

Malanuk v Alvert Weiss Air Conditioning Prods., Inc.
2013 NY Slip Op 33120(U)
November 8, 2013
Supreme Court, New York County
Docket Number: 103166/08
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: DEBRA A. JAMES
Justice

PART 59

JOHN MALANUK and MARY ELLEN MALANUK,
Plaintiffs,

Index No.: 103166/08

Motion Date: 10/19/12

- v -

ALBERT WEISS AIR CONDITIONING PRODUCTS,
INC., BP AIR CONDITIONING CORP., DIANE
ELECTRIC, INC., ANEMOSTAT AIR DISTRIBUTION,
MESTEK, INC., TISHMAN CONSTRUCTION
CORPORATION, TISHMAN CONSTRUCTION
CORPORATION OF MANHATTAN, TURNER
CONSTRUCTION COMPANY,

Motion Seq. No.: 04

Motion Cal. No.: _____

Defendants.

FILED

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NEW YORK
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The following papers, numbered 1 to 6 were read on this motion for summary judgment.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits _____
Answering Affidavits - Exhibits _____
Replying Affidavits - Exhibits _____

PAPERS NUMBERED	
1 - 3	_____
4	_____
5, 6	_____

Cross-Motion: Yes No

Upon the foregoing papers,

The court shall deny the motion for summary judgment made by
defendants Albert Weiss Air Conditioning Products, Inc.,
Anemostat Air Distribution and Mestek, Inc.

Movants assert that summary judgment should be granted in
their favor because (1) the air handling unit was not defectively
designed and it was reasonably safe for its intended purpose,
(2) the design of the unit was not a substantial factor in

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Check if appropriate: DO NOT POST REFERENCE

SETTLE/SUBMIT ORDER/JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING

causing plaintiff's injuries and (3) plaintiff's negligence was a superceding cause of the accident.

"On a motion for summary judgment, a defendant seeking the dismissal of a strict products liability claim based on a manufacturing defect must submit admissible proof establishing, as a matter of law, that the product was not defective. If the defendant presents such proof, the burden shifts to the plaintiff to demonstrate the existence of a triable issue as to whether, in fact, there was a defect." McArdle v Navistar Intern. Corp., 293 AD2d 931, 932 (3d Dept 2002).

Here, the movants fail to meet their initial burden and therefore the burden never shifts to the plaintiff. Movants submit no expert affidavit or testimony in support of their contention that the air handling unit was not defectively designed. "A mere statement in an attorney's affirmation in support of a motion for summary judgment" is insufficient to carry a defendant's burden in a case alleging defective design. Yun Tung Chow v Reckitt & Colman, Inc., 17 NY3d 29, 33 (2011). As on this motion "[d]efendants focus on plaintiff's mishandling of the product and asserted deficiencies in his expert's affidavit" are insufficient to establish entitlement to judgment as a matter of law. Id. As further stated by the Court "[a]t this stage, defendants cannot rely simply on the fact that their product is what they say it is and that everyone knows that [it]

is dangerous; that only begs the question at the heart of the merits of the defective design claim: knowing how dangerous [the product] is, was it reasonable for defendants to place it into the stream of commerce . . . for use by a layperson? Defendants offered no answer to this question, and thus, did not demonstrate their entitlement to judgment as a matter of law." Id.

Movants here assert that the plaintiff should have known not to service the product because his "maintenance duties did not include electrical work, which he admittedly had no training in." Yet the movants fail to cite any warning on their product that its servicing required an electrician. Defendants argument that plaintiff should have known not to attempt to service the unit because "it was wired and powered by electricity" taken to its limit would suggest that plaintiff should know to always call an electrician in order to replace a light bulb because it too is "wired and powered by electricity."

Movants' argument that plaintiff's attempt to repair the unit is a superseding cause of his injuries fails at this juncture because there is no evidence that movants provided any warning that it was inherently dangerous for a maintenance person to attempt to perform maintenance on the unit. See Johnson v Johnson Chemical Co., Inc., 183 AD2d 64, 69 (2d Dept 1992) ("liability may be premised upon the complete absence of warnings as to a particular hazard").

Movants' further attempt to summarily avoid liability on the basis that the unit was manufactured pursuant to codes, standards and regulations of their co-defendants must also be denied because there is no evidence that any other party undertook to inspect the unit after its manufacture to insure it was free of either a design or manufacturing defect. Contrast McArdle v Navistar Intern. Corp., supra, 293 AD2d at 932-933 ("defendants met their initial burden by submitting proof that the sweeper was built to state specifications and was thoroughly examined and approved by several DOT inspectors prior to shipment").

Accordingly, it is

ORDERED that the motion is DENIED.

This is the decision and order of the court.

Dated: November 8, 2013

ENTER:

~~Debra A. James~~
DEBRA A. JAMES J.S.C.

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