Leone v Weinman Pump & Supply Co.
2019 NY Slip Op 31607(U)
June 5, 2019
Supreme Court, New York County
Docket Number: 190295/2015
Judge: Manuel J. Mendez
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ *Justice* **PART 13**

IN RE: NEW YORK CITY ASBESTOS LITIGATION
ANTHONY D. LEONE, Individually and as Personal Representative of the Estate of VINCENT CHARLES LEONE, Deceased, and MARIA L. LEONE

Plaintiff(s),

- against -

WEINMAN PUMP & SUPPLY CO., *et al.*,

Defendants.

INDEX NO. 190295/2015
MOTION DATE 5/29/2019
MOTION SEQ. NO. 006
MOTION CAL. NO.

The following papers, numbered 1 to 6 were read on Crane Pump & Systems, Inc.'s motion for summary judgment:

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1- 3
Answering Affidavits — Exhibits	4-5
Replying Affidavits	6

Cross-Motion: Yes X No

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Upon a reading of the foregoing cited papers, it is Ordered that defendant Crane Pump & Systems, Inc.'s (hereinafter, "CP&S") motion for summary judgment pursuant to CPLR § 3212, dismissing plaintiffs' complaint and all cross-claims against it, is denied.

Plaintiffs commenced this personal injury action on September 18, 2015. Plaintiffs sued Crane Pumps in this action for the wrongful death of decedent, Vincent C. Leone ("Mr. Leone"), allegedly caused by exposure to asbestos-containing products. Mr. Leone was allegedly exposed to asbestos during his work as a pump mechanic for Federal Pumps Company and Frank A. Kristal Associates from 1954 to 1972. Plaintiffs also allege that he was exposed to asbestos while replacing brake linings on personal vehicles from approximately 1967 to the 1980s. Mr. Leone's son specifically recalled that his father worked on Weinman pumps during his time as a pump mechanic (Aff. in Opp., Exh. 4, 36:10-37:16; 65:16-66:1; 101:9-22).

Defendant moves for summary judgment, arguing that it is not responsible for tort related personal injury claims concerning Weinman pumps. Plaintiffs oppose the motion, claiming that CP&S did, in fact, assume liability for the personal injury claims at issue per its successor relationship to Weinman Pump & Supply, Co.

More specifically, defendant argues that it is not responsible for plaintiffs' personal injury claims because it contends that it did not assume liability for such claims in the relevant Asset Purchase Agreement (discussed further *infra*). CP&S also maintains that it is not otherwise the general successor to Weinman pumps.

On the other hand, plaintiff contends that CP&S did assume liability for the personal injury claims at issue according to a proper interpretation of the pertinent language in the relevant Asset Purchase Agreement (discussed further *infra*).

To prevail on a motion for summary judgment, the proponent must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence, eliminating all material issues of fact (*Klein v City of New York*, 81 NY2d 833, 652 NYS2d 723 [1996]). Once the moving party has satisfied these standards, the burden shifts to the opponent to rebut that prima facie showing, by producing contrary evidence, in admissible form, sufficient to require a trial of material factual issues (*Amatulli v Delhi Constr. Corp.*, 77 NY2d 525, 569 NYS2d 337 [1999]). Summary judgment is a drastic remedy that should only be granted if there are no triable issues of fact (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 942 NYS2d 13, 965 NE3d 240 [2012]).

"The fundamental rule of contract interpretation is that agreements are construed in accord with the parties' intent, and the best evidence of what parties to a written agreement intend is what they say in their writing. A written agreement that is clear and unambiguous on its face must be enforced according to the plain meaning of its terms" (*Banco Espirito Santo, S.A., v Concessionaria Do Rodoanel Oeste, S.A.*, 100 AD3d 100, 951 NYS2d 19 [1st Dept 2012]).

CP&S was once known as Burks Pumps, Inc. ("Burks"). It currently manufactures a line of pumps branded "Weinman." CP&S/Burks acquired certain assets related to the Weinman business from an entity known as A.M.W. Industries, Inc. in 1991. In accordance with the terms of an Asset Purchase Agreement dated October 8, 1991, Burks purchased assets from A.M.W. Industries, Inc. (*see* Aff. in Supp., Exh. G). The acquired assets included the Weinman line of pumps (*see* Aff. in Supp., Exh. H). Under the terms of both the A.M.W. Asset Purchase Agreement, and an accompanying "Assignment and Assumption Agreement" dated November 21, 1991, Burks assumed the following liabilities of the A.M.W. business (as enumerated in the Asset Purchase Agreement):

> 2. Assumption of Obligations.
>
> 2.1 Assumption of Liabilities. Upon the transfer of the Assets at the closing in accordance with this Agreement, Buyer shall assume the following liabilities and obligations (the "Assumed Liabilities"):
>
> * * * (v) All liabilities incurred in connection with any claim arising out of or otherwise relating to any express or implied representation, warranty, agreement or guaranty made or claimed to be made by the Company (or Buyer or any affiliate thereof), *or imposed or asserted to be imposed by operation of law*, in connection with any product produced, repaired, created or sold by the Company prior to the Closing (as hereinafter defined) (or Buyer or any affiliate thereof), *to the extent such claims*

> ***relate to damage or injury to person or property occurring from and after the Closing Date***;

(Aff. in Opp., Exh. 1, Purchase Agreement at 3, *emphasis added*)

As concerns asset purchase agreements, "A corporation may be held liable for the torts of its predecessor if (1) it expressly or impliedly assumed the predecessor's tort liability, (2) there was a consolidation or merger of seller and purchaser, (3) the purchasing corporation was a mere continuation of the selling corporation, or (4) the transaction is entered into fraudulently to escape such obligations" (*Schumacher v Richards Shear Co., Inc.*, 59 NY2d 239, 245, 464 NYS2d 437 [1983])

The italicized and underlined language above indicates that this contract provided for the assumption of personal injury liabilities such as those at issue in this case. In this case, exception "(1)" applies to the "general [New York] rule that a corporation which acquires the assets of another is not liable for the torts of its predecessor" (*id.*).

When provision 2.1(v) of the Asset Purchase Agreement is read in conjunction with provision 2.1(vi), the plain meaning of the two provisions also becomes further evident:

> **(vi) All liabilities relating to express or implied warranty obligations of the Company in connection with any product (including components or parts thereof) produced, repaired, created or sold by the Company prior to the Closing, to the extent such liabilities do not exceed the amounts reserved therefore on the Company's books and records as of the Closing Date;**

(Aff. in Opp., Exh. 1, Purchase Agreement at 3)

Clause 2.1(vi) would be unnecessary and redundant if Clause 2.1(v) did not, indeed, refer to the assumption of common law tort liability for personal injury claims. Moreover, the Asset Purchase Agreement does not show that CP&S refused to assume liability for tort claims such as those at issue in this case (*see Am. Std., Inc. v OakFabco, Inc.*, 14 NY3d 399, 403-04, 901 NYS2d 572 [2010]). The contract language above is clear on its face and should be enforced according to its plain meaning (*see Banco Espirito Santo, S.A., v Concessionaria Do Rodoanel Oeste, supra*).

Plaintiffs have successfully rebutted defendant's prima facie entitlement to summary judgment by showing that CP&S is liable for the kinds of personal injury claims at issue in this case. Therefore, the motion for summary judgment is denied.

Accordingly, it is ORDERED that defendant Crane Pump & Systems, Inc.'s motion for summary judgment pursuant to CPLR § 3212, dismissing plaintiffs' complaint and all cross-claims against it, is denied.

ENTER:

MANUEL J. MENDEZ
J.S.C.

Dated: June 5, 2019

MANUEL J. MENDEZ
J.S.C.

Check one: ☐ FINAL DISPOSITION X NON-FINAL DISPOSITION
Check if appropriate: ☐ DO NOT POST ☐ REFERENCE