

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT

Myrtle Nell Catrett, Administratrix of the Estate of Louis H. Catrett,
Deceased v. Johns-Manville Sales Corporation, et al.

263 U.S. App. D.C. 399 (D.C. Cir. 1987) · No. No. 83-1694 · Decided August 7, 1987

SUMMARY

The D.C. Circuit considered, on remand from the Supreme Court, whether summary judgment was properly granted to Celotex in an asbestos-exposure wrongful-death action. The court held that the record, including an employer letter, interrogatory responses, sales records, and corporate succession evidence, created a genuine issue of material fact regarding the decedent's exposure to Firebar and Celotex's responsibility for the product. The court reversed the summary judgment and remanded for further proceedings.

CASE DETAILS

COURT	United States Court of Appeals for the District of Columbia Circuit
WRITING FOR THE COURT	Circuit Judge Starr; Chief Judge Wald; Circuit Judge Bork
JURISDICTION	Federal
DECIDED	August 7, 1987
DOCKET	No. 83-1694
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the grant of summary judgment for Celotex Corporation in an asbestos product-liability action, considered on remand from the Supreme Court after the Supreme Court reversed the court of appeals' earlier decision concerning the sufficiency of Celotex's summary-judgment motion.
STANDARD OF REVIEW	De novo review of the grant of summary judgment; summary judgment is proper only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	published precedential federal appellate opinion
PARTIES	Myrtle Nell Catrett, Administratrix of the Estate of Louis H. Catrett, Deceased v. Johns-Manville Sales Corporation, et al.

TOPICS

summary judgment evidence hearsay products liability appellate procedure

PRACTICE AREAS

civil procedure products liability evidence appellate procedure

QUESTIONS PRESENTED

1. Whether the evidence before the District Court created a genuine issue of material fact concerning Louis Catrett's exposure to Firebar and, through the corporate chain linking Carey-Canadian Asbestos and Panacon Corporation to Celotex, to a Celotex product.
2. Whether summary judgment was proper when the nonmoving party's showing included an allegedly inadmissible letter, an interrogatory response identifying a potential witness, sales records, and corporate-liability evidence.

HOLDINGS

1. The cumulative record created a genuine issue of material fact regarding Louis Catrett's exposure to Firebar while working for Anning-Johnson and the connection between Firebar and Celotex; therefore, Celotex was not entitled to summary judgment as a matter of law.
2. The court could consider the Hoff letter at the summary-judgment stage because Celotex did not timely object to its consideration or admissibility before the District Court, and the letter was before that court when it ruled.

KEY QUOTATIONS

"On this record, therefore, an unbroken chain links Mr. Catrett to Firebar, and Firebar to Celotex." (39-40)

"Under the specific circumstances before us, we cannot, in conscience, conclude on this state of the record that no genuine issue of material fact exists with respect to Mr. Catrett's exposure to Celotex products." (40)

FACTUAL BACKGROUND

Louis Catrett worked in construction and was exposed to asbestos products during his employment, including work for Anning-Johnson in 1971. Evidence in the record indicated that he applied Firebar fireproofing, that Firebar was shipped to Anning-Johnson by Carey-Canadian Asbestos, a division of Panacon Corporation, and that Panacon later merged into Celotex with Celotex assuming Panacon's ordinary liabilities. The record also identified T.R. Hoff, an Anning-Johnson official, as a potential witness concerning facts relevant to the alleged exposure.

PROCEDURAL HISTORY

Mrs. Catrett sued multiple asbestos manufacturers and distributors after her husband's death from asbestosis. The District Court granted Celotex summary judgment, concluding that the record did not show exposure to Celotex products. A divided court of appeals panel reversed on the ground that Celotex had not properly supported its

motion under Rule 56. The Supreme Court reversed and remanded, holding that Celotex's identification of portions of the record supporting its motion satisfied its initial burden and leaving this court to determine whether Catrett's opposition created a genuine issue for trial. On remand, this court reversed the summary judgment and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded for further proceedings not inconsistent with the opinion; the court did not determine whether the case ultimately had to proceed to trial or could be resolved on a more fully developed record.

CASES CITED

- Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)
- Catrett v. Johns-Manville Sales Corp., 756 F.2d 181 (D.C. Cir. 1985)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)
- Laningham v. United States Navy, 813 F.2d 1236, 1241 (D.C. Cir. 1987)
- United States v. General Motors Corp., 518 F.2d 420, 441-42 (D.C. Cir. 1975)
- Palmer v. Hoffman, 318 U.S. 109, 111-15, 63 S. Ct. 477, 479-81, 87 L. Ed. 645 (1943)
- Marks v. United States, 430 U.S. 188, 193, 97 S. Ct. 990, 993, 51 L. Ed. 2d 260 (1977)