

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Michelle Stecyk et al.,	:	
Plaintiffs,	:	
	:	
v.	:	CIVIL ACTION
	:	
Bell Helicopter	:	NO. 94-CV-1818
Textron., Inc. et al.	:	
Defendants.	:	
	:	
	:	

MEMORANDUM OF DECISION

McGlynn, J. **November** , **1998**

This case arises out of the crash of an experimental V-22 Osprey aircraft during a ferry flight near Quantico, Virginia on July 20, 1992. The accident killed seven people, including plaintiffs' decedents, who worked for Boeing Vertol Company ("Boeing"). The defendants are: (1) Bell Helicopter Textron, Inc. ("Bell"), the contractor who worked with Boeing and the United States Government on the development of the V-22; (2) the Allison Gas Turbine Division of General Motors, Inc. ("GM"), who contracted with the Government to develop and build the V-22 engine and its related parts; and (3) Macrotech Fluid Sealing ("Macrotech"), the manufacturer of a seal which is alleged to have been installed incorrectly on the plane that crashed.

Before the court is a motion by defendant Bell to dismiss the complaint pursuant to Rule 12(b)(6) of the Federal

Rules of Civil Procedure for failure to state a claim upon which relief can be granted. In a prior ruling, the court concluded that the defendants had presented sufficient evidence to demonstrate the existence of a joint venture between Bell and Boeing to develop the V-22 Osprey. Stecyk v. Bell Helicopter Textron, Inc., No. CIV. A. 94-CV-1818, 1997 WL 701312, at *3 (E.D. Pa. Nov. 4, 1997). Defendant Bell contends, therefore, that because the Osprey was developed by the Bell-Boeing joint venture, it is not individually liable for the acts of the joint venture, and its liability, if any, must stem from its partnership capacity. (Def's. Mem. Supp. Mot. To Dismiss at 4, 5.)

Additionally, Bell argues that under Pennsylvania law, a judgment cannot be entered against a partner individually unless he has been sued in his partnership capacity. Id. at 6. While the Bell-Boeing venture is not a party to this action, Bell has been named a defendant in its individual capacity. For the following reasons, defendant's motion to dismiss the complaint will be denied.

As a general rule, parties to a joint venture are mutually and vicariously liable for injuries or harms caused by their venture. Richardson v. Walsh Construction Company, 334 F.2d 334 (3d Cir. 1964). Resembling the law of partnership, all the members of a joint venture may be liable jointly and severally for a tort committed by one of them in conducting the business of

the joint venture. Friedman v. Wilson Freight Forwarding Company, 181 F. Supp. 327, 328 (W.D. Pa. 1960). However, an exception to the rule exists where the plaintiffs are employees of the joint venture or partnership. Greenya v. Gordon, 389 Pa. 499, 133 A.2d 595 (Pa. 1957).

In Greenya, the court held that "employees" of a joint venture or partnership cannot sue individual partners or joint venturers in tort. Id. Other jurisdictions have recognized this limitation on the capacity of an employee to sue as well. For example, in Kalnas v. Layne of N.Y. Co., 173 N.J. Super. 492, 414 A.2d 607 (N.J. Super. Ct. App. Div. 1980), a New Jersey court held that a member of a joint venture could be held liable for its own negligence when sued by an employee of the other venturer, despite the exclusivity provision in the state's workers' compensation law, where the joint venture did not exert control over the plaintiff so as to be considered his "employer."

Here, the court has already ruled that while a joint venture did exist, it did not exercise sufficient control over the manner of the decedents' employment to be considered an employer under Pennsylvania law, and Bell's motion for summary judgment was denied on the issue of workmen's compensation as plaintiffs' exclusive remedy. Stecyk, 1997 WL 701312, at *3, *7. Since neither Bell nor the Bell-Boeing joint venture employed the plaintiffs, it follows, under the Greenya court's holding, that they are not barred from suing Bell, a joint venturer, for its

own alleged negligence.¹

Furthermore, it is uncontested that, under Pennsylvania law, a partner is individually liable for wrongs committed by the partnership. LaFountain v. Webb Indus. Corp., 759 F. Supp 236, 242 n.3, aff'd, 951 F.2d 544 (3d Cir. 1991). Moreover, a party's capacity to be sued is determined by Rule 17(b) of the Federal Rules of Civil Procedure. Rule 17 (b) provides, in relevant part:

The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of the individual's domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. In all other cases capacity to sue or be sued shall be determined by the law of the state in which the district court is held . . .

As noted by defendant Bell, this rule points to Pennsylvania law for determining how suit can be brought against a partnership. Rule 2128 of the Pennsylvania Rules of Civil Procedure answers this question, providing that "[a]n action against a partnership may be prosecuted against one or more partners as individuals trading as the partnership . . . , or against the partnership in its firm name." This rule has been interpreted by the Pennsylvania Supreme Court to allow for suit against the individual partners, the partnership as an entity, or

¹ As noted previously by Judge Rendell in considering whether a joint venture existed, "[p]laintiffs also are not trying to hold Bell liable for Boeing's actions but wish to hold Bell liable for Bell's actions." Stecyk v. Bell Helicopter Textron, Inc., No. 94-CV-1818, 1996 WL 153555, *11 at n.11 (E.D. Pa. April 1, 1996).

both. Birk v. Dobin, No. 95-5958, 1996 WL 284995, at 2 (E.D. Pa. May 23, 1996). See also Powell v. Sutliff, 189 A.2d 864, 865 n.1 (Pa. 1963) ("Suit may be prosecuted against either the partnership entity, the individual partners or, as here, against both of these entities."). Based on the Pennsylvania rule and its interpretation by the state's highest court, plaintiffs may proceed against defendant Bell as named in this action.

Therefore, for the reasons set forth above, defendant Bell's motion to dismiss pursuant to Federal Rule of Civil Procedure 12 (b)(6) will be denied.