SUPREME COURT – STATE OF NEW YORK
TRIAL TERM, PART 56 SUFFOLK COUNTY

ORIGINAL

PRESENT:

Hon. Carmen Victoria St. George
Justice of the Supreme Court

YUDY BONILLA,

Plaintiff,

-against-

NEXEL INDUSTRIES, INC. and SYSTEMAX, INC.,

Defendants.

Index No. 618985/2016

Motion Seq: 001 MD
Decision/Order

The following numbered papers were read upon this motion:

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Before the Court is an action to recover damages sounding in strict products liability and negligence for personal injuries stemming from a work-related accident sustained by plaintiff Yudy Bonilla on November 26, 2013 at her non-party employer's facility in Bohemia, New York.

Defendants move this Court for an Order pursuant to CPLR § 3212, granting summary judgment in its favor and dismissing plaintiff's complaint in which plaintiff's allegations include claims sounding in strict products liability and negligence. Defendants further demand costs and disbursements incurred for this action. For the reasons detailed below the defendants' motion in its entirety is denied.

ORDERED, that the defendants' motion for summary judgment dismissing the complaint is denied.

This Court recognizes that summary judgment is a drastic remedy and as such should only be granted in the limited circumstances where there are no triable issues of fact (***Andre v.***

Pomeroy, 35 NY2d 361 [1974]). Summary judgment should only be granted where the court finds as a matter of law that there is no genuine issue as to any material fact (***Cauthers v. Brite Ideas, LLC,*** 41 AD3d 755 [2d Dept 2007]). The Court's analysis of the evidence must be viewed in the light most favorable to the non-moving party, herein the plaintiff (***Makaj v. Metropolitan Transportation Authority***, 18 AD3d 625 [2d Dept 2005]).

The 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 eliminate any material issue of fact from the case (***Alvarez v. Prospect Hosp.***, 68 NY2d 320 [1986]; ***Sillman v. Twentieth Century-Fox Film Corp.***, 3 NY2d 395 [1957]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (***Winegrad v. New York Univ. Med. Ctr.***, 64 NY2d 851 [1985]). Once such proof has been offered the burden then shifts to the opposing party, who, in order to defeat the motion for summary judgment, must proffer evidence in admissible form and "must show facts sufficient to require a trial of any issue of fact" (**CPLR § 3212[b]**; ***Zuckerman v. City of New York***, 49 NY2d 557 [1980]). As the court's function on such a motion is to determine whether issues of fact exist, not to resolve issues of fact or to determine matters of credibility, the facts alleged by the opposing party and all inferences that may be drawn are to be accepted as true (***see Roth v. Barreto***, 289 AD2d 557 [2d Dept 2001]; ***O'Neil v. Town of Fishkill***, 134 AD2d 487 [2d Dept 1987]).

In support of defendants' motion, defendants submit, *inter alia*, the pleadings, the deposition of plaintiff, defendants and non-party witnesses, an affidavit of Alex Kattamis, PhD and relevant sections of defendants' catalogues.

Plaintiff's action arises out of an accident occurring in the course of her employment with the nonparty entity B/E Aerospace ("B/E"), at their manufacturing facility. B/E is engaged in the aerospace industry producing electrical component parts. Plaintiff was at a work station of a so-called "burn in rack" at the time of her accident. Defendants Nexel Industries, Inc. and Systemax, Inc. ("defendants") are manufacturers and wholesalers of various business products for light industry including storage racks. In this instance, defendants sold a rolling storage rack directly to B/E. That rack is the subject of this litigation and is described as consisting of chrome plated metal and having four rolling wheels attached by omnidirectional casters. The rack is typically used in retail stored such as Home Depot. The racks are for general purpose storage and may or may not have rollers. Plaintiff was performing what is known at B/E as a "burn-in" test of LED strip lighting being manufactured for placement in Boeing 737 jetliners on the subject rack. While testing the strip with an electrical power supply device to provide direct current electrical power to supply electricity to the light strips on the rack the plaintiff received an electrical shock.

Plaintiff commenced the instant action by filing a Summons and Complaint on November 22, 2016. On January 18, 2017 defendants joined issue by Answer and demanded a Bill of Particulars and Combined Demands. Plaintiff served a Verified Bill of Particulars on July 14, 2017 and a Supplemental Verified Bill of Particulars on June 28, 2018. The instant motion was filed within the 120 days of the filing of the Note of Issue.

"Manufacturers may be held strictly liable for injuries caused by their products 'because of a mistake in the manufacturing process, because of defective design or because of inadequate warnings regarding use of the product' " (***Singh v. Gemini Auto Lifts, Inc.***, 137 AD3d 1002, 1002–1003 [2d Dept 2016], quoting ***Sprung v. MTR Ravensburg***, 99 NY2d 468, 472 [2003]; *see* ***Voss v. Black & Decker Mfg. Co.***, 59 NY2d 102, 106–107 [1983]). Here, the defendants' submissions in support of their motion for summary judgment demonstrate the existence of triable issues of fact as to whether the rack was defectively designed at the time it was sold, whether it was feasible to design it in a safer manner, and whether the defect was a substantial factor in causing the injured plaintiff's injury (*see* ***McDermott v. Santos***, 171 AD3d 1158 [2d Dept 2019]; ***Singh v. Gemini Auto Lifts, Inc.***, 137 AD3d at 1003, *supra*; ***Cwiklinski v. Sears, Roebuck & Co., Inc.***, 70 AD3d 1477, 1480 [4th Dept 2010]; ***Milazzo v. Premium Tech. Servs. Corp.***, 7 AD3d 586, 588 [2d Dept 2004]). Based on the foregoing, the defendants failed to establish their prima facie entitlement to judgment as a matter of law dismissing the causes of action sounding in negligence and strict products liability based on design defect.

The defendants also failed to establish their prima facie entitlement to judgment as a matter of law dismissing the causes of action premised upon a failure to warn. "A manufacturer has a duty to warn against latent dangers resulting from foreseeable uses of its product of which it knew or should have known" (***Liriano v. Hobart Corp.***, 92 NY2d 232, 237 [1998]; *see* ***Reece v. J.D. Posillico, Inc.***, 164 AD3d 1285, 1287 [2d Dept 2018]; ***Singh v. Gemini Auto Lifts, Inc.***, 137 AD3d at 1002–1003, *supra*). "A manufacturer also has a duty to warn of the danger of unintended uses of a product provided those uses are reasonably foreseeable" (***Reece v. J.D. Posillico, Inc.***, 164 AD3d at 1287–1288, *supra*). "Issues regarding the adequacy of instructions or warnings ... are generally inappropriate for summary judgment relief" (***Haight v. Banner Metals, Inc.***, 300 AD2d 356, 356 [2d Dept 2002]; *see* ***DiMura v. City of Albany***, 239 AD2d 828, 829–830 [3d Dept 1997]). Here, the defendants failed to submit evidence that certain warnings were placed on the rack and a manual or other tags had such a warning, the defendants failed to establish, *prima facie*, that they adequately warned users that the rack or the rack as customized had warnings (*see* ***Passante v. Agway Consumer Prods., Inc.***, 12 NY3d 372, 382 [2009]; ***Singh v. Gemini Auto Lifts, Inc.***, 137 AD3d at 1003; ***Barker v. Mobile Pallet Truck, Inc.***, 71 AD3d 1542, 1543 [4th Dept 2010]; ***Milazzo v. Premium Tech. Services Corp.***, 7 AD3d at 588). The defendants also failed to establish, prima facie, that the plaintiff was aware of the danger of doing electrical work on the rack (*see* ***Passante v. Agway Consumer Prods., Inc.***, 12 NY3d at 382; ***Palmatier v. Mr. Heater Corp.***, 163 AD3d 1192, 1196–1197 [3d Dept 2018]; ***Garcia v. Woodgrove Sales, Inc.***, 65 AD3d 516, 516–517 [2d Dept 2009]).

In light of the defendants' failure to establish their *prima facie* entitlement to judgment as a matter of law, we need not consider the sufficiency of the plaintiff's opposition papers (*see* ***Winegrad v. New York Univ. Med. Ctr.***, 64 NY2d 851, 853 [1985]).

Accordingly, this Court denies the defendants' motion for summary judgment dismissing the complaint.

ORDERED, defendants' motion for summary judgment on the issue of liability is denied.

The foregoing constitutes the Order of this Court.

Dated: April 29, 2020
Riverhead, NY

HON. CARMEN VICTORIA ST. GEORGE

CARMEN VICTORIA ST. GEORGE, J.S.C.

FINAL DISPOSITION [ ] NON-FINAL DISPOSITION [X]