

[J-21-2004]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

FRANK AND MARGARET IEROPOLI, : No. 117 EM 2002

Appellants

v.

AC&S CORPORATION, NATIONAL :
GYPSUM COMPANY, ASBESTOS : Common Pleas of Philadelphia County
CORPORATION, LTD., BELL ASBESTOS : dated June 11, 2002 at No. 2098,
MINES, INC., COMBUSTION : December Term 2000 and No. 0001,
ENGINEERING INC., CROWN CORK & : October Term 1986
SEAL COMPANY, INC., FLEXITALLIC :
GASKET COMPANY, GAF :
CORPORATION, GARFIELD MOLDING :
COMPANY, INC., GARLOCK, INC., :
HAJOCA PLUMBING SUPPLY :
COMPANY, HOPEMAN BROTHERS, :
INC., MERIDEN MOLDED PLASTICS, :
METROPOLITAN LIFE INSURANCE, :
NOSROC CORPORATION, OWENS- :
ILLINOIS, INC., PELTZ ROWLEY :
CHEMICALS COMPANY, PFIZER, INC., : RESUBMITTED: December 29, 2003
RAPID AMERICAN CORPORATION, :
BEVCO INDUSTRIES, TURNER & :
NEWALL, LTD., UNION CARBIDE :
CORPORATION, U.S. GYPSUM :
COMPANY, U.S. MINERAL PRODUCTS, :
W.R. GRACE & COMPANY :

PETITION OF: CROWN CORK & SEAL :
COMPANY, INC. :

DISSENTING OPINION

MADAME JUSTICE NEWMAN

DECIDED: February 20, 2004

I respectfully dissent from the decision announced by the Court this day. I believe that the statute at issue does not “clearly, plainly, and palpably” violate the state or federal Constitution and, accordingly, I would affirm the Order of the trial court granting summary judgment to Crown, Cork & Seal Company, Inc. (Crown).

The General Assembly enacted 15 Pa.C.S. § 1929.1 (Limitations on Asbestos-Related Liabilities Relating to Certain Mergers or Consolidations) on December 17, 2001, to stem the ever-expanding asbestos-related liabilities of corporations, such as Crown, that incurred asbestos-related liability only by virtue of a previous merger or consolidation with a company that produced, distributed, or installed asbestos or asbestos products. See 2001 LEGISLATIVE JOURNAL - SENATE 1231 (December 11, 2001) (statement of Sen. Stack) (describing the “unprecedented avalanche of asbestos-related claims” as “an elephantine mess” requiring “legislative solutions”). Section 1929.1(a)(1) provides in relevant part that “the cumulative successor asbestos-related liabilities of a domestic business corporation that **was incorporated in this Commonwealth prior to May 1, 2001**, shall be limited to the fair market value of the total assets of the transferor determined as of the time of the merger or consolidation” 15 Pa.C.S. § 1929.1(a)(1) (emphasis added). The statute applies to all mergers and consolidations consummated prior to May 1, 2001, whether or not litigation was pending against a successor corporation as of the date of enactment. 15 Pa.C.S. § 1929.1(d)(1) and (2).

On February 7, 2002, Crown filed a Global Motion for Summary Judgment, seeking dismissal of 378 cases then pending against it in the Court of Common Pleas of Philadelphia County (trial court). The parties agree that, as of February 7, 2002, Crown already had paid out approximately \$336 million for asbestos claims as the successor corporation to Mundet Cork Corporation (Mundet Cork). The fair market value, adjusted for inflation, of Crown's 1963 purchase of Mundet Cork is in the range of \$50 - \$55 million. Therefore, Crown contended that, pursuant to Section 1929.1, it had expended its liability six-fold. The trial court agreed and granted summary judgment in all 378 pending cases. Frank and Margaret Ieropoli (the Ieropolis), among the group of plaintiffs who had sued asbestos defendants including Crown, appealed to the Superior Court and we exercised our King's Bench powers to review the decision of the trial court.¹

The majority finds Section 1929.1 repugnant to Article I, Section 11 of the Pennsylvania Constitution, which states that “[a]ll courts shall be open; and every man for an injury done him in his lands, goods, person or reputation **shall have remedy by due course of law**, and right and justice administered without sale, denial or delay.” (emphasis added). Accord Marbury v. Madison, 5 U.S. 137, 163 (1803) (the “very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury”). We have explained that this provision of our state Constitution ensures “that the Legislature may not extinguish a right of action which has already accrued to a claimant.” Gibson v. Commonwealth, 415 A.2d 80, 83 (Pa. 1980).

¹ See 42 Pa.C.S. § 726 (allowing the Supreme Court of Pennsylvania to exercise emergency jurisdiction over any matter then pending in any court of the Commonwealth). By exercising our King's Bench powers, we divested the Superior Court of jurisdiction and took cognizance of the issue presented.

“There is, of course, a strong presumption in favor of the constitutionality of statutes – a presumption which reflects on the part of the judiciary the respect due to the legislature as a co-equal branch of government.” School Districts of Deer Lakes and Allegheny Valley v. Kane, 345 A.2d 658, 662 (Pa. 1975) (internal footnotes omitted). “Courts may not declare a statute unconstitutional ‘unless it clearly, palpably, [and] plainly violates the Constitution.’” Tosto v. Pennsylvania Nursing Home Loan Agency, 331 A.2d 198, 205 (Pa. 1975) (quoting Daly v. Hemphill, 191 A.2d 835, 840 (Pa. 1963)). “It is the duty of this court . . . in construing [a] statute to give it, if possible, an interpretation which will prevent any conflict with the Constitution.” Hotel Casey Co. v. Ross, 23 A.2d 737, 740 (Pa. 1942).

A “right of action” implicates the right of an injured party “to secure redress for violation of his rights” by bringing a cause of action in suit. Black’s Law Dictionary 1325 (6th ed. 1991). A cause of action in tort accrues on the date that the accident or the injury occurs. Smith v. Fenner, 161 A.2d 150, 154-155 (Pa. 1960). The phrase “cause of action” is incapable of a precise definition, as the majority aptly notes. See also United States v. Memphis Cotton Oil Co., 288 U.S. 62, 67-68 (1933). In the present case, the majority defines “cause of action” as a right to a remedy: “the vehicle by which a person secures redress from another person for the consequences of an event that is a legal injury.” Majority Opinion at 16, n.17. I must quarrel with the breadth of this concept because it fails to limit adequately the class of entities from which the injured party can seek that redress. Instead, I note that a cause of action in tort necessarily requires a set of facts that gives rise to an obligation between the party claiming injury and the party that is allegedly responsible for that injury. What is necessary to the definition of “cause of action” is the identification of a party responsible for the injury allegedly suffered.

The problem in the instant case is the identification of the party legally responsible for the injuries suffered by the Ieropolis. The responsible party in the instant case is not Crown; rather it is Mundet Cork. My point in this regard is not intended to undo a century of successor liability law, but to acknowledge the artifice of deeming a successor corporation “responsible for the injury.” The cause of action in this case does not accrue against Crown;² more accurately, it accrues against Mundet Cork and, pursuant to its status as successor, Crown steps into the shoes of Mundet Cork to ensure that, as between a blameless plaintiff and a corporation that has succeeded a corporation responsible for an injury, the successor corporation, not the blameless plaintiff, is responsible for the acts of the tortfeasor. Successor liability is an important tenet of our system of jurisprudence, but it is not one protected by Article I, Section 11 of the Pennsylvania Constitution. Causes of action in tort do not accrue in a vacuum – rather, they arise against an entity for a wrong done at the time an injury is incurred. Article I, Section 11 forecloses retroactive elimination or limitation of the liability of the tortfeasor.

Conceived of in this way, Section 1929.1 does not extinguish a vested right or an accrued cause of action. Neither does it eliminate a right to a remedy. Instead, Section 1929.1 limits the amount of liability that successor corporations can be made to be accountable for and, ultimately, limits the class of entities who can be made to bear the burden of that right. This is not to say that the legislature could constitutionally provide that all pending asbestos cases are summarily dismissed -- this would extinguish vested causes of action against entities responsible for injuries. But the constitutional provision with which we are concerned, Article I, Section 11, does not estop the General Assembly from limiting

² I recognize that Crown (the successor) is the entity that the plaintiff will sue, but in the theoretical sense, Crown’s responsibility is predicated solely on its status as a successor to Mundet Cork (the alleged tortfeasor).

(or eliminating) the effect of successor liability, even retroactively. See Jenkins v. Hospital of the Medical College of Pennsylvania, 634 A.2d 1099, 1104 (Pa. 1993) (“[n]either the federal constitution nor our state constitution invalidates a non-penal statute merely because it is retroactive, unless such legislation impairs contractual or other vested rights”) (internal citation omitted). Section 1929.1 does not retroactively limit or extinguish the liability because the successor corporation (in the case *sub judice*, Crown) is not the tortfeasor.

It is conceivable, although unlikely, that at some point in the future a plaintiff in a pending asbestos case could, by virtue of Section 1929.1, be denied any recovery. That would be an unfortunate result of my position in this case, but that potentiality should not enter into the consideration of a court of last resort charged with determining whether the statute passes constitutional muster. In my opinion, the Ieropolis have failed to demonstrate, “clearly, plainly, and palpably,” that Section 1929.1 violates Article I, Section 11 of the Pennsylvania Constitution.

I recognize that the Ieropolis have presented five other constitutional challenges to Section 1929.1: (1) violation of the Commerce Clause; (2) violation of equal protection principles; (3) the statute was not properly enacted, in violation of Article III, Sections 1 and 3 of the Pennsylvania Constitution; (4) the statute is a special law, in violation of Article III, Section 32; and (5) the statute sets an unconstitutional limit on personal injury damages, in violation of Article III, Section 18. However, rather than discussing these meritless challenges *seriatim*, I would instead affirm the well-reasoned Opinion of the trial court rejecting each of these contentions. See In Re: Asbestos Litigation, 59 Pa. D. & C. 4th 62, 72-80, 88-99 (Pa. C.C.P. 2002).

Mr. Justice Eakin joins this dissenting opinion.