained in some detail why state law is applicable and why this Court has the inherent authority to reach conclusions outside of the arguments advanced.

Finally, as there is no substantive difference between the legal theories enunciated by the federal cases and the state case regarding their rejection of the cumulative exposure theory, Shaffer can hardly be heard to argue prejudice.

SHAFFER WAS NOT GIVEN THE OPPORTUNITY TO BRIEF THE ISSUE OF *SCHWARTZ* APPLICATION TO THIS CASE

In this Court's view, this argument is the most compelling.

Shaffer is correct that *Schwartz* was released after the briefing closed and oral argument was had. And, admittedly, this Court did rely significantly (though not exclusively) on its holding.

Nevertheless, the Court is cognizant of two overriding principals: first, as noted repeatedly herein, the legal analysis posited by the Ohio Supreme Court in *Schwartz* mirrors the conclusions of a number of the Federal Circuit Court decisions relied upon by USSC and this Court. As Shaffer clearly addressed the conclusions and holdings of the federal cases and their application to this case, Plaintiffs implicitly addressed the holding in *Schwartz.*

Put another way, what new arguments can Shaffer make to address the application and holding of *Schwartz* that were not made relative to the federal cases? At the end of the day, numerous federal cases, and now an Ohio case, reject the legal theory of causation advance in this case by Shaffer (cumulative exposure). These cases demand

that a plaintiff alleging injury from exposure to asbestos show that the conduct of a particular defendant was a substantial factor in causing the injury or loss.

Based upon the evidence proffered by Plaintiffs, Shaffer cannot satisfy this requirement for either the Jones Act claims or maritime claims.

Second, this Court is firmly convinced that the framework underpinning asbestos litigation in Ohio has been significantly altered by *Schwartz.* In many asbestos cases, including all in recent memory of this Court, plaintiffs have brought suit against multiple defendants in reliance on the cumulative exposure theory with no evidence that each individual defendant's conduct was a substantial factor in causing the plaintiff's illness.

Such is the situation herein.

Based upon Shaffer's expert's opinions and reliance on the cumulative exposure theory, the fact that *Schwartz* is clearly applicable and consistent with federal case law, and Shaffer's inability to demonstrate causation under either state or federal law, it would be inapposite, costly, and burdensome to grant reconsideration of a decision, that, for all practical purposes, will not yield a different result if re-briefed.

CONCLUSION

For all of the forgoing reasons, Plaintiff's Motion For Reconsideration is DENIED.

IT IS SO ORDERED.

JUDGE D. CHRIS COOK

THE COURT FINDS NO JUST CAUSE FOR DELAY

Pursuant to Civ. R. 54(B), this court enters final judgment as to the issue decided herein, which is less than all the claims in the case and makes the express determination that there is no just reason for delay.