

STATE OF MAINE
CUMBERLAND, ss

BUSINESS AND CONSUMER COURT
Location: Portland
Docket No.: BCD-CV-13-21

NAOMI B. McKINNON, Individually and)
as Personal Representative for the)
ESTATE OF CHARLES L. McKINNON,)
Plaintiff,)
v.)
AIR & LIQUID SYSTEMS CORP. et al.,)
Defendants)

DECISION AND ORDER
(Motion for Summary Judgment/Defendant
Tri-State Packing Supply Co.)

This matter is before the Court on Defendant Tri-State Packing Supply Co.'s Motion for Summary Judgment. In this action, Plaintiff contends that Charles McKinnon (the Decedent) was exposed to asbestos, which ultimately caused his death. Through its motion, Defendant asserts that Plaintiff's claim is barred by the statute of limitations, and that Plaintiff cannot establish the required relationship between Defendant's product and the Decedent's exposure to asbestos. Defendant filed its motion on June 26, 2013. Defendant did not file an opposition to the motion and, therefore, has waived opposition to the motion. M.R. Civ. P. 56(c); M.R. Civ. P. 7(c)(3).

Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. M.R. Civ. P. 56(c); *Levine v. R.B.K. Caly Corp.*, 2001 ME 77, ¶ 4, 770 A.2d 653, 655. An issue of "fact exists when there is sufficient evidence to require a fact-finder to choose between competing versions of the truth at trial." *Inkel v. Livingston*, 2005 ME 42, ¶ 4, 869 A.2d 745, 747 (quoting *Lever v. Acadia Hosp.*

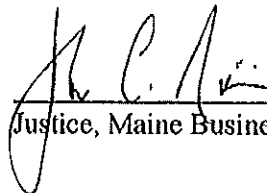
Corp., 2004 ME 35, ¶ 2, 845 A.2d 1178, 1179). Any ambiguities “must be resolved in favor of the non-moving party.” *Beaulieu v. The Aube Corp.*, 2002 ME 79, ¶ 2, 796 A.2d 683, 685 (citing *Green v. Cessna Aircraft Co.*, 673 A.2d 216, 218 (Me. 1996)). To withstand a defendant’s motion for summary judgment, “the plaintiff must establish a prima facie case for each element of her cause of action. If a plaintiff does not present sufficient evidence on the essential elements . . . the defendant is entitled to a summary judgment.” *Blake v. State*, 2005 ME 32, ¶ 4, 868 A.2d 234, 237 (quotation marks omitted).

The summary judgment record establishes that the Decedent was diagnosed with lung cancer in June 2006, and died on April 13, 2007. Plaintiff filed the Complaint in this action on April 11, 2013. Defendant asserts, and the Court agrees, that the date of death and the onset of Mr. McKinnon’s disease forecloses this action regardless of whether the Court applies the general six-year statute of limitations, *see* 14 M.R.S. § 752 (2012) (“All civil actions shall be commenced within 6 years after the cause of action accrues and not afterwards”), or the two-year statute of limitations of the Wrongful Death Statute, *see* 18-A M.R.S. § 2-804(b) (“An action under this section must be commenced within 2 years after the decedent’s death.”).

The Court, therefore, grants Defendant’s Motion for Summary Judgment, and enters judgment in favor of Defendant Tri-State Packing Supply Co. and against Plaintiff.¹

Pursuant to M.R. Civ. P. 79(a), the Clerk shall incorporate this Decision and Order into the docket by reference.

Date: 7/25/13



Justice, Maine Business & Consumer Court

¹ Because the Court has concluded that the record establishes that the Plaintiff’s claim is barred by the statute of limitations, the Court does not address Plaintiff’s other arguments in support of its request for summary judgment.