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| Burawa v Acker Drill Co. |
| 2014 NY Slip Op 30887(U) |
| March 31, 2014 |
| Sup Ct, New York County |
| Docket Number: 190272/12 |
| Judge: Sherry Klein Heitler |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 30

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DEBORAH ANN BURAWA, Individually and as Executrix
of the Estate of ROBERT BRUCE BURAWA,

Index No. 190272/12
Motion Seq. 006

Plaintiffs,

DECISION & ORDER

-against-

ACKER DRILL COMPANY, et al.,

Defendants.

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SHERRY KLEIN HEITLER, J.:

In this asbestos personal injury action, defendant Electrolux Home Products, Inc. (“Electrolux”)¹ moves pursuant to CPLR § 3212 for summary judgment dismissing the complaint and all cross-claims asserted against it on the ground that it is not responsible for the Hercules engine blocks plaintiff Robert Burawa identified as a source of his asbestos exposure.

Summary judgment is a drastic remedy that should be granted only if there are no triable issues of fact. *Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 (2012); *see also Alvarez v Prospect Hospital*, 68 NY2d 320, 324 (1986). In deciding a summary judgment motion the court’s role is to determine if any triable issues exist, not the merits of any such issues. *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 (1957). In doing so, the court views the evidence in the light most favorable to the nonmoving party, and gives the nonmoving party the benefit of all reasonable inferences that can be drawn from the evidence. *Angeles v Aronsky*, 105 AD3d 486, 488-89 (1st Dept 2013).

In asbestos personal injury cases, should the defendant *prima facie* establish its entitlement to

¹ Electrolux Home Products, Inc. is sued herein as “Electrolux Home Products, Inc., Individually and as Successor to Gibson White and Hercules and Blaw-Knox Company”.

summary judgment, the plaintiff must then demonstrate that there was actual exposure to asbestos fibers released from the defendant's product. *Cawein v Flintkote Co.*, 203 AD2d 105, 106 (1st Dept 1994). While the plaintiff need only show "facts and conditions from which the defendant's liability may be reasonably inferred," (*Reid v Georgia-Pacific Corp.*, 212 AD2d 462, 463 [1st Dept 1995]), the plaintiff cannot rely on conjecture or speculation. *Roimesher v Colgate Scaffolding*, 77 AD3d 425, 426 (1st Dept 2010).

In light of this standard, and for the reasons set forth below, this summary judgment motion is denied.

Robert Burawa was diagnosed with mesothelioma on June 4, 2012. He died on January 21, 2013. Prior to his death, Mr. Burawa and his wife Deborah Burawa commenced this action to recover for personal injuries caused by his alleged exposure to asbestos-containing products which he sustained over the course of more than twenty years as an automotive and marine repairman.

Mr. Burawa was deposed on October 5, 2012 and November 19, 2012.² He testified that during the early 1950's when he was 8-10 years old he began assisting at Bay Towing, his father's Queens, New York repair shop. By 1970, marine repairs had become the vast majority of Bay Towing's business. Mr. Burawa testified that he rebuilt engines and salvaged junk engines for spare parts and that he was exposed to asbestos from scraping head gaskets. In this regard, Mr. Burawa expressly identifies Hercules engine blocks as a source of his exposure.

In its moving papers the defendant asserts that there is no successor relationship between Electrolux and the Hercules motor brand. In opposition plaintiffs submit documents³ which among

² Copies of Mr. Burawa's deposition transcripts are submitted as defendant's exhibits B & C ("Deposition").

³ See Electrolux's June 20, 2013 Objections and Responses to Plaintiffs' Standard Set of Liability Interrogatories and Request for Production of Documents; May 14, 1968 correspondence from William A. Giddens to H.R. Gill; October 21, 1966 Supplemental Agreement between White Motor and Hupp; and excerpts from a 1961 Hupp report (collectively submitted as defendant's exhibit D).

others things establish: that the Hupp Corporation ("Hupp") to which Electrolux is the successor purchased Hercules' assets in 1961; that Hupp operated Hercules as a division for five years until 1966; that Hupp sold Hercules in the form of an asset sale to White Motor Corporation ("White Motor"); and that there is nothing in the agreement between Hupp and White Motor which demonstrates that White Motor assumed any of Hercules' liabilities. Plaintiffs contend that such documents show that Hupp retained the liabilities associated with Hercules engine blocks manufactured from 1961 through 1966.

In reply the defendant contends that plaintiffs failed to demonstrate that Mr. Burawa actually worked on Hercules engine blocks during this limited time frame. Nevertheless, I find that a reasonable inference could be drawn from Mr. Burawa's testimony that he was exposed to Hercules engines manufactured during the period 1961-1966 given that he continuously worked with marine engines towards the end of his career at Bay Towing and that Hercules apparently supplied engine blocks to several major engine manufacturers during this time. The defendant's reply does not challenge plaintiffs' recitation of Hercules' corporate history or plaintiffs' assertion that the defendant is responsible for all Hercules engine blocks manufactured between 1961 and 1966. Mr. Burawa testified as follows (Deposition pp. 251-52, 255-56, objections omitted):

Q. Let me ask you this: Could you tell me the brand of marine engines that you worked on during your career doing marine engine work?

A. Yes, like I said . . . there was Gray Marine. There was Chris-Craft, Norberg, Ford Interceptor. There's another very popular motor. Gray, Chris-Craft, Norberg, Ford Interceptor. I'm at a loss. I can't think right now. There were one or two more I believe. I'm not positive.

Q. Let me ask you this question: In some cases was the block of the engine made by a company other than the engine manufacturer?

A. Yes.

Q. Who was the block maker than you're familiar with?

A. Chris-Craft I know had Hercules motors and Gray Marine, I believe they had Continental. Norberg I think was a Hercules block too. I'm pretty sure.

* * * *

- Q. You mentioned that you believe that Hercules blocks were used in conjunction with Norberg engines?
- A. Yes, I believe so. I wouldn't swear to it, but I know that Chris-Craft was and Gray -- not Gray Marine, the Chris-Craft and Norberg, is that all I said?
- Q. I think you said a few others too. I'm not sure. But with regard to my question, what does that mean, the block in conjunction with Norberg? What did Norberg do with this block?
- A. They're the one that manufactured that motor and the other -- like the Chris-Craft company and all, they used that motor as a marine motor.
- Q. Was the Hercules a motor?
- A. Yes, Hercules was a motor company, yes, but it was used in marine, but Hercules didn't have its own marine motor. All the blocks were made by Hercules.
- Q. So Hercules would make this motor block?
- A. Yes, and it supplied it to different companies with that motor block.
- Q. What would the different companies do with the block?
- A. They would make a marine engine and put their name on it. It would be called Chris-Craft or Norberg. I forget the other one.

The defendant declined to specifically question Mr. Burawa whether he believed he was exposed to Hercules engine blocks manufactured between 1961 to 1966 despite having been given an opportunity to do so. As such I find that there remains a triable issue of fact as to the defendant's liability which precludes summary judgment in its favor. *Vega v Restani Constr. Corp., supra*, at 503 (the party moving for summary judgment carries the initial burden to produce evidence which *prima facie* resolves all material issues of fact in its favor).

Accordingly, it is hereby

ORDERED that Electrolux Home Products, Inc.'s motion for summary judgment is denied in its entirety.

This constitutes the decision and order of the court.

DATED: 3.31.14



SHERRY KLEIN HEITLER, J.S.C.