

Snedeker v Arvinmeritor, Inc.
2017 NY Slip Op 33349(U)
November 19, 2017
Supreme Court, Broome County
Docket Number: Index No. EFCA2017-0870
Judge: Richard T. Aulisi
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STATE OF NEW YORK
SUPREME COURT COUNTY OF BROOME

DONNA SNEDEKER, Individually and as Personal
Representative for the Estate of KENNETH L. SNEDEKER,

Plaintiffs,

**DECISION
AND ORDER**

-vs-

ARVINMERITOR, INC., et al.,

Index #EFCA2017-0870
RJI #2017-0758-C

Defendants.

The plaintiffs commenced the within action to recover damages for personal injuries incurred by Kenneth L. Snedeker, allegedly resulting from his exposure to various asbestos containing products. The plaintiffs commenced this action on April 18, 2017, by filing a Summons and Complaint in the Broome County Clerk’s Office. The plaintiff, Kenneth L. Snedeker, passed away on July 19, 2017, and Mrs. Donna Snedeker was appointed as the Personal Representative of Mr. Snedeker’s Estate. Issue has been joined and discovery has been conducted pursuant to an expedited schedule. This matter is currently scheduled for trial commencing December 4, 2018.

The defendant, ArvinMeritor, Inc., (Rockwell and/or defendant)¹ has made a motion for summary judgment dismissing the plaintiffs’ Complaint and all cross claims asserted against it, pursuant to CPLR 3212. The defendant seeks summary judgment on the theory that the plaintiffs will be unable to prove that Kenneth L. Snedeker’s malignant mesothelioma was caused by his use and/or exposure to its products.

¹ The plaintiffs’ claims against ArvinMeritor relate to products manufactured and sold by the former automotive products segment of Rockwell International Corporation for which ArvinMeritor is now liable.

Mr. Snedeker was diagnosed with malignant mesothelioma in February of 2017. It is alleged that he developed mesothelioma as a result of exposure to asbestos containing materials. For the purpose of the within motion, plaintiffs allege Mr. Snedeker was exposed to the defendant's asbestos containing products while working for Stever Brothers, from 1957 until 1977. In particular, Mr. Snedeker alleged that he was exposed to asbestos containing brake materials made by Rockwell. Plaintiffs allege that these brake materials, which were made by Rockwell, were on various backhoes, bulldozers and loaders that the decedent worked with at Stever Brothers. Plaintiffs allege Mr. Snedeker was exposed to the asbestos materials during the removal and installation process, as well as during the actual operation of the equipment itself. Plaintiffs also claim that Mr. Snedeker was exposed to asbestos containing materials because he was in the presence of others who were performing work on the asbestos containing brake materials.

The defendant acknowledges the fact that the deceased plaintiff identified it (Rockwell) as the manufacturer of the brake materials that he recalled working with and around while being employed at Stever Brothers. The defendant asserts, however, that although Mr. Snedeker testified that he believes he was exposed to asbestos from its brake materials, he was mistaken in his alleged identification. The defendant claims that Mr. Snedeker identified "band brakes", and that Rockwell never manufactured band brakes as he described.

The movant has submitted an affidavit from Bruce E. Ketcham, a Litigation Consultant. Mr. Ketcham asserts in his affidavit that the deceased plaintiff only worked with "tracked equipment". Mr. Ketcham claims that this type of equipment would utilize band brakes and that Rockwell never manufactured or sold band brakes for the type of equipment Mr. Snedeker described.

A proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the

absence of any material issue of fact (Alvarez v Prospect Hospital, 68 NY2d 320, 324 [1986]). In the context of an asbestos case, the defendant must make a prima facie showing that its product could not have contributed to the causation of plaintiff's injury (Comeau v W.R. Grace & Co., 216 AD2d 79, 80 [1st Dept. 1995]); (Reid v Georgia-Pacific Corp., 212 AD2d 462 [1st Dept. 1995]).

The Court also notes that since this is a summary judgment motion, it must view the evidence in a light most favorable to the non-moving party, drawing all reasonable inferences in favor of the non-moving party (Salerno v Garlock, Inc., 212 AD2d 463, 464 [1st Dept. 1995]); (Goff v Clark, 302 AD2d 725 [3rd Dept. 2003]).

In order to establish entitlement to judgment as a matter of law, defendant carries the initial burden demonstrating that its respective products "could not have contributed to the causation" of plaintiff's asbestos-related injuries (Matter of New York City Asbestos Litig., 116 AD3d 545, 545 [2014]; see Matter of New York City Asbestos Litig., 216 AD2d 79, 80 [1995]). Moreover, a defendant cannot satisfy this burden by merely pointing to gaps in a plaintiff's proof (see Overocker v Madigan, 113 AD3d 924, 925 [2014]; DiBartolomeo v St. Peter's Hosp. of the City of Albany, 73 AD3d 1326, 1327 [2010]; Dow v Schenectady County Dept. of Social Servs., 46 AD3d 1084, 1084 [2007]; Johnson City Cent. School Dist. v Fidelity & Deposit Co. of Md., 272 AD 2d 818, 821 [2000]). "Failure to make such prima facie showing requires denial of the motion regardless of the sufficiency of the opposing papers" (Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]). Stated another way, a defendant cannot prevail on a motion for summary judgment merely by correctly arguing that the record before a court on the motion would be one which, if presented at trial, "would fail to satisfy a plaintiff's burden of proof and the court would be required to direct a verdict for defendant (Yun Tung Chow v Becklitt & Colman, Inc., 17 NY3d 29, 35 [2011])" (O'Connor v Fisher Scientific, LLC., __ AD3d __ [3rd Dept. June 6, 2017]).

The moving party must submit sufficient evidence showing why plaintiff's claim must fail (Krok v Aercto International, Inc., 146 AD 3d 700[1st Dept. 2017]); (Ricci v A.O. Smith, 143 AD 3d 516[1st Dept. 2016]); (Koulermos v A.O. Smith, 137 AD 3d 575, 576 [1st Dept. 2016]); (Torres v Industrial Container, 305 AD 2d 136[1st Dept. 2003]); also see (New York City Asbestos Litig. [DiSalvo] v A.O. Smith, 123 AD 3d 498[1st. Dept 2014]).

A plaintiff can successfully defeat a summary judgment motion by raising a material issue of fact and, once again, when this standard is applied to asbestos litigation, it has been held that plaintiff need not show the precise causes of his damages but only facts and conditions from which defendant's liability may be reasonably inferred (Lloyd v W.R. Grace & Co., 215 AD2d 177 [1st Dept. 1995]); also see (In Re New York City Asbestos Litigation v A.C. & S., 7 AD3d 285 [1st Dept. 2004]); (In Re Eighth Judicial District Asbestos Litigation v Amchem Products, Inc., 32 AD3d 1268 [4th Dept. 2006]).

Here, the plaintiffs assert that there is sufficient evidence to establish that the defendant's products were a source of Kenneth L. Snedeker's exposure to asbestos containing materials. The plaintiffs rely upon Mr. Snedeker's deposition testimony, wherein he testified repeatedly that he recalled working with defendant's (Rockwell) brake materials. He testified in detail as to how he believes the Rockwell brake products exposed him to asbestos. The plaintiff testified about the various pieces of equipment that utilized the defendant's products and he also described the cable brakes on the backhoes, which had the big break drums inside the cab where Mr. Snedeker alleges he was exposed to asbestos.

It is readily apparent to the Court that the moving defendant has not met its initial burden of proof. The Court also notes that, even if the defendant had met its initial burden of proof, the record before the court contains conflicting accounts regarding the various breaking mechanisms that Mr. Snedeker encountered while working at Stever Brothers. These conflicting accounts create material issues of credibility and fact which cannot be resolved in the context of a

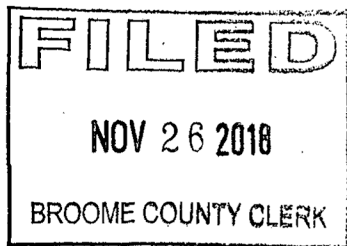
summary judgment motion (Ferrante v American Lung Assn., 90 NY2d 623,631[1997]).


Upon reviewing the record before it, the Court finds that there is a material issue of fact concerning the liability of the defendant.

Defendant's motion for summary judgment dismissing the Complaint and all cross-claims is denied, without costs.

This writing shall constitute the Decision and Order of this Court.

Signed this *19th* day of *November* 2017, at Johnstown, New York.





HON. RICHARD T. AULISI
Justice of the Supreme Court

ENTER